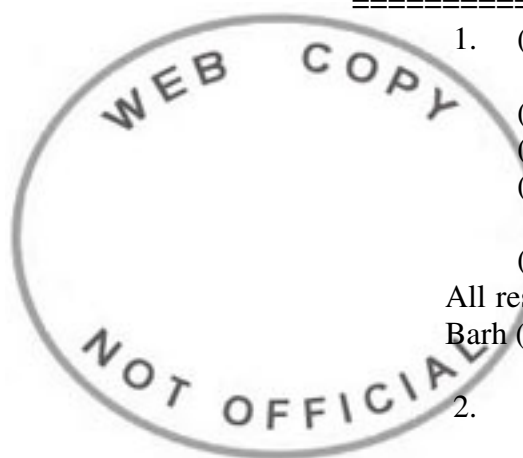


IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3685 of 2004



1. (a) Rabiya Khatoon, widow of late Amin Ahmad (original petitioner No. 1)
(b) Shamim Ahmad
(c) Samin Ahmad
(d) Firoj Ahmad, sons of late Amin Ahmad (deceased of petitioner No. 1)
(e) Nilofar, daughter of late Amin Ahmad
All resident of Mohalla Salimpur, ward No. 12 (old ward No. 03), PO+PS-Barh (Patna)
2. Syed Fakhar Ahsan, S/o Syed Rayaj Ahsan, R/o-Mohalla Salempur, ward No. 21/10, PO+PS-Barh (Patna)

.... Petitioners

Versus

1. The State of Bihar
2. The Barh Municipality through the Chairman Barh, Municipality Barh, District-Patna
3. The Executive Officer, Barh Municipality, Barh, District-Patna
4. Seema Nizami, Wife of Syed Badi, Ashgar, Resident of Mohalla Salimpur, Ward No. 9, P.O. P.S. and Town Barh, District-Patna
5. Surji Devi, wife of Ram Parvesh Sao, Resident of Mohalla Walipur, P.O. P.S. and Town Barh, District Patna

.... Respondents

Appearance :

For the Petitioner/s : Mr. Chitranjan Sinha, Sr. Advocate with
Mr. Khatim Reza, Advocate

For the Respondent Nos.
2 & 3(Barh Nagar Parishad) Mr. Partha Sarthy, Advocate
Mr. Utsav Kumar, Advocate

For the Respondent Nos.
4 & 5 Mr. Raghib Ahsan, Sr. Advocate
For the State Mr. Krishna Kumar, AC to GP-26

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 22-04-2016

Heard the parties.

The petitioners have prayed for issuance of a writ in the nature of certiorari for quashing the order dated 12.12.2003 passed by the Executive Officer, Barh Municipality, Barh in Mutation Case No. 26 of 2003 whereby the Executive Officer has



directed for deletion of the name of the petitioner from the municipal records relating to Salempur ward No. 10/09 Holding Nos. 10, 11, 12 and 13 (old); Holding No. 6(new), having an area of 1 katha 17 dhur 14 dhurki and for inclusion of the name of the respondent no. 4 as well as for modification in the area in respect of respondent no. 5 accordingly. The order also gives liberty to the parties to resolve the dispute relating to the title before the court of competent civil jurisdiction.

Mr. Chitranjan Sinha, learned Senior Counsel appearing for the petitioners has with reference to the exercise of power by the Executive Officer, has made reference to Section 107 of the Bihar Municipal Act, 1922 (hereinafter referred to as 'the Act') to submit that the exercise has been done under Section 107 of 'the Act' and even though the Commissioner is vested with the powers of amendment and preparation of list but the essentials for such exercise stands discussed in the provision. With particular reference to Section 107(1)(b) of 'the Act', it is submitted that even when the Commissioner concerned is vested with the powers of substitution of the name of the owners/occupier of any holding but the substitution has to be done only when the Commissioner is satisfied that the person seeking claim for mutation has succeeded to the property by a valid transfer. It is the submission of Mr. Sinha that though the power is extensive but has to be exercised with due

care and it is only upon recording a satisfaction on the facts present.

He submits that the property in question was recorded in the name of Abdul Aziz, son of Mangli Mian in the municipal records in 1928 and upon his death was mutated in the name of the son of the original holder namely, Abdul Hafeez, son of Abdul Aziz in the year 1938. It is further submitted that vide the sale deed present at Annexure-15 executed in the year 1965, the entire area of the holding which is 3 kathas, was sold by the land owner Abdul Hafeez in favour of one Syed Fakhrun Nabi whose name was entered in the municipal records. It is next contended that the original petitioner (since deceased) namely late Amin Ahmad purchased the holding from the transferee Syed Fakhrun Nabi on 27.12.1969, a copy of which registered sale deed is annexed at Annexure-16 to the supplementary affidavit and whereafter the name of the original writ petitioner was mutated in the municipal records on 04.05.1973. It is stated that half of this area was subsequently sold to the respondent no. 5 vide sale deed dated 1.3.2002 placed at Annexure-3 but the remaining half has remained with the petitioners and which is the subject matter of the impugned order.

It is the argument of Mr. Sinha, learned Senior Counsel that in between this period one Syed Belal Ahsan claiming



a right over the land in question filed a title suit bearing Title Suit No. 34 of 1966 seeking a declaration of title and confirmation of possession over the land including the holding in question. The suit was held abated on 14.01.1973. An appeal was preferred by the plaintiff Syed Balal Ahsan who happens to be the vendor of the private respondent no. 4 giving rise to Appeal No. 27 of 1974 and which was allowed by a Bench of this Court vide judgment and decree dated 18.05.1979. As a consequence the Title Suit No. 34 of 1966 stood revived. It is submitted by Mr. Sinha that the status of the suit is not known. He submits that even when Title Suit No. 34 of 1966 filed by the vendor of the private respondent no. 4 for seeking a declaration of title and possession over the property in question was pending before the Sub-Judge-III, Barh, he proceeded to execute a sale deed in favour of the private respondent no. 4 on 24.04.2002 and after which the private respondent No. 4 sought mutation and which has been mechanically allowed. Mr. Sinha has questioned the impugned action on the following grounds:

- (a) Section 107(1)(b) of 'the Act', enables the Commissioner for substitution in the records in case a person seeking mutation has succeeded the owner by a valid transfer and in no other circumstance;
- (b) The name of the vendor of the private respondent Syed Belal Ahsan does not find mention in the municipal records

and in absence of the name in the municipal records, there was no occasion for the Municipal Commissioner to disturb the holdings; and

- (c) Even when the title suit filed by the vendor of the private respondent bearing Title Suit No. 34 of 1966 seeking declaration of title and possession remained pending and even when the title is yet to be established, yet the Commissioner has accepted the claim to exercise such jurisdiction.

Learned counsel in support of his submission has relied upon a Division Bench judgment of this Court reported in **1978 P.L.J.R. 684 (Tenu Mandal vs. Executive Officer)**.

The arguments of Mr. Sinha has been contested by the counsel for the Municipality who has simply voiced the opinion of the Executive Officer. The main contest is advanced by Mr. Raghib Ahsan, learned Senior Counsel for the private respondent No. 4. It is the argument of Mr. Ahsan with reference to the counter affidavit filed on behalf of the respondent No. 4 that the petitioner has tried to defraud the parties concerned in obtaining the mutation. It is his argument that the vendor of the respondent No. 4 is lineal descendant of the owners of the property and had thus a right to transfer the property in the name of the



private respondent no. 4. According to Mr. Ahsan, learned Senior Counsel, there is no invalidation in the sale deed executed on 24.04.2002 by Syed Belal Ahsan. It is further argued that the petitioner has no locus standi for maintaining the writ petition after having transferred the entire one and half kathas so purchased by their predecessor in interest, in favour of the private respondent No. 5 who has entered into a compromise with the respondent No. 4. According to Mr. Ahsan, learned Senior Counsel, it is only one and half kathas of the property in question which was transferred to the petitioners father and which has since been sold in favour of the respondent No. 5. According to Mr. Ahsan, once the late petitioner has chosen to transfer the entire property purchased through the sale deed in favour of the respondent No. 5, he has no cause for maintaining the writ petition nor can they be said to be a person aggrieved. Responding to the argument of the petitioners that even the Jamabandi created in the name of the respondent No. 4 has been cancelled by the statutory authorities, it is contested by Mr. Raghib Ahsan, learned Senior Counsel that the final orders passed for cancellation by the revisional authority has been made subject to the outcome of the present writ petition.

I have heard learned counsel for the parties and I have perused the records. The exercise of jurisdiction by the Commissioner is under Section 107(1)(b) of 'the Act' which reads

as follows:-

“107. **Amendment and duration of list**-(1) The Commissioner may, from time to time alter or amend the assessment list in any of the following ways:-

(a).....

(b) by substituting for the name of the owner or occupier of any holding the name of any other person who has succeeded by transfer or otherwise to the ownership or occupation of the holding;

.....”

There is no issue regarding the conferment of jurisdiction on the Commissioner to make alterations in the holding register as and when the occasion would so arise on transfer of ownership. The issue is whether the power has been rightly exercised or has been abused. The circumstances leading to the exercise stands discussed. Section 107(1)(b) of ‘the act’ eloquently provides that the name of the original owner can be substituted where the claimant to a mutation is able to establish his right on the basis of a valid transfer.

It is not in contest that whereas in the year 1928 the name of Abdul Aziz was entered in the municipal records, it was substituted by his son Abdul Hafeez in the year 1938 and who sold the property in favour of Syed Fakhrun Nabi on 17.09.1965 vide Annexure-15 whereafter the name of Syed Fakhrun Nabi entered the municipal records. It is again not in dispute that the original



writ petitioner purchased the holding in question from Syed Fakhrun Nabi on 27.12.1969 vide Annexure-16 and though there is a contest as to the area purchased for while it is the contention of Mr. Sinha that the entire area of the holdings in question had been purchased, these arguments have been contested by Mr. Ahsan to submit with reference to the sale deed that it merely contains a transfer of 1 ½ katha out of the three katha and not the entire holding but that is not the subject matter of dispute rather the dispute is regarding the exercise of power by the Commissioner in the discussed circumstances.

The issue in hand is neither in respect of the area recorded nor the transfer of the holdings rather the contest is whether the name of the respondent no. 4 was rightly entered in the municipal records. A relevant feature of contest is that neither the transfer of property in the name of the vendor of the original petitioner Syed Fakhrun Nabi is put to question nor the sale deed executed by Syed Fakhrun Nabi on 27.12.1969 has been put to question by any before a court of competent jurisdiction or has been called upon its veracity. The sale deed thus has to be accepted on its face value and since it has been executed by the title holder of the property hence until it is questioned on its validity before a court of competent jurisdiction, the right of the original writ petitioner or his successor in interest over the



holdings cannot be interfered with. The legal position being such, the entry in the municipal records bearing the name of the original writ petitioner since after 4.5.1973 could not have been interfered with at the instance of any other except by his legal heir or the successor in interest by way of substitution. But such is not the case here.

It is rather surprising that even when the name of the original petitioner or his vendor continued in the municipal records right since 1973 or even before, no objection was raised by any for all the three decades only to be cancelled under the impugned order passed on 12.12.2003. It is again surprising that even when the vendor of the respondent No. 4 was contesting his right before the civil court in trying to establish his title over the holdings in question by filing a Title Suit No. 34 of 1966 and the suit was yet to reach a finality, he chose to transfer the holding in question in favour of the respondent No. 4 vide a sale deed dated 24.04.2002.

As regarding the title suit filed by the vendor of the respondent No. 4 bearing Title Suit No. 34 of 1966 it transpires that the same was decreed ex parte on 07.04.1971. The sole defendant no. 1 died on 18.04.1971 and thus the heirs of the deceased respondent No. 1 filed an application before this court under Order 9 Rule 13 of the Code of Civil Procedure praying for setting aside the ex parte decree which was registered as



Miscellaneous No. 8 of 1971. The miscellaneous case was allowed by this court on 25.08.1972 thus restoring the title suit to its original file. The suit was again considered but was held abated by the trial court under a judgment and decree dated 14.11.1973. It was appealed against by the vendor of the respondent No. 4 before this court giving rise to Appeal No. 27 of 1974 and was allowed by a Bench of this Court vide judgment and decree dated 18.05.1979 and as a consequence, the suit stood restored. But since after its restoration, the suit has not been taken to its conclusion rather the papers available on the records of the present proceedings transpires that the records of the suit are untraceable and although, the District Judge, Patna has been taking steps for tracing out of the records but the situation remains the same. Meaning thereby the suit remains pending and the records are untraceable.

This single aspect confirms the fact that the title of the vendor of the respondent No. 4 was yet to be confirmed under an order of a competent court and in these circumstances where the right, title and interest of the vendor of the respondent no. 4 was yet to be established, the sale deed so executed by him in favour of the private respondent no. 4 could not have been a basis for substitution or for making any alteration in the municipal records.

Mr. Raghib Ahsan, learned Senior Counsel appearing for the respondent no. 4 has submitted that upon the

revival of the suit, the original plaintiff deceased and since no substitution was carried out hence the suit has abated. In my opinion the abatement of the suit would only further weaken the claim of the respondent no. 4 for until such time that the title of the vendor of the respondent no. 4 would be established over the holdings in question, the transfer made on 24.04.2002 can neither be a foundation for any right much less interference with the entry in the municipal records.

For the reasons aforementioned, the order dated 12.12.2003 passed by the Executive Officer, Barh impugned at Annexure-1 cannot be upheld and is accordingly set aside. The writ petition is allowed.

(Jyoti Saran, J)

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CAV DATE	
Uploading Date	19.05.2016
Transmission Date	