

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20635 of 2014

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Sushma Devi @ Sushma Singh Wife of Murli Manohar Singh, Daughter of Rajendra Pratap Singh Resident of Mohalla- Mahavir Ashthan Manpur, P.S.- Muffasil, District- Gaya, at present residing at House No.58, Patliputra Colony, Patna

... .. Petitioner/s

Versus

1. The State Of Bihar through the District Magistrate, Gaya
2. The District Magistrate, Gaya
3. The Additional Collector, Gaya
4. The Deputy Collector Land Reforms, Gaya
5. The Circle Officer, Manpur, District- Gaya
6. The Gajendra Pratap Singh Son of Rajendra Pratap Singh Resident of Krishna Niwas, Bulla Sahid Road, Mohalla- Lakhibag, P.S.- Mufassil, District- Gaya
7. Kitendra Pratap Singh Son of Rajendra Pratap Singh Resident of Krishna Niwas, Bulla Sahid Road, P.S.- Mufassil, District- Gaya
8. Devendra Pratap Singh Son of Rajendra Pratap Singh Resident of Kapasia House, First Floor, Buniyadganj, District- Gaya
9. Smt. Krishna Devi Wife of Rajendra Pratap Singh Resident of Krishna Niwas, Bulla Sahid Road, Mohalla- Lakhibag, P.S.- Mufassil, District- Gaya

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Chitranjan Sinha, Sr. Advocate with Mr. Sanjeet Kumar
For the Respondent/s	:	Mr.Niraj Kumar, AC to GA-10
For Respondent No.6	:	Mr. Shailesh Kumar,
For Respondent No.7	:	Mr. Dharendra Kumar Jha
For Respondent 8 to 10	:	Mr. Upendra Kumar Singh

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 28-03-2019

The petitioner is aggrieved by an order dated
21.08.2014, passed in B.L.T. Case No. 887 of 2013,
whereby his application against the order dated



15.10.2013, passed by the Additional Collector, Gaya has been dismissed.

2. It appears from the pleadings on record that an application was filed by Respondent No.8 (Devendra Pratap Singh) for mutation in respect of certain lands, which are subject matter of the present case, which was numbered as Case No. 644 of 2005-06. On the said application for mutation, the Circle Officer, Manpur passed an order dated 28.12.2005, allowing the mutation in the name of the parties in respect of the lands in question, based on certain documents showing partition in the joint family. Aggrieved by the said order of the Circle Officer, Manpur, the petitioner had preferred appeal before the Deputy Collector Land Reforms, Sadar, Gaya, giving rise to Mutation Appeal No. 2 of 2011-13 and Appeal No. 3 of 2009-10. It was the case of the petitioner before the Deputy Collector Land Reforms that the order of the Circle Officer was passed without any notice to her. It appears that the contesting respondents had raised plea before the Deputy Collector Land Reforms that power of attorney, duly executed by the petitioner, was filed by her father in mutation proceeding and, therefore, her grievance



that she was not heard, during the mutation proceeding was not sustainable. The Deputy Collector Land Reforms, interfered with the order of the Circle Officer dated 28.12.2005, and remitted the matter back to the Circle Officer by an order dated 15.06.2011. Two Revisions Applications were thereafter preferred against the order of the Deputy Collector Land Reforms by Respondent No.6, which gave rise to Revision Case No. 206 of 2011-12 and 211 of 2011-12. The revisional authority, i.e., the Additional Collector, Gaya allowed the revision application after examining various materials and documents which appear to have been filed before him, by the rival parties to establish their respective claims of the title and possession over the land. The petitioner, thereafter, preferred a case before the Bihar Land Tribunal, Patna, against the order of the revisional authority dated 15.10.2013, which came to be registered as B.L.T. Case No. 887 of 2013. By the impugned order dated 21.08.2014, the Bihar Land Tribunal has dismissed the case of the petitioner holding that the petitioner on the basis of some concocted forged and fabricated documents had filed an appeal challenging the order passed by the



Circle Officer, Manpur, dated 28.12.2005, in Mutation Case No. 644 of 2005-06.

3. Assailing the impugned order, Mr. Chitranjan Sinha, learned Senior Counsel appearing on behalf of the petitioner has strenuously contended that the original order of the Circle Officer was not at all sustainable which was passed behind her back without issuing any notice to her. He has contended that as a matter of fact, passing of the order dated 28.12.2005 by the Circle Officer is an act of *antedating* since the application for mutation was filed after passing of the order. In view of the said specific stand taken on behalf of the petitioner, I had directed the learned State Counsel to produce the original records of the Mutation case No. 644 of 2005-06. On perusal of record I notice that the file starts from the impugned order itself dated 28.12.2005. There is an undated application addressed to the Circle Officer, Manpur Block, on record according to which, the father of the contesting respondents had partitioned the joint family property and on the basis of *punchnama* prepared, he had sought mutation. There is another application on record filed on 03.01.2006 by respondent No.8 which indicates that he had presented himself before the Circle Officer for hearing in the mutation case. What is



apparent from the original records that there was no notice issued after filing of any application for mutation. It also appears that if any application was filed before the Circle Officer, the same was after the order dated 28.12.2005 was passed.

4. Learned Senior Counsel appearing on behalf of the petitioner has referred to the provisions under Sections 12 and 14 of the Bihar Tenant's Holdings (Maintenance of Records) Act, 1973 (hereinafter referred to as 'the Act') to contend that it was mandatory for the Anchal Adhikari to have given the parties a reasonable opportunity of hearing and adduce evidence. According to him, non-compliance of the mandatory provisions under Section 14 of the Act has rendered the original order dated 28.12.2005, unsustainable and any subsequent order passed in appeal, revision or by the Tribunal cannot validate the kind of illegality committed by the Circle Officer while passing the order dated 28.12.2005.

5. Mr. Dharendra Kumar Jha and Mr. Upendra Kumar Singh, learned counsels appearing on behalf of the contesting respondents, on the other hand, has submitted that a power of attorney was filed on behalf of the petitioner and the order in mutation case was passed in a camp Court on the same



day of application, since all the parties to the partition had appeared and, therefore, there was no requirement of any notice to be issued to any party. It has, accordingly, been contended that there is no violation of the provisions under Section 14 of the Act. Reliance has also been placed on certain circulars issued by the State Government, which contemplates disposal of mutation cases in Camp Courts by the Circle Officer on the same day.

6. On perusal of the original records, however, I am satisfied that the order dated 28.12.2005, passed by the Anchal Adhikari cannot be sustained being in breach of Sections 12 and 14 of the Act which read thus:-

“12. - Persons claiming interest by partition effected either privately or through Court or intestate or testamentary succession, transfer, exchange, agreement, settlement, lease, mortgage, gift, or by any other means to give notice to the Anchal Adhikari - After the commencement of this Act in any area every person having interest in a holding or part thereof in that area by partition effected either privately or through Court of intestate or testamentary succession, transfer, exchange, agreement, settlement, lease, mortgage, gift or by any other means, shall within six month of accrual of such interest, give notice of the fact in the prescribed form to the Anchal Adhikari of the area in whose jurisdiction the land is situated, and may apply for mutation of his name in respect of that holding or part thereof in the Continuous Khatian and the Tenants' ledger Register on receipt of such information of application the Anchal Adhikari shall grant a receipt to such person.



14. Requisition and disposal of mutation case.- (1) On receipt of notice under [Sections 4, 5, 6, 7, 8, 9](#) and [10](#) or an application under [Sections 11](#) and [12](#) or a report under [Section 13](#), the Anchal Adhikari shall start a mutation proceeding and, after entering it in the mutation case register which shall be maintained in the prescribed form, shall cause such enquiry to be made as may be deemed necessary.

(2) The Anchal Adhikari shall issue a general notice and also give notice to the parties concerned to file objection, if any, within 15 days of the issue of the notice. On receipt of objection, if any, the Anchal Adhikari shall give reasonable opportunity to the parties concerned to adduce evidence, if any, and of being heard and dispose of the objection and pass such orders as may be deemed necessary.

(3) In cases in which no objections are received the Anchal Adhikari shall dispose them of within one month of the date of expiry of filing objection and in cases in which objections are received, the Anchal Adhikari shall dispose them of in not more than three months from the date of expiry of the period of filing objections.”

7. It transpires that in the absence of any material in the original records produced by the learned counsel for the State that any application was ever filed by the contesting respondents before passing of the order dated 28.12.2005, in Mutation Case No. 644 of 2005-06, I am of the considered view that the order dated 28.12.2015 was not at all sustainable and could not have been sustained by the revenue Courts in appeal, revision or in the proceeding before the Bihar



Land Tribunal. The impugned order dated 28.12.2005, is accordingly, quashed. The Order of Bihar Land Tribunal, Patna dated 21.08.2014, is also set aside, for the reason that the nature of defect occurring in the original order as noticed above could not be cured in subsequent proceedings.

8. It has been pointed out by the learned counsel appearing on behalf of the parties that a Title Suit No. 340 of 2011 is pending between the parties. It is indicated that I have interfered with the impugned order on the sole ground of violation of principles of natural justice as contemplated under Section 14 of the Act.

9. I have not expressed my opinion over the merits of the case of the respective parties to the extent the same relates to their right title and possession over the lands, which are subject matter of the present case. The question of title and possession will have to be adjudicated upon by a competent Court of civil jurisdiction.

10. I would have in normal course remanded the matter back to the competent authority



for passing an order afresh in the mutation case but because a title suit between the parties is admittedly pending I have refrained from passing such order of remand.

11. It is made clear that no observation made in this order nor any finding recorded by the courts under the Mutation Act or the Bihar Land Tribunal in the proceedings arising out of the mutation case shall prejudice case of either of the parties before the Court below in the title suit.

12. With the above observations and direction, this writ application is allowed.

13. Let the original records be returned to the learned counsel for the State of Bihar.

14. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
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