

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4215 of 2008

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Shiv Nandan Yadav, son of late Uttim Lal Yadav, resident of village-Raghunathpur,
P.S.-Bhargama, Anchal-Bhargama, District-Araria.

.... Petitioner/s

Versus

1. The State of Bihar
 2. Secretary, Revenue and Land Reforms Department, Government of Bihar,
Patna.
 3. Collector, Araria.
 4. D.C.L.R., Forbesganj, District-Araria.
 5. Circle Officer, Bhargama, District-Araria.
 6. Jibach Ram, son of late Kanai Mochi (Ram), resident of village-Raghunathpur,
P.S. and Anchal-Bhargama, District-Araria.
 7. Harinandan Yadav, son of late Uttim Lal Yadav
 8. Shikandar Yadav
 9. Binod Yadav
- Both sons of late Resham Lal Yadav
- Respondent nos.7, 8 and 9 are resident of village-Raghunathpur, P.S. and Anchal-Bhargama, District-Araria.
10. Chitnarayan Yadav, son of late Debi Prasad Yadav, resident of village-Dinapatti, P.S.-Murliganj, District-Madhepura.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Gyanand Roy, Adv.
For the Respondent no.6 : Mr. Bidhanesh Misra, Adv.
Mrs. Tanuja Mishra, Adv.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL JUDGMENT
Date: 20-08-2016

Heard the learned counsel appearing on behalf of the petitioner and the learned counsel appearing on behalf of the respondent no.6. However, none appears on behalf of the official respondent nos.1 to 5, though the name of the learned State counsel is printed in the daily cause list. None appears on behalf of the respondent nos.7 to 10 as well, though the notices were issued to them way back by an order dated 18.04.2009.

The petitioner is aggrieved by the order dated 25.07.2007 passed in Mutation Revision Case No.27 of 2005-06 by the respondent District Collector, Araria, as contained in Annexure-1

to the writ petition, whereby the aforesaid mutation revision case filed on behalf of the respondent no.6 was allowed and, after setting aside the appellate order, as contained in Annexure-5, the order passed by the original authority, as contained in Annexure-4, has been affirmed.

The learned counsel appearing on behalf of the petitioner has argued the matter at length and submitted that the originally claim of mutation raised on behalf of the petitioner was allowed with respect to the lands in question, fully detailed in paragraph 4 of the writ petition, but, on the basis of the direction issued by the Additional Collector, Araria, fresh case of mutation was initiated by the Anchal Adhikari, Bhargama giving rise to Mutation Case No.4 of 2003-04, which was finally allowed in favour of the private respondent no.6 by an order dated 28.07.2003 (Annexure-4). It is contended that the petitioner, besides others, being aggrieved by the aforesaid order, preferred Mutation Appeal Case No.15 of 2003-04 before the D.C.L.R., Forbesganj, which was finally allowed by an order dated 09.07.2005 (Annexure-5) and the order passed by the Circle Officer, Bhargama was set aside. It is next contended that the respondent no.6, being aggrieved by the aforesaid order, preferred Mutation Revision Case No.27 of 2005-06, which has been finally allowed by the impugned revisional order dated 25.07.2007 (Annexure-1), and the order of the D.C.L.R., Forbesganj has been set aside and that of the Circle Officer, Bhargama has been affirmed. According to him, the respondent District Collector, Araria, while passing the impugned revisional order, has not taken into consideration all the aspects of the matter and, therefore, the order impugned is not sustainable in law.

Per contra, the learned counsel appearing on behalf of the respondent no.6 submits that Title Suit No.429 of 1966, filed on behalf of the petitioner and his other family members, was decreed ex-



parte by the learned Munsif, Araria and the father of the respondent no.6, being aggrieved by the aforesaid ex-parte decree, preferred Misc. Case No.198 of 1969 in the court of learned Munsif, Araria for setting aside the aforesaid ex-parte decree and for deciding the aforesaid title suit afresh on merits, but during the pendency of the aforesaid Misc. Case, a notification under Section 3 of The Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (in short 'Act') was issued by the State government, as a result of which aforesaid Misc. Case abated in terms of Section 4(1)(c) of the Act by an order dated 24.05.1983. According to him, title of the parties over the lands in question has not been decided by the competent Civil Court on contest and question of title is yet to be conclusively decided by the Civil Court on the basis of the evidence/materials produced by the parties. He next contended that there is a serious dispute of title between the parties over the lands in question and the revenue authorities have also given liberty to the parties to get their right and title decided by the competent Civil Court.

Taking into consideration the aforesaid submissions made by the learned counsel appearing on behalf of the parties and also taking into consideration the entire factual matrices of the present case, this Court is of the opinion that unless and until the right and title of the parties is conclusively decided by the Civil Court on contest, the claim of mutation cannot be effectively decided by the revenue authorities. The order of mutation has to follow the contested judgment and decree passed by the Civil Court of competent jurisdiction.

In the present case, there are two difficulties: firstly, the right and title of the parties over the lands in question have not been conclusively decided by the Civil Court of competent

jurisdiction on contest, as admittedly Misc. Case filed by the father of the respondent no.6 abated in terms of Section 4(1)(c) of the Act; and secondly, a notification under Section 26-A of the Act has not been issued till date, as has been submitted by the learned counsel appearing on behalf of the parties, closing the consolidation operation in the unit in question.

In above view of the matter, without interfering with the impugned revisional order passed by the District Collector, Araria, as contained in Annexure-1, the present writ petition is disposed of with a liberty to the aggrieved party to approach the Civil Court of competent jurisdiction for getting his/her/their right and title declared over the lands in question on the basis of the evidence/materials produced by the parties, once the notification under Section 26-A of the Act is issued by the State government.

It is also clarified that such civil suit shall be decided on its own merits strictly in accordance with law on the basis of the evidence/materials produced by the parties, but without being prejudiced/influenced by any finding recorded by the revenue authorities in the impugned mutation proceedings either in favour of the petitioner or in favour of the private respondents including the respondent no.6.

Arvind/-

(Birendra Prasad Verma, J)

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	22.08.2016
Transmission Date	N/A