

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4586 of 2005

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1. Kamru Yadav son of Late Rit Lal Yadav
2. Mohril Yadav son of Late Kameshwar @ Commission Yadav
Both are residents of Mohalla Babu Tola, P.O. & P.S. Banka, District Banka
.... Petitioner/s

Versus

1. The State of Bihar
2. The Collector, Banka, District Banka
3. The Deputy Collector, Land Reforms (D.C.L.R.), Banka
4. The Circle Officer, Banka, District Banka
5. Abdul Rahman @ Sayed Abdul Rahman son of Khan Bahadur Abdus Samarth,
Boring Road, P.S.Sri Krishnapuri, District Patna
6. Chamru Yadav son of Rit Lal Yadav, resident of Mohall Babu Tola, Ward
No.8, P.S.& District Banka
.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajendra Narain, Sr. Advocate
Mr.Rajiv Kumar Singh, Advocate
Mr.Angit Narain, Advocate
For the Respondent Nos. 1 to 4 : Mr.Amresh, AC to GP 13
For the Respondent No.5 : Mr.Raghunandan Pd.Sinha, Advocate
Mr.Amitesh Kamal Sinha, Advocate
Ms.Punam Kumari, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 03-10-2016

Heard the learned senior counsel appearing on behalf of the petitioners, the learned AC to GP 13 appearing on behalf of the respondent nos. 1 to 4 as also the learned counsel appearing on behalf of the respondent no.5. However, despite valid service of notice, respondent no.6 has chosen not to appear and contest the matter.

2. The matter in issue is the claim of the parties for mutation of their names with respect to the lands in question, fully detailed in paragraphs 4 to 6 of the writ petition.

3. It is an admitted case of the parties that the respondent no.5 filed Mutation Case No. 77 of 1991-92 before the respondent Anchal Adhikari, Banka, which was finally allowed by order dated



12.02.1992, which has been brought on the record as Annexure-3 to the supplementary affidavit filed on behalf of the petitioners. According to the learned senior counsel appearing on behalf of the petitioners, respondent no.6 Chamru Yadav and his other brothers, being aggrieved by the aforesaid order passed by the Anchal Adhikari, Banka, preferred Mutation Appeal Case No. 5 of 1994-95 before the respondent D.C.L.R., Banka raising a plea that the original order passed by the Anchal Adhikari, Banka is in complete violation of rules of natural justice; and without giving any opportunity of hearing to the appellants of that appeal, final order was passed by the Anchal Adhikari, Banka. The aforesaid mutation appeal case was finally heard and was disposed of by order dated 10.06.2004 (Annexure-1). By the aforesaid appellate order dated 10.06.2004 (Annexure-1), order passed by the Anchal Adhikari, Banka was set aside on the ground of violation of the rules of natural justice as also on the ground of violation of the provisions of The Bihar Tenants Holdings (Maintenance of Records) Act, 1973 (in short "the Act, 1973") and the matter was remitted back to the original authority i.e. the Circle Officer, Banka with a direction to hold spot enquiry personally on the point of possession and pass a fresh order regarding mutation of names of the parties with respect to lands in question.

4. It is contended by the learned senior counsel that against the aforesaid order of remand, the private respondent no.5 filed Mutation Revision Case No. 5 of 2004-05 before the respondent District Collector, Banka, which has been allowed by the impugned order dated 03.12.2004 (Annexure-2) and the order passed by the appellate authority has been set aside and that of original authority has been affirmed. According to the learned senior counsel, the respondent District Collector, Banka ought not to have interfered



with the order of remand passed by the appellate authority, as the original authority had passed the order of mutation in favour of the private respondent no.5 without complying the requirement of the rules of natural justice. It is further submitted by him that the revisional authority has, in fact, decided the issue of title with respect to the lands in question and therefore, he has exceeded his jurisdiction. According to him, the revenue authorities are not legally authorized to decide the question of title, which is exclusively in the domain of the civil court of competent jurisdiction.

5. In the present case, notice was issued to respondent nos. 5 and 6 way back by order dated 18.04.2008. Though respondent no.5 has entered his appearance through a counsel by filing a duly executed vakalatnama, but no counter affidavit has been filed on his behalf disputing the averments made in the writ petition. He has simply supported the revisional order, but has not been able to dispute the submissions raised on behalf of the petitioners.

6. The learned State counsel appearing on behalf of the respondent nos. 1 to 4 submits that in the given facts of the case, the entire matter may be remanded to the original authority for deciding the claim of mutation of names of the parties with respect to the lands in question afresh strictly in accordance with law.

7. After having heard the learned counsel appearing on behalf of the parties and taking into consideration the materials available on the record, this Court is of the opinion that entire matter requires re-consideration and a fresh decision. Apparently, the original order passed by the Circle Officer, Banka in favour of the private respondent No.5 was in violation of the rules of natural justice. Both sides are laying their claim of right, title and possession over the lands in question. Therefore, the petitioners and the respondent no.6 were



required to be heard by the Anchal Adhikari, Banka before passing any final order, but that was not done. The appellate authority, therefore, had rightly set aside the order passed by the original authority and had remanded the matter back to the original authority. Unfortunately, while passing the impugned revisional order, the revisional authority has gone to examine the question of title of the parties with respect to the lands in question, which he could not have done while deciding the claim of the parties for mutation of their names with respect to the lands in question. Furthermore, he could not have affirmed the order of the original authority, which was passed in violation of the rules of natural justice.

8. For the reasons recorded above, the impugned revisional order dated 03.12.2004 passed in Mutation Revision Case No. 5 of 2004-05 by the respondent District Collector, Banka, as contained in Annexure-2 to this writ petition, is hereby set aside and quashed and the matter is remitted back to the respondent Circle Officer, Banka, the original authority, with a direction to decide the claim of the parties for mutation of their names afresh with respect to lands in question. The Anchal Adhikari, Banka, now, shall pass a fresh order strictly in accordance with law under the provisions of The Bihar Land Mutation Act, 2011 (in short the Act, 2011) and Rules made thereunder, as the Act, 1973 stood repealed by virtue of Section 23(1) of the Act, 2011.

9. The parties shall be at liberty to raise all the issues of facts and law before the Anchal Adhikari, Banka with respect to their claim of mutation of their names with respect to lands in question.

10. In order to expedite the matter, the petitioners as well as respondent no.5 are hereby directed to appear before the respondent Anchal Adhikari, Banka within a period of six weeks from

today with a certified copy of the present order, whereafter the respondent Anchal Adhikari shall proceed to decide the mutation case afresh strictly in accordance with law, but before passing any final order, reasonable opportunity of hearing must be given to all concerned including the petitioners, respondent no.5 and the respondent no.6, besides others, if any.

11. The writ petition stands allowed to the extent indicated, but with the observations and directions made above. However, the parties are left to bear their own costs.

(Birendra Prasad Verma, J)

Tahir/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	06.10.2016
Transmission Date	