

Upendra Narain Singh (Dead) By Lrs.

Vs

State of Bihar

Civil Appeal No. 3986 of 1983

(K. Ramaswamy, G.B. Pattanaik JJ)

07.08.1996

ORDER

1. This appeal by special leave arises from the judgment and order of the Patna High Court made in Second Appeal No. 311 of 1979 on 29-4-1982. The admitted facts are that the appellant had in his possession 9 bighas 16 kathas of land bearing SP No. 2775 of 1940 under Khata No. 797, Tauzi No. 22230 (new) 10828 (old) situated in Mohalla Sikandarpur within the municipal limits of Muzaffarpur. The said land is a portion of old plot No. 2775 which in the cadastral survey was recorded as Gairmajrua Man under the proprietorship of Khan Bahadur Nawab Sayed Ali Sajjad and others. He claimed patta thereunder from the year 1942 given by the said Zamindar, ex-landlord. By operation of Section 3 of the Bihar Land Reforms Act, 1950 (30 of 1950) (for short, 'the Act') on and from the date of the notification published under sub-section (2) of Section 3 of the Act, all the lands stand vested in the State free from all encumbrances except those lands excluded by operation of the provisions of Section 4. Section 4(h) of the Act envisages that :

"4. (h) The Collector shall have power to make enquiries in respect of any transfer including the settlement or lease of any land comprised in such estate or tenure or the transfer of any kind of interest in any building used primarily as office or cutchery for the collection of rent of such estate or tenure or part thereof, and if he is satisfied that such transfer was made at any time after the first day of January 1946, with the object of defeating any provisions of this Act or causing loss to the State or obtaining higher compensation thereunder, the Collector may, after giving reasonable notice to the parties concerned to appear and be heard annul such transfer, dispossess the person claiming under it and take possession of such property on such terms as may appear to the Collector to be fair and equitable."

2. An enquiry in this behalf was conducted and it was found that the patta got by the appellant on 11-8-1950 was a fraudulent transfer in favour of the appellant to defeat the provisions of the Act. Therefore, it was rejected and became final. Thereafter, the appellant came to file a title suit for declaration of title which was dismissed by the trial court and confirmed by the appellate court and in second appeal, the High Court dismissed it summarily. Thus, this appeal by special leave.

3. Shri L. R. Singh, the learned counsel for the appellant, contended that though the finding was recorded by the Tribunals and the civil court, the transfer was effected after 1-1-1946, namely, 11-8-1950 with a view to defeat the provisions of the Act; under second proviso to clause (h) of Section 4 of the Act, the Government had not confirmed such annulment; so it has not become effective and the courts below have committed grievous error in giving effect to the decision of the Collector under Section 4(h) of the Act. We find no force in the contention. It is true that under the proviso no

order cancelling or annulling the transfer shall take effect nor possession taken in pursuance of it unless such an order has been confirmed by the State Government. The confirmation is one of administrative acts so as to ensure the order passed by the Collector to be according to law. It is seen that the statute prescribed the period during which the transactions that took place were to be enquired into to find whether they are genuine transactions or spurious or fraudulent brought into existence to defeat the provisions of the Act. In view of the findings recorded concurrently by the Tribunal under the Act and the civil courts that the patta came to be executed in favour of the appellant on 11-8-1950 after the specified date with a view to defeat the provisions of the Act, the transfer was a fraudulent one. Under these circumstances, the confirmation of such an annulment of the transfer by the State Government being administrative in nature, it does not clothe any right on the appellant at any stage. Under these circumstances, the decree of the civil courts and the order passed by the Collector are not vitiated by any error of law warranting interference.

4. The appeal is accordingly dismissed. No costs.