

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1132 of 2011

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Vijay Kumar Vishwakarma Son Of Late Nageshwar Vishwakarma Resident Of
Satya Narayan Mandir Road, Ward No. 2 Naugachhia, P.S. Naugachhia, District
Bhagalpur

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Collector, Bhagalpur
3. The Deputy Collector Land Reforms, Naugachhia, P.S. Naugachhia, District
Bhagalpur
4. Anchal Adhikari, Naugachhia, P.O. And P.S. Naugachhia, District Bhagalpur
5. Most. Raj Kumari Devi Wife Of Late Bimal Kumar Jhunjhunwala Resident Of
Naugachhia Ward No. 2 Satyanarayan Mandir Road, P.O. And P.S. Naugachhia,
District Bhagalpur At Present Residing C/O Anuj Jhunjhunwala, A-138, Ranjeet
Nagar, Ist Floor, Bharatpur-321001(Rajasthan)

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dr. Manoj Kumar

For the Respondent/s : AC to SC 14

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 26-06-2015

Heard Dr. Manoj Kumar, learned counsel for the petitioner,

learned AC to SC No. 14 as well as learned counsel, who has

appeared on behalf of the respondent no. 5.

The petitioner, invoking writ jurisdiction of this court under

Article 226 of the Constitution of India, has prayed for quashing of

an order dated 13.5.2010 passed by the learned Collector, Bhagalpur,

in M.R. Case No. 50 of 2009-10 (Annexure – 3 to the writ petition).

By the said order learned Collector has set aside the order of the

Deputy Collector Land Reforms, Naugachhia, in Mutation Appeal

Case No. 3 of 2009-10. The petitioner has also prayed for quashing of the order dated 15.3.2008 passed in Mutation Case No. 994(VI) of 2007-08.

Short fact of the case is that the respondent no. 5 had approached the Circle Officer for mutation of her name in respect of the land appertaining to khata no. 214, khesra no. 344, measuring 1185 Sq. Ft. The said application was allowed and name of the respondent no. 5 was directed to be recorded in the revenue record. The petitioner after noticing about the impugned order approached the D.C.L.R. assailing the order of the Circle Officer mainly on the ground that without valid notice to the petitioner order of mutation was passed by the Circle Officer that too in a camp court. It was pleaded that long back the said land was already transferred to the petitioner and his family members through registered sale deed by the father -in -law of the respondent no. 5 and in the plot in question no portion of land was available in the name of the respondent no. 5, nor respondent no. 5 were in possession over the land in question. Before the learned D.C.L.R. a plea was taken on behalf of the respondent no. 5 that her father –in- law had executed a will and on the basis of said will, mutation was prayed for and same was allowed. The learned D.C.L.R. noticed that the said will was not confirmed in a probate proceeding and in absence of any confirmation the Circle Officer was

not authorized to entertain the application for mutation. Against the said order the respondent no. 5 preferred a revision before the learned Collector and the learned Collector by its order dated 13.5.2010 passed in M.R. Case No. 50 of 2009 -10 allowed the revision, which has been assailed in the present proceeding.

Learned counsel for the petitioner emphatically argued that mutation order passed by the Circle Officer was *non est* in the eye of law in view of the fact that from bare perusal of the order it is evident that no notice was issued or served on the petitioner. He has further argued that a will without being confirmed by the competent court in a probate proceeding was not at all required to be relied upon, that too, was not placed before the Circle Officer, however, before the appellate authority such plea was taken.

On the aforesaid grounds, a prayer has been made for setting aside the impugned orders.

Learned counsel for the respondent no. 5 has opposed the prayer of the petitioner. He submits that the respondent no. 5 and other legal heirs of Late Purushottam Lal Jhunhunwala had filed a Title Suit vied Title Suit No. 38 of 2010 mainly for a declaration that the defendants have not purchased the entire land in respect of the concerned plot. He submits that since a case is pending before the court of competent jurisdiction, this court may not interfere into the

matter.



Besides hearing learned counsel for the parties, I have also perused the materials available on record. On perusal of the order of the Circle Officer, the court is satisfied that same was passed without notice to the petitioner. Nothing has been indicated as to whether any proper step was taken for service of notice on the concerned parties. The order of the Circle Officer even does not indicate as to whether along with petition for mutation any document was filed to corroborate the title and possession of the respondent no. 5. Virtually, the order was passed in a camp court, which appears to be violative of the principle of natural justice. Moreover, the stand which was taken before the appellate authority that mutation was applied on the basis of a will of deed, the court is of the opinion that unless the will was confirmed in a probate proceeding by the court of competent jurisdiction, in normal course, the learned court was not required to take notice of such plea.

In view of the facts and circumstances, particularly the fact that the order of mutation passed by the Circle Officer was without notice to the petitioner, the order of the Circle Officer is not sustainable in the eye of law and same is set aside. Similarly, the order of the learned Collector is set aside in view of the fact that initial order was itself illegal. So far pendency of Title Suit is

concerned, it is evident that Title Suit was filed in the year 2010. However, if the Title Suit is finally decided, the parties would be at liberty to approach the Circle Officer in respect of mutation, if so advised.

The writ petition stands allowed.

(Rakesh Kumar, J)

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