

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.277 of 2020

In
Civil Writ Jurisdiction Case No.205 of 2020

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Shashibhushan Jha S/o Late Ramji Jha, resident of Village- Bank, P.O. and
P.S. Dandari, District Begusarai.

... .. Appellant/s

Versus

1. The State of Bihar through Collector, Begusarai.
2. The Chairman, Bihar Land Tribunal, Patna.
3. The Additional Collector, Begusarai.
4. The Land Reform Deputy Collector, Balia, Begusarai.
5. The Circle Officer, Dandari, Begusarai.
6. Mahant Hare Ram Das, Chela of Late Mahant Ram Chandra Das, Resident
at Village Bishanpur, Tola Thakurbari, Gram Panchayat Bank, P.S. Dandari,
Sub-Division Balia, District-Begusarai, State Bihar.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Siddhartha Prasad, Advocate Mr. Om Prakash Kumar, Advocate Mr. Sumit Kumar, Advocate
For the Respondent/s	:	Mr. Rajni Kant Jha, Advocate Mr. Arun Kumar Bhagat, AC to AAG-12

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 12-05-2022

Heard Mr. Siddhartha Prasad, learned counsel for the
appellant and Mr. Rajni Kant Jha, learned counsel for Private
Respondent No. 6.

The appellant had purchased a land *vide* sale-deed dated
08.12.2014 from one Late Ram Chandra Das, of whom, the Private



Respondent No. 6 claims to be his disciple. A mutation case was filed by the appellant *vide* Mutation Case No. 995 of 2014-15 for recording his name in the record of rights on the basis of sale-deed. The aforesaid request was rejected by the Circle Officer by order dated 16.04.2015 on the ground that the possession and the sale-deed appeared to be doubtful. This was challenged by the appellant before the DCLR *vide* Mutation Appeal No. 14 of 2015-16 on the ground that it was absolutely unjustified for the Circle Officer to have doubted the correctness of the sale-deed as he was not authorized to do the same. The mutation appeal was allowed and the order of the Circle Officer was set aside. This led to filing of revision by Private Respondent No. 6 before the Additional Collector *vide* Mutation Revision Case No. 30 of 2016-17 which was allowed by the order of the DCLR in favour of the appellant was set aside. The matter thereafter was taken to the Tribunal *vide* BLT Case No. 718 of 2018 where the case of the appellant was allowed and the order passed by the Additional Collector in Mutation Revision No. 30 of 2016-17, referred to above, was set aside whereas the order of the DCLR passed in Mutation Appeal No. 14 of 2015-16 was allowed.



The learned Single Judge while scrutinizing all the above orders, especially the order passed by the Tribunal, found that it was flawed for the reason that no definitive finding was given by either of the authorities with respect to possession of the appellant for him to qualify for getting his land mutated in the record of rights.

The learned Single Judge while referring to the provisions contained in Section 6 of the Bihar Land Mutation Act, 2011 inferred that Sub-clause 13 provides for a situation when the request for mutation could be rejected and that would be in the event of an acquirer of an interest in the holding or part thereof would not be found to have physical possession over that holding or a part thereof.

The learned Single Judge thereafter found that the Circle Officer had based his decision on the report of the Revenue Authority that the appellant was not in possession of the land. However, with respect to that part of the order of the Circle Officer which adverted to the issue with respect to the correctness of the title or genuineness of the sale-deed, was rightly found by the learned Single Judge to be inappropriate and incorrect in position of



law and therefore held that the Tribunal was absolutely justified to that extent in not endorsing the order of the Circle Officer.

However, the learned Single Judge, while finding that none of the authorities which had passed an order in favour of the appellant, had adverted to the issue of possession which was also one of the grounds for rejecting the claim of the petitioner for mutation before the Circle Officer and therefore found that even the Tribunal committed a mistake in leaving that issue open-ended and not adverted to the same in a definitive way, which alone would have entitled the appellant to have succeeded in getting his name mutated in the record of rights.

Mr. Siddhartha Prasad, learned Advocate for the appellant has submitted that though the matter has been remanded to the Circle Officer to decide the issue afresh in accordance with the provisions contained in Sections 5 and 6 of the Bihar Land Mutation Act, 2011, but by such remand, the entire issue has been re-opened which could not have been done in view of the sale-deed in his favour which has not been questioned in any forum whatsoever. He further submits that such an open-ended remand in fact would open up the entire issue which the revenue authorities would not have



the wherewithals to finally decide. It has also been submitted on behalf of the appellant that the report of possession in favour of the private respondent by junior revenue officer is collusive in as much as the Circle Officer himself had issued certificate of possession in favour of the appellant. Assuming but not admitting, it has been argued that this aspect of the matter had not been adverted to by the Tribunal, that itself would not lead to the inescapable conclusion that the order passed by the DCLR was bad with respect to possession and the consequent entitlement of the appellant to have his name mutated in the record of rights.

As opposed to the aforesaid contention, Mr. Rajni Kant Jha, learned counsel for the private respondent has submitted that the Circle Officer, though has recorded a finding that the Title of the appellant is doubtful but that was not the only issue on which mutation was refused. It was refused on the ground that the appellant who claims to be the acquirer of interest in the holding was not found to be in possession. He further submits that the appellant has no cause of action or the issue to agitate once the matter has been relegated to the Circle Officer, the authority of the first rung which is entrusted with the responsibility and power of



taking a decision with respect to mutation as it would only provide a clean slate to both the parties to have the issue decided.

In response to the aforesaid argument, Mr. Prasad, learned Advocate for the appellant has reminded this Court that such remand may not normally be interfered in an Intra Court appeal but then in the present case, such an open-ended remand has only resulted in re-opening the whole case especially with respect to the Title.

The aforesaid apprehension of the learned counsel for the appellant is incorrect and unfounded.

We find from the order impugned that the matter has been remanded only to the extent of a determination with respect to the possession of the appellant for his entitlement for mutation of his name in the record of rights. However, we do find that certain observations of the learned Single Judge might prejudice the case of the appellant, in as much as, the report of the Circle Officer regarding the possession in favour of the appellant has not been accepted; perhaps for the reason that it was brought on record later than the first decision by the Circle Officer, rejecting the claim of the appellant.



Thus, we are of the view that the learned Single Judge ought to have decided the issue on the basis of materials available on record which could have been done by referring to the land possession certificate of the appellant and taking into account that there was no question or cloud over the registration of the sale-deed in his favour with respect to the land in question. Successive authorities may not have adverted to ancillary or collateral issues but that would not justify any interference with the order of the Tribunal. The Tribunal, it appears that from the records, had found that the Circle Officer, in the first instance, had traversed beyond his jurisdiction of questioning the correctness of the Title of the appellant and on that score, set aside the order of the Circle Officer and affirmed the order of the DCLR which had directed for mutation of the name of the appellant in the record of rights.

However, since the matter has been remanded to the Circle Officer for deciding the issue, we only add and clarify that the Circle Officer, while deciding the issue shall limit his decision to the extent of the possession of the appellant over the land in question and shall decide whether the appellant is entitled for mutation. This entire exercise shall not be expanded into a roving enquiry with



respect to the correctness of the title or the authority of the vendor to sell the property to the appellant and would conclude the proceeding within a period of two months from the date of production/receipt of a copy of this order.

With the aforesaid modification, the appeal stands partially allowed.

(Ashutosh Kumar, J)

(Anjani Kumar Sharan, J)

skm/-

AFR/NAFR	AFR
CAV DATE	
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