

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3200 of 2020

Md. Gayasuddin S/o Late Md. Habibullah Resident of Village and P.O.- Rajai,
P.S.- Aurangabad Mufassil and District- Aurangabad presently residing at
Mohalla Nawadih (Sheesh Mahal Gali), P.S. and District- Aurangabad

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Land Reforms and Revenue, Govt. of Bihar, Patna, Bihar
2. The Commissioner Magadh Division, Gaya
3. The District Magistrate cum Collector, Aurangabad
4. The Deputy Collector Land Reforms, Aurangabad
5. Md. Sahjahan Afaq S/o Late Md. Habibullah Resident of Village and P.O.- Rajoi, P.S.- Aurangabad, (M), District- Aurangabad

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Anirudh Kumar Verma
For the Respondent/s : Mr. Md. Khurshid Alam (AAG12)

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

2 18-02-2020 Heard learned counsel for the petitioner and learned
counsel for the State.

The petitioner has filed this writ petition to quash the order dated 25.09.2019 passed by the Commissioner, Magadh Division, Gaya in Land Dispute Redressal Appeal No.2 of 2018 by which the Commissioner set aside the order dated 22.12.2017 passed by the D.C.L.R. in Land Dispute Case No.11 of 2017-18 by which the D.C.L.R. ordered to deliver the possession of Plot No.735 area 3 decimals to the petitioner.

Learned counsel for the petitioner submits that admittedly, Md. Habibullah Ansari had three sons namely Md.



Iliyash Ansari, Md. Gayasuddin (the petitioner) and Md. Sahjahan Afaque(respondent No.5). They amicably partitioned their properties by Annexure-1. The entire lands standing in the name of Md. Habibullah were divided in three schedules. According to the case of the petitioner, Plot No.735 of Khata No.32 area 12 decimals were allotted to the two brothers but due to inadvertence, the area of share in Plot No.735 is mentioned only 2 decimals. The petitioner filled up the land and constructed shops but respondent No.5 forcibly took possession on some portions of the land. When the dispute arose, the petitioner filed petition before the D.C.L.R. and the D.C.L.R. found that since the land was mutated in the name of the petitioner, he ordered for delivery of possession to the petitioner with regard to 3 decimals of land and the shops standing thereon. Respondent No.5 filed appeal before the Commissioner, Magadh Division, Gaya and the Commissioner by order dated 25.09.2019 held that the dispute is with regard to title and possession and in view of the judgment rendered by this Court in the case of Maheshwar Mandal & Anr. v. State of Bihar & Ors.(C.W.J.C. No.1091 of 2013), the D.C.L.R. cannot entertain the case involving title and possession and also cannot order for delivery of possession to a party. Learned counsel for



the petitioner submits that dispute does not involve any title of a party. There is amicable settlement between three brothers. The petitioner got two decimals of land in Plot No.735 of Khata No.32. The total area of Plot No.735 is 12 decimals but on the basis of possession, the Circle Officer mutated the name of the petitioner. Later on, brother of the petitioner forcibly took possession over two shops standing on the disputed land and when the petitioner filed the petition under the B.L.D.R. Act before the D.C.L.R., the D.C.L.R. did not decide the title of a party nor entered into any question. Since the matter has been set at rest by the Circle Officer and the name of the petitioner was mutated with regard to 3 decimals of land, the D.C.L.R. has rightly ordered for delivery of possession to the petitioner.

Having considered the submission and on perusal of the order, I find that petitioner got only 2 decimals of land of Plot No.735 in amicable partition between three brothers but the petitioner did not produce the amicable partition deed before the Circle Officer and got mutated his name with regard to 3 decimals of land of Plot No.735 of Khata No.32. The respondent disputed the possession and title of the petitioner on 1 decimal of land and claimed his own title by virtue of partition. Admittedly, the petitioner got only 2 decimals of land in Plot



No.735 of Khata No.32 in amicable partition but concealing this fact, the petitioner got mutated his name with regard to 3 decimals of land of Plot No.735 of Khata No.32. Therefore, the D.C.L.R. has exceeded his jurisdiction in ordering for delivery of possession to the petitioner with regard to 1 decimal of land in favour of the petitioner on the basis of the mutation order. The order of mutation does not give right of title and possession over the land. The dispute is purely with regard to title of three brothers who claimed share. Even from perusal of Annexure-1, it appears that petitioner got only 2 decimals of land in Plot No.735 and he is not entitled to get possession over 3 decimals of land by virtue of such amicable partition. Thus, I find that the Commissioner has rightly held that there involves question of title and possession and the same cannot be decided under the B.L.D.R. Act. The D.C.L.R. has committed jurisdictional error in ordering for delivery of possession to the petitioner.

Having considered the facts, I find that the learned Commissioner has rightly set aside the order of the D.C.L.R. Accordingly, I do not find any merit in this writ petition and the same is dismissed.

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(Prabhat Kumar Jha, J)