

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4045 of 1985

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1. Smt. Vijay Lakshmi Kumar, widow of late Ramanand Kumar
 2. Vivekanand Kumar
 3. Sarojanand Kumar
 4. Yashodanand Kumar
All sons of Late Ramanand Kumar, all resident of Village and P.O. Putai, P.S. Manigachi, District- Darbhanga at present resident of Mohalla Boring Canal Road, P.S. Budha Colony, District- Patna.
 5. Madhubala wife of Sri Samir Kumar Mishra, resident of Village- Janta, P.S. Gaighat, District- Muzaffarpur, at present residing at Mohalla- Boring Canal Road, Gorakhnath Lane, P.S. Budha Colony, District- Patna.

.... Petitioners

Versus

1. The State of Bihar.
2. The Chief Executive Officer, Patna Municipal Corporation, Patna.
3. Smt. Sumitra Yadav, wife of Shri Ramashray Yadav, resident of Mohalla- Shivpuri, P.S. Shrikrisnnapuri, Dist- Patna.
4. Baidya Nath Choudhary son of Ramdayal Choudhary.
5. Smt. Rekha Devi, wife of Baidya Nath Choudhary
Both residing in the house of Munsii Chand Yadav at K.M. Singh Lane, in Boring Canal Road, District- Patna.

.... Respondents

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Appearance :

For the Petitioners : Mr. Satish Chandra Jha, Advocate
Mr. Purushottam Jha, Advocate
For the Respondents: Ms. Pravina Rai, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE VIKASH JAIN
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)
Date: 03-03-2015

This writ petition is pending for the past three decades, on a small area of controversy.

The premises bearing No. 413/85A on Boring Canal Road at Patna city was held by Pt. Satyananda Kumar. He is said to have died on 11.03.1978. In the context of recording of ownership in respect of the property, an application was filed in



the name of the petitioner and his three brothers before the Executive Officer of the Patna Municipal Corporation (for short 'the Corporation'). The contention of the petitioner is that his signature was forged and the application was, in fact, filed by Respondent Nos. 3 to 5. The Executive Officer passed order dated 30.06.1983 accepting the contention and caused mutation of entries in the property register, accordingly.

The petitioner filed an appeal before the Chief Executive Officer of the Corporation, the 2nd Respondent, feeling aggrieved by order dated 30.06.1983. The Chief Executive Officer in turn is said to have entrusted the matter to the Deputy Chief Executive Officer of the Corporation. Through his order dated 06.07.1985 the Deputy Chief Executive Officer of the Corporation allowed the appeal and set aside the order dated 30.06.1983.

The Respondent Nos. 3 to 5 preferred a revision before the 2nd Respondent, challenging the order dated 06.07.1985 passed by the Deputy Chief Executive Officer. The petitioner raised an objection as to the maintainability of the revision before the 2nd Respondent. His contention was that when the appeal itself was presented before the 2nd Respondent and it was made over to the Deputy Chief Executive Officer, a revision cannot be entertained by the 2nd Respondent. The plea of the petitioner was rejected through order dated 19.08.1985.

The same is challenged in this writ petition.

At one stage, a learned Single Judge heard the matter at length and referred the matter to a Division Bench for hearing, as some important question of law are to be dealt with.

Heard Sri Satish Chandra Jha, learned Counsel for the petitioner and Smt. Pravina Rai, learned counsel for the Respondents in detail.

The Municipal Corporation maintains property register, in the context of collecting property tax. Many at time, disputes exist as to the person in whose name the property must be recorded, though the purpose is only to levy tax. Such instances crop up when the original owner of the property dies and there is no agreement among the legal heirs in the matter of succession or devolution.

In the instant case, the original owner was Pt. Satyanand Kumar. An application was made for mutation of entries in the property register. The Executive Officer of the Corporation passed order dated 30.06.1983. It is need to be observed that the Executive Officer can only take note of undisputed facts as to transfer or succession or devolution of the property. He cannot undertake any adjudication if there is dispute as regards succession or transfer or devolution. The very fact that there was serious contest between the parties as to the ownership, the Executive Officer ought to have required the

parties get the matter adjudicated by a Civil Court and desisted from making any mutation. However, he accepted the contention of Respondent Nos. 3 to 5, and the petitioner naturally felt aggrieved by the order dated 30.06.1983.

The appeal itself was presented before the 2nd Respondent, in his capacity as the Chief Executive Officer. Obviously for administrative reasons, he entrusted the matter to his Deputy, and the latter in turn passed order on 06.07.1985. Once the 2nd Respondent has entrusted adjudication of the appeal to a Deputy Executive Officer, for all practical purposes it emanates from the office of the 2nd Respondent himself. Any further proceedings made in the form of appeal or revision can be only to an authority superior to the 2nd Respondent. There was absolutely no basis for the 2nd Respondent to entertain revision against an order passed in appeal which was initially presented before himself. Added to that none of the authorities of the Municipal Corporation can venture to express their views on merits much less undertake adjudication of any disputed question of fact and law.

We therefore, allow the writ petition and set aside the order dated 19.08.1985. We, however, make it clear that the order dated 06.07.1985 and the order dated 30.06.1983 passed by the Chief Executive Officer of the Corporation cannot be treated as a final assessment on the rights and title of the

properties vis-à-vis the property in question. It shall be open to the parties to work out their remedies before the competent Court of law.

Interlocutory Application, if any, stands disposed of.
There shall be no order as to costs.

(L. Narasimha Reddy,CJ)

A.F.R.
Chandran/Md.Ibrarul

(Vikash Jain, J)

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