

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8292 of 2009

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1. Most.Taramani Devi daughter of late Garju Yadav wife of late Basudeo Yadav, resident of village Mansahi, P.S.Mansahi, District Katihar
 2. Chandani Devi daughter of late Garju Yadav wife of Arjun Yadav, resident of village Mansahi, P.S.Mansahi, District Katihar
 3. Sartika Devi daughter of late Garju Yadav wife of late Kailash Yadav, resident of village Bhawanipur, P.S.Naugachhia, District Bhagalpur
 4. Ram Chandra Yadav son of late Garju Yadav, resident of village Dilarpur, P.S.Manihari, District Katihar
 5. Mahesh Yadav son of late Garaju Yadav, resident of village Baldiabari, P.S.Manihari, District Katihar

.... Petitioner/s

Versus

1. The State of Bihar
2. The Collector, Katihar
3. The Additional Collector, Katihar
4. The Deputy Collector of Land Reforms Department, Katihar
5. The Circle Officer, Manihari, Katihar
6. Geeta Devi wife of Haribansh Chaudhary, resident of village Hanswar, P.O. Nawabganj, P.S.Manihari, District Katihar
7. Santosh Kumar Choudhary son of Haribansh Choudhary, resident of village Hanswar, P.O. Nawabganj, P.S.Manihari, District Katihar

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bhola Prasad, Advocate
For the Respondent Nos. 1 to 5 : Mr.Pawan Kumar, AC to GA 9
For the Respondent Nos. 6 & 7 : Mr.Vishwajeet Kumar Mishra, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

4 14-08-2015

Heard the parties.

2. The petitioners are aggrieved by order dated 31.03.2008 (Annexure-2) passed in Mutation Revision Case No. 907 of 2004 by the respondent Additional Collector, Katihar, whereby order dated 12.09.2003 (Annexure-1) passed in Mutation Appeal Case No.9 of 2003 by the respondent DCLR, Manihari, District Katihar was reversed and set aside.

3. Learned counsel appearing on behalf of the petitioners submits that if the revisional authority was satisfied that the order passed by the DCLR was not sustainable as it was an



ex-parte one, then the matter ought to have been remitted back to the respondent DCLR for deciding the mutation appeal afresh on merits after hearing both the sides, but that has not been done in the present case. He further submits that the petitioners are still in possession over the land in question. He next submitted that without directing for an enquiry regarding possession, the order passed by the respondent DCLR was reversed and the claim of the private respondents for mutation of their names and thereby correction of Jamabandi has been allowed by the impugned order.

4. The matter has been contested by the learned counsel appearing on behalf of the respondent nos. 1 to 5 and learned counsel appearing on behalf of the respondent no. 6 and 7. According to the learned counsel appearing on behalf of the respondent nos. 6 and 7, the mutation appeal preferred by the writ petitioners before the respondent DCLR was not maintainable, as it was filed after a delay of 14 years. According to him, the order passed by the appellate authority was ex-parte one and therefore, it has rightly been reversed and set aside by the revisional authority. He further submits that the private respondent nos. 6 and 7 are in possession over the land in question.

5. After having heard the parties and on consideration of the materials available on the record, this Court is of the opinion that the matter requires re-consideration and fresh decision from the stage of the respondent DCLR. Apparently, in the appeal preferred by the petitioners before the respondent DCLR, the respondent nos. 6 and 7 were not given reasonable opportunity to place their case. Furthermore, the respondent DCLR could not have gone into the question of title of the parties. He was required to decide the claim of mutation only on the basis of possession of the parties and for that he could have either held

enquiry himself or he could have directed for enquiry by some other authority, but that has not been done in the present case.

6. For the reasons recorded above, the impugned order dated 31.03.2008 (Annexure-2) passed in Mutation Revision Case No. 907 of 2004 by the respondent Additional Collector, Katihar as also the order dated 12.09.2003 (Annexure-1) passed in Mutation Appeal Case No. 9 of 2003 by the respondent DCLR, Manihari are hereby quashed and set aside and the matter is remitted back to the respondent DCLR, Manihari, District Katihar to decide the claim of the parties afresh strictly in accordance with law.

7. In order to expedite the matter, the parties are directed to appear before the DCLR, Manihari, District Katihar within a period of six weeks from today with a certified copy of the present order, whereafter the respondent DCLR, Manihari shall fix a firm date for deciding the matter afresh in accordance with law keeping in mind the observations made above by this Court. However, before passing any final order, he shall be obliged to give opportunity to both sides for placing their materials in support of the respective claims for mutation regarding the lands in question. The parties shall be at liberty to raise all the issues of facts and law, which may be available to them.

8. The writ petition stands allowed to the extent indicated above.

(Birendra Prasad Verma, J)

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