

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1450 of 2023

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Devanand Tiwari S/o Late Jawahar Tiwari R/o Ward No. 19, Tiwari Tola, P.O. and P.S. - Bhabhua, Distt.- Kaimur at Bhabhua.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Revenue and Land Reforms.
2. Collector-cum-District Magistrate, Kaimur (Bhabhua).
3. Vinodanand Tiwari S/o Late Jawahar Tiwari R/o Ward No. 19, Tiwari Tola, P.O. and P.S.- Bhabhua, Distt.- Kaimur at Bhabhua.
4. Chandan Kumar @ Chandan Tiwari S/o Vinodanand Tiwari R/o Ward No.19, Tiwari Tola, P.O. and P.S.- Bhabhua, Distt.- Kaimur at Bhabhua.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Parth Gaurav, Advocate
For the State	:	Mr. Navnit Kumar, AC to GP-18
For the Resp. Nos. 3 & 4:		Shri Devendra Kumar Sinha, Sr. Advocate
		Mr. Akhouri Vipin Bihari Shrivastava, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
CAV JUDGMENT

Date : 02-04-2025

Heard Mr. Parth Gaurav, learned counsel for the petitioner, Shri Devendra Kumar Sinha, learned Senior counsel appearing on behalf of the Respondent Nos. 3 and 4 and Mr. Navnit Kumar, learned AC to GP-18 for the State.

2. The present writ petition has been filed for quashing the order dated 22.08.2022 (Annexure-1) passed by the Collector-cum-District Magistrate, Kaimur at Bhabhua (respondent no. 2) in Misc. Case No. 31 of 2021 whereby an application filed by the petitioner under Section 32 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (hereinafter referred to



as 'the Act') has been rejected on the ground that a Title Suit No. 802 of 2020 is pending in the Court of Subordinate Judge-V, Bhabhua between the parties with respect to the same relief.

3. The dispute in this case related to a Gift Deed No. 2778 dated 17.05.2016 executed by Most. Basanti Kuer in favour of Chandan Kumar with respect to the land appertaining to Khata No. 75, Plot No. 15, Area 1.03 Acres, situated at Mauza- Silauta, P.S. Sonhan, District- Kaimur at Bhabhua. The common ancestor of the parties namely Jawahar Tiwari died leaving behind his widow namely Most. Basanti Kuer and five sons, namely, Abhyanand tiwari, Vinodanand Tiwari, Ram Prakash Tiwari, Vivekanand Tiwari and Devanand Tiwari. The disputed property is the ancestral property of the parties, partition with respect to which has never taken place and without there being any partition with respect to the aforesaid property, a purported gift deed dated 17.05.2016 have been executed by the mother of the petitioner namely Most. Basanti Kuer in favour of her grandson namely Chandan Kumar on the ground that he along with his mother have been taking care of the widow and no other heirs have been keen to take care of her. The petitioner being aggrieved with the execution gift deed during pendency of the Consolidation proceeding in the Mouza where disputed land is situated. The



petitioner has filed Misc. Case No. 31 of 2021 under Section 32 of the Act before the respondent no. 2. Admittedly, no denotification under Section 26A of the Act was done with respect to the area where disputed land is situated. Petitioner has obtained the information through RTI from the concerned Department which reported on 08.01.2021 that on the date of execution of gift deed in question, the area was not yet denotified under Section 26 A of the Act and prior permission from the authority was required for executing any deed of transfer.

4. Learned counsel for the petitioner submits that aforesaid fact about execution of the gift deed dated 17.05.2016 has come to the notice of the petitioner for the first time in 2021 and immediately, he has filed an application under Section 32 of the Act before the respondent no. 2 for holding the deed of gift to be void along with other reliefs.

5. Learned counsel for the petitioner submits that upon issuance of notice upon the respondent no. 2, the private respondents appeared and filed their reply mentioning the fact about pendency of aforementioned Title Suit No. 802 of 2020 between the parties and also raising the question of maintainability of such petition before the respondent no. 2. During pendency of the Miscellaneous Case before the respondent no. 2, the



respondent no. 2 called for a report from the Consolidation officer, Bhabhua, regarding prerequisite conditions for execution of gift deed and also about the fact as to whether consolidation proceeding was pending on the date of execution of the gift deed in question in the area where disputed land is situated. The Consolidation Officer, Bhabhua replied to the aforementioned query of respondent no. 2 vide letter no. 84 dated 18.09.2021, wherein it was reported that consolidation proceeding was pending on the date of the execution proceeding of the gift deed in the area where the disputed land is situated and there was requirement of seeking permission from the competent authority (Consolidation Officer) prior to execution any deed of transfer. Learned counsel for the petitioner submits that the respondent no. 2 has completely ignored the aforementioned report of the Consolidation Officer has been pleased to dismiss the Miscellaneous Case on the ground of pendency of Title Suit between the parties. He further submits that on similarly situated facts, the Hon'ble Court had decided CWJC No. 16057 of 2019 (*Lalita Devi & Ors. Vs. State of Bihar & Ors.*) on 06.08.2019 where it has been held that under Section 32 of the Act, the Collector has power to declare the deed of transfer as void if the same has been executed without taking permission from the Consolidation Officer and it was further held that



pendency of any suit with respect to the said deed before the Civil Court is not a bar to decide the matter between the parties by the respondent no. 2.

6. Learned counsel for the petitioner further submits that aggrieved by the order dated 06.08.2019, the petitioner of C.W.J.C. No. 16057 of 2019 has challenged the order of the writ court in LPA No. 1471 of 2019 which was heard and dismissed vide order dated 21.12.2022 affirming the order dated 06.08.2019 passed in CWJC No. 16057 of 2019. In view of the aforesaid settled principle of law by this Court, the order dated 22.08.2022 passed by the respondent no. 2 is without jurisdiction and fit to be set aside by this Court.

7. Learned counsel for the private respondent nos. 3 and 4 has filed a detailed counter affidavit and submits that the petitioner has not come before this Court with clean hand and the grandmother of respondent no. 4 has executed the aforesaid gift deed without any partition between the parties and after death of father of the petitioner in the year 2008, all brothers and their mother are separated for 1/6th share each. In fact, the village situated, Thana No. 490, the Chak scheme which was confirmed by the Deputy Director Consolidation, Sasaram on 01.10.1982 as such it is duty of the State to denotify the village under Section



26(a) of the Act. If the village has not been denotified under Section 26(a) of the Act the unit holders or villagers of Village-Silauta cannot be penalized for the same. There is nothing on the Notice Board about the list of the denotified villages in which there is need of permission required under Section 6 of the Act. So, permission was not required at all for transfer of the land of Village- Silauta. Once Chak stands confirmed by the Consolidation Officer, Khatiyon of village has been distributed to all the Raiyats of Village- Silauta without any hue and cry and as per distribution of Consolidation Khatiyon each Raiyat has been allotted Chak. As such each and every Raiyat is in possession of his allotted own Chak. The Chak Khatiyon of Khata No. 75 and Chak Khesra No. 15 for an area of 6.28 acres was published and distributed to Jawahar Tiwari whose sons are petitioner and opposite party/ Respondent Nos. 3 & 4. In fact, the petitioner had knowledge through the Title Suit No. 522 of 2016 filed by Vivekanand Tiwari, one of the brother of the petitioner for declared deed of gift no. 2778 of 2016 null and void in Schedule-"Kha" of the property and partition 1/6th share and on 27.10.2016 the petitioner has filed written statement with counter claiming partition of the suit land by 1/6th meaning thereby the petitioner has admitted 1/6th share of his mother namely Basanti



Kuer. The deed in question Most. Basanti Kuer in favour of Chandan Kumar @ Chandan Tiwari is quite correct and genuine as she has filed written statement in the Title Suit No. 522 of 2016 which was filed by the one of the brother of the petitioner namely Vivekanand Tiwari which supports the genuineness of the gift deed. She also supported the gift deed voluntarily in the supervision done by A.S.P., Bhabhua in Bhabhua P.S. Case No. 599 of 2016.

8. Learned counsel for the Private Respondent Nos. 3 & 4 further submits that if the petitioner has received any report from Consolidation Office which necessarily speaks about the fact that there is no need of taking permission from Consolidation Officer but it appears from the report that the chak has been confirmed by order of Deputy Director of Consolidation who is the only competent authority for the same, and after distribution of Khatiyan, the possession over the land allotted to each Raiyat has been confirmed. In the report issued by the Consolidation Officer, Bhabhua, he concluded that it was expected to take permission before transferring the land in question but he did not state that it was compulsion for taking permission from the Consolidation officer as chak scheme has been confirmed by the Deputy Director in 1982 itself. From the aforesaid, it is clear that there was no



need of taking permission from the Consolidation Officer and to that respect any report regarding taking permission is against the law. No need of all to take permission for transfer of the land in question because of the fact that the land has been transferred measuring 1.03 acre vide Chak Khata No. 75 and Chak Khesra No. 15 and there was no fragmentation of the area as such permission was not required for transfer of the land. The transfer of the land of Village Silauta permission was not required at all because of the BIZ that the chakbandi of Village Silauta, Thana No. 490 was published finally and distributed Khatian to each Raiyat of Village- Silauta and equally distributed to Jawahar Tiwari, the father of Opposite Party No. 1 and grandfather of Opposite Party No. 2 in 1982 and confirmed by the competent authority i.e. Deputy Director of Consolidation, Rohtas under Section 13(1) of Bihar Consolidation Act and it was the duty of the State Government to identify the Village- Silauta under Section 26(a) of Bihar Consolidation Act.

9. Learned counsel for the Private Respondents further submits that the draft consolidation scheme was confirmed in Village- Silauta under Section 13(2) of the Consolidation Act and accordingly permission was not equally required at all to deal with the land in Village- Silauta and therefore several persons executed



sale deeds from 1993 without any permission, even one full brother of the petitioner namely, Abhayanand Tiwari also executed two sale deeds on 28.02.2014 to Amtansh Kumar Dwivedi and another deed dated 14.08.2018 to Smt. Sunita Devi without any permission but the petitioner not raised any objection. In the present deed, the brother of the petitioner namely Abhayanand Tiwari stated that this land is ancestral property and in the share by Khangi Partition. The certificate of transfer has already been issued to the Raiyats and accordingly Register-II stands prepared on the basis of sale deeds and as such all Raiyats are *suo moto* paying rent to the State Government and as such there was no need at all for taking permission from Consolidation Officer. The land in question has been mutated by Circle Officer, Bhabhua on the basis of the order passed by the Collector, Bhabhua in the Mutation Revision Case No. 03 of 2017-2018. The petitioner has also filed Title Suit No. 802 of 2020 for declaration of deed of Gift No. 2778 dated 17.05.2016 illegal inoperative and void document and partitioned 1/5th share etc. In the aforesaid Suit, the bothers of the petitioner filed written statements and accepted that in between all brothers of the petitioner and mother already partitined in the year 2008 itself and mother of the petitioner executed deed of gift to Chandan Tiwari (Respondent No. 4) is genuine



documents. The aforesaid Title Suit No. 802 of 2020 rejected on 05.07.2023 under Order 7 Rule-11 of the C.P.C. The Miscellaneous Case filed by the petitioner before the Respondent No. 2 under Section 32 of the Consolidation Act itself was not maintainable on the ground of delay because in gift in issue had also been executed in the year 2016 whereas the impugned Miscellaneous Case has been filed in the year 2021 much beyond the period of general Rule of limitation. The land in issue fall has already been confirmed on 01.10.1982 under Section 13 of the Act and notification under Section 26A of the Act by the State is simply a formality, therefore bar of Section 32 of the Act, in any, has no meaning now.

10. It is pertinent to mention a Title Suit No. 522 of 2016 filed by the brother of the petitioner and a counter claim filed by the present petitioner the relief was to declare the deed of gift void beside partition and during pendency of the Suit as well as another Suit bearing Title Suit No. 802 of 2020, the present petitioner filed Miscellaneous Case before Respondent No. 2 for the same relief, which was in fact in identical proceeding which in itself was not maintainable under the eye of law. The petitioner after suppressing the fact about dismissal of suit as well as appeal preferred against that referred above, moved before the



Respondent No. 2 under Section 32 of the Act which was not at all maintainable in view of the judgment in the case of ***Panna Devi Vs. The State of Bihar through the Secretary, Revenue and Land Reforms Department and Ors, reported in 2015(4) PLJR 902,*** referring paragraph nos. 5 to 11, which reads as follows:-

*“5. Before proceeding further, we may notice that the learned Single Judge, relying upon the several decisions, held the sale deed executed without permission of the authorities to be void. When the appeal was taken up, reliance was placed by the appellant on the Division Bench Judgment of this Court in the case of **Ram Raji Sharma & Anr. v. The State of Bihar & Ors., since reported in 2007 (4) PLJR 449,** the correctness whereof was doubted by the Division Bench during the hearing of the appeal and it was referred to the Full Bench. The Division Bench in **Ram Raji Sharma** (supra) held that Section 32 of the Act speaks about the transaction being void in respect of which no permission was taken from the consolidation authority. The voidness was in relation to the consolidation proceedings alone. In other words, the Division Bench was of the view that such transaction was not void for all purposes, they were void for the purposes of consolidation proceedings because the whole object of such a provision was not to disturb or complicate the consolidation proceedings or become impediment thereto but it did not intend to restrict the civil rights of the people to enter into the transaction and to make it dependent upon the discretion of the Consolidation Officer. The Full Bench of*



*this Court disagreed with the view and held that once Section 5 of the Act provided that there would be no transfer without permission and Section 32 of the Act provided that transfer in violation of Section 5 of the Act would be void, then the transaction would be void ab initio for all purposes and the Division Bench was wrong in holding the transaction not to be void for all purposes and to be void for the limited purposes of the Consolidation Act. The Full Bench having, thus, answered the same (reported is **2010 (2) PLJR 1066**) remitted back the matter to the Division Bench wherein at the time of admission, two main issues were framed vide order dated 29.01.2014.*

(i) Whether in absence of limitation provided under the Act, the District Collector can exercise the power at any time, after 23 years in the present case, or shall the principle of reasonable period enunciated in the matter of State of Gujarat v Patel Raghav Natha [AIR 1969 SC 1297] apply;

(ii) Whether the power under Section 32 of the Act can be exercised suo motu or at the instance of the parties to the transfer and whether this power can be exercised at the instance of the successor-in-interest of the vendor, the grandson of the vendor in the present case.

6. We have heard learned counsel for the appellant, learned counsel for the State as well as the private respondent.

7. As noted above, the private respondent has no objection as to right, title, interest, the authority or the need of his grand father to



sell the land and if it is so, why he chooses to challenge the same and that too after 23 years, he could not give any answer to this Court. The reason is obviously that now the grandson wants to grab the land, which has become valuable in course of time and, therefore, this super technicality.

8. We are unable to accept the bonafide of the grandson which the Collector himself ought to have first questioned before obliging the grandson in the matter. Before proceeding further, we may notice some parts of the scheme of the Act to show that this is one of those cases where apart from the facts, noted above, the Collector ought not to have interfered. The Consolidation Act has been made to prevent the fragmentation. It was for public good. It was not intended to effect the property rights or the right to enjoy the property of any agriculturist rather it was meant to facilitate the better usage of agricultural land by the agriculturalist. Whenever in any area, the consolidation scheme was to be taken up, a notification under Section 3(1) of the Act has to be issued. Once such a notification is issued then the consolidation proceedings start, various steps are then taken. First the area is surveyed, then classification and valuation of the land are done, then records are prepared, then principles of consolidation are made out. Objections are heard. Consolidation of holdings is then worked out according to the principles of the consolidation. Objections are again heard. It is for this purpose, Section 5 of the Act, inter alia, provides that once the proceedings have been notified under Section 3(1) of the Act, no person could transfer the land without permission of the



Consolidation Officer. The reason is simple. Once these process are being carried out and the people start transferring their lands, then the whole scheme would be upset with each transfer and subsequently the exercise would be required to be done again because the ownership of the land and the area of the land would change. That is the object of Section 5 of the Act.

9. Now, we may refer Section 13 of the Act, which provides that once all these exercises are over and plots are consolidated, then the drafts scheme is published in terms of Section 13(1) of the Act and Section 13(2) of the Act, it is deemed to be final. There may be certain objections but ultimately once it is done, then new Chak Certificates are issued under Section 15 of the Act to the land owners and then under Section 16 of the Act, the scheme is confirmed altering the record of rights. This finishes the consolidation proceedings. What is then left is formality for the Government to issue the Gazette Notification in terms of Section 26A of the Act, denotifying the consolidation proceedings but, as noted above, for all practical purposes the consolidation activities are finalized and come to an end, after the Draft Scheme is put up under Section 13(1) of the Act. It is a matter of regret that in most of the areas in the State of Bihar, though consolidation operations were notified in the year 1970 or thereupon, till date, i.e., 45 years, Notification under Section 26-A of the Act have not been issued. In the present case, as noted above, the stage of Section 13 (1) of the Act had crossed in 1981 itself (and not 1991 as noted by Collector) while in 1983 Chak Certificate had been issued. Nothing remained



to be done and even at that time when the grandfather of the private respondent executed the sale deed in favour of the writ petitioner-appellant for well being of his family including his grandson, the private respondent. The private respondent has now become wiser. He saw a legal lacunae and challenges the sale deed to get back the land after 23 years. In this fact, we hold that the consolidation proceedings being over in all respects and for all practical purposes, the Collector should not have exercised this power under Section 32 of the Act after delay of more than 23 years. The argument that there is no time limit fixed and, as such, the Collector, could have exercised his jurisdiction to levy fine consequent upon the declaration about the voidness of the deed at any time even after 23 years cannot be accepted. We may notice here that there are series of judgments of this Court and the Apex Court wherein it has specifically been held that where authority is conferred upon an officer to exercise a power without any limitation as to time, he must exercise the authority within a reasonable time and not after undue delay. In this connection we may refer first to decisions of the Apex Court. AIR 1969 SC 1297 Pr. 11 and 12, a delay of over one year where no limitation was provided for exercise of revisional power was held to be fatal. Then in (1984) 1 SCC 125 Pr. 12 the Court held that though order of eviction could be passed but Collector not having done so for 22 years, even when no limitation was prescribed, could not be permitted to do so now. In (2002) 4 SCC 188 Pr.17 the Court held that even inherent powers could not be resorted to after 4 decades. In (2006) 8 SCC



502 Pr.18 it was emphasized that statutory power must be exercised within a reasonable time. In (2015) 3 SCC 695, a recent judgment of the Apex Court reviewed large number of cases and held that even suo motu power without limitation as to time could not be exercised after undue delay. Relying on some of the aforesaid judgments this Court in 2011 (4) PLJR 26 (HC) has in relation to Section 35 of this Act held that revisional power could not be exercised after undue delay. The above cases have noted these propositions here. There is no explanation by the private respondent as to why he took 23 years to challenge the sale deed. Most probably he was waiting for his grandfather to die and it may be noted that the elder brother of the private respondent was also the witness to the sale deed. In the circumstances, we also hold that successor in interest cannot be permitted to challenge the actions of their ancestors by which he is bound unless the ancestor lacked the authority to sell.

10. In the facts aforesaid, the consolidation proceedings having been concluded for all practical purposes, there being no valid ground for challenging of the sale deed and there is undue delay in moving the Collector, the Collector ought to have refrained from interfering. The question framed by this Court at the time of admission is answered accordingly.

11. In view of the aforesaid, we allow the appeal, set aside the order of the learned Single Judge and set aside the consolidation proceeding before the Collector and as also the impugned order of the Collector.”



11. Having heard the counsel for the parties and perused the materials on record and taking into consideration of the order dated 01.07.2015 passed in LPA No. 375 of 2010, hold that from the aforesaid facts, the consolidation proceedings having been concluded for all practical purposes, there being no valid ground for challenging of the sale deed and apart from that Section 13 of the Act, which provides that once all these exercises are over and plots are consolidated, then the drafts scheme is published in terms of Section 13(1) of the Act and Section 13(2) of the Act, it is deemed to be final. There may be certain objections but ultimately once it is done, then new Chak Certificates are issued under Section 15 of the Act to the landowners and then under Section 16 of the Act, the scheme is confirmed altering the record of rights and only remain left is formality for the Government to issue the Gazette Notification in terms of Section 26A of the Act, denotifying the consolidation proceedings. Apart from aforesaid, a bare perusal of the order dated 22.08.2022 passed by the Respondent No. 2 in Miscellaneous No. 31 of 2021, the Respondent No. 2 has recorded that although the Consolidation Proceedings having been concluded for all practical purposes but due to technical reason Notification under Section 26(ka) has not been issued by the authority concerned and apart from that the



petitioner has stated that permission required from the competent authority and petitioner has already filed a Title Suit No. 802 of 2020 for cancellation of the gift deed which is subject matter of the present case and the Title Suit No. 802 of 2020 is still pending for consideration before the Court of learned Subordinate Judge-V, Bhabhua between the parties with respect to the same relied as prayed in the present writ petition.

12. In view of the aforesaid, no case is made out for interference in the matter by this Court.

13. It is, accordingly, dismissed.

(Rajesh Kumar Verma, J)

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AFR/NAFR	NAFR
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