

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.23309 of 2012

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Maheshwar Prasad Singh Son of Late Yadav Singh, Resident of Vill - Sheonar,
P.O. Sheonar, P.S. Mokama, Dist - Patna, Presently residing at Alakhnath Road,
Barh, P.O. + P.S. Barh, Dist - Patna

.... Petitioner/s

Versus

1. The State of Bihar
2. The District Magistrate-Cum-Collector, Patna
3. The Addl. District Magistrate-Cum-Additional Collector, Patna
4. The Deputy Collector Land Reforms, Barh, Dist - Patna
5. The Circle Officer, Barh, Patna
6. Meena Devi Wife of Madhusudan Sharma, Resident of Village - Bedna, P.O. -
Bedna, Via - Barh, P.S. Barh, Dist- Patna
7. Jaiprakash Sharma Son of Late Dayanand Sharma, Resident of Vill + P.O.
Sheonar, P.S. Mokama, Dist - Patna
8. Jaishankar Sharma Son of Late Dayanand Sharma, Resident of Vill + P.O.
Sheonar, P.S. Mokama, Dist - Patna
9. Om Prakash Sharma Son of Late Dayanand Sharma, Resident of Vill + P.O.
Sheonar, P.S. Mokama, Dist - Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arun Kumar Arun, Adv.

For the Respondent No.1 to 5: Mr. Amish Kumar, AC to AAG-8

For the Respondent No. 6 : Mr. Raj Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 05-09-2016

Heard the learned counsel appearing on behalf of the petitioner, the learned AC to AAG-8 appearing on behalf of the respondent nos. 1 to 5 and the learned counsel appearing on behalf of the respondent no.6. However, none appears on behalf of the respondent nos. 7 to 9, though, they have already entered appearance through their counsel.

The petitioner is aggrieved by the order dated 24.1.2012/ 4.2.2012 passed in Mutation Revision Case No.41 of 2008-09 by the respondent Additional Collector, Patna, as contained in Annexure-4 to the writ petition, whereby the aforesaid mutation revision case filed

on behalf of the respondent no. 6 has been allowed and the Jamabandi standing in the name of the petitioner as also one Dayanand Sharma has been cancelled and consequently, the orders passed by the original authority as also the appellate authority have been set aside.

The learned counsel appearing on behalf of the petitioner, while assailing the validity and correctness of the impugned order, has raised various issues of facts and law with respect to the lands in question, fully detailed in paragraph-5 of the writ petition. He further submitted that the petitioner and his brother- Dayanand Sharma, had purchased the lands in question through registered sale deed dated 18.8.1975. Accordingly, their claim of mutation of their names with respect to the property in question was allowed by the respondent Circle Officer, Barh, which was affirmed by the appellate authority. It is next contended that the respondent no.6, being aggrieved by the order passed by the original authority as also the appellate authority, preferred Mutation Revision Case No. 41 of 2008-09, but that has been allowed by the impugned order against a dead person namely, Dayanand Sharma. By referring to the averments made in paragraph 15 of the writ petition, it is contended that the aforesaid Dayanand Sharma, the full brother of the petitioner, died on 15.5.2007, yet mutation revision case filed on behalf of the respondent no.6, has been allowed without substituting the heirs and legal representatives of the aforesaid deceased Dayanand Sharma. According to him, the impugned revisional order passed against a dead person is a nullity and it is fit to be set aside on that ground alone.

The learned State counsel, appearing on behalf of the respondent nos. 1 to 5 as also the learned counsel appearing on behalf of the respondent no.6, have opposed the prayer and have submitted that against the impugned revisional order, the petitioner has an

alternative remedy before the learned Bihar Land Tribunal, Patna. Therefore, according to them, the writ petition is fit to be dismissed on that ground alone.

After having heard the parties and on consideration of the materials available on records, this Court finds that there is a categorical statement made in paragraph-15 of the writ petition that the aforesaid Dayanand Sharma, who was opposite party no.2 in Mutation Revision Case No. 41 of 2008-09, died on 15.5.2007 leaving behind his heirs and legal representatives, but without substituting the heirs and legal representatives of deceased Dayanand Sharma, the respondent Additional Collector passed the impugned final order allowing the claim of the respondent no. 6 with respect to the lands in question.

The present writ petition was filed on 14.12.2012, but no counter-affidavit has been filed on behalf of the respondent nos. 1 to 5 controverting the averments made in paragraph-15 of the writ petition. By order dated 4.1.2013, notices were issued to the respondent nos. 6 to 9 and all of them have entered appearance through their counsel, but no counter-affidavit has been filed on their behalf also controverting the averments made about the death of aforesaid Dayanand Sharma.

In above view of the matter, it is apparent that the impugned revisional order has been passed against a dead person and on that ground alone, this Court is inclined to set aside the impugned revisional order.

For the reasons recorded above, without going into the merits of the claims of the parties with respect to the lands in question, the impugned order dated 24.1.2012/ 4.2.2012 passed in Mutation Revision Case No. 41 of 2008-9, as contained in Annexure-

4 to the writ petition, is hereby set aside and quashed, and the matter is remitted back to the respondent Additional Collector, Patna with a direction to decide the aforesaid mutation revision case afresh after getting the heirs and legal representatives of the deceased Dayanand Sharma substituted in the aforesaid mutation revision case.

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

In the result, the writ petition stands allowed to the extent indicated, but with the observations and directions made above. No costs.

(Birendra Prasad Verma, J)

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