

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5525 of 2015

1. Navin Kumar Choudhary
2. Sunil Kumar Choudhary.
3. Anil Kumar Choudhary.
4. Ajay Kumar Choudhary.
5. PushpaKumari Sinha. @ Pushpa Sinha All sons and daughter of Late Rajeshwar Prasad Choudhary,. All residents of village Sirsa, P.O. Dalan, P.S. Muffasil District Katihar.
6. NirmalaChoudhary w/o Late Yogendra Prasad Choudhary. null
7. SoniChoudhary w/o Late Azad Kumar Choudhary. null
8. MamtaChoudhary d/o Late Yogendra Prasad Choudhary w/o Pankaj Kumar Sharma, residents of village Sirsa, P.O. Dalan, P.S. Muffasil District Katihar.

... .. Petitioner/s

Versus

1. The State Of Bihar through District Magistrate, Katihar
2. Shyam Nandan Prasad Choudhary.
3. Bindeshwari Prasad Choudhary.
4. Ramanand Choudhary.
5. Surendra Prasad Choudhary. All sons of Late Bhagwat Prasad Choudhary.
6. Murari Prasad Choudhary.
7. Rajiv Choudhary.
8. Dablu Choudhary. All the sons of Late Gajendra Prasad Choudhary. null
9. Priti Kumari Choudhary daughter of Late Gajendra Prasad Choudhary.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 5412 of 2015

1. Bindeshwari Prasad Choudhary
2. Rama Nand Prasad Chaudhary @ Rama Nand Choudhary.
3. Surendra Prasad Choudhary. All sons of Late Bhagwat Prasad Choudhary. null
4. Murari Prasad Choudhary @ Krishna Murari Chaudhary.
5. Rajiv Choudhary @ Rajiv Kumar Choudhary.
6. Dablu Choudhary @ Dablu Kumar Choudhary. All the sons of Late Gajendra Prasad Choudhary.
7. Priti Kumari Daughter of Gajendra Prasad Choudhary. All residents of village Sirsa, P.O. Dalan P.S. Muffasil Katihar District Katihar.



... .. Petitioner/s

Versus

1. The State Of Bihar through Collector, Katihar
2. The D.C.L.R. Katihar, P.O. and P.S. Katihar, District Katihar.
3. The Circle Officer, Katihar, P.O. Dalan, P.S. Muffasil Katihar District Katihar.
4. Shyam Nandan Prasad Chaudhary son of Late Bhagwat Prasad Choudhary resident of village Sirsa, P.O. Dalan P.S. Muffasil Katihar District Katihar.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 5525 of 2015)

For the Petitioner/s : Mr. J. S Arora, Sr. Advocate
with Mr. Sunil Kumar Pathak

For the Respondent/s : Mr. P.K.Jaipuriar
Mr. Anshuman Jaipuriar
Ms. Anukirti Jaipuriar

(In Civil Writ Jurisdiction Case No. 5412 of 2015)

For the Petitioner/s : Mr. J. S. Arora, Sr. Advocate
with Mr. Sunil Kumar Pathak

For the Respondent/s : Mr. P.K.Jaipuriar
Mr. Anshuman Jaipuriar
Ms. Anukirti Jaipuriar

For the State:-

(in both cases) : Mr. Jai Prabhat Kishore, AC to SC-13

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 06-05-2019

The matters arise out of a mutation proceeding initiated prior to coming into force of the Bihar Land Mutation Act, 2011(hereinafter referred to as ‘the Act of 2011). In the year 1970, the disputed land bearing Tauzi No. 1175, Khesra No. 3690, 3698/1045, 4421, 4428/1047 of Thana No. 77, Area 1020 decimal was mutated in the name of contesting Respondent No.4 by an order of the Circle Officer dated 28.11.1970. A mutation appeal was filed thereafter, giving rise



to Mutation Appeal No.443 of 2011-12, assailing the order of the Circle Officer, which was allowed by the Deputy Collector Land Reforms, Katihar and the order of the Circle Officer passed in 1970, thus, stood set aside. A revision petition filed against the order of the Deputy Collector Land Reforms was dismissed and thus, the appellate order by the Deputy Collector Land Reforms setting aside the order of the Circle Officer stood affirmed.

2. Aggrieved by the said decision of the revisional authority, i.e., Additional Collector, Katihar, Respondent No.4 filed a case before the Bihar Land Tribunal, Patna in BLT Case No.810 of 2014. Learned Member of the Tribunal by an order dated 18.03.2015, has set aside the orders passed by the Additional Collector, Katihar dated 08.10.2014, in Mutation Revision Case No. 491 of 2013 as well as the order dated 05.07.2013, passed by the Deputy Collector Land Reforms in Mutation Appeal Case No. 443 of 2011-12, referring to a Division Bench decision of this Court in case of **Maheshwar Mandal and another Vs. State of Bihar and others** reported in **2014(3) PLJR 281**. According to the learned Member (Administrative), Bihar Land Tribunal, Patna, since the dispute involved complex question of adjudication of title, the parties



ought to have sought remedies before a competent Civil Court.

3. This is to be noted that the petitioners and the contesting private respondent in both the cases are full brothers and a partition suit is pending before the learned Sub-Judge-4th, Katihar, being Title (Partition) Suit No. 304 of 2012. The said order of the Member (Administrative) of the Tribunal dated 18.03.2015 is under challenge in the present writ application.

4. Mr. J.S. Arora, learned Senior counsel appearing on behalf of the petitioners in both the cases assailing the impugned order, has submitted that the Tribunal has committed a grave error while applying the law laid down in case of **Maheshwar Mandal** (supra) and others in the present case which has arisen out a mutation proceeding whereas the case of **Maheshwar Mandal** deals with Section 4 of the Bihar Land Dispute Resolution Act, 2009 (hereinafter referred to as 'the Act of 2009'). He has submitted that the Tribunal, for no apparent reasons set aside the orders of the Deputy Collector Land Reforms and the Additional Collector passed in mutation proceeding without recording his finding that the said orders were either beyond jurisdiction or illegal.

5. Mr. P.K. Jaipurkar, learned counsel appearing on behalf of contesting respondent No.4, on the other hand, has



argued that the Circle Officer had passed the order on 28.11.1970, mutating the land in question, in the name of the petitioners with the consent of all the members of the family including these petitioners. He has submitted that the act of these petitioners questioning the correctness of the order of the Circle Officer passed in 1970 after more than four decades was completely uncalled for, unwarranted and improper. He has further submitted that the Deputy Collector Land Reforms, without appreciating the circumstance in which the land was mutated in his name, based on the evidence adduced by/on behalf of the petitioners allowed the appeal and set aside the order of the Circle Officer passed in 1970. He has argued that the order of the Additional Collector, affirming the order of the Deputy Collector Land Reforms is equally infirm.

6. Responding to the submission made by Mr. Arora, learned senior counsel that the case of **Maheshwar Mandal** (supra) has been wrongly applied, Mr. Jaipurkar has submitted that even if the order of the Tribunal is bad for the said reason, it should not be interfered with as that would amount to reviving other orders, which are patently illegal. He has relied on a decision of the Supreme Court in case of **Parents Association of Students Vs. M.A. Khan and another** reported in (2009) 2



SCC 641 to bolster his plea.

7. Mr. Arora, learned senior counsel appearing on behalf of the petitioners has, in reply, submitted that this is not correct to say that the order of the Circle Officer dated 28.11.1970, mutating the land in favour of Respondent No.4 was passed with the consent of the petitioners. He has also argued that only three days before passing of the so-called order dated 28.11.1970, the Circle Officer had rejected an application for mutation filed by respondent No.4 on 25.11.1970, which is there on record at Annexure-1 of the writ petition being CWJC No. 5525 of 2015.

8. Be that as it may, I do not have any hesitation in recording my conclusion that learned Member (Administrative) of the Tribunal has wrongly applied the ratio of **Maheshwar Mandal's** case (supra) in the proceeding before him. In **Maheshwar Mandal** case the Division Bench of this Court had the occasion to consider the jurisdiction of the authorities to resolve land disputes under the Act of 2009. While dealing with various provisions of the Act, the Division Bench has held that the authorities under the Act could not decide complex disputed question of title. While holding so, the Division Bench, in case of **Maheshwar Mandal** (supra) has held sub-section (5) of



Section 4 of the Act of 2009, *ultra vires*.

9. What was there before learned Member (Administrative) of the Tribunal to decide was the legality or otherwise of the order passed in revisional proceeding by the Additional Collector. He has not at all dealt with in the order, the merits of the cases of the respective parties before him nor has he gone into the legality of the order which was under challenge before him. It is not the finding of the Tribunal that the order assailed before him was beyond jurisdiction and the Additional Collector, in that background could not have entertained the revision petition or that the Deputy Collector Land Reforms did not have the jurisdiction to entertain the appeal before him. The manner in which the order has been passed by the Tribunal cannot be approved of by this Court.

10. The impugned order dated 18.03.2015, passed by the learned Member (Administrative) of the Bihar Land Tribunal, Patna, is accordingly set aside. The matter is remanded back to the Tribunal for passing an order afresh in BLT Case No. 810 of 2014, in accordance with law.

11. It will be open for the Bihar Land Tribunal, Patna not only to examine the correctness of the orders impugned before him but also the jurisdiction of the authorities to entertain



the appeal or revision.

12. While parting with the present order and judgment, I must observe that the nature of dispute which exists among the parties need to be finally adjudicated upon by a Civil Court of competent jurisdiction.

13. These writ applications are allowed with the aforesaid observations and directions.

14. There shall, however, be no order as to costs.

arun/-

(Chakradhari Sharan Singh, J)

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	16.05.2019
Transmission Date	N/A

