

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10638 of 1992

Mostt. Azara Rahman

.... Petitioner/s

Versus

The State of Bihar & Ors

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Jagdish Prasad Bhagat

For the Respondent/s : Mr. AC to AAG 10

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 08-02-2018

Heard the learned counsel for the petitioner and the learned counsel for the State. In spite of service of notice nobody appears on behalf of private respondents.

The petitioner has filed this writ petition to quash the order dated 09.10.1991 passed by Additional Collector, Gaya in Mutation Revision No. 64 A.C. of 1988-89 (Annexure-8).

The learned counsel for the petitioner submits that the petitioner got the land by virtue of sale deed. One Bhikhari Dusadh claimed title and possession over the land of plot No. 367 and the proceeding under Section 144 was initiated. Bhikhari Dusadh was found in possession of the land in the proceeding under Section 144. Thereafter, the landlord filed Title Suit No. 145 of 1947/ 38 of 1948. The suit was decreed on 30.06.1949 and plaintiff, Moulvi Mahbubul Rahman, decree holder, filed execution case and the decree holder was put in possession over the land. Name of decree holder was also mutated. The petitioner is legal heir of Khalilur Rahman. It is further submitted that the petitioner has been paying rent but the respondents filed petition before the Circle Officer and the Circle Officer vide order dated 22.11.1979 passed in Mutation case No. 1840/78-79



mutated the names of respondents Nos. 6 to 9, who died during the pendency of the writ petition and their legal heirs were substituted. The petitioner preferred appeal before the DCLR who set aside the order passed by Circle Officer vide order dated 31.01.1989. The Additional Collector, without looking into records of the case and ignoring the judgement and decree of civil court ordered for mutating the name of respondents after setting aside the order of DCLR and confirmed the order of Circle Officer.

The learned counsel for the petitioner submits that the order of Additional Collector is illegal as by virtue of the judgement of civil court the petitioner has got title over the land and the land is already mutated in his favour. The learned counsel for the petitioner further submits that Additional Collector, Babulal Choudhary, also purchased some portion of land of plot No. 367 and 171 and the same person, being Additional Collector disposed of the revision petition and set aside the order of DCLR and on this ground alone the order is not sustainable.

The learned counsel for the State submits that the record is not available with him and prayed for time to seek instruction but the prayer cannot be accepted on the ground that the writ petition is of the year 1992 and in the last 30 years the learned counsel for the State could not seek instruction. This is very sorry state of affairs in conducting the cases on behalf of the State of Bihar.

Having considered the facts aforesaid, I find that on this ground alone that Additional Collector, Babulal Choudhary, also purchased some portion of land of plot No. 367 and 171 and the same person, being Additional Collector, heard and disposed of the revision petition and set aside the order of DCLR, the writ petition is fit to be allowed and the order dated 09.10.1991 passed by Mr. Babulal



Choudhary, Additional Collector (Annexure-8) is liable to be set aside.

Accordingly, the order dated 09.10.1991 passed by Additional Collector, Gaya in Mutation Revision No. 64 A.C. of 1988-89 (Annexure-8) is set aside and the matter is remitted to the Additional Collector to hear the case and decide afresh mutation revision petition, in accordance with law, preferably, within six months from the date of receipt of this order.

This writ petition is, accordingly, allowed.

(Prabhat Kumar Jha, J)

BKS/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	16.02.2018
Transmission Date	N.A

