

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5156 of 2015

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1. Shyam Prakash Agarwal, son of Late Peyari Devi and Late Kedar Prasad Agarwal, resident of Village New Colony, Mastipur, P.O. & P.S. Mastipur, Bodh-Gaya, District Gaya.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Collector cum District Magistrate Gaya, P.O. & P.S. Gaya, District Gaya, State of Bihar.
3. The Sub-Divisional Officer, Sadar, Gaya cum Chairman, Notified Area, P.O. & P.S. Bodh-Gaya, District Gaya, (Bihar).
4. The Deputy Collector, land Revenue, Gaya, P.O. & P.S. Gaya Sadar, District Gaya, State of Bihar.
5. The Circle Officer (Anchalaadhikari), Bodh-Gaya, P.O. & P.S. Bodh-Gaya, District Gaya, State of Bihar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anuj Kumar

For the Respondent/s : Mr. Dinbandhu Singh

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER

3 21-06-2018 Heard both sides.

The petitioner has filed this writ petition against the order dated 15.01.2007 passed by Dy. Collector Land Reforms, Sadar Gaya in Demand Case No.1 of 2006-07.

Mr. Yogesh Chandra Verma, learned senior counsel for the petitioner assailed the order as contained in Annexure-10 on the ground of lack of jurisdiction of the Dy. Collector Land Reforms for cancellation of mutation standing in the name of a person. Admitted fact of the case is that the lands of Khata No.285



C.S. Plot No.2008 was standing in the name of State of Bihar as Anabad Sarv Sadharan. By lapse of time, ex-landlord of Tekari Raj settled the land in favour of Tuneshwari Kuer. Tuneshwari Kuer came in possession. Tuneshwari Kuer sold the land to Jageshwar Yadav and Nageshwar Yadav by registered sale deed executed on 13.02.1962. Peyari Devi purchased 5 ½ decimals of land of Plot No.2008, Khata No.285 on 09.06.1980 from Nageshwar Yadav. The name of Peyari Devi was mutated by Circle Officer, respondent No.5. Peyari Devi also filed Title Suit No.222 of 1995 in the Court of Munsif II, Gaya for declaration of title and confirmation of possession and for correction of record of rights. The suit was allowed on 14.01.2000. The Circle Officer on the order of superior authority initiated a Demand Cancellation No.1 of 2006-07 and issued notice to Peyari Devi. On such recommendation, the D.C.L.R. cancelled the mutation standing in the name of the mother of the petitioner on the ground that the nature of the land was Anabad Sarv Sadharan and the State of Bihar was not a party in Title Suit No.222 of 1995, therefore, the judgment and decree is not binding on the State of Bihar.

The respondent-State filed counter-affidavit and reiterated the facts that since the nature of the land was Anabad Sarv Sadharan, the same cannot be settled in favour of any person



but the land was illegally transferred in the name of Nageshwar Yadav who sold the land to Peyari Devi, the mother of the petitioner. The respondent further stated that since the State was not a party in the title suit, therefore, the judgment and decree passed by Civil Court is not binding and the mutation opened in the name of Peyari Devi is illegal and fit to be cancelled.

The learned counsel for the petitioner submits that admittedly the D.C.L.R. cancelled the mutation standing in the name of Peyari Devi on 15.01.2007. According to Bihar Tenants Holdings(Maintenance of Records) Act, 1973, there is no provision for cancellation of mutation and the D.C.L.R. is not empowered to cancel the mutation standing in the name of a person rather under Section 16 of the aforesaid Act, the Collector is empowered under revisional jurisdiction to cancel the mutation done in favour of any person in contravention of any law or the circulars. Now the mutation law has been enacted in the year 2011 and Section 9 of the aforesaid Act provides for cancellation of mutation. The power is vested with the Additional Collector of the District, therefore, the order dated 15.01.2007 passed by D.C.L.R. as contained in Annexure-10 is without jurisdiction.

The learned counsel for the State could not be able to show any provision in the mutation Act of 1973 which empowers



the D.C.L.R. to cancel the mutation standing in the name of a person.

Having considered the submissions of both sides and perusal of the records, it is admitted that the land was mutated in the name of Peyari Devi on the basis of the sale deed executed by Nageshwar Yadav with regard to 5 ½ decimals of land of Khata No.285, Plot No.2008. Peyari Devi also filed Title Suit No.222 of 1995 for declaration of title and confirmation of possession. The suit was allowed but on some complaint, D.C.L.R. initiated a proceeding for cancellation of jamabandi in the garb of Demand Cancellation Case No.1 of 2006-07. On perusal of mutation law of 1973, it appears that the Circle Officer is empowered to maintain record.

Section 3 of “The Bihar Land Mutation Act, 2011” provides that a person acquiring interest in a holding or a part thereof by any means/instrument, shall, within 90 days of the acquisition of such interest, file petition in prescribed form before the Circle Officer.”

The subsequent provisions provide for report and Section 14 of the aforesaid Act gives power to the Circle Officer to mutate the name of a person. There is no provision in the Mutation Act, 1973 for cancellation of mutation standing in the



name of a person. The D.C.L.R. has got no jurisdiction to cancel the mutation standing in the name of a person. Therefore, I find that the order dated 15.01.2007 passed in Demand Case No.1 of 2006-07 is without jurisdiction and not sustainable in the eye of law.

Accordingly, this writ petition is allowed. The order dated 15.01.2007 passed by Dy. Collector Land Reforms, Sadar Gaya in Demand Case No.1 of 2006-07 is set aside.

(Prabhat Kumar Jha, J)

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