

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.23294 of 2012

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Tej Narayan Yadav Son Of Bhubneshwari Yadav Resident Of Village- Jaduapatti,
P.S.- Kumarkhand, District- Madhepura

.... Petitioner

Versus

1. The State Of Bihar
2. The Collector Madhepura, District- Madhepura
3. Land Reform Deputy Collector, Madhepura, District- Madhepura
4. Anchaldhikari, Kumarkhand, District- Madhepura
5. Ashok Kumar Sah Son Of Late Surya Narayan Sah Resident Of Village-
Jaduapatti, P.S.- Kumarkhand, District- Madhepura
6. Ram Kumar Sah Son Of Late Surya Narayan Sah Resident Of Village-
Jaduapatti, P.S.- Kumarkhand, District- Madhepura
7. Shiv Kumar Sah Son Of Late Surya Narayan Sah Resident Of Village-
Jaduapatti, P.S.- Kumarkhand, District- Madhepura
8. Musiya Devi Wife Of Deo Narayan Sah Resident Of Village- Jaduapatti, P.S.-
Kumarkhand, District- Madhepura
9. Md. Hajar Uddin Son Of Late Khush Mohammad Resident Of Village-
Jaduapatti, P.S.- Kumarkhand, District- Madhepura
10. Md. Siraj Uddin Son Of Late Khush Mohammad Resident Of Village-
Jaduapatti, P.S.- Kumarkhand, District- Madhepura
11. Dukhan Ramani Son Of Late Godar Ramani Resident Of Village- Jaduapatti,
P.S.- Kumarkhand, District- Madhepura
12. Md. Wajit Son Of Late Sukhawat Resident Of Village- Jaduapatti, P.S.-
Kumarkhand, District- Madhepura
13. Manoj Yadav Son Of Deep Narayan Yadav Resident Of Village- Jadiapatti,
P.S.- Kumarkhand, District- Madhepura
14. Mandika Devi Wife Of Yogendra Yadav Resident Of Village- Jadiapatti, P.S.-
Kumarkhand, District- Madhepura
15. Geeta Devi Wife Of Sri Narayan Yadav Resident Of Village- Jadiapatti, P.S.-
Kumarkhand, District- Madhepura

.... Respondents

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Appearance :

For the Petitioner : Mr. Sharda Nand Mishra, Advocate
For the State : Mr. K.B.Singh, SC 22
For Respondent : M/s S.K.Thakur and
Nos. 5 to 12 Ravishankar Kumar, Advocates

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 22-06-2015

I have heard parties and perused the records of this

case.

Through this writ application the petitioner seeks quashing of the order dated 4.7.2012 passed by the Land Reforms Deputy Collector, Madhepura in Land Dispute Case No. 44/12, by which allegedly he has declared the title and possession of the disputed land of the respondent no. 5.

The petitioner claims to have purchased the lands of plot nos. 602, 603, 612 appertaining to Khata no. 375/1010 as well as Plot Nos. 1653, 1654, 1655, 1656 and 1657 appertaining to Khata No. 111/429 of total area of 3 acres 2 decimals of Mauza Israin Khurd by the registered sale deed executed by the second wife of Haribhajan Yadav, namely, Mala Devi @ Dukhani Devi vide registered sale deed dated 4.1.2000 and, thereafter, an application was filed before the Circle Officer for their mutation in view of such purchase. However, the said land was already mutated in the name of the private respondent nos. 5 to 12. When no decision was taken by the Circle Officer on his application, the petitioner approached before the Deputy Collector Land Reforms, Madhepura in Mutation Case No. 10/2007 who, after hearing the parties, passed order dated 4.8.2009 in favour of the petitioner and directed for cancellation of Jamabandi running in the name of the aforesaid private respondents and creating Jamabandi in the name of the petitioner. The aforesaid



order passed by the Deputy Collector Land Reforms, Madhepura was put to challenge in Mutation Revision No. 17/2009 before the Collector – cum – District Magistrate, Madhepura who, after hearing the parties and perusal of the reports, came to the conclusion that there was a dispute with regard to the land, therefore, he directed the appellant – respondent to approach the Deputy Collector Land Reforms under the Bihar Land Disputes Resolution Act, 2009 (hereinafter referred to as ‘the BLDR Act’) vide order dated 25.11.2011 as contained in Annexure 2. The Deputy Collector Land Reforms, Madhepura, thereafter, heard both the parties and passed the impugned order dated 4.7.2012 contained in Annexure 3. He has made observation that, for taking a decision with respect to the concerned dispute, it has to be determined as to (i) whether the second marriage of Haribhajan Yadav was valid one and (ii) what would be the right of her heirs with respect to the properties which were standing in the name of Haribhajan Yadav? He came to the conclusion that the matter relates to the aforesaid complicated question touching the title of the parties and, as such, the appropriate forum for redressal of grievance would be a Civil Court of competent jurisdiction. However, at the same time he has declared the title of Ashok Kumar Sah, i.e., the respondent no. 5 till a decision is taken by the Civil Court. The petitioner is aggrieved by the aforesaid decision.



The issue is no longer *res integra* as the same has been set at rest by the Division Bench of this Hon'ble Court in **Maheshwar Mandal and another vrs. The State of Bihar and others, 2014(3) PLJR 281** holding that any matter touching the issue of title has to be mandatorily referred to the Civil Court under sub Section 5 of Section 4 of the BLDR Act and sub Section 4 of Section 4 has been held to be arbitrary and unconstitutional. The Division Bench has further held that the authorities under the BLDR Act would have power only to execute the final decision taken by the competent authorities under the six Statutes incorporated under Schedule I.

However, it is also clear that the authorities under the BLDR Act cannot sit in appeal or revision of any order passed in the aforesaid Statutes by a competent authority as power of appeal and revision are provided in the Statute concerned. The authorities under the BLDR Act cannot set aside or modify or alter the orders passed by the authorities under aforesaid six enactments.

In above view of the matter, when the Deputy Collector Land Reforms has passed the order in favour of the petitioner in Mutation Case No. 10/2007, the Deputy Collector Land Reforms acting as statutory authority under the BLDR Act could not have taken a view contrary to that what has been taken by the Deputy



Collector Land Reforms vide Annexure 1 by declaring title in favour of respondent no. 5 even till any decision of Civil Court of competent jurisdiction comes. Though, the Deputy Collector Land Reforms, while passing the order impugned, appears to have come to the conclusion that the matter is required to be finally decided by the Civil Court of competent jurisdiction in view of complicated question touching the title are involved but at the same time he has directed the respondent – petitioner to go to the Civil Court and seek relief and till then he has declared title of respondent no. 5, Ashok Kumar Sah, which, in my considered opinion, could not have been done by him as he does not derive any power to declare title of one of the parties even for the interregnum period till a final decision of Civil Court is pronounced. Thus, he should have simply refused to pass any order involving the complicated question of title having been involved and should have left option for both the parties to seek remedies before the competent court.

In above view of the matter, the impugned order dated 4.7.2012, contained in Annexure 3, is quashed and set aside.

Having held and ordered as above, in my considered opinion, when the Deputy Collector Land Reforms has passed order in mutation case and appeal was preferred before the Collector, he ought not have directed the respondents to file appropriate



application under BLDR Act as he himself was competent to test the propriety and legality of the order concerned. The petitioner had filed Mutation Case No. 17/2009 in the year 2009 itself and the Bihar Land Mutation Act, 2011 was enforced in the year 2011, however, he could well have decided the matter even under the earlier Statute, namely, The Bihar Tenants Holding (Maintenance of Records) Act, 1973 under Section 16 thereof to satisfy himself as to the legality or propriety of any order made under that Act passed by any authority or officer subordinate to him after calling for and examining the records of any case.

Thus, in my considered opinion, he was required to decide the matter on its own merit and in accordance with law as the respondents had raised a point that Deputy Collector Land Reforms did not have any power to cancel his jamabandi which was opened in the name of respondent after their purchase from the son of the land holder whereas the petitioner claims to have purchased the lands from the heirs of the second wife of the owner of the land. He could have passed necessary order after due consideration in accordance with law regarding the issue as to whether that was required to be decided by the Deputy Collector Land Reforms or whether the Deputy Collector Land Reforms was empowered under the Statute mentioned above or any other provision of law to cancel

the jamabandi or could well have taken any decision in accordance with law. Even if the matter involved a complicated question of title he could have come to such conclusion also but he has refrained himself from passing any order on merit which, in my considered opinion, was required to be passed by him. Accordingly, I direct him to pass necessary order after granting reasonable opportunity to the parties without being prejudiced by any observation of this Court made in this regard in the present order. However, the option to seek relief before a Civil Court would always remain open to the parties.

Accordingly, the writ application stands allowed to the extent indicated above. However, there would be no order as to costs.

(Dr. Ravi Ranjan, J)

Spd/- N.A.F.R.

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