

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13043 of 2001

With

Interlocutory Application No. 6584 of 2008

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Kapil Muni Singh son of Sri Ramnath Singh, resident of at & P.O. Kesath
(Mausatola), P.S. Nawanganar, District- Buxar.

.... Petitioner/s

Versus

1. The Collector, Buxar
2. The Deputy Collector Land Reforms, Dumraon, Buxar.
3. The Anchal Adhikari, Nawanganar, Buxar.
4. Sheo Kumar Mishra son of Late Ram Singasan Mishra, resident of village
Keshath, Dubey Mohalla, P.S. Nawanganar, District- Buxar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kamal Nayan Chaubey, Sr. Adv.
Mr. Ambuj Nayan Chaubey, Adv.
Mr. Ashok Kumar Garg, Adv.
Mr. Homa Yunus, Adv.
Mr. Rito Priyadarshini, Adv.
Mr. Yogendra Kumar Dwivedi, Adv.

For the Respondent Nos. 1 to 3: Mr. Randhir Kumar, AC to SC-18

For the Heirs of Respondent No. 4: Mr. Gopal Pandey, Adv.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL JUDGMENT
Date: 19-09-2016

Re.: Interlocutory Application No. 6584 of 2008

Heard the learned Senior counsel appearing on behalf of the petitioner, the learned AC to SC-18 appearing on behalf of the respondent nos. 1 to 3 as also the learned counsel appearing on behalf of the heirs and legal representatives of the deceased respondent no.4, who were issued notice by this Court on I.A. No. 6584 of 2008, by an order dated 14.11.2008.

The instant interlocutory application has been filed on behalf of the petitioner stating therein that the respondent no.4- Sheo Kumar Mishra has passed away during the pendency of the main writ petition on 10.06.2004 leaving behind his heirs and legal

representatives, fully detailed in paragraph-2 of the instant interlocutory application.

The learned AC to SC-18 appearing on behalf of the respondent no. 1 to 3 as also the learned counsel appearing on behalf of the heirs and legal representatives of the deceased respondent no. 4 do not raise any objection to the prayer for substitution made in the present interlocutory application.

In above view of the matter, the prayer for substitution is allowed. Let the name of the deceased respondent no.4 be expunged from the array of the parties of the main writ petition and he be substituted by his heirs and legal representatives, fully detailed in paragraph-2 of the present interlocutory application, who all have already entered appearance through their counsel.

The instant Interlocutory Application thus stands finally disposed of.

Re.: Civil Writ Jurisdiction Case No. 13043 of 2001

With the consent of the parties, main writ petition has been taken up for consideration on merits.

The matter at issue is the claim of the petitioner for mutation of his name with respect to a parcel of land bearing khata no. 422 plot no. 2434 area 3 decimals, out of total area of 6 ½ decimals claimed by him, situate at mauza Kesath in the district of Buxar.

The learned Senior Counsel appearing on behalf of the petitioner submits that the petitioner purchased 3 decimals and 3 ½ decimals of lands from the aforesaid plot no. 2434 through two separate registered sale deeds dated 29.7.1995 from one Birendra Prasad son of Sheo Nandan Sahu. It is further submitted that apart from the aforesaid lands, some other area of lands of the plot in question were also purchased by some other family members of the



petitioner. It is contended that in view of the purchase of the lands in question, the petitioner filed a case before the respondent Anchal Adhikari, Nawanganar for mutation of his name with respect to the lands in question, which gave rise to Mutation Case No. 418 of 1995-96, but the respondent Anchal Adhikari by the impugned cryptic order dated 6.1.1996 (Annexure-1) rejected the prayer made on behalf of the petitioner in view of the objections raised by the original respondent no.4- Sheo Kumar Mishra, though he did not produce any document in support of his claim of right, title and possession over the same. It is further contended that the petitioner, being aggrieved by the aforesaid order, preferred Mutation Appeal No. 57 of 1995-96 before the respondent D.C.L.R., Dumraon, but that was partly allowed with respect to 3 ½ decimals of land purchased by him, and the prayer for mutation raised on behalf of the petitioner for remaining 3 decimals of land also purchased by him has been rejected on the ground that the original respondent no.4 is claiming possession over the lands in question. While passing the aforesaid appellate order dated 26.8.1996 (Annexure-2), the respondent D.C.L.R. has recorded a finding of facts that the original respondent no. 4 has no valid document for the lands in question. The revision application, preferred on behalf of the petitioner before the District Collector, Buxar, was also dismissed by the impugned revisional order dated 10.7.2001 passed in Revision Case No.156 of 1996, as contained in Annexure-3. It is pleaded by the learned Senior counsel appearing on behalf of the petitioner that in view of the admitted position that the original respondent no.4 and for that matter, even his heirs and legal representatives, have no valid document of right, title and possession over the lands in question, prayer made on behalf of the petitioner for mutation of his name could not have been rejected by the statutory authorities. In support of his

above contention, he has placed heavy reliance on a recent judgment of the Hon'ble Apex Court in the case of **Narayan Laxman Patil vs. M/s Gala Construction Company Pvt. Ltd.** [2016 (1) PLJR (SC) 197] particularly paragraphs 19 and 20.

The learned counsel appearing on behalf of the heirs and legal representatives of the original respondent no. 4 has opposed the prayer made on behalf of the petitioner and has supported the impugned orders. According to him, though the original respondent no. 4 or his heirs and legal representatives are having no valid documents of their right, title and possession over the lands in question, but the lands in question have been coming in their possession for last several years. Therefore, the authorities concerned have rightly rejected the prayer made on behalf of the petitioner for mutation of his name with respect to only 3 decimals of land of plot No. 2434.

After having heard the parties and taking into consideration the admitted position that the original respondent no. 4 or his heirs and legal representatives are having no valid document of any right, title and possession over the lands in question, the statutory authorities could not have rejected the prayer for mutation raised on behalf of the petitioner for the lands in question. Even if the claim of possession raised on behalf of the original respondent no.4 or his heirs and legal representatives is accepted, though it is being seriously disputed by the learned senior counsel appearing on behalf of the petitioner, then in that case also, their position would be that of encroachers or at best, in the illegal possession, but on that ground alone the prayer for mutation made on behalf of the petitioner could not have been rejected by the authorities concerned in view of the recent judicial pronouncements made by the Hon'ble Supreme Court in the case of

Narayan Laxman Patil vs. M/s Gala Construction Company Pvt. Ltd. (supra).

For the reasons recorded above, the impugned order dated 7.12.1995 (Annexure-1), passed by the respondent Anchal Adhikari, Nawanagar, the impugned appellate order dated 26.8.1996 (Annexure-2), passed in Mutation Appeal No. 57 of 1995-96 by the respondent D.C.L.R., Dumraon as also the impugned revisional order dated 10.7.2001 (Annexure-3) passed in Mutation Revision Case No. 156 of 1996 by the respondent District Collector, Buxar (Annexure-3) are hereby set aside and quashed, and the respondent Anchal Adhikari, Nawanagar is hereby directed to mutate the name of the petitioner with respect to the lands in question.

The writ petition stands allowed to the extent indicated, as also with the observations and directions made above. No costs.

However, it is clarified that the present order shall not come in the way of the heirs and legal representatives of the original respondent no.4 to approach the civil court of competent jurisdiction for getting their right, title and possession declared or for grant of any other appropriate relief(s) with respect to the lands in question.

(Birendra Prasad Verma, J)

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CAV DATE	
Uploading Date	22-09-2016
Transmission Date	