

CASE NO.:  
Appeal (civil) 1364 of 1999

PETITIONER:  
ASHARAFI SINGH

RESPONDENT:  
KAPILDEO RAI(DEAD) AND OTHERS

DATE OF JUDGMENT: 19/09/2006

BENCH:  
Dr.AR.LAKSHMANAN & A.K.MATHUR

JUDGMENT:  
J U D G M E N T

Dr.AR.LAKSHMANAN, J.

Heard learned counsel appearing on behalf of both sides.

The counsel for the appellant argued only one contention before the High Court that the land in question does not come within the provisions of Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (for short 'the Act') inasmuch as the appellant had purchased the land in question through registered sale deed dt.12.01.1983 and by Notification dt.09.01.1978, the village where the land is located has come within the jurisdiction of the Patna Regional Development Authority and, therefore, Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 has no application. The said contention was reiterated by the learned counsel for the appellant before us. The said contention, in our view, has no force. Section 2(9) of Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 defines the "land" which means agricultural lands and includes horticultural land, kharaur land, land with bamboo clumps, pasture land, cultivable waste land, home steads, tanks, wells and water-channels. The definition of "land" in Section 2(9) of the Act was considered by the High Court of Patna in Mirza Sulaiman Beg & Ors vs.Harihar Mahto & Ors. reported in 1985 (33) Bihar Law Journal Reports 585. The Bench was also of the view that confining the land to being strictly agricultural land in nature, in fact, extends it to matters and things, which cannot strictly be labelled as 'agricultural land' - for instance, includes 'homestead', and, by itself, a homestead was not an agricultural land stricto sensu. In our opinion, Section 2(9) of the Act has emphatic and also couched in very wide language. That being so, we are of the opinion that there is no legal infirmity in the order passed by the Division Bench affirming the order passed by the learned Single Judge.

In the instant case, Notification was issued on 26.11.1970. Section 5 of the Act deals with land not be transferred without sanction. This Section reads as under :-

"5. Land not to be transferred without sanction.- During the period commencing from the date of the publication of the notification under Section 3 to the date when the scheme of consolidation comes into operation in any notified area, in 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 of partition, as the case may be, shall be subject to the rights and liabilities attached to the term under the scheme of consolidation in respect of such area."

The Section is very clear. The transfer or partition, as the case may be, shall be subject to the rights and liabilities attached to the term under the scheme of consolidation in respect of such area. In the instant case, the sale was made in favour of the appellant on 12.01.1983 which is after the Notification. It is also pertinent to notice that the consolidation proceedings were over on 10.1.1975 and 20.2.1975. The learned Single Judge also has elaborately considered the entire matter placed before him and came to the right conclusion which was rightly affirmed by the Division Bench. We,

therefore, see no reason to interfere with the order passed by the Division Bench of the High Court. The appeal is accordingly dismissed. There shall be no order as to costs.

JUDIS