

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13177 of 2011

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1. Raghu Nandan Chaudhary S/O Late Shiv Lal Chaudhary
2. Sukhdeo Chaudhary S/O Late Shivan Chaudhary
Both residents of village- Damariya, P.O.- Anishabad, P.S.- Gardanibagh,
Distt.- Patna, Bihar

.... Petitioners

Versus

1. The State of Bihar through the Chief Secretary
2. The District Collector, Patna
3. The Deputy Collector Land Reforms, Patna
4. The Sub-Divisional Officer, Patna, Sadar
5. The Circle Officer, Patna Sadar, Distt.- Patna

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Rabindra Nath Singh

For the Respondent/s : Mr. Jaishankar Barnwal- SC1

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 08-07-2015

Heard learned counsel for the petitioners and Sri
Jaishankar Barnwal, learned Standing Counsel no.1.

2. The petitioners, invoking writ jurisdiction of this Court under Article 226 of the Constitution of India, have prayed for quashing of an order dated 30.04.2011 passed by Respondent no.5/ Circle Officer, Patna Sadar, Patna , whereby he had rejected the application filed by the petitioner for issuance of rent receipt. The said application was filed by the petitioner in view of order dated 22.04.2010 passed in C.W.J.C.No.6688 of 2010. Earlier the writ petitioners had approached this Court in view of non-issuance of rent



receipt in favour of the petitioners despite the fact that the land in question was already mutated in the name of the petitioners and on payment of rent, rent receipts were regularly being issued in favour of the petitioners since 1976. Since without any rhyme and reason, the Circle Officer had stopped to accept the rent of the land, the petitioners had approached this Court by filing C.W.J.C.No.6688 of 2010, which was disposed of by order dated 22.04.2010 in following terms, which is as follows:

“For the relief prayed for in the writ application petitioners are at liberty to approach the Circle Officer, Phulwarisharif, Patna, respondent no.5, who shall pass reasoned order over their request to accept the rent in the light of the mutation order passed in their favour, as early as possible, in any case within one month from the date of receipt of the application of the petitioner along with a copy of this order.

With the liberty aforesaid this writ application is disposed of.”

3. In terms of the order of the writ court, the petitioners approached the Circle Officer for issuance of rent receipt. However, the Circle Officer by the impugned order besides rejecting the claim for issuance of rent receipt also directed for taking steps for cancelling the earlier Jamabandi.

4. The case of the petitioners is that the father of



petitioner no.2 and petitioner no.1 jointly had purchased a piece of land in the year, 1972 appertaining to Khata No. 30, Plot No.1447 measuring an area of 18 decimals, situated in Mauza Damaria, Police Station- Gardanibagh, District- Patna from one Ramchandra Chaudhary through a registered sale deed. Originally the land was of one Doma Chaudhary (father of Ramchandra Chaudhary), who executed registered sale deed in favour of petitioner nos. 1 and 2. It has further been indicated in the writ petition that Doma Chaudhary, father of Ram Chandra Chaudhary) had acquired the land through settlement by Ex Landlord on the basis of returned dated 10.01.1929. Doma Chaudhary paid the rent of the land in question to the Ex Landlord and rent receipts were issued in his name and the Ex Landlord submitted return in favour of Doma Chaudhary (father of the vendor of the petitioners)

5. Subsequently, after purchase of the land, the petitioners approached the Circle Officer for mutating the land in question and by order dated 19.10. 1976, mutation order vide Annexure-2 to the writ petition was passed. Since thereafter the petitioners started to pay rent and rent receipts were issued regularly. However, subsequently after some time the Circle Officer stopped to accept the rent of the land. Thereafter, the petitioners approached this Court, which was disposed of as

indicated above. The petitioners filed an application along with the order of the writ court. Thereafter the order impugned has been passed by the Circle Officer, which has been assailed in the present writ petition.

6. Learned counsel for the petitioners submits that once the mutation order was already passed by the Circle Officer and the petitioners started to pay rent regularly, at subsequent stage same authority was not having jurisdiction to review its own order and he was not at all authorized to pass an order for taking steps for cancelling Jamabandi, which has already been mutated in favour of the petitioners. In sum and substance, it has been argued that the Circle Officer has acted beyond jurisdiction.

7. Sri Jai Shankar Barnwal, learned Standing Counsel no.1 has raised preliminary objection on the point of maintainability of the writ petition. Firstly, it has been argued that without availing statutory remedy, the petitioners had directly approached this Court. He further submits that the land in question as mentioned in record as Gairmazarua Aam Land. He further submits that the Circle Officer, on the basis of record, has passed the order and this Court, while exercising writ jurisdiction, may not interfere with the impugned order.

8. In reply, learned counsel for the petitioners submits



that the Circle Officer virtually has travelled beyond its own jurisdiction in examining the record of the cadastral survey. He submits that it is true that in cadastral survey the land was recorded as Gairmazarua Aam land, but nature of the land has already been changed. He submits that in sum and substance, the plea taken by learned counsel for the State is not sustainable.

9. Besides hearing learned counsel for the parties, I have also perused the materials available on record. Of course, in this case, a counter affidavit has been filed on behalf of the Respondents, the stand taken in the writ petition has not been categorically denied. However, a consolidated counter affidavit has been filed. Learned counsel for the State also does not dispute that mutation order was passed in the year 1976 in favour of the petitioners. In view of the fact that earlier the Circle Officer had passed order of mutation in favour of the petitioners, the same authority i.e. the Circle Officer was not having any jurisdiction to review its own order. Moreover, once the mutation order was passed in favour of the petitioners on the basis of registered sale deed in the year 1976 and the petitioners started paying rent, there was no reason for the Circle Officer to stop issuance of rent receipt on payment of rent.

10. On perusal of the order impugned, it appears that

the Circle Officer has exercised his power, as if he was exercising power of competent court of civil jurisdiction, which is not permissible in the eye of law. The impugned order is illegal and perverse. Accordingly, the order impugned is hereby set aside and the Respondents are hereby restrained from taking any steps for cancelling Jamabandi, which was earlier created in favour of the petitioners. If the petitioners approach the Circle Officer regarding issuance of rent receipt on payment of rent, the Circle Officer is directed to accept the same and issue proper receipt.

11. The writ petition stands allowed.

12. So far availing statutory remedy is concerned, the Court is of the opinion that if the order is itself perverse and illegal, such order can be examined by this Court while exercising writ jurisdiction.

(Rakesh Kumar, J)

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