

IN THE HIGH COURT OF JUDICATURE AT PATNA

Nirmala Devi & Ors.

vs.

State of Bihar & Ors.

LETTERS PATENT APPEL No. 607 of 2018

In

CIVIL WRIT JURISDICTION CASE No. 13116 of 1992

1 February, 2023

(Hon’ble Mr. Justice Ashutosh Kumar and Hon’ble Mr. Justice Satyavrat Verma)

Issue for Consideration

Whether sale deeds executed during the pendency of consolidation proceedings are void under Section 5 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956, especially when Chaks have already been determined under Section 13 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956?

Headnotes

Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956—Section 32—Property Law—consolidation proceedings—bar on alienation—determination of Chaks—right to transfer property—Jurisdiction of Collector—civil remedy—appellants challenged sale deeds executed during pendency of consolidation proceedings, alleging violation of Section 5 of the Act, 1956—District Collector rejected objection under Section 32; Bihar Land Tribunal upheld sale as valid, noting Chaks had already been determined under Section 13—learned Single Judge affirmed Tribunal’s decision—appellants argued bar under Section 5 continues until formal closure notification under Section 26-A is issued.

Held: Once Chaks are finalized under Section 13, bar under Section 5 ceases to apply—absence of notification under Section 26-A does not restrict owner’s right to alienate property—Collector lacks jurisdiction to declare sale void post-Chak determination—appeal dismissed.

Case Law Cited

Panna Devi vs. The State of Bihar & Ors., **2010 (2) PLJR 1066** (FB); Ram Raji Sharma and Anr. vs. The State of Bihar and Ors., **2007(4) PLJR 449—Relied Upon.**

List of Acts

Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956.

List of Keywords

consolidation proceedings; consolidation operation; sale deed; bar on alienation.

Case Arising From

From order passed by learned Single Judge in Civil Writ Jurisdiction Case No. 13116 of 1992.

Appearances for Parties

For the Appellants: Mr. Binod Kumar Singh, Advocate Ms. Vagisha Pragya Vacaknavi, Advocate.

For the State: None

Headnotes Prepared by Reporter: Abhas Chandra, Advocate

Judgment/Order of the Hon’ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.607 of 2018
In
Civil Writ Jurisdiction Case No.13116 of 1992

-
1. Nirmala Devi W/o Harbansh R/o Village and P.O. - Mathila Via, P.S. - Koransaraiya, District - Buxar.
 2. Shivji Singh @ Sheoji Singh
 3. Satya Narain Singh
 4. Sanjay Kumar Singh All S/o late Dadan Singh and Late Ramala Devi
 5. Renu Devi
 6. Sadhana Devi, Both D/o Late Dadan Singh and Late Ramala Devi Petitioner Nos. 2 to 6 are R/o Village and P.O. - Kopwa, P.S. Koransaraiya, District - Buxar, presently R/o Village - Niranjanpur, P.O. Diwan Ke Barkha Gaon, P.S. - Koransaraiya, District Buxar.

... .. Appellant/s

Versus

1. The State of Bihar
2. The District Collector, Bhojpur.
4. Nagendra Singh S/o late Ram Subhag Singh
5. Binod Kumar Singh
6. Deshraj Singh
7. Hansraj Singh All S/o late Rudal Singh
8. Koshila Devi
9. Bibi Devi
10. Pinki Devi
11. Rani Devi All daughters of late Rudal Singh All R/o Village Niranjanpur, P.S. - Koransarai, District - Buxar.
12. Anil Singh
13. Krishna Singh
14. Vinod Singh
15. Bateshwar Singh
16. Sriman Singh @ Pahari Singh All S/o Nagendra Singh and late Kumaro Devi All R/o Village Niranjanpur, P.S. - Koransarai, District - Buxar.
17. Smt. Atwaro Devi W/o Sripati Ram
18. Sant Bilash Singh S/o Late Ramadhar Singh Both R/o Village Niranjanpur, P.O. Koransarai, District - Buxar.
19. Shankar Dayal Yadav S/o Shri Shri Rangila Yadav R/o Village Pipari, P.S. Koransarai, District - Buxar.

... .. Respondent/s

Appearance :



For the Appellant/s : Mr. Binod Kumar Singh, Advocate
Ms. Vagisha Pragya Vacaknavi, Advocate
For the Respondent/s : None.

**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)**

Date : 01-02-2023

Heard Mr. Binod Kumar Singh, learned Advocate for
the appellants.

As noted in earlier orders, there is no appearance on
behalf of the respondents even though they have been served
notice.

The appellants herein are the descendants of one
Indrasana Kuer, the mother-in-law of the vendor of some of
the sale-deeds, which were executed in favour of third party
during the pendency of the consolidation proceedings. She
had approached the District Collector under Section 32 of the
Bihar Consolidation of Holdings and Prevention of
Fragmentation Act, 1956 (hereinafter called the Act) for
declaring such sale-deeds to be null and void in view of the
bar for any transfer or alienation of any kind as provided
under Section 5 of the Act.



The Collector did not agree to the proposition of the objector forcing a litigation ahead before the Bihar Land Tribunal.

Before the Tribunal, the issue with respect to sale of a property, which was under the consolidation operation, was raised but the Tribunal found that the sale-deed had been executed only after the *Chaks* were determined and the principles were declared under Section 13 of the Act.

Precisely for this reason, no interference was made by the Tribunal.

On similar set of grounds, the learned Single Judge also refused to interfere with the orders passed by the authorities below.

Mr. Binod Kumar Singh strenuously argued that in the Full Bench decision of the Patna High Court in ***Panna Devi Vs. The State of Bihar & Ors. 2010(2) PLJR 1066 (FB)***, it has been conclusively held that the bar operates for the period during which consolidation proceedings are pending and that it binds all the parties.

There is no quarrel to this proposition of law.



It may be noted that the Full Bench in this instance was constituted for correcting an apparent error in the judgment of a Division Bench of this Court in ***Ram Raji Sharma and Anr. Vs. The State of Bihar and Ors. 2007(4) PLJR 449***, in which it was held that the transaction during the period of operation would be void in so far as the consolidation proceedings are concerned and not *inter se* the parties to the transaction.

Since this was in derogation of the general line of decision, a determination of the issue was required by a Larger Bench. The Full Bench, referred to above, did not find the proposition in Ram Raji Sharma (*supra*) to be correct and therefore it was conclusively held that any such transaction shall not only govern the consolidation proceedings but shall also bind the parties to the transaction.

We have noticed that the learned Single Judge relied upon ***Kamla Devi Vs. The State of Bihar & Ors. 1998(3) All PLR 142***, where, taking into account the basic principle of the constitutional right to property and the general practice of the State of Bihar in not coming out with a notification of closure of consolidation operations under Section 26-A of the Act,



even when *Chaks* are determined, it was held that preventing an owner of a property to sell it for such long time would only be an unnecessary curb on his right to enjoy the property. Merely because a formal notification under Section 26-A of the Act has not been issued, that would not fetter the right of the owner to alienate his property by different modes.

Taking this to be an unnecessary inconvenience on the right of enjoyment of property and the right being circumscribed only for the purposes of ease of consolidation proceedings, it was conclusively held that if the *Chaks* and the principle behind it is declared under Section 13 of the Act, there shall be no embargo on the alienation of the property, without the permission of the Collector and no bar under Section 5 of the Act would get attracted for the Collector of the district to pass any order of nullity under Section 32 of the Act.

The extension of the bar beyond that stage, it was observed, would not serve any purpose of the Act and, therefore, would be an arbitrary restriction on a citizen's right.



We endorse the afore-noted principle and find that the orders passed by the Tribunal and the learned Single Judge are not fit to be interfered with.

At this stage, Mr. Binod Kumar Singh submits that surprisingly, in the consolidation operations, the *Chaks* were carved out in favour of the objector viz Late Ms. Indrasana Kuer, the mother-in-law of the vendor.

If that be the case, the vendee does not get any Title and if at all the appellants are aggrieved, they could approach the competent civil court for redressal of their grievances.

Thus finding no fault with the order passed by the learned Single Judge, we dismiss this appeal but without any order as to costs.

(Ashutosh Kumar, J)

(Satyavrat Verma, J)

kundan

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	06.02.2023
Transmission Date	

