

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.205 of 2020

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Mahant Hare Ram Das, Chela of Late Mahanth Ram Chandra Das, residing at Village- Bishanpur, Dih Tola Thakurbari, Gram Panchayat- Bank, P.S. Dandari, Sub-division- Ballia, District- Begusarai, State- Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Collector, Begusarai.
2. The Chairman, the Bihar Land Tribunal, Patna.
3. The Additional Collector, Begusarai.
4. The Land Reform Deputy Collector, Ballia, Begusarai.
5. The Circle Officer, Dandari, Begusarai.
6. Shashibhushan Jha, Son of Late Ramji Jha, resident of Village- Bank, P.O. and P.S. Dandari, District Begusarai.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Rajni Kant Jha
For the Respondent/s : Mr.Raj Kishore Roy (GP18)

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

5 27-02-2020 Heard both sides.

The petitioner in this writ petition seeks quashing of the order dated 16.09.2019 passed in B.L.T. Case No.718 of 2018 whereby learned Chairman, B.L.T., Patna set aside the order dated 03.07.2018 passed by the Additional Collector, Begusarai in Mutation Revision Case No.30 of 2016 and affirmed the order dated 16.08.2016 passed by the D.C.L.R., Ballia in Mutation Appeal No.14 of 2015-2016.

The factual matrix of the case is that respondent No.6(Shashibhushan Jha) purchased land in dispute through sale



deed dated 08.12.2014 from late Mahanth Ram Chandra Das. Thereafter, respondent No.6 filed Mutation Case No.995 of 2014-15 for mutating his name in the record of rights on the basis of the sale deed executed by Mahanth Ram Chandra Das. The Circle Officer by order dated 16.04.2015 rejected the petition of respondent No.6 holding that the respondent No.6 is not in possession and the sale deed appears to be doubtful. It was further held that Plot Nos.1721 and 1722 of Khata No.35 are not standing in the name of Ram Chandra Das. The respondent No.6 filed mutation appeal before the D.C.L.R., Ballia, Begusarai being Mutation Appeal No.14 of 2015-16. D.C.L.R., Ballia by order dated 16.08.2016 allowed the mutation appeal and set aside the order of the Circle Officer passed in Mutation Case No.995 of 2014-15 holding that Late Mahanth Ram Chandra Das has purchased the land in his own capacity and out of 6 acres 1 katha 11 dhurs land, he only sold 1 Acre 18 katha 4 dhurs to respondent No.6 through a registered sale deed. The petitioner filed Mutation Revision Case No.30 of 2016-17 before the Additional Collector. The Additional Collector by order dated 03.07.2018 allowed the revision by setting aside the order passed by the D.C.L.R. in Mutation Appeal No.14 of 2015-16. Respondent No.6 filed B.L.T. Case



No.718 of 2018 and the learned Chairman by order dated 16.09.2019 allowed the case of the respondent No.6 after setting aside the order of the Additional Collector passed in Mutation Revision No.30 of 2016-17 and affirmed the order of the D.C.L.R. passed in Mutation Appeal No.14 of 2015-16 holding that D.C.L.R. under the Mutation Act is not vested with the power to suspect the genuineness of a registered sale deed whereas there is a presumption of correctness of the sale deed. Genuineness and correctness of the sale deed can be challenged only in a competent Civil Court.

Learned counsel for the petitioner primarily assailed the order of learned Chairman, B.L.T. on the ground that of course the Circle officer as well as Additional Collector committed jurisdictional error in suspecting the genuineness of the sale deed executed by Mahanth Ram Chandra Das in favour of respondent No.6 but Ram Chandra Das was the Sebait of the Math and being Sebait of the Math, he purchased the land in his own name from different persons from the income of Math properties. It is further submitted that Section 6 of the Mutation Act, 2011 contains many criteria for mutation of a person in the record of rights. Section 6(13) contains that if a person is not found in possession of the land, his/her name cannot be mutated.



The Circle Officer has recorded a categorical finding that respondent No.6 was not found in possession of the land and the Circle Officer besides other grounds rejected the petition of the respondent No.6 for mutating his name on the ground that he was not in possession of the land but neither the D.C.L.R. nor the learned Chairman, B.L.T. dealt or recorded any finding with regard to possession of respondent No.6 over the land. It is further submitted that respondent No.6 subsequently obtained the land possession certificate of the disputed land after passing of the order but mere possession of land possession certificate is not suffice to set aside the findings of the Circle officer with regard to possession of the respondent No.6 over the disputed land. Petitioner is still Sebait of the Math. Respondent No.6 made him party and respondent No.6 assuming the petitioner to be Sebait of Math made him party in the case. The petitioner being Sebait is entitled to protect the interest of Math and its properties. It is submitted that order suffers from illegality as once the respondent No.6 is not found in possession, the mutation in the name of respondent No.6 cannot be allowed.

The respondent No.6 filed counter-affidavit. Mr. Sidharth Prasad, learned counsel for the respondent No.6 submits that there is no doubt that late Ram Chandra Das was



Mahanth of Thakurbari and he looked after the property of Thakurbari throughout his lifetime. Thakurbari owned and possessed 16 bigha 3 kathas and 15 dhurs land and rent receipt was also issued in the name of deity Ram Janki. The land in dispute is self-acquired property of Ram Chandra Das out of his personal income and fund. Separate jamabandi was created in the name of Ram Chandra Das. Ram Chandra Das purchased the land in his own name through different sale deeds in the year 1954 and onwards from Mathura Prasad Singh, Natho Mallah, Dinanath Mishir and Babu Devi Singh. All the sale deeds were executed in the name of Ram Chandra Das and not in the name of deity. Ram Chandra Das was in exclusive possession of the purchased land and he exercised his right, title and interest separate from the properties of Math without any hindrance. Ram Chandra Das sold his own property firstly in the year 1990 and thereafter respondent No.6 also purchased 1 bigha 18 kathas 4 dhurs land from Ram Chandra Das through a sale deed dated 08.12.2014. After death of Ram Chandra Das on 23.12.2014, the petitioner filed Mutation Case No.950 of 2014-15 before the Circle Officer for mutation of the land pertaining to the sale deed executed in favour of the respondent No.6 in the name of Ram Janki Math but Circle Officer dismissed the Mutation Case



vide order dated 16.04.2015. Respondent No.6 also intervened in that case and the Circle Officer dismissed the mutation case. Thereafter, respondent No.6 filed mutation case but the Circle Officer illegally obtained report from junior revenue officers about the possession of the land in question and on the basis of such collusive report, the Circle Officer rejected the petition of the petitioner for mutating his name in the record of rights.

Mr. Sidharth Prasad further submits that the petitioner has got no locus. The order of the Chairman, B.L.T. is exhaustive and the Chairman has clearly held that there is a presumption of correctness of the registered sale deed. The revenue authority cannot cast doubt on the genuineness and correctness of the sale deed. Genuineness and correctness can only be questioned in civil court having competent jurisdiction. It is further submitted that since the Circle Officer on the basis of collusive report with regard to possession recorded a finding that the respondent No.6 is not in possession but on the basis of the records, the learned Chairman held that name of the petitioner is legally required to be mutated in the record of rights on the basis of the sale deed.

On the basis of submissions of both sides, I find that the learned Chairman has rightly held that the finding of the



Additional Collector with regard to the mutation of a person suspecting the genuineness and correctness of registered sale deed suffers from jurisdictional error. The revenue authority is not at all justified and vested with the power under the Act to refuse to mutate the name of a purchaser suspecting the genuineness and correctness of the sale deed but the next question arises whether the possession is an essential ingredient for getting the name of a person mutated if he is not found in possession of the land.

Section 6 of Bihar Land Mutation Act, 2011 reads as follows:

6. Disposal of Mutation cases.- (1) The Circle Officer, on receipt of enquiry report from Karmachari and Circle Inspector in respect of the mutation petition or upon his own enquiry under section 5(5) of this Act, shall dispose of the mutation case in the prescribed manner after inviting objections in the manner prescribed, from persons having interest in the holding or a part thereof as well as general public either in a-

(a) Regular mutation court held in his office, or

(b) In camp courts organized for the disposal of mutation cases of the area where the holding or a part thereof is situated.

(2) On receipt of an objection, the Circle Officer shall give reasonable opportunity to the parties concerned to adduce evidence, if any, and of being heard and shall dispose of the objection and pass such order as he deems fit.

(3) Cases in which no objection has been received after the expiry of the last date of filing objections, the Circle Officer



shall dispose them of by passing such order as he deems fit.

(4) Cases in which objections have been received, no order shall be passed unless the parties have been given reasonable opportunity of being heard.

(5) In case of rejection of a mutation petition, the Circle Officer shall record in the order-sheet the grounds on which it has been rejected and shall intimate the petitioner in the prescribed manner giving a brief account of the grounds on which the petition has been rejected.

(6) Cases in which mutations have been allowed, the Circle Officer shall issue correction slips to give effect to his orders for mutation in the prescribed form and intimate the petitioners in manner prescribed.

(7) The Karmachari shall alter the entries in the Continuous Khatiyan, Tenants' Ledger Register and Khesra Register of the Revenue village in which the holding or a part thereof is situated reflecting the order for alteration given in the correction slip.

(8) On the basis of the alteration effected in the entries of the Tenants' Ledger' Register the Karmachari shall alter the yearly demand of rent and cess of the concerning jamabandi.

(9) Mutation claimed on the basis of transfer through sale-purchase, gift or exchange, shall not be allowed unless it is registered.

(10) Mutation claimed on the basis of will, shall not be allowed unless probate of the will has been duly decided by the competent court.

(11) Mutation claimed on the basis of partition other than by the court or registered deed, shall not be allowed unless there is consent for partition by all co-sharers.

(12) Mutation of a holding or a part thereof shall not be allowed in cases in which Title Suit with regard to that holding or a part thereof is pending in the competent court.

(13) Mutation of a holding or a part thereof shall not be allowed in



cases in which acquirer of an interest in the holding or part thereof does not have physical possession over that holding or a part thereof.

From perusal of sub-clause (13) of Section 6, it is evident that the mutation of a holding or a part thereof shall not be allowed in which acquirer of an interest in the holding or part thereof does not have physical possession over that holding or a part thereof. Even a member of public can file objection under Section 6(1) of the Act.

Thus, it is inevitable for consideration to the Circle Officer to ascertain about the possession of a holding or a part thereof before mutating the name of a person who acquired an interest in the holding. From perusal of the order of the Circle Officer, I find that Circle Officer on the basis of the report of the revenue authority recorded the finding that the acquirer of an interest in the holding by virtue of the sale deed, the petitioner is not in possession of the land. Of course the Circle officer also cast doubt on the genuineness of the sale deed said to have been executed by late Ram Chandra Das but D.C.L.R. altogether in a different footing without recording any finding with regard to possession of the acquirer of an interest in the holding ordered for mutation in the name of respondent No.6. Learned Chairman, B.L.T. has also not given any finding on the point of possession of respondent No.6 acquirer of an interest as has



been recorded by the Circle Officer and if the acquirer of an interest in the holding is not found in possession of the holding or a part thereof, the Circle officer may reject the petition of such acquirer of interest in the holding. The Circle Officer further held that Plot Nos.1721 and 1722 of Khata No.35 were not recorded in the name of Late Ram Chandra Das and on this point also, no finding has been recorded. I find that the submission of Mr. Sidharth Prasad, learned counsel for the respondent No.6 that report with regard to possession of the junior revenue officers is collusive and later on the Circle Officer issued land possession certificate in favour of the respondent No.6 cannot be accepted as even the learned Chairman, B.L.T. has not recorded any finding with regard to the possession over the disputed land. Thus, I find that learned Chairman has committed illegality. Accordingly, I set aside the order passed in B.L.T. case No.718 of 2018 by learned Chairman, B.L.T., Patna, order passed in Mutation Revision Case No.30 of 2016-17 by Additional Collector, Begusarai, order passed in Mutation Appeal No.14 of 2015-16 by D.C.L.R., Ballia and order passed in Mutation Case No.995 of 2014-15 by Circle Officer, Dandari and remanded the case to the court of Circle Officer to decide the matter afresh in accordance with the



provisions as contained in Sections 5 and 6 of Bihar Land
Mutation Act, 2011.

Consequently, the writ petition as aforesaid is
allowed.

(Prabhat Kumar Jha, J)

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