

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8222 of 1998

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Mahendra Chaubey son of late Ramashray Choudhary resident of village Barashara,
Post office Baraki Ankorhi, Police Station Kargahar, District Rohtas

.... Petitioner/s

Versus

1. The State of Bihar
2. The Additional Collector, Rohtas at Sasaram
3. Deputy Collector Land Refoms, Sasaram.
4. Anchal Adhikari, Kargahar, Rohtas
5. Srimati Kalawati Devi wife of Ram Chandra Singh, resident of village
Bharasara, P.S. Akorhi, P.S. Kargahara District Rohtas

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. K.N.Choubey, Sr. Adv.
 Mr. Ambuj Nayan Choubey, Sr. Adv.
 Mr. Ashok Kumar Garg, Adv.

For the Respondent/s : Mr. Rajeev Kumar Singh, GP-2

For the respondent Nos. 5 and 6: Mr. Sanjay Kumar Singh, Adv.
 Mr. Binod Kumar Singh, Adv.
 Mr. Shashank Shekhar Sinha, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 07-05-2015

Heard learned counsel for the parties.

The petitioner by way of this writ petition prays for issuance of a writ in the nature of certiorari for quashing the order dated 8.7.1998 passed in Mutation Revision No. 12 of 1997-98 whereby the Additional Collector exercising revisional powers under section 16 of the Bihar Tenancy Holding (Maintenance of Records) Act, 1973 (hereinafter referred to as 'the Act') has set aside the order dated 25.7.1977 passed by the respondent No.3, Deputy Collector Land Reforms, Sasaram in Mutation Appeal No. 139 of 1996-97 thus restoring the order of the Circle Officer dated 6.2.1988 passed in



Mutation Case No. 5 of 1987-88. The petitioner apart from the relief set out hereinabove has also questioned the registered sale deed dated 18.12.1987 stated to have been executed by Late Sukhari Choubey, grand father of the petitioner in favour of the respondent No.5 inter alia on grounds that the execution was in violation of Section 5 read with Section 32 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (hereinafter referred to as 'the Consolidation Act') and other ancillary reliefs.

Facts of the case briefly stated is that the grand father of the petitioner Late Sukhari Choubey executed a sale deed in respect of 31 and $\frac{1}{4}$ decimals of land of the ancestral property which cumulatively comprised of 3.16 acres of land under Chak Khata No. 87/80 Chak Plot No. 110/60 in favour of the respondent No.5 vide sale deed dated 22.4.1988 bearing No. 4596. The dispute in question arises from an earlier purchase made by the respondent No. 5 in respect of 70 decimals of land vide sale deed No. 14970 dated 18.12.1987. The petitioner while questioning the validity of the sale deed dated 18.12.1987 has challenged the action of the Circle Officer, Kargahar in the District of Rohtas in allowing mutation in the name of the private respondent simply on the basis of sale deed dated 18.12.1987 which order of mutation was passed on 6.2.1988 in Case No. 5 of 1987-88 placed at Annexure-1 to the writ petition.



The petitioner being aggrieved by the mutation order dated 6.2.1988 moved in appeal before the Deputy Collector Land Reforms giving rise to Appeal No. 139 of 1996-97 and which appeal has been allowed by the Deputy Collector Land Reforms vide order passed on 25.7.1997 placed at Annexure-2. The petitioner at the same time also filed Title Suit No. 70 of 1996 in the court of 2nd Munsif for seeking a declaration that the sale deed dated 18.12.1987 was a forged and fabricated document. In addition thereto the petitioner also filed a complaint case bearing Case No. 653 of 1995/1096 of 1997 charging the private respondent with offences punishable under Sections 420, 465, 467, 468, 471/34 of the Indian Penal Code and according the petitioner cognizance has been taken in the matter. It was now the turn of the private respondent to move in revision and he filed such application under Section 16 of 'the Act' giving rise to Revision Case No. 12 of 1997-98, the Additional Collector, Rohtas exercising Revisional powers vide order passed on 8.7.1998 while recording infirmity in the order of the appellate authority has set aside the same and remanded the matter to the Deputy Collector Land Reforms for adjudication afresh. The writ petitioner being aggrieved is before this Court questioning the power of the Additional Collector to exercise revisional jurisdiction under Section 16 in as much as the revisional powers under the said provision stands exclusively in the Collector of

the district and no other authority.

This matter was heard on admission and vide order passed on 19.2.2001, the writ petition was admitted while staying the operation of the order of remand passed by the Additional Collector as revisional authority.

I have heard learned counsel for the parties and I have perused the materials on record.

The issue raised in the writ petition requires no further discussion for the legislative intent reflected from the provisions underlying Section 16 of 'the Mutation Act' leaves no room for confusion that the power of revision exclusively lies in the Collector of the district and none other.

Although Section 2(c) of 'the Act' empowers the State Government to notify such authority not below the rank of the District Collector to discharge the function of the Collector but even such notification only came to be published on 28.5.2008. Meaning thereby prior to the said date it was the Collector of the District exclusively who was vested with revisional powers. It is thus manifest that the Additional Collector was not vested with revisional powers. The order thus is not capable to be upheld.

The situation as it stands presently is that the petitioner claiming to be the minor son of the father questions the sale deed



executed by the vendor who is the grand father of the writ petitioner in favour of the private respondent. Now whereas the writ petitioner does not question the sale deed executed by his grand father in favour of the private respondent on 22.4.1988, he has chosen to question the sale deed executed by his grand father in favour of the private respondent on 18.12.1987 and questioning its validity he has also moved the Civil Court where the matter is pending consideration in Title Suit No. 70 of 1996.

Since Undisputably the Revisional order is wholly without jurisdiction and thus not sustainable, the consequences of setting aside of the revisional order would mean that the appellate order whereby the mutation granted to the private respondent by the Circle Officer was set aside, comes into operation and which in turn would lead to a situation where the records would now reflect the name of the vendor himself. No doubt, the Circle Officer while granting permission to the private respondent for opening of account in her name has relied upon the registered sale deed which has been put to question before the civil court by the writ petitioner but in my opinion until such time that a court of competent civil jurisdiction finds any infirmity in the sale deed executed in favour of the private respondent, a mere apprehension expressed by the writ petitioner cannot be held sufficient enough to take away the right vested in the private



respondent in seeking entry in the revenue records of rights. In my opinion a mere error in following a procedure may not be sufficient enough to take away a right vested in a person claiming the same on the basis of a registered sale deed. The appellate order has been passed merely on grounds of a procedural lapse by the Circle Officer in passing the same in a camp and without notice to the writ petitioners. On the other hand the order of the Circle Officer rests exclusively on the registered sale deed whose validity is yet to be upset by a court of competent civil jurisdiction. In such circumstance where a mutation is being claimed on the basis of a registered sale deed which continues to hold good, there can be no infirmity attached to the procedure followed by the Circle Officer in as much as the sale deed is yet to be declared invalid. In the circumstances discussed, the appellate order as well, cannot be upheld.

The law stands very well settled and where quashing of an illegal order leads to a revival of another illegal order, both the orders has to be set aside. Reference is made to a judgment reported in **(2009) 2 SCC 641 (Parents Association Vs. M.A. Khan)**.

For my conclusions drawn hereinabove, the order dated 8.7.1998 passed by the Additional Collector in Revision Case No.12 of 1997-98 together with the order dated 25.7.1997 passed by the Deputy Collector, Land Reforms in Appeal No. 139 of 1996-97

cannot be upheld and both are set aside. Before parting I shall make it very clear that I have expressed no opinion on the merits of the rival claims and thus the order passed by the Circle Officer, granting mutation dated 6.2.1988 shall be governed by the final outcome in the title suit.

The writ petition is allowed in part along with the directions aforementioned.

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(Jyoti Saran, J)

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