

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11553 of 1992

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Bibi Mariyam, Wife of Abdul Rauf, resident of Village-Kara, P.S.-Obra, District-Aurangabad.

.... **Petitioner/s**

Versus

1. The State of Bihar.
 2. The Collector, Aurangabad.
 3. The Additional Collector, Aurangabad.
 4. The Deputy Collector, Land Reforms, Aurangabad.
 5. The Anchal Adhikari, Obra, Aurangabad.
 6. Nezamuddin, Son of Late Gulam Rasool.
Resident of Village + P.O.-Dihra, P.S.-Obra, District-Aurangabad.
 7. Md. Yakub
 8. Jamil Ansari
Both Sons of Quamruzzaman.
 9. Bibi Roshan, Wife of Abdul Aziz.
 10. Md. Ayub Ansari
 11. Mahboob Alam
 12. Mohmood Ansari
 13. Jamshed Alam
 14. Rafi Alam
- Nos. 7 to 14 residents of Village-Ghataro, P.O.-Barauli, P.S.-Obra, District-Aurangabad.

.... **Respondent/s**

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Appearance :

For the Petitioner/s : Mr. Syed Hussain Majeed, Adv.

For the Respondent (State) Nos. 1 to 4 : Mr. Praveen Kumar, Adv. (AC to GP-27)

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 26-03-2015



The petitioner in the present writ application has sought, *inter alia*, quashing of the order dated 15.06.1992 passed by the Additional Collector, Aurangabad, whereby, the petitioner's Mutation Revision No. 117 of 1991-92 has been rejected on the ground that Zamabandi opened in the name of private respondents was on the basis of Chakbandi Khatiyar, which stood affirmed up to the level of Joint Director, Consolidation. By the impugned order, learned Additional Collector affirmed the order of the Deputy Collector, Land Reforms, Aurangabad dated 24.10.1991 passed in Mutation Appeal No. 14 of 1991-92, whereby, he had set aside the order of the Anchal Adhikari, Obra. The Anchal Adhikari, Obra vide his order dated 21.04.1991 had directed for mutating the name of the petitioner with respect to the land in question on the basis of a decree passed in favour of the petitioner by learned Sub-Judge, Aurangabad in Partition Suit No. 68 of 1976 which has remained undisturbed up to this Court.

The Deputy Collector, Land Reforms, however, allowed the appeal by order dated 24.10.1991, preferred against the order of Anchal Adhikari, on the ground that proceeding of mutation stood abated because of operation of Section 4(C) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (**hereinafter referred to**

as the 'Act') as the consolidation proceeding was not finalized. The Deputy Collector, Land Reforms in his order dated 24.10.1991, while setting aside the order of the Anchal Adhikari, Obra, relied on the order of this Court passed in C.W.J.C. No. 4999 of 1988 and C.W.J.C. No. 4998 of 1988 dated 26.07.1990, for coming to the conclusion that the mutation proceeding stood abated by operation of Section 4(C) of the Act.

It appears that the consolidation Khatiyan with respect to village in question has been finally prepared, a copy of relevant portion of which has been brought on the record by way of Annexure-13 to the writ application. The Additional Collector, Aurangabad while rejecting the revision petition filed by the petitioner, has observed that the Deputy Collector, Land Reforms correctly held that demand register at Anchal shall to be opened according to the new Khatiyan of Chakbandi.

Assailing the impugned order passed by the Additional Collector, Aurangabad as well as the order passed by the Deputy Collector, Land Reforms, learned counsel for the petitioner has relied upon a Division Bench decision of this Court in a case of "Shanti Devi Vs. The State of Bihar & Ors." reported in "1993 (2) PLJR 118". He has submitted that the



order of the Division Bench of this Court dated 26.07.1990 passed in C.W.J.C. No. 4999 of 1988 and C.W.J.C. No. 4998 of 1988 which has been quoted in the order of the Deputy Collector, Land Reforms dated 24.10.1991, is reported in **“1990 (2) PLJR 592” (Rabindra Pd. Singh Vs. The Commissioner, Patna & Ors.)** and has submitted that the said Division Bench order of this Court has been held to be *per curium* by subsequent Division Bench decision in case of **Shanti Devi (Supra)** wherein, it has been held that the provisions of Section 4(C) of the Act cannot have any application whatsoever in relation to a mutation proceeding. Paragraph No.-7 of the decision of the Division Bench of this Court in case of **Shanti Devi (Supra)** reads as follows:-

“7. In this view of the matter, in our opinion, the provisions of Section 4(C) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 cannot have any application whatsoever in relation to a mutation proceeding. The decision of *Rabindra Prasad Singh’s* case (1990 B. L. J. 542) having been rendered without taking into consideration the aforementioned question as also without taking into consideration the earlier Division Bench decision of this Court in *Gobri Singh’s* case (Supra,) the same is not a binding precedent and must be held to have been rendered per incurium.”



Learned counsel for the petitioner appears to be right in his submission in view of the Division Bench decision of this Court in case of **Shanti Devi** (*Supra*) that the Deputy Collector, Land Reforms wrongly held the mutation proceeding to have abated in view of the fact that the village in question was notified under Section 3 of the Act. The order of the appellate authority dated 24.10.1991, setting aside the order of the Circle Officer in mutation proceeding on the ground that the said mutation proceeding stood abated by operation of Section 4(C) of the Act cannot be sustained and accordingly the said order dated 24.10.1991 is set-aside. From the order of the learned Additional Collector dated 15.06.1992 passed in Mutation Revision No. 117 of 1991-92, it appears that he did not go into the legal issues as to whether the Deputy Collector, Land Reforms rightly allowed the appeal and set aside the judgment of Anchal Adhikari and just affirmed the order of the Deputy Collector, Land Reforms, coming to a conclusion that D.C.L.R. rightly held that the demand register at Anchal level was required to be opened according to new Khatiyan of Chakbandi.

Learned counsel for the petitioner appears to be right in his submission that even on the basis of new Khatiyan of Chakbandi, the name of the petitioner deserves to be

mutated on the basis of share shown in her favour. In any view of the matter, there is no dispute about the fact that a Court of competent jurisdiction has decreed that the petitioner is entitled for 1/8th share in the Joint Family Property. Her name is required to be mutated, accordingly.

This is not in dispute that Chakbandi and operation in the area, in question, is complete. Accordingly, the petitioner's name will be required to be mutated in terms of the decree passed in Partition Suit No. 68 of 1976 dated 09.05.1977. The orders passed by the Deputy Collector, Land Reforms dated 24.10.1991 passed in Mutation Appeal No. 14 of 1991-92 and the order passed by the Additional Collector, Aurangabad dated 15.06.1992 in Mutation Revision Case No. 117 of 1991-92 are set aside. The Anchal Adhikari, Obra is directed to proceed afresh with respect to the mutation of the petitioner's name with respect to her share in the Joint Family Property, taking into account, the new Khatiyani of Chakbandi.

The application is, accordingly, allowed.

(Chakradhari Sharan Singh, J)

Praveen-II/-

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