

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15811 of 2017

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1. Md. Mojib Alam
 2. Md. Mohib Alam
 3. Md. Mahboob Alam 1 to 3 sons of Late Maulvi Mahmood Alam Resident of Village - Lahgaria, P.O. - Manman, P.S. - Barsoi, District - Katihar.
 4. Rehana Khatoon D/o Late Maulvi Mahmood Alam, W/o Noor Alam Resident of Village - Dhumtola, P.O. - Guwaltili, P.S. - Abadpur, District - Katihar.
 5. Rahman Nisa D/o Late Maulvi Mahmood Alam W/o Naushad Alam Resident of Village - Dhumtola, P.O. - Guwaltili, P.S. - Abadpur, District - Katihar.
 6. Shahar Bano D/o Late Maulvi Mahmood Alam W/o Jamil Akhtar Resident of Village - Gahhot, P.O. - Gaigatta, P.S. - Azamnagar, District - Katihar.
 7. Amna Khatoon W/o Late Maulvi Mahmood Alam Resident of Village - Lahgaria, P.O. - Manman, P.S. - Barsoi, District - Katihar.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The District Magistrate, Katihar.
3. The Additional Collector, Katihar.
4. The Circle Officer, Barsoi, District - Katihar.
5. Md. Idris S/o Late Rahim Baksh
6. Rabbul S/o Md. Idris
7. Mustafa S/o Md. Idris
8. Naiyar S/o Md. Idris All 5 to 8 residents of Village - Taiuabpur, P.O. - Kumkub, P.S. Balia Belan, District - Katihar.
9. Noor Jabin Khatoon D/o Md. Idris W/o Sk. Rahman resident of Village - Khari, P.O. + P.S. - Balia Belan, District - Katihar.
10. Sajda Khatoon D/o Md. Idris, W/o Asgar Hussain resident of Village - Lahgaria, P.O. + P.S. Barsoi, District - Katihar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Md. Ataur Rahman
Md. Anisur Rahman
For the State : Mr. Rishi Raj Sinha -Sc19
For the respondent no.5 : Mr. P.K. Jaipuriyar
Mr. Anshuman Jaipuriyar and Anukriti Jaipuriyar

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER

2 23-07-2018

Heard the learned counsel for the petitioners, learned



counsel for the State and the learned counsel for the respondent no. 5.

The petitioners have filed this writ petition for setting aside the order dated 05.06.2017 passed by the Circle Officer, Barsoi, Katihar in Mutation Case No. 269 of 2017-18 by which the names of the respondent nos. 5 to 10 have been mutated after deleting the name of Moulvi Mahmood Alam, father of the petitioners, from the Jamabandi register.

The learned counsel for the petitioners submits that father of the petitioners was owner of the land bearing Khata No. 91 Kheshra No. 299, area 71 decimals situated in Village-Lahgaria, P.S.- Barsoi, Dist- Katihar on the basis of the registered sale deed dated 15.05.1991 executed by Md. Soyeb, Md. Mamoon, Md. Ali Akbar, son of Md Jalaluddin and Bibi Jalisha Khatoon, daughter of Md. Jalaluddin. Thereafter, the name of the father of the petitioners was mutated and Jamabandi no. 283 was created. The respondent nos. 5 to 10 filed petition for mutation of their names with regard to the same land vide Case No. 269 of 2017-18 and the Circle Officer without hearing the petitioners, expunged the name of the father of the petitioners from Jamabandi register-II and ordered for opening of Jamabandi in the name of respondent nos. 5 to 10.



The learned counsel for the petitioner submits that since the Circle Officer without giving notice to the petitioners passed the order impugned, mutating the names of respondent nos. 5 to 10, the order is in violation of principles of natural justice therefore, the alternative remedy shall not come in the way of entertaining this writ petition. In support of his submission the learned counsel for the petitioners placed reliance upon a judgment of this Court reported in **2015 (2) PLJR, 191 (Madneshwar Goswami Vs. The State of Bihar and Others)**. Of course, if the order is passed without hearing the respondents in violation of principles of natural justice, the writ court can entertain the writ petition but from perusal of the impugned order itself it appears that notices were issued to all the concerned but nobody appeared.

The learned counsel for the private respondent submitted that on the basis of the sale deed executed by Md. Soyeb, Md. Mamoon, Md. Ali Akbar, son of Md Jalaluddin and Bibi Jalisha Khatoon, daughter of Md. Jalaluddin Jamabandi was created in the father's name of the petitioners but the aforesaid sale deed was questioned in Title Suit and the sale deed was set aside. Thereafter, the respondent no. 5 to 10 filed petition for mutating their names with regard to the aforesaid land and the



Circle Officer passed order, as contained in Annexure-2 and the order of mutation is appealable under the Bihar Mutation Act 2011.

Taking into consideration the facts aforesaid, I do not find any merit in this Writ petition and the same is dismissed with liberty to the petitioners to present appeal before the appropriate authority against the order of Circle officer passed in Mutation Case No. 269 of 2017-18, who shall hear the petitioners on merit without unsuiting them on the point of limitation.

(Prabhat Kumar Jha, J)

BKS/Rajan

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