

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17972 of 2013

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Binod Kumar Sah Son of Late Asarfi Sah, Resident of At - Nirmali, Post Office + Police Station - Nirmali, Ward No. 7, District - Supaul
..... Petitioner/s

Versus

1. The State of Bihar through D.M. Supaul.
2. The Circle Officer, Nirmali, District - Supaul
3. The Presiding Officer, Lok Adalat Birpur, Saharsa, Supaul
4. Kripa Shankar Noniya Son of Not Known to the Petitioner, Resident of At - Nirmali, Post Office + Police Station - Nirmali, District - Supaul
..... Respondent/s

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Appearance :

For the Petitioner/s : Mr. M.S. Hoda
Mr. Surya Narain Yadav
For the Respondent No.1 to 3 : Mr. Kuber Pathak, AC to SC-14

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

4 15-03-2016 Heard the learned counsel appearing on behalf of the petitioner and the learned AC to SC-14 appearing on behalf of the respondent no. 1 to 3. However, despite valid service of notice, respondent no.4 has chosen not to appear and not to contest the matter.

The petitioner is aggrieved by the order dated 02.05.2013 passed by the respondent Circle Officer, Nirmali in Case No. 52 of 2013-14, whereby claim of mutation raised on behalf of one Balchand Nonia was allowed with respect to the lands in question. He is also aggrieved by the order dated 25.05.2013 passed by the learned Presiding Officer, Lok Adalat, Birpur, Saharsa (Supaul), whereby the aforesaid mutation case was finally disposed of. Both the orders dated 02.05.2013 as also 25.05.2013 passed in Case No. 52 of 2013-14 are part of Annexure-1 series.

The learned counsel appearing on behalf of the petitioner submits that the lands in question was originally



belonging to his father- Asarfi Sah and after his death, he acquired the right, title and possession over the same. It is contended that Case No. 52 of 2013-14 was filed in the name of Balchand Nonia purportedly by the respondent no.4, who has absolutely no concerned with the lands in question. It is also contended that on the date of filing of the aforesaid case i.e. 09.04.2013, aforesaid Balchand Nonia was already dead. Therefore, no petition could have been filed on behalf of a dead person. According to him, the aforesaid proceeding was carried out in the name of Balchand Nonia, who was already dead. It is next contended that without issuing any notice to the petitioner or his co-sharers, entire proceeding was carried out and final order was passed in violation of rules of natural justice. Assertion about death of aforesaid Balchand Nonia has been made in paragraph-8 of the writ petition.

A counter-affidavit has been filed on behalf of the respondent no.2- the Circle Officer, Nirmali. Though, other facts have been disputed, but the factum about death of aforesaid Balchand Nonia has not been disputed by the respondent no.2. The learned State counsel appearing on behalf of the respondent no. 1 and 2 has fairly conceded that there is no averment in the whole counter-affidavit that aforesaid Balchand Nonia was still surviving when the petition was filed on his behalf and the impugned final order was passed.

After having heard the parties and on going through the record, this Court finds that the entire proceeding was carried out behind the back of the petitioner in the name of a dead person. Therefore, the whole proceeding has vitiated and the impugned order cannot be allowed to sustain.

For the reasons recorded above, the impugned order

dated 02.05.2013 passed in Case No. 52 of 2013-14 by the respondent Circle Officer, Nirmali, as also the order dated 25.05.2013 passed by the Lok Adalat, Birpur, Saharsa (Supaul), as contained in Annexure-1 series, are hereby set aside and quashed. However, this order shall not come in the way of either the petitioner or the respondent no. 4, if fresh petition is filed for mutation of the land in question in accordance with law.

The writ petition is 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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