

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3056 of 2011

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Ashok Kumar Srivastava son of Late Rajendra Prasad Srivastava, resident
of village Bhalui, P.S.Guthani, District Siwan Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar,
Patna

2. The District Magistrate, Siwan

3. The Sub Divisional Magistrate, Siwan Sadar, Siwan

4. The Circle Officer, Guthani Block, Siwan

5. The Circle Inspector, Guthani Block, Siwan

6. Fulena Kohar son of Late Rekha Kohar, resident of Jataur,
P.O.+P.S.+Block Guthani, District Siwan (**Expunged vide order dated
04.03.2016 and substituted by his following heirs and legal
representatives**)

(i) Gopal Kohar

(ii) Motilal Kohar

(iii) Surndra Kohar

(iv) Kumti Devi

(v) Gyanti Devi @ Jal Pari Devi

(i) to (iii) are sons and (iv) to (v) are daughters of Late
Fulena Kohar Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ranjeet Kumar, Advocate

M/s Ranjeeta Singh, Advocate

For the Respondent Nos. 1 to 5: Mr. Kamlesh Prasad, AC to SC 2

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

10 04-07-2016

Heard the parties.

2. The petitioner is aggrieved by the order dated 05.09.2006 passed in Misc.Case No. 183 of 2005-2006 by the respondent Sub Divisional Magistrate, Siwan, Sadar, as contained in Annexure-3, whereby claim of mutation raised on behalf of the original respondent no.6, who is now dead and has been substituted by his heirs and legal representatives, has been allowed with respect to lands in question, fully detailed in paragraph 4 of the writ petition and original order of mutation passed on 27.09.1994 in Mutation Case No. 221 of 1994-1995 by the Anchal Adhikari, Guthani , as contained in Annexure-2, has been set aside.

3. It is submitted by the learned counsel appearing on behalf of the petitioner that the impugned order dated 05.09.2006 was passed by the respondent SDM, Siwan, Sadar ex-parte without valid service of notice upon the father of the petitioner, Rajendra Prasad Srivastava, who was still surviving when the impugned order was passed. Aforesaid Rajendra Prasad Srivastava died on 15.01.2009. Therefore, the present writ petition has been filed by his heir, who happens to be his son.

4. The learned State counsel, appearing on behalf of the respondent nos. 1 to 5, has not been able to dispute the aforesaid submissions raised on behalf of the petitioner, as no counter affidavit has been filed on behalf of the aforesaid respondents till date, though the matter is pending for more than five years. However, he has pointed out that the original order of mutation passed on 27.09.1994 (Annexure-2) by the Anchal Adhikari, Guthani is also not in accordance with law and it was passed without following the procedures prescribed under the relevant law. Therefore, according to him, the entire matter requires re-consideration and a fresh decision.

5. Though notice was issued to the private respondent on 23.02.2011, but none is appearing on his behalf or his heirs.

6. After having heard the parties and on consideration of the materials available on the record, this Court is of the opinion that the entire matter requires reconsideration and a fresh decision, now, under the provisions of The Bihar Land Mutation Act, 2011 (in short, "the Act, 2011") and Rules made thereunder. Apparently, the impugned order dated 05.09.2006 was passed by the SDM, Siwan, Sadar under the provisions of The Bihar Tenants' Holdings (Maintenance of Records) Act, 1973 (in short, "the Act, 1973"), but under the aforesaid Act, SDM was not

vested with any power to deal with the matter of mutation. The power of hearing appeal was vested with the DCLR. Furthermore, the impugned order was passed ex-parte. This Court also finds that the original order of mutation passed on 27.09.1994 by the respondent Anchal Adhikari, Guthani in favour of the father of the petitioner was also not in consonance with the procedures prescribed under the Act, 1973 and by a non-speaking order claim of mutation in favour of the father of the petitioner was allowed, which cannot be sustained in law. Admittedly, now the Act, 1973 has been repealed by virtue of provisions contained in Section 23 of the Act, 2011. Therefore, now the matter of mutation is required to be decided under the provisions of the Act, 2011 and the Rules made thereunder.

7. For the reasons recorded above, the impugned order dated 05.09.2006 passed in Misc.Case No. 183 of 2005-2006 by the SDM, Siwan, Sadar, as contained in Annexure-3 as also the original order dated 27.09.1994 passed in Mutation Case No. 221 of 1994-1995 by the Anchal Adhikari, Guthani, as contained in Annexure-2, are hereby set aside and quashed and the matter is remitted back to the Circle Officer, Guthani with a direction to him to decide the claim of mutation of the parties afresh under the provisions of the Act, 2011 and Rules made thereunder.

8. In the result, 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)

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