

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.134 of 2020

In

Civil Writ Jurisdiction Case No.16751 of 2019

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- 1.1. Siyaram Yadav Son of Late Dwarika Ahir @ Dwarika Yadav Resident of Village and P.O.- Mahadah, P.S.- Buxar (M), District- Buxar.
- 1.2. Rajaram Yadav, Son of Late Dwarika Ahir @ Dwarika Yadav Resident of Village and P.O.- Mahadah, P.S.- Buxar (M), District- Buxar.
- 1.3. Rameshwar Yadav, Son of Late Dwarika Ahir @ Dwarika Yadav Resident of Village and P.O.- Mahadah, P.S.- Buxar (M), District- Buxar.

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Revenue and Land Reform Department, Patna.
2. The Bihar Land Trinunal, Patna.
3. The District Magistrate, Buxar.
4. The Consolidation Officer, Buxar.
5. Lalan Yadav, S/o Dwarika Yadav, Resident -Mahadah, P.S. Buxar (M), District-Buxar.
- 6.1. Pappu Yadav S/o Late Ganga Sagar Yadav, Resident of Village-Pratapsagar, P.O.-Purana Bhojpur, P.S.-Dumraon, Distt-Buxar.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Ambuj Narayan Chaubey, Advocate

For the State : Mr. Arun Kumar Bhagat, Advocate

For the Respondent/s : Mr.Md. Khurshid Alam (AAG-12)

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 04-09-2023

The appellant is aggrieved with the judgment of the
Learned Single Judge, which dismissed the writ petition on the



ground of no *locus standi* and refused to interfere with the order passed by the Bihar Land Tribunal in B.L.T. Case No. 449 of 2018 on that ground and also on the ground of the gross delay of 9 years, that occurred from the date of execution of the sale-deeds, to move the Collector.

2. The facts not in dispute are that the appellant had a dispute on the title of the property, with the 6th respondent. The appellant agitated his cause up to the Hon'ble Supreme Court and failed. The 6th respondent transferred the properties by three sale-deeds in favour of Respondent No. 5. The sale-deeds were executed on different dates and after about nine years the appellant herein approached the Collector under Section 32 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (for brevity 'Consolidation Act'). The Collector canceled the three sale-deeds by Annexure-1 Order produced in the writ application. The Collector in the said order has found that the sale-deeds could not have been executed without de-notification of the lands. The Collector, however, has not imposed any fine under Section 32.

3. The 6th respondent approached the Bihar Land Tribunal, which was permissible under Section 9 of the Bihar Land Tribunal Act, 2009. The Bihar Land Tribunal allowed the



appeal by rejecting the claim on two grounds; one of *locus standi* and the other of delay in approaching the Collector. The Tribunal set aside the order of the Collector against which the writ petition was filed.

4. Before us the learned counsel for the appellant, who was the writ petitioner, pointed out an earlier order of the Division Bench which directed the parties to produce the 'Chakbandi' by which there was a prohibition on transfer of lands as per the Consolidation Act. It is submitted by the learned counsel for the appellant that the State may be asked to produce such 'Chakbandi' and the publication under Section 13, if there is any.

5. We are not convinced that there should be such a direction, especially looking at a Division Bench decision of this Court reported in **(2015) 2 PLJR 774 Surendra Rai and Ors. v. State of Bihar through the District Magistrate, Vaishali at Hajipur**. We specifically refer to Paragraph 15, wherein also the order of the Collector observed that the transfer of the land had taken before issuance of any notification under Section 26A of the Act. The learned Judges specifically noticed that there is not even any mention as to when the Register under Section 10 was published or when the notification under Section 26A of the Act



was issued. In the present case, it is an admitted fact that there was no notification under Section 26A. However, a notification under Section 26A is required only if there is a publication issued under Section 13 of the Act of 1956. We specifically extract the following from Paragraph 17 of the cited judgment :-

“An individual or authority which intends to invoke the provision under Section 5 must be able to establish the factum of publication of register under Section 10. In absence of that, the very occasion to invoke Section 5 does not arise.

6. Hence either the appellant herein or the authority acting under Section 5 of the Act should have specifically mentioned the notification by which the ‘*Chakbandi*’ was created under Section 10 of the Act. The writ petitioner who is the appellant, even now insist that the State should produce it. The writ petitioner was not vigilant enough to produce it before the Original Authority, the District Collector before whom he moved under Section 5 of the Act. The Collector also did not refer to that fact before cancelling the sale-deeds. The Tribunal has allowed the appeal on the ground that petitioner has no *locus standi* and there is gross delay in approaching the District Collector under Section 5.

7. We are not convinced that the delay would restrict the Collector from acting under Section 32, since there is a clear prohibition under Section 32; which makes any transfer *void ab*



initio. There is no requirement for an order from the Collector or a declaration that the transfer is void. Section 32 without anything more, makes a transfer, void, statutorily. The power conferred on the Collector under Section 32 is to impose a fine; on such a transfer being effected. The primary aspect for the statutory prohibition to operate is not the de-notification under Section 26A; but the publication of the register under Section 10 of the Consolidation Act.

8. The appellant cannot be non-suited on the ground of *locus standi*, but he had to place the necessary facts before the Authority. When the fact of a transfer by three sale-deeds was brought to the notice of the authority, at least the authority had a duty to ensure that the creation of ‘*Chakbandi*’ was noticed in the order.

9. We cannot also ignore the fact that the appellant is a person who had attempted to divest the 6th respondent off the title of the property, and failed. There is an element of mischief in his approaching the Collector under Section 32 and in that circumstance the delay assumes relevance. The sale-deeds were of the years 2001, 2006 and 2007 and the application under Section 32 was in 2015. The appellant, who initiated the proceedings under the Consolidation Act, had an additional



responsibility to ensure that the lands were covered under the Consolidation Act, and establish it; which he now attempts to establish by seeking a direction to the State.

10. We find absolutely no reason to entertain the prayer made or even the appeal. We reject the prayer and dismiss the appeal.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Anushka/-

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CAV DATE	
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