

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 4328 of 2008

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Birja Kohar S/o Late Guljar Kohar, resident of Village Chotaka Sihanpura P.S. Simari District Buxar.

.... Petitioner

Versus

1. The State of Bihar
2. Collector Buxar
3. D.C.L.R. Dumraon Buxar
4. Anchal Adhikari Simari, Buxar
5. Uday Narain Ojha S/o Bachu Ojha, resident of Village Chotki Singhanpura P.S. Simari, District Buxar.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Rama Sinha
For the Respondent/s : AC to GA-9
Mr. Anil Kumar Dwivedi

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 23-03-2015

Heard learned counsel for the petitioner, learned A.C. to Govt. Advocate – 9 as well as Sri Anil Kumar Dwivedi, learned counsel, who has appeared on behalf of 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 31-01-2006 passed by the Collector, Buxar/respondent no. 2 in Case No. 09 of 2005/206 of 2006. By the said order, the learned Collector has reversed the order dated 21-10-2004 passed by the Deputy Collector Land Reforms, Dumraon, Buxar (in short “D.C.L.R.”) in Mutation Appeal No. 7 of 2004-05. The D.C.L.R. has set aside the order

passed in Mutation Case No. 293 of 2002-03.

The dispute in the present case pertains to Khata No. 182, Khesra No. 1124 measuring an area of 6 decimals and Khata No. 137, Khesra No. 1123 measuring an area of 2 decimals of land.

It has been pleaded by learned counsel for the petitioner that land in question was recorded in revisional survey in the name of ancestor of the petitioner and regularly the rent receipts were issued. However, in the year 2002, the respondent no. 5 on the strength of sale-deed dated 10-02-1969 (paragraph 6 of the petition) filed a petition for mutation of the land in his favour in camp court. The Circle Officer, without proper notice to the petitioner, allowed the mutation application. Since the order of the Circle Officer was passed behind back of the petitioner and ignoring the principle of natural justice, the petitioner preferred an appeal before the D.C.L.R. Before the D.C.L.R., the respondent no. 5 also appeared and after hearing the parties, by assigning detailed reason, the D.C.L.R. allowed the appeal and set aside the order of the Circle Officer. Against the order of the D.C.L.R., the respondent no. 5 preferred a revision, which was numbered as Case No. 9 of 2005/206 of 2006. In the revision, the petitioner appeared and produced all the relevant documents, however; the learned Collector Buxar allowed the revision and set aside the order of the D.C.L.R. He

passed order for restoring order of the Circle Officer, whereby, mutation was allowed in favour of the respondent no. 5. Aggrieved with the order of the learned Collector, the petitioner has approached this Court by filing the present writ petition.

Learned counsel for the petitioner submits that the order of the Circle Officer was completely an illegal order. By way of referring to the order of the Circle Officer, learned counsel for the petitioner submits that in the order, though the Circle Officer had mentioned that he had examined some persons regarding the possession over the land in question, the Circle Officer has not bothered even to indicate the name of person, who had disclosed regarding possession in favour of respondent no. 5. He submits that since without notice to the petitioner as well as the fact that land receipt was regularly issued in favour of the petitioner and under revisional survey, the land was recorded in the name of ancestor of the petitioner, it was mandatorily required on the part of the Circle Officer to give proper notice to the petitioner before passing any order in the mutation petition. Since the mutation order was passed against the principle of natural justice, the learned D.C.L.R. has rightly set aside the same. By way of referring to order passed by the Collector, in Case No. 9 of 2005/206 of 2006, he submits that learned Collector had simply noticed argument on behalf

of both the sides, however; no reason has been assigned in allowing the revision petition, save & except, he concludes that the order of the D.C.L.R. is not justified. Accordingly, it was submitted that the order of the revisional authority is liable to be set aside.

Sri Anil Kumar Dwivedi, learned counsel for respondent no. 5 has vehemently opposed the prayer of the petitioner. He submits that fact remains that land in question was purchased by the respondent no. 5 in the year 1964 through two registered sale-deeds, however; due to bona fide reason, earlier no step was taken on his behalf to get the land mutated. Subsequently, mutation petition was filed by respondent no. 5 in camp court, which has been allowed. It has been argued by learned counsel for private respondent that this is the practice in the camp court that only public notice is issued, no personal notice is required to be served. He further submits that the Circle Officer, before passing order in the mutation case in favour of the respondent no. 5, had also obtained report of karamchari as well as the Circle Inspector, which suggested possession of the respondent no. 5 on the land in question. He further submits that after purchasing the land, the petitioner had also made construction over the land in question and as such, he submits that the learned revisional court has rightly quashed the order of the appellate authority.

Learned counsel for respondent no. 5 has also tried to persuade the Court to rely on Annexure R/VI i.e. a photograph to show that over the land in question, there is house of respondent no. 5.

At the very outset, it may be indicated that this Court may not take any note of photograph i.e. Annexure R/VI to the counter affidavit, since on the basis of such photograph, one may not arrive at a conclusion that said construction pertains to the same land. On perusal of the order of the Circle Officer, it is evident that everything was done behind back of the petitioner. Once the learned Circle Officer was relying on statement of local person, it was mandatorily required on the part of the Circle Officer to indicate the name of such person, who has stated in respect of possession over the land in question. On the same date, the petition was filed and on same date i.e. 03-07-2002, mutation order was passed in favour of respondent no. 5. In such a situation, the learned D.C.L.R. has rightly set aside the order of the Circle Officer and as such, the order of the revisional court is also not justified.

Accordingly, the order of the Collector passed in revision case no. 09 of 2005/206 of 2006 (**Annexure '5'** to the writ petition) is hereby set aside. Since the order of the revisional court has been set aside on the premises that the Circle Officer had passed mutation order without proper inspection/verification, while allowing the writ petition,

it is necessary to remit back the matter to the Circle Officer to hear both the parties and pass appropriate order in accordance with law. Since the matter has been remitted back to the Circle Officer, obviously order of the appellate authority, i.e. D.C.L.R. may not remain operative.

The writ petition stands allowed with above observation and direction.

(Rakesh Kumar, J.)

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