

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1280 of 2013

1. Yogendra Mistry

2. Suboth Mistry

Both sons of Late Hari Lal Mistry, resident of village Bari Painkat,
Police Station Pasraha, District Khagaria Petitioner/s

Versus

1. Jiyalal Sharma son of Late Ganga Sharma, resident of village Bari
Painkat, police station Pasraha, District Khagaria

2. The State of Bihar through Divisional Commissioner, Munger, District
Munger Respondent/s

Appearance :

For the Petitioner/s : Mr. Sanjeev Ranjan, Advocate

For the Respondent No.1 : Mr. Dharendra Kumar, Advocate

For the Respondent No.2 : Mr. Shashi Shekhar Pd. Sinha, AC to GA 13

CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

6 30-10-2015

Heard the parties.

2. The matter at issue is the mutation of land bearing Khata No. 140 appertaining to Khesra No. 37 situate at Mauza Painkat in the District of Khagaria (in short the land in question).

2. It is not in dispute that the petitioners filed a petition before the Anchal Adhikari, Gogari for mutation of the land in question to the extent purchased by them through a registered sale deed, on the basis of which Mutation Case No. 554 of 2003-04 was started. By final order dated 05.03.2004 (Annexure-1), the claim of the petitioners for mutation of their names with respect to the land in question was allowed.

3. It is also not in dispute that the respondent no.1, being aggrieved by the aforesaid order dated 05.03.2004, preferred Mutation Appeal Case No. 02 of 2004-05 before the D.C.L.R, Gogari, which was finally allowed by order dated 15.06.2008 (Annexure-2) and order passed by the Anchal Adhikari, Gogari was set aside. Thereafter the petitioners, being aggrieved by the aforesaid appellate order, filed Mutation Revision Case No. 06 of



2008-09 before the Additional Collector, Khagaria, which was finally allowed by order dated 25.11.2009 (Annexure-3) and order passed by the DCLR, Gogari was set aside. The respondent no.1, being aggrieved by the aforesaid order passed by the Additional Collector, Khagaria, approached the Divisional Commissioner, Munger giving rise Mutation Revision No. 03 of 2010, which has been finally disposed of by the impugned order dated 11.08.2010 and the matter has been remitted back to the District Collector, Khagaria for hearing and deciding the mutation revision case filed on behalf of the petitioners afresh.

4. Learned counsel appearing on behalf of the petitioners submits that the powers of second revision vested in the Divisional Commissioner under Section 17 of The Bihar Tenants' Holdings (Maintenance of Records) Act, 1973 was taken away long long ago by amendment in the aforesaid Act. Therefore, according to him, the order impugned is wholly without jurisdiction and is fit to be set aside on that ground alone.

5. Per contra, learned counsel appearing on behalf of the respondent no.1 has submitted that by the impugned order, the Divisional Commissioner has not decided the matter on merits regarding land in question; rather he has simply remitted the matter back to the District Collector, Khagaria for deciding the revision application filed on behalf of the petitioners afresh on merits. According to him, Section 16 of the aforesaid Act authorizes only the District Collector to hear and decide the revision filed by any person. Therefore, according to him, if the impugned order is interfered with, then a patently illegal order passed by the Additional Collector shall stand revived. He further submitted that the original order passed by the Anchal Adhikari was itself bad in law, which was rightly set aside by the appellate

authority.

6. By way of reply, the learned counsel for the petitioners submits that, in fact, by virtue of a judicial pronouncement made by this Court, powers of revision exercised by the Additional Collector has been held to be permissible. Therefore, according to him, the finding and conclusion to that effect made by the Divisional Commissioner is not tenable.

7. Learned counsel appearing on behalf of the State of Bihar, on the other hand, submits that, in fact, the entire matter requires reconsideration and a fresh decision from the stage of original authority, as the issue/ claim of mutation was not decided by the original authority after giving an opportunity of hearing to all concerned, which is apparent from the findings recorded by the appellate authority. He further submits that in view of alternative remedy available to the petitioners before the learned Bihar Land Tribunal, Patna, the writ petition is liable to be dismissed.

8. After having heard the parties and on consideration of the materials available on the record, this Court is of the opinion that the entire matter requires reconsideration and a fresh decision right from beginning. Though claim of mutation of the petitioners was allowed by the Anchal Adhikari, Gogari by order as contained in Annexure-1, but that was set aside by the appellate authority on the ground of violation of the rules of natural justice as also violation of the procedures prescribed under the law. The aforesaid appellate order was reversed by the Additional Collector by order contained in Annexure-3. It appears that the case of both the parties have not been properly considered and decided by the authorities concerned after giving them reasonable opportunity of hearing and after looking into all the materials produced by them.

9. For the reasons recorded above, the impugned

order dated 11.08.2010 passed in Mutation Revision No. 03 of 2010 by the Divisional Commissioner, Munger, as contained in Annexure-4, as also the original order dated 05.03.2004 passed in Mutation Case No. 554 of 2003-04 by the Anchal Adhikari, Gogari, as contained in Annexure-1, the appellate order dated 15.06.2008 passed in Mutation Appeal Case No. 02 of 2004-05 by the DCLR, Gogari, as contained in Annexure-2, and the order dated 25.11.2009 passed in Mutation Revision Case No. 06 of 2008-09 by the Additional Collector, Khagaria, as contained in Annexure-3, are set aside and quashed, and the entire matter is remitted back to the Anchal Adhikari, Gogari with a direction to decide the mutation case filed on behalf of the petitioners afresh after giving an opportunity of hearing to all concerned including the petitioners and the private respondent no.1.

10. It is clarified that parties shall be at liberty to raise all the issues of facts and law, which may be available to them with respect to the land under dispute.

11. In order to expedite the matter, the petitioners as also the respondent no.1 are hereby directed to appear before the Anchal Adhikari, Gogari with a certified copy of the present order within a period of one month from today, whereafter he shall fix a firm date for deciding the aforesaid mutation case afresh strictly in accordance with law.

12. In the result, the writ petition stands allowed to the extent indicated above as also with the directions and observations made above. However, the parties are left to bear their own costs.

(Birendra Prasad Verma, J)

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