

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18685 of 2015

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Maheshar Yadav, son of Late Saryug Yadav, resident of Baluahi, P.S. and District- Khagaria.

... .. Petitioner/s

Versus

1. The State Of Bihar.
2. The Collector, Khagaria.
3. The Sub-Divisional Officer, Khagaria.
4. The Circle Officer, Khagaria Block, District-Khagaria.
5. The Municipal Council, Khagaria.
6. The Chief Executive Officer, Khagaria Municipal Council, Khagaria.
7. Manohar Kumar Yadav, son of Late Chotelal Yadav, resident of Baluahi, P.S. and District- Khagaria.
8. Vijay Kumar Sah, son of Late Thakur Prasad, resident of Kachahari Road, Mauza- Sanhauili, District- Khagaria, at present resident of Thana Chowk, P.S. and District- Khagaria.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Dronacharya, Adv. Mr.Ramashankar, Adv.
For the Respondent/s	:	Mr. Ranjit Kumar, AC to GP 26.
For Nagar Parishad, Khagaria:		Mr.Rakesh Chandra, Adv.
For the Pvt. Respondent	:	Miss Anukriti Jaipuriyar, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

6 06-05-2019 The petitioner in this case is aggrieved by and dissatisfied with the order dated 22.05.2013/09.05.2013 passed by the Chief Executive Officer, Municipal Council, Khagaria in Reference Case No.63 of 2012 by which the Chief Executive Officer has directed for restoration of the name of the private respondent no.8, Vijay Kumar Sah in respect of Holding No.26 to 35.

Petitioner has also prayed for a writ of mandamus



directing the respondents to restore the name of the petitioner as owner over Holding No.492 to 498 (at present holding nos.26 to 35) of Khagaria Municipal Council.

It is, in fact, an admitted position appearing from Paragraph '8' of the writ application that earlier the name of Vijay Sahu was recorded in respect of Holding No.26 to 35 and rent receipts were also issued in his favour.

The name of the petitioner was, thereafter, recorded in place of said Vijay Sahu, the basis thereof is not known. The said Vijay Kumar Sah filed an application before the Chief Executive Officer, Nagar Parishad, Khagaria in which he made a complaint that his name has wrongly been removed from the record and in place thereof the name of this petitioner has been recorded. He also claimed possession of rent receipts since the year 1998 to the year 2008.

Although, the petitioner contested the complaint brought by said Vijay Kumar Sah but in course of consideration, the petitioner could not place before the Chief Executive Officer, the very basis of entry of his name in the record. One of the allegations against the petitioner was that he got his name entered in the records when his son was there as Chairman of the Nagar Parishad.



In course of hearing of the writ application, this Court called upon learned counsel for the petitioner to make a statement as to the basis of entry of his name in respect of the aforesaid holding numbers as also the proof thereof, learned counsel for the petitioner has submitted that no such order is in his possession. It is, however, been argued on behalf of the petitioner that the Chief Executive Officer, Nagar Parishad, Khagaria had no authority of law to restore the name of the private respondent, Vijay Kumar Sah in the municipal records in respect of the aforesaid holding numbers.

Learned counsel for the Nagar Parishad, Khagaria as well as the learned counsel for the State have opposed the writ application. It is their submission that the petitioner got his name entered in the municipal records in place of the private respondent when his son was there as Chairman. Learned counsel have also pointed out that the petitioner has miserably failed to place on record any order showing that in past the competent authority of the Nagar Parishad had permitted entry of the name of the petitioner with respect to the holding numbers. It is submitted that if there is no basis for recording of the name of the petitioner, even if the Chief Executive Officer, Nagar Parishad, Khagaria has passed the impugned order



without authority of law but acting as the competent authority to correct the mistake in the municipal records, the Court would not exercise its power to direct restoration of the name of the petitioner in the records which would amount to perpetuating an illegality.

Having heard learned counsel for the parties and on perusal of the records, this Court finds that basically the petitioner is looking for entry of his name in the municipal records with respect to the aforesaid plot numbers but there is no basis to claim that in past his name was recorded in the municipal records by virtue of an order of a competent authority. In the opinion of this Court if the petitioner is unable to produce any record/order showing that his name was recorded in the municipal records by virtue of the order of the competent authority and in accordance with law, there is no reason why this Court would interfere with the impugned order. By passing the impugned order, the Chief Executive Officer, Nagar Parishad, Khagaria has, in fact, restored the previous position and an illegality or the mistake as the case may be, has simply been corrected and rectified. Even otherwise, it is well settled that if an illegal order has set at naught the another illegal order, this Court sitting under Article 226 of the Constitution of India



would not exercise its discretion to quash the impugned order which would result in perpetuating the illegality.

This Court does not find any merit in the writ application. It is dismissed, accordingly.

Learned counsel for the petitioner submits that he may be given liberty to raise all such issues with respect to his right, title and possession of the property before a competent Civil Court. That Liberty is always there with the petitioner, if so advised subject of course in accordance with law only.

(Rajeev Ranjan Prasad, J)

R.R.Ojha/-

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