

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3426 of 2013

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Bharat Prasad

.... Petitioner/s

Versus

The State of Bihar & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ranjan Kumar Dubey

For the Respondent/s : Mr. P.K. Verma

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

6 18-11-2016

Heard the learned senior counsel, Mr. S.S.Dvivedi for the petitioner, learned A.C. to AAG 3, Dr. Mankeshwar Tiwary for the State and also the learned counsel, Mr. Dhanendra Choubey for the respondent No.3.

This writ application under Article 226 of the Constitution has been filed by the petitioner for setting aside the order dated 10.07.2012 passed by respondent No.2, Executive Officer, Chapra Nagar Parishad, Chapra in Mutation Case No.324 of 2011-12 whereby the learned Court below refused to mutate the name of the petitioner.

It appears that the petitioner is purchaser of 1 ½ katha land out of Holding No.192(Old) and 233A(New) within the Nagar Parishad, Chapra. He applied for mutation of his name with respect to the property in the Nagar Parishad. The application was earlier rejected by the Nagar Parishad and then the petitioner filed



writ application before the High Court being CWJC No.15025 of 2008. This Court by order dated 16.02.2012 remanded the matter for passing a fresh order on the basis of the mutation application and the evidences that may be produced by the parties and it was clearly directed that the earlier order passed by the Executive Officer will not operate as resjudicata. After above order passed by this Court, the Executive Officer, respondent No.2 passed the order dated 10.07.2012 as contained in Annexure 1.

From perusal of the order, it appears that the Executive Officer held at page 7 of the order to the effect that on the basis of the materials available on record, the name of Satrughna Prasad had already been mutated and accordingly dismissed the mutation application filed by the petitioner.

The learned senior counsel for the petitioner submitted that the name of the respondent No.3, Satrughna Prasad was mutated in collusion with the Karamchari and there was nothing on record to show that the name was mutated on the basis of any application filed by him. An enquiry was made on the basis of the application of the petitioner. A report was submitted by the Tax Collector which is Annexure 9 wherein it is clearly mentioned that there is nothing on record to show how the name of the respondent No.3 has been mutated with respect to the property. By Annexure



10, the respondent No.2 himself has passed an order on 30.01.2012 to the effect that the mutation of the name of the respondent No.3 is suspicious and, therefore, he directed that till a decision is made regarding the validity of mutation, no rent be realized. He also clearly held that the name was not mutated by the Executive Officer, Nagar Parishad. According to the learned senior counsel, the respondent No.3 got his name inserted/mutated by playing fraud which would be evident from Annexure 9 and Annexure 10 but while passing the order as contained in Annexure 1, the respondent No.2 neither considered Annexure 9 nor Annexure 10 and held that the name of the respondent No.3 has already been mutated and, therefore, rejected the application which is illegal and is based on inadmissible evidences, therefore, it is liable to be set aside.

On the other hand, the learned counsel, Mr. Choubey for the respondent No.3 submitted that he has purchased the property by registered sale deed and he had already constructed a house thereon and is living therein since 1982. The respondent No.3 also produced various documentary evidences in support of his case before the respondent No.2 and, therefore, the respondent No.2 has rightly rejected the mutation application filed by the petitioner.

Perused the order as contained in Annexure 1. From



perusal of the order, no doubt the respondent No.2 has mentioned at page 7 of the impugned order as contained in Annexure 1 to the effect that for mutation of the name, possession is the only consideration. However, nowhere the respondent No.2 has recorded any prima facie finding regarding possession. Only observation is that on the materials available on record, the name of respondent No.3 has already been mutated and while observing this, the respondent No.2 has not taken into account that the mutation of the name of respondent No.3 was found to be suspicious by himself and he himself had stayed the realization of the rent from respondent No.3 till the validity of mutation was found to be corrected. The respondent No.2 nowhere recorded any finding that the mutation of respondent No.3 is according to law and based on any finding recorded by the respondent No.2 that he was found in possession earlier and, therefore, his name was mutated in particular proceeding.

It may be mentioned here that name can be mutated only after initiating a proceeding to that effect and not by inserting name of a person for realization of the rent and because of this fact that the name of respondent No.3 has been inserted for the purpose of realizing the rent, the question of possession has become now complicated and the parties are fighting for that. Further, it is very



easy to say that this is complicated question of title, therefore, the party should go to the civil court. This is not the solution. The authorities are expected to act according to law. The name should be mutated on the basis of any proceeding or application filed by any person. In the present case, there is nothing on record to show that any application for mutation was filed by the respondent No.3 before the respondent No.2 and any enquiry was made and prima facie, he was found to be in possession and his name was mutated for the purpose of realizing the rent. On the contrary, the finding of respondent No.2 himself is to the effect that there is no basis for mutation of the name of respondent No.3 and, therefore, realization of rent was stayed till it is found that his name has been mutated according to law. Ignoring these facts, the respondent No.2 has passed the impugned order as contained in Annexure 1. Therefore, in my opinion, the order passed by the respondent No.2 is not according to the direction passed by the High Court in CWJC No.15025 of 2008. The respondent No.2 has taken into account the evidences which were produced by the respondent No.3 which are subsequent to the mutation of his name. How his name has been mutated it is not there in Annexure 1.

Thus, this writ application is allowed. The order as contained in Annexure 1 is set aside and the matter is remanded

back to the respondent No.2 for passing a fresh order according to law after hearing both the parties and considering these facts stated above.

(Mungeshwar Sahoo, J)

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