**Punya Mani Devi and ors. Vs. the State of Bihar and ors.**

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**Court** : Patna

**Decided On :** Oct-04-2001

**Judge** : Sachchidanand Jha and Chandramauli K. Prasad, JJ.

**Appeal No.** : Letters Patent Appeal No. 1216 of 1996

**Appellant** : Punya Mani Devi and ors.

**Respondent** : The State of Bihar and ors.

**Disposition** : Appeal Dismissed

**Judgement** :

**S.N. Jha And C.K. Prasad, JJ.**

1. The dispute in this Letters Patent Appeal relates to the validity of a gift in the context of Section 5 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (in short 'the Consolidation Act'). The dispute has arisen out of orders passed in a proceeding relating to preparation of register of land under Section 10 (2) of the Consolidation Act. The appellants had succeeded before the original authority i.e. the Consolidation Officer but lost before the appellate and revisional authorities. He approached this Court for setting aside those orders in the connected case i.e. C.W.J.C. No. 607 of 1985 but without success.

2. From the order of the learned Single Judge it appears that the only point urged before him was that as the notification under Section 3 of the Consolidation Act had been rescinded by the State Government with respect to area comprising Improvement Trust or Blocks the question of obtaining sanction under Section 5 of the Act did not arise. The learned Judge noticed the notification referred to in support of the contention and observed that perusal of the notification merely shows that the areas falling under the Improvement Trust or the Blocks stand deleted from the notification under Section 3 but there is no averment in the writ petition nor was there any material on record to show that the land in question was situated in the area falling under the Improvement Trust or Blocks and, therefore, the appellate or revisional authorities did not commit any error in holding that for want of sanction under Section 5 of the Act, the gift was void.

3. Before us a different point was canvassed on behalf of the appellants. It was submitted that amended Section 5 of the Act was made retrospective by Act 35 of 1982 and, therefore, the gift was not hit by the bar contained in that section. The submission is wholly misconceived.

4. In order to appreciate the point it would be appropriate to first notice Section 5 as it originally stood as under:

5. Land not to be transferred without sanction.--During the period commencing, from the date of the publication of f 3 notification under Section 3 to the date when the scheme of consolidation comes into operation in any notified area, no person shall transfer or partition any land in such area except with the previous sanction of the Consolidation Officer and, if the sanction is granted, the transfer or partition, as the case may be, shall be, subject to the rights and liabilities attached to the land under the scheme of Consolidation in respect of such area.

The Section was amended by Act 27 of 1975 as under:

After the date of publication of preparation of register of lands and statement of principles under Sub-section (1) of Section 10 no person shall transfer any land in the notified area by way of sale, gift, exchange, or partition without the previous sanction of the Consolidation Officer and if the sanction is granted, such transfer or partition, as the case may be, shall be, subject to the right and liabilities attached to the land under the scheme of consolidation prepared with respect to that area.

In 1982, by Act 35 of the 1982, the provision was given retrospective effect by inserting Sub-section (1) of Section (2). The existing Section was numbered as Sub-section (1). Sub-section (2) as inserted runs as under:

The provision of Sub-section (1) shall take effect from the date the notification under Sub-section (1) of Section 3 has been issued.

5. From a conjoint reading of Section 5 as it originally stood and as it stood after 1975 amendment it would be clear that the mischief of Section 5 which got attracted upon the issuance of notification under Section 3, was made effective from the date of publication of the register of lands and the statement of principles under Section 10 (1) of the Act. This, however, gave rise to an anomalous situation. Whereas the transfers made after the date of notification under Section 3 but before the date of publication of the register of lands etc. under Sub-section (1) stood vitiated, after the 1975 amendment, only those transfers made after publication of the register of lands etc. under Section 10 (1) came within the mischief of the provision. In order to do away with the anomaly the State Government initially issued circulars but as they were found to be inadequate, ultimately the aforesaid amendment was introduced in 1982 making the amended Section 5 retrospective from the date of the notification under Section 3. It must be clarified that the effect of the said amendment was not to extend the bar to the date of notification under Section 3 but only to extend the the applicability of Section 5 as it stood after 1975 amendment, to the date of Section 3 notification, In other words, in all cases, the bar contained in Section 5 was to apply uniformly from the date of publication of register of lands and statement of principles under Section 10(1).

6. Coming to the instant case, the admitted position is that the notification under Section 3 was issued on 12-10-72, the register of land and statement of principles were published under Section 10 (1) on 18-10-73 while the impugned gift was made on 27-11 -73. The date of gift being subsequent to the date of publication of

register of land it is obvious that it was hit by the bar contained in Section 5, and there being no dispute that the gift was without the requisite sanction under Section 6 the same was void under Section 32 of the Act.

7. Counsel for the appellant placed reliance on Most Gudhani Devi and Ors. v. State of Bihar and Ors. 1986 BLJ 38. The decision, in our opinion, instead of lending any support rather negatives the contention. The relevant part of the judgment in the aforesaid case runs as under:

There was some argument at the Bar as to whether the effect of Sub-section (2) of Section 5 of the Act is to give retrospective effect to Sub-section (1) of Section 5 of the Act and also to retrospectively repeal Section 5 which stood prior to Act 35 of 1982. Having considered the matter at some length, I am of the view, Sub-section (2) of Section 5, as it stands today, has been given retrospective effect and Section 5 which stood prior to Act 27 of 1975 has been retrospectively repealed because if this is not done then the same transaction may be void being in violation of Section 5 of the Act which now stands repealed but it will be valid and convey good title by virtue of Section 5 of the Act as it stands today. The certainly would not have been the intention of the legislature.

We are in agreement with the above proposition of law except that there being no repeal of Section 5, the reference of Section 5 existing prior to 1975 being retrospectively repealed does not seem to be correct. It is a case of substitution and not repeal. This, however, does not materially affect the conclusion of the learned Judge which, as stated above, correctly lays down the legal position.

8. We have referred to above Section 32 of the Act. In order to make the order self-contained it would be useful to quote the Section as under:

32. Transfer of lands prohibited.--The transfer of any land or fragment contrary to the provisions of this Act shall be void; and the owner of any land, so transferred shall be liable to pay such fine......

The gift being admittedly without sanction of the competent authority was clearly void by reason of Section 32 read with Section 5 of the Act and, therefore, the conclusion of the authorities cannot be said to be erroneous.

9. We, thus, do not find any merit in this appeal, which is accordingly dismissed. No costs.