

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16934 of 2015

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Kamal Kishore Prasad, son of late Hari Singh, resident of Village- Gewal Bigha, Durga Asthan, P.S.- Civil Lines, District- Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Land Reforms and Revenue Department, Govt. of Bihar, Patna.
2. The District Magistrate-cum- Collector, Gaya, District- Gaya.
3. The Deputy Collector, Land Reforms, Sadar, Gaya.
4. The Circle Officer, Bodh Gaya Circle, District- Gaya.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dhananjay Kumar, Advocate.
For the Respondent/s : Mr. Nagendar Pd. Yadav, S.C. 23.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL JUDGMENT

Date : 28-05-2019

1. Petitioner has challenged the order as contained in Annexure-6 whereby the Deputy Collector, Land Reforms, Sadar Gaya, (hereinafter referred to as 'D.C.L.R.'), has refused to pass order in Mutation Petition No. 04 of 2013/14 filed by the petitioner with respect to land appertaining to Thana No. 354, Khata No. 90(new) 45 (old), Plot No. 4 (new) 7 (old) measuring an area of 8232 Sq.ft. Situated in village Hariharpur and has directed the Circle Officer to file Appeal against the Judgment passed by the court below in Title Suit No. 204 of 2009/346 of 2007 in favour of the petitioner.



2. Heard Mr. Dhananjay Kumar, counsel for the petitioner and Mr. Nagendar Pd. Yadav, SC-23 appearing on behalf of the State.

3. Counsel for the petitioner submits that petitioner has purchased the land from rightful owner in the year 2005. He further submits that ex-landlord on vesting *Zamindari* has settled the land in favour of Komal Mistry and delivered the possession after Nazarana was paid and, thereafter, *Zamindari* receipt was issued in his favour. The landlord had filed return showing the name of raiyat and State respondents had recognized late Komal Mistry as raiyat of the land in question at the time of vesting of *Zamindari*. His name was also mutated in the State Demand who used to pay the revenue rent to the State and got rent receipts. During operation of revisional Survey, the Cadestal Survey Plot No. 7 appertaining to Cadestal Survey Khata No. 45 has been carved out as new Plot No. 4 appertaining to new Khata No. 90 but, illegally in place of name of raiyat, State of Bihar had been mentioned showing the name of late Komal Mistri (Raiyat) as in illegal possession in the remark column of new *Khatian*. He further submits that late Komal Mistry sold the land to different persons as mentioned in detail in paragraph-9 of the writ petition. One of the purchasers of the land namely, Madhuri Prasad, sold



the land to the petitioner by executing sale deed dated 21.5.2005 and delivered possession of the land to him with specific area and boundary.

4. Counsel for the petitioner submits that since wrong entry was made in revisional survey operation, the cloud over title of petitioner and other purchasers was continued. The other purchasers filed Title Suit No. 518 of 1992 in the Court of learned Munsif IInd, Gaya, which was allowed on contest in their favour by Judgment and decree dated 12.01.1999 and 19.02.1999. The name of different purchasers had been mutated on the basis of Judgment and decree. They are making payment of rent to the Government of Bihar and rent receipts are being issued in their favour. (Photocopy of mutation order in Mutation Case No. 49/88-89 as well as rent receipts issued in favour of different purchasers from late Komal Mistry has been enclosed as Annexure-1 series.

5. The petitioner applied for mutation in his name. The Respondent No. 4 did not take any action on aforesaid petition. Thereafter petitioner filed Title Suit No. 346/2007 in which State authorities were made defendants and on contest the suit was decreed in favour of petitioner vide Judgment dated 10.5.2013.



6. The petitioner again filed an application on 27.8.2013 before Respondent No. 4 after judgment and decree passed in favour of petitioner for mutation of land in his name.

7. The Respondent No. 4, asked for report from Circle Officer, Bodh Gaya and Halka Karamchari. The Circle Inspector submitted report dated 10.12.2013, showing prima facie title as well as possession of the petitioner over the land in question.

8. The Circle Officer (Respondent No. 4), after receiving the report dated 10.12.2013, passed order dated 12.12.2013, (Annexure-5) in Rent Fixation Case No. 4/2013-14, referring the matter to court of D.C.L.R., Gaya, for adjudicating the matter on the basis of judgment and decree passed by competent civil court. The D.C.L.R. (Respondent No.3), after receiving the file of Rent Fixation Case No. 4/2013-14, has closed the proceeding of case without noticing the petitioner and directed Respondent No. 4 to file Appeal against Judgment and decree passed in favour of petitioner after obtaining legal opinion from the Govt. Pleader.

9. It is admitted position that in the revenue record, the entry made in favour of the State of Bihar with respect to the aforesaid land was found incorrect by competent civil court in Title Suit No. 204 of 2009/346 of 2007. The aforesaid Title Suit



filed by the petitioner was allowed and accordingly, necessary correction was made in the revenue record.

10. The petitioner has applied for mutation on the basis of sale deed executed by Madhuri Prasad in the year 2005. Madhuri Prasad was one of the purchasers of land from Komal Mistry.

11. Komal Mistry had sold land to different purchasers and all of them have applied for mutation on the basis of sale deed executed in their favour. The name of all such purchasers have been mutated but prayer of the petitioner was refused by the D.C.L.R. by order as contained in Annexure-6 to the writ petition, without giving any notice to petitioner and looking into relevant documents.

12. This Court finds that D.C.L.R. Gaya has not applied his mind on the petition filed by the petitioner for mutation of his name. He has rejected the prayer of petitioner without giving opportunity of hearing to petitioner. Respondent No. 3 has in the impugned order as contained in Annexure-6, directed the Respondent No. 4, to file Appeal against the judgment passed by the court below in Title Suit No. 204 of 2009/346 of 2007.

13. This Court finds that D.C.L.R. has committed illegality in passing the impugned order.



14. Therefore, the impugned order as contained in Annexures-5 and 6 suffers from illegality and the same are hereby set aside.

15. The petitioner is directed to file fresh petition before the Circle Officer, Gaya (Respondent No. 4), for mutation along with relevant documents. The Circle Officer, Gaya, after looking into the documents filed by the petitioner shall pass appropriate order in accordance with law, within a period of one month from the date of filing of such petition by the petitioner.

16. This writ petition is accordingly allowed with aforesaid direction.

(Sanjay Priya, J)

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AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	01/06/2019
Transmission Date	N.A.

