

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1920 of 2009

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1. Smt. Chandra Kanti Sinha daughter of Late Mahesh Chandra Sinha and wife of Prof. Awadesh Kumar Singh, resident of Village + P.O. Ekbari, P.S. Sahar, District Bhojpur
 2. Arun Kumar Singh son of Bishwanath Pd.Singh, resident of Village + P.S.Barahia, District Munger at present District Lakhisarai
 3. Smt.Shail Devi wife of Sri Pramod Narayan Singh, resident of Village Ratoi, P.O. Roh, P.S.Govindpur, District Nawadah

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Revenue-cum-Land Reforms Department, Govt. of Bihar, Patna
2. The District Magistrate, Patna
3. The Sub-divisional Officer-cum-D.C.L.R., Patna City, District Patna
4. Anchaladhikari, Sadar Anchal, Patna
5. Sri Krishna Niketan Sahkari Grih Nirman Samiti, Patna through its Secretary
6. Babu Lal Mahto son of Late Balkishun Mahto
7. Awadhesh Mahto son of Bikau Mahto

Respondent nos. 6 and 7 are residents of Village Bari Pahari, P.S.Alamganj (Agam Kuan), District Patna

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 5056 of 2009

With

Interlocutory Application No. 3437 of 2012

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1. Bibhuti Bhushan Tiwary husband of late Saraswati Tiwary and son of Late Ganesh Tiwary, resident of Dumraon, Police Station Dumraon, District Buxar, at present living at A/61, P.C.Colony, Kankaarbagh, Patna
2. Kamla Tiwari daughter of Late Ram Pujan Tiwary at Patrakona, Police Station Nawanagar, District Buxar at present living at A/61, P.C.Colony, Kankaarbagh, Patna

.... Petitioner/s

Versus

1. The State of Bihar
2. Collector, Patna
3. Deputy Collector Land Reforms, Patna City, District Patna
4. Circle Officer, Patna, Sadar, Patna, District Patna
5. Babu Lal Mahto son of Bal Kishun Mahto (**Expunged vide order dated 09.11.2009 and substituted by his following heirs and legal representatives**)
 - 5(a) Arun Mahto
 - 5(b) Papu Mahto
 - 5(c) Jaharun MahtoResident of Bari Pahari, P.S.Alamganj, District + Town Patna
6. Awadhesh Mahto son of Bikau Mahto
Resident of Bari Pahari, Police Station Alamganj, District Patna
7. The Secretary, Shree Krishna Niketan Sahkari Grih Nirman Samati
8. Nripendra Kumar Singh, Secretary, Prabhat Nagar Sahkari Grih Nirman Samiti,

Patna

.... Respondent/s

Appearance :

(In CWJC No.1920 of 2009)

For the Petitioner/s : Mr. D.K.Sinha, Sr.Advocate

Mr. Ajay Kumar, Advocate

For the Respondent Nos. 1 to 4 : Mr. Md.Anisul Haque, AAG 5

For the Respondent No.5 : Mr. Sanjeev Kumar, Advocate

(In CWJC No.5056 of 2009)

For the Petitioner/s : Mr. D.K.Sinha, Sr.Advocate

Mr. Ajay Kumar, Advocate

For the Respondent Nos.1 to 4 : Mr. GP14

For the Respondent No. 7 : Mr.Sanjeev Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 29-08-2016

In both the writ petitions, common orders passed by the revenue authorities are under challenge; therefore, on the request of the learned counsel appearing on behalf of the parties, both the writ petitions have been heard together and are being disposed of by this common judgment.

2. The matters at issues are the orders passed by the revenue authorities with respect to the claims raised on behalf of the parties for mutation of their names with respect to the lands in question and/or for cancellation of jamabandi standing in the name of the petitioners with respect to the lands in question.

3. In both the writ petitions, the petitioners are aggrieved by a common order dated 17.01.2008 passed analogously in Mutation Revision Case No. 45 of 1993-94 and Mutation Revision Case No. 54 of 1993-94 by the respondent District Collector, Patna, whereby the aforesaid two revision cases filed on behalf of above two sets of petitioners have been dismissed and the order dated 03.06.1993 passed by the respondent Sub Divisional Officer-cum-DCLR, Patna city as also the order dated 13.04.1993 passed by the respondent Circle Officer, Patna Sadar, Patna have been affirmed.



4. The learned senior counsel appearing on behalf of the petitioners submitted that these petitioners purchased the lands in question, fully detailed in paragraph 4 of both the writ petitions, through separate registered sale deeds executed in the year 1979 by one Phool Kumari Mahanthin @ Mahanthin Phool Kumari Bhagtin and accordingly, their names were mutated by the respondent Anchal Adhikari. It is contended that subsequently, original respondent nos.5 and 6 of CWJC No. 5056 of 2009 and respondent nos. 6 and 7 of CWJC No. 1920 of 2009 filed their mutation case before the Anchal Adhikari, Patna on the ground that they have inherited the properties in question from their maternal grand father. Accordingly, Anchal Adhikari, Patna Sadar by order dated 13.04.1993 recommended for cancellation of jamabandi nos. 199 and 34 with respect to the lands in question. It is the case of the petitioners that, in view of the aforesaid recommendation, final order was passed against them by the respondent SDO-cum-DCLR Patna City on 03.06.1993 cancelling aforesaid jamabandi standing in their names and directed for creation of jamabandi in favour of aforesaid respondents. The petitioners, being aggrieved by the aforesaid order dated 03.06.1993, preferred Mutation Revision Nos. 45 of 1993-94 and 54 of 1993-94 and both the revision applications were finally dismissed by the impugned revisional order dated 17.01.2008. The learned senior counsel contends that the impugned orders are illegal and without jurisdiction; therefore, are fit to be set aside by this Court.

5. It would be relevant to mention here that during pendency of the proceeding before the respondent Anchal Adhikari, the Secretary of Shri Krishna Niketan Sahkari Grih Nirman Samiti, Patna filed an intervention petition on the ground that the lands in question have been purchased by the aforesaid Co-operative Society;

therefore, the same should be mutated in its favour.

6. Per contra, the learned counsel appearing on behalf of the private respondents submits that originally the lands in question were belonging to one Chaitu Mahto, who had three sons namely, Sukhu Mahto, Garbhu Mahto and Mangru Mahto. The aforesaid Mangru Mahto is said to have died unmarried issueless. Garbhu Mahto died leaving behind his widow Parbatia Devi and Sukhu Mahto died leaving behind his only son Biltu Mahto. Aforesaid Biltu Mahto died leaving behind his only daughter Chulhiya, who was married with one Balkishun Mahto of Chapra and from their wedlock, Babulal Mahto, one of the private respondents, and Bikau Mahto were born. Bikau Mahto also died leaving behind his only son Awadhesh Mahto, one of the private respondents. According to the case of the private respondents, the lands in question were inherited by them from their maternal side. It is contended by the learned counsel that in the aforesaid background, the impugned orders cannot be legally faulted and both the writ petitions are liable to be dismissed.

7. The learned State counsel appearing on behalf of the official respondents by referring to the averments made in the counter affidavit filed in CWJC No. 1920 of 2009 on behalf of the respondent nos. 2 to 4, submits that the complicated question of title is involved in both the writ petitions, which is yet to be tested by the civil court of competent jurisdiction. According to him, the petitioners claim to have purchased the lands in question from one Phool Kumari Bhagtin, Cheli of Late Mahanth Anurag Gosain, Proprietor of Thakurbari, but whether she was legally entitled to execute the sale deeds with respect to the lands in question is yet to be tested by the competent civil court. He next submitted that whether the private respondents legally inherited the properties from his maternal side is also yet to be tested



by the civil court of competent jurisdiction. If the private respondents were having perfect right and title over the lands in question, only then they could have transferred the lands in question in favour of the Co-operative society in question or any body else, but all these complicated issues cannot be gone into by the revenue authorities. He pleaded that even if the entire matter is remitted to the revenue authorities for fresh decision, that would not be the end of the dispute and ultimately, the matter will have to be relegated to the civil court of competent jurisdiction for deciding the question of right and title of the parties over the lands in question.

8. After having heard the parties at length and on taking into consideration the materials available on records as also the pleadings of the parties, this Court is of the opinion that in the present case unless and until the right and title of the parties over the lands in question are conclusively decided by the civil court of competent jurisdiction, the claim of mutation or cancellation of jamabandi or creation of jamabandi cannot be effectively decided by the revenue authorities.

9. In above view of the matter, both the writ petitions are disposed of with a liberty to the aggrieved party to approach the civil court of competent jurisdiction for getting his/her/their right, title and possession declared over the lands in question and once such declaration is made by the competent civil court, then the revenue authorities shall be obliged to pass a fresh order of mutation with respect to lands in question on the basis of judgment and decree passed by the civil court.

10. It is clarified that if such a civil suit is filed by any of the aggrieved party within a period of three months from today after impleading all the necessary parties including the parties of the

present proceedings as also the intervenors, if they have valid claim of right and title over the lands in question, the same shall be decided on its own merits on the basis of the evidence/materials produced by the parties, but without being prejudiced/influenced by any findings recorded by the revenue authorities in the impugned orders, which are subject matter of challenge in these two writ petitions.

11. It is further clarified that the parties shall be at liberty to raise all issues of facts and law, which may be available to them, with respect to the lands in question before the civil court of competent jurisdiction.

12. In the result, both the writ petitions are disposed of with the observations and directions made above. The Interlocutory Application also stands disposed of accordingly.

(Birendra Prasad Verma, J)

Tahir/-

AFR/NAFR	
CAV DATE	
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