

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16241 of 2008

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Mirza Mainuddin Beg, son of Nirza Suleman Beg, died and substituted vide order dated 26.03.2015 by his following heirs:

1. Hushnara Begum @ Hushaina Begum widow of late Mirza Mainuddin Beg.
2. Md. Tajuddin Beg
3. Md. Saddam Beg
4. Md. Arshad Beg
5. Aurangzeb Beg, All are sons of late Mirza Mainuddin Beg.
6. Nadira Parvin D/O Late Mirza Mainuddin Beg, all are resident of Mohalla- Mause Tola, Bettiah, P.O. and P. S. Bettiah (M), District West Champaran.
7. Rubi Khatoon D/O Late Mirza Mainuddin Beg, wife of Afroz Khan, resident of Mohalla- Mause Tola, Bettiah, P.O. and P.S. Bettiah(M) of District- West Champaran.
8. Sabra Khatoon D/o Late Mirza Mainuddin Beg wife of Ahmad Ali Khan, resident of village- Tilangahi, P.S. + P.O. Bairia, District- West Champaran.
9. Tabassum Khatoon, D/O Late Mirza Mianuddin Beg, wife of Shakil Ahmad, resident of village + P.O.+ P.S. Mautan, District- West Champaran.

.... Petitioner/s

Versus

1. The State of Bihar
2. The District Magistrate, West Champaran, at Bettiah.
3. The Land Reforms Deputy Collector, Bettiah, West Champaran.
4. The Land Reforms Deputy Collector, Narkatiaganj, District West Champaran.
5. The Circle Officer, Mainatard Anchal, West Champaran, at Bettiah.
6. Sk. Husnain Ahmad Son of late Ali Ahmad, resident of Mohalla Ganj no.2, Hospital road, Bettiah, P.O. and P.S. Bettiah(T), Distt. West Champaran.
7. Member, Board of Revenue-cum- (Court of Wards), Bihar, Patna (Bettiah Estate).

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajendra Narain, Sr. Adv.

Mr. Akhileshwar Kr. Shrivastav

For the Respondent No.1 to 5 : Mr. A.K. Keshri, AAG-XI

Mr. Brajesh Kumar, AC to AAG-XI

For the Respondent No.6: Mr. Amrendra Nr. Verma

For the Respondent No.7: Mr. Binod Kumar

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

11 18-08-2015

Heard the parties.



The original petitioner, who is now dead and has been substituted by his heirs and legal representatives, was aggrieved by the order dated 25.07.2008 (Annexure-5) passed in R.M. Case No. 60 of 2005-06 by the respondent District Collector, West Champaran, Bettiah, whereby aforesaid revision case filed on behalf of the respondent no.6 has been allowed and the order dated 16.04.2000 (Annexure-4) passed in Jamabandi Correction Case No. 2 of 1996-97 by the respondent D.C.L.R., Narkatiaganj has been set aside and quashed.

Learned senior counsel appearing on behalf of the petitioners submits that the respondent District Collector, while passing the impugned order, has wrongly and illegally set aside the valid order dated 16.04.2000 (Annexure-4) passed by the respondent D.C.L.R., Narkatiaganj. He further submits that the respondent District Collector by the impugned order has practically cancelled the Jamabandi already running in the name of the original petitioner, which he could not have done. Therefore, according to him, the impugned revisional order dated 25.07.2008 (Annexure-5) is not sustainable.

The matter has been contested by the learned counsel appearing on behalf of the respondent no.6. According to him, the respondent D.C.L.R. by his order dated 16.04.2000 had illegally directed for correction of Jamabandi in favour of the writ petitioners. According to him, aforesaid order was passed ex parte and the respondent no.6 was not given reasonable opportunity to place his case before the respondent D.C.L.R. It is pleaded that if the impugned order passed by the respondent District Collector is set aside, then that would amount to revival of patently illegal order, passed by the respondent D.C.L.R. He also submitted that

earlier also the order passed in favour of the petitioners by the respondent D.C.L.R. was an ex parte order.

Learned State counsel appearing on behalf of the respondent no. 1 to 5 has resisted the prayer made on behalf of the petitioners and supported the impugned order. However, he pointed out that during the interregnum period the Bihar Tenants' Holding (Maintenance of Record) Act, 1973 (In short '1973 Act') has been repealed and new Act, namely, Bihar Land Mutation Act, 2011 (In short "2011 Act") has been enacted. He further pointed out that under the new Act, the claim of mutation of the parties regarding any land can be considered by the Circle Officer.

Learned counsel appearing on behalf of the respondent no.7 submits that the matter may be directed to be decided afresh under the provisions of the new Act.

After having heard the parties and taking into consideration the entire materials available on record and further taking into consideration the enactment of 2011 Act, this Court is of the opinion that the entire matter requires re-consideration and fresh decision from the stage of the original authority. Apparently, the order passed by the respondent D.C.L.R. was an ex parte order. The respondent District Collector does not appear to have decided the claim of the parties strictly in accordance with the provisions of 1973 Act.

For the reasons recorded above, all the orders passed either in favour of the petitioner or respondent no.6 with respect to the lands in question either for the purposes of mutation or for the purposes of creation of Jamabandi or cancellation of Jamabandi including the order dated 16.04.200 (Annexure-4) passed by the respondent D.C.L.R., Narkatiaganj and the order dated 25.07.2008

(Annexure-5) passed by the District Collector, West Champaran, Bettiah, are hereby set aside and quashed and the matter is remitted back to the original authority with a direction to consider and decide the claim of the parties afresh under the provisions of 2011 Act. The parties shall be at liberty to raise all the issues of facts and law, which may be available to them.

The writ petition stands allowed to the extent indicated above.

(Birendra Prasad Verma, J)

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