

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15469 of 2005

Yadunandan Prasad son of Braj Kishore Prasad Sahu, resident of Mohalla-Yusufpur Chauhatta, P.S. Town Hajipur, District Vaishali.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Collector, Vaishali at Hajipur.
3. The Sub-Divisional Officer, Vaishali at Hajipur.
4. The Chairman, Municipality, Vaishali at Hajipur.
5. The Executive Officer, Municipality Vaishali at Hajipur.
6. The Tax Officer, Municipality Vaishali at Hajipur.
7. Suresh Prasad Singh, son of Awadhesh Narayan Singh, resident of Mohall Mahendru, P.S. Gandhi Maidan, District- Patna.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Surendra Kishore Thakur, Adv.

For the Respondent No.1 to 3: Mr. Ajay Kumar Sharma, AC to PAAG-I

For the Respondent No. 4 to 6: Mr. Vasant Vikas, Adv.

CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 08-08-2016

Heard the parties.

The matter at issue is the validity and correctness of the order of assessment passed by the Executive Officer, Hajipur Municipality, now, Nagar Parishad Hajipur, with respect to the land in question situate in its jurisdiction.

The petitioner is aggrieved by the order dated 28.09.2004 passed in Suit No. 22 of 2002 by the Executive Officer, Hajipur Municipality, as contained in Annexure-5, whereby the claim of mutation of his name with respect to the land in question raised on behalf of the petitioner has been allowed, subject to payment of entire arrears of Hajipur Municipality with respect to the land in question. According to the learned counsel appearing on behalf of the petitioner, the petitioner is prepared to pay the assessment tax fixed by the Executive Officer, Hajipur Municipality only from the date, the

land in question was transferred to him, but he cannot be compelled to pay entire arrears of tax liable to be paid to the Municipality for the land in question.

The learned counsel appearing on behalf of the respondent no. 4 to 6, on the other hand, submits that the impugned order is appealable before the learned District Judge under the provisions of Section 143 of The Bihar Municipal Act, 2007 (in short Act, 2007); therefore, the writ petition, at this stage, is not maintainable and is fit to be dismissed on that ground alone.

After having heard the parties and taking into consideration the factual matrices of the present case, this Court is of the opinion that the impugned order 28.09.2004 passed in Suit No. 22 of 2002 by the Executive Officer, Hajipur Municipality, would be deemed to be an order passed under Section 137 read with Section 142 as also Section 488(5) of the Act, 2007. Therefore, an appeal does lie against such order before the learned District Judge in terms of Section 143 of the Act, 2007. In above view of the matter, the petitioner has an alternative and efficacious remedy before the prescribed appellate authority.

Hence, the present writ petition is disposed of with a liberty to the petitioner to approach the prescribed appellate authority under Section 143 of the Act, 2007 for grant of appropriate relief(s) with respect to the land in question.

It is clarified that if such an appeal is filed before the learned District Judge, Vaishali at Hajipur within a period of four weeks from today with a certified copy of the present order and if it is found to have become barred by limitation and if any petition is filed on behalf of the petitioner for condonation of such delay, then the learned prescribed appellate authority shall take into consideration

that on a bonafide legal advice, the present writ petition was filed on 19.12.2005 before this Court and that remained pending till date.

(Birendra Prasad Verma, J)

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