

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4727 of 2023

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Lalita Devi Wife of Late Satya Narayan Mishra, Resident of ‘Ganghara Niwas’, Mohalla Basant Vihar Colony, Jay Prakash Path (Boring Road), P.S. Shri Krishnapuri, Patna- 800001.

... .. Petitioner/s

Versus

1. The Commissioner, Patna Municipal Corporation Maurya Lok, C- Block, Patna- 800001.
2. The Executive Officer, Patliputra Circle, Patna Municipal Corporation, Sahdeo Mahto Marg, Shri Krishnapuri, Patna- 800001.
3. Lavina Sharma @ Aarti Sharma, Wife of Late Ambarjyoti Sharma Resident of Nayantara Sadan, Jay Prakash Path (Boring Road), P.S.- Shri Krishnapuri, Patna- 800001.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Basant Kumar Choudhary, Sr. Advocate Mr.Arun Kumr, Advocate
For the Municipal Corporation:		Mr.Sanjay Prakash Verma, Advocate
For the Respondent/s	:	Mr.Prasoon Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 07-12-2023

Heard Mr. Basant Kumar Choudhary (Senior Advocate)
along with Mr. Arun Kumar (Advocate), learned counsels
appearing on behalf of the petitioner and Mr. Sanjay Prakash
Verma, learned counsel for the Municipal Corporation and Mr.
Prasoon Sinha, learned counsel for the respondents.

2. The present writ petition has been filed for following
relief(s) :-

“That this is an application for issuance
of a writ of certiorari quashing order dated
06.04.2018, Annexure ‘3’ passed in Mutation Case
No.685 of 2013-14 whereby application filed by
petitioner for mutation of her name in Assessment



Register of Patliputra Circle of Patna Municipal Corporation with respect to Holding No.400/214A/1 of Circle No.249, Ward No.23 standing in the name of one Asma Ahmad (who died in 1996) has been put in abeyance by Executive Officer, Resp No.2 as also for issuance of a writ of mandamus directing Resp. Nos. 1 & 2 to mutate the name of petitioner with respect to aforesaid holding.”

3. Mr. Basant Kumar Choudhary, learned Senior Advocate assisted by Mr. Arun Kumar, Advocate-on-Record, submitted that the order passed by the Executive Officer in Mutation Case No.685 of 2013-14 is without jurisdiction by not taking into consideration the fact that the petitioner became occupier of the premises having Municipal Holding No.400/214A/1 of Circle No.249, Ward No.23 in accordance with provision of Section 135 of Bihar Municipal Act, 2007. It is admitted that the house is still standing in the name of Late Biwi Asma Ahmad in municipal records, who had died in the year, 1996 but after her, death in absence of her heir's name being mutated at her place, the Executive Officer, Patliputra Circle, Patna Municipal Corporation (respondent no.2) has kept the matter in abeyance without passing any order – either rejecting or allowing the application for mutation of the petitioner.

4. Learned counsel referring to Section 135 of Bihar Municipal Act, 2007 further submitted that even a occupier



becomes entitled for paying the holding taxes in absence of the original owner under Sub Section 2 of Section 135 of Bihar Municipal Act, 2007, which provides that the annual value of holding shall be payable by the persons in actual occupation of the holding within the Municipality.

5. On these grounds, learned counsel submitted that there is no reason to keep the application of the petitioner in abeyance by the Executive Officer since the dates he filed her application on 10.02.2014. It is the case of the petitioner that the Executive Officer has not produced any reason rather a statement has been made in paragraph 6 of the counter affidavit filed on behalf of the Municipal Corporation that the holding taxes are being issued in the name of the original land lord namely, late Biwi Asma Ahmad, who has allowed the petitioner to occupy the premises in absence of any legal representative of the original holder to claim their right. He further submitted that the holding tax can not be accepted in the name of a dead person, if his/her legal representative is alive. On these grounds, learned senior counsel submitted that there is no reason to keep the application pending and at the same time by not fixing the holding tax for the Holding No.400/214A/1 of Circle No.249, Ward No.23 in favour



of the petitioner is without jurisdiction and colorable exercise of power.

6. *Per Contra*, Mr. Sanjay Prakash Verma, learned counsel appearing on behalf of Patna Municipal Corporation submitted that the petitioner has filed the instant writ petition for quashing the order dated 06.04.2018 passed in Mutation Case No.685 of 2013-14, by which the application filed by the petitioner for mutation of her name in Assessment Register of Patliputra Circle of Patna Municipal Corporation, Patna with respect to Holding No.400/214A/1 of Circle of 249, Ward No.23 standing in the name of one Asma Ahmad (who died in 1996), was rejected. From the Revenue record of Patliputra Circle, Patna Municipal Corporation, report of the concerned official and the details of the computerized tax collection process, it appears that receipt of Holding Tax with respect to Holding NO.400/214A/1 of Circle No.249, Ward No.23 is being issued in the name of original landlord namely Bibi Asma Ahmad.

7. He further submitted that the application of the petitioner for mutation has been kept pending since 2014, because the subject matter of Holding No.400/214A/1 of Circle No.249, Ward No.23 is questioned in Title Suit No.538 of 1993, which is pending before the Civil Court having jurisdiction, in which the



petitioner has already appeared. The Executive Officer has kept the Mutation Case in abeyance till the final result of Title Suit and if the petitioner is aggrieved, he may file an intervention petition before the competent Civil Court. He, however, admitted that the said suit has been filed by one Budhdeo Sharma. The description of the revenue land record has not been provided in the counter affidavit.

8. Learned counsel further submitted that the petitioner had earlier moved before the Hon'ble Court by way of filing CWJC No.7743 of 2017 and at the time of hearing of the said writ application, it had been submitted by the learned counsel for the petitioner that by efflux of time, the writ application had become infructuous and thus sought permission to withdraw the same. Accordingly, the writ application was dismissed as withdrawn, vide order dated 13.03.2023 passed in CWJC No.7743 of 2017. Thereafter the petitioner filed another writ application bearing CWJC No.2210 of 2023 (**Lalita Devi & anr. Vs. The Patna Municipal Corporation & Ors.**) against the order passed by the Executive Officer in Mutation Case Nos.694 of 2016-17 and 684 under Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013-14. In the said case the stand of the learned counsel for the Patna Municipal



Corporation was that the said order of the Executive Officer in the present case can be challenged under Section 141 of Bihar Municipal Act, 2007. The remedy lies before the Municipal Commissioner, Patna Municipal Corporation, Patna and if the petitioner is aggrieved and dissatisfied with the order of the Municipal Commissioner, Patna Municipal Corporation, the petitioner may avail remedy of appeal before the District Judge under Section 143 of the Bihar Municipal Act, 2007. The Hon'ble Court after hearing the parties and considering the submissions made by the learned counsel for the Patna Municipal Corporation disposed of the writ petition with a direction to the petitioner to avail her remedy before the Municipal Commissioner, Patna Municipal Corporation.

9. Heard the parties.

10. It is admitted fact that a Title Suit No.538 of 1993 for declaration of Title with respect to plot in question is pending before the learned Sub Judge VI, Patna. In these circumstances till the decision of the competent court in the said Title Suit and the matter regarding mutation has been kept in abeyance.

11. The petitioner had filed an application before the respondent Executive Officer for redressal of her grievance on 10.02.2014 whereas the fact is that the Patliputra Circle of the



Patna Municipal Corporation came into existence in the year, 2018.

12. From perusal of order dated 06.04.2018, passed by the Executive Officer, it appears that the dispute relating to the holding is the subject matter of Title Suit No.538 of 1993, which is still pending, which has been filed by a member of Alakhnanda Grih Nirman Sahyog Samity, in which petitioner is defendant. The petitioner has also filed her written submission. The Executive Officer being the revenue authority without any objection in the mutation case pending by any of the member of Alkhnanda Grih Nirman Sahyog Samiti has proceeded on an objection, which has been raised by one Ambar Jyoti Sharma but it is not clear from the order that he is one of the plaintiff to the suit. Section 141 of the Bihar Municipal Act, 2007 provides that the objection to assessment can only be filed by any person who is dissatisfied with assessment or valuation or amount assessed upon him. However, the objector Ambar Jyoti Sharma is a total stranger to the assessment, if any, and has no right to maintain an objection under Section 141 of of the Bihar Municipal Act, 2007.

13. In the present case, the record reveals that Holding No.400/214A/1 of Circle No.249, Ward No.23 is still standing in the name of Late Biwi Asma Ahmad, who had died in the year,



1996. The Municipal Corporation has not endeavoured to issue notice to the legal representatives of the said Late Biwi Asma Ahmad, whose right can not be defeated. The Executive Officer has given reason for keeping the mutation case in abeyance because a title suit is pending, in which the original holder has been made party and their name has been substituted in place of Late Biwi Asma Ahmad.

14. It has been informed by the learned counsel appearing on behalf of the Municipal Corporation that Alakhnanda Grih Nirmal Sahyog Samity Society was created by the legal representative of Late Biwi Asma Ahmad.

15. The municipal corporation has failed to issue notice to the legal representatives of the said late Biwi Asma Ahmad. The Apex Court in *Moresnar Yadaorao Mahajan Vs. Vyankatesh Sitaram Bhedi (D) Thr. LRs. and Ors.* reported in *2022 SCC Online SC 1307* has outlined twin test for any person to be a necessary party in a proceeding. The relevant paragraph has been re-produced hereinunder :

“19. As already discussed hereinabove, the plaintiff himself has admitted in the plaint that the suit property is jointly owned by the defendant, his wife and three sons. A specific objection was also taken by the defendant in his written statement with regard to non-joinder of necessary parties. Since the suit property was jointly owned by the defendant along with his wife and three sons, an effective decree could not have



been passed affecting the rights of the defendant's wife and three sons without impleading them. Even in spite of the defendant taking an objection in that regard, the plaintiff has chosen not to implead the defendant's wife and three sons as party defendants. Insofar as the reliance placed by Shri Chitnis on the judgment of this Court in the case of *Kasturi* (supra) is concerned, the question therein was as to whether a person who claims independent title and possession adversely to the title of a vendor could be a necessary party or not. In this context, this Court held thus :

“7..... From the above, it is now clear that two tests are to be satisfied for determining the question who is a necessary party. Tests are” (1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings; (2) no effective decree can be passed in the absence of such party”

Thus, the legal heirs of original holder as well as the present petitioner are necessary party to the the mutation proceeding in question.

Apart from the statutory duty it is incumbent upon every authority to give reasonable opportunity of hearing to affected parties before passing any order having civil consequences. The Apex Court in the case of **Chairman State Bank of India and Anr. v. M.J. James** reported in (2022) 2 SCC 201 in paragraph nos. 28 and 29 has held as under :-

“28. Traditional English law recognised and valued the rule against bias that no man shall be a judge in his own cause i.e. nemo debet esse judex in propria causa; and the obligation to hear the other or both sides as no person should be condemned unheard i.e. audi alteram partem. To these, new facets sometimes



described as subsidiary rules have developed, including a duty to give reasons in support of the decision. Nevertheless, time and again the courts have emphasised that the rules of natural justice are flexible and their application depends on facts of each case as well as the statutory provision, if applicable, nature of right affected and the consequences. In *A.K. Kraipak v. Union of India* [*A.K. Kraipak v. Union of India*, (1969) 2 SCC 262] the Constitution Bench, dwelling on the role of the principles of natural justice under our Constitution, observed that as every organ of the State is controlled and regulated by the rule of law, there is a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a quasi-judicial or administrative power are those which facilitate if not ensure a just and fair decision. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of law under which the enquiry is held and the constitution of the body of persons or tribunal appointed for that purpose. When a complaint is made that a principle of natural justice has been contravened, the court must decide whether the observance of that rule was necessary for a just decision in the facts of the case.”

29. Legal position on the importance to show prejudice to get relief is also required to be stated. In *State Bank of Patiala v. S.K. Sharma* [*State Bank of Patiala v. S.K. Sharma*, (1996) 3 SCC 364] a Division Bench of this Court distinguished between “adequate opportunity” and “no opportunity at all” and held that the prejudice exception operates more specifically in the latter case. This judgment also speaks of procedural and substantive provisions of law embodying the principles of natural justice which, when infringed, must lead to prejudice being caused to the litigant in order to afford him relief. The principle was expressed in the following words : (SCC p. 389, para 32)

“32. Now, coming back to the illustration given by us in the preceding paragraph, would setting aside the punishment and the entire enquiry on the ground of aforesaid violation of sub-clause (iii) be in the interests of justice or would it be its negation? In our



respectful opinion, it would be the latter. Justice means justice between both the parties. The interests of justice equally demand that the guilty should be punished and that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice. Principles of natural justice are but the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end. That would be a counterproductive exercise.

16. This Court directs the Executive Officer to first substitute the name of legal representative of the original holder and then to proceed after giving notice to all the parties including the petitioner who claims to be in possession of the holding in question. Section 135 of the Act, 2007 mandates that annual value of holding shall be payable by the persons in actual occupation of the holding within the municipality. A full Bench judgment of this Court in *Nripendra Nath Roy Choudhary Vs. Commissioer of Chaibasa Municipality* reported in *1981 BLJR 154 (FB)* has held that title of a person does not get affected in any way by change of his name in records of municipality. Title flows from transfer as devolution of holding which can only be adjudicated in a properly framed title suit. However, a person who is in possession of a holding is liable to pay holding tax under Section 135 (2) of the Act, 2007 while adjudication of title can simultaneously be decided in a title suit without affecting the right of any of the parties to the title suit in any manner whatsoever.



Moreover, the petitioner has claimed that she has possessory rights which can not be defeated without giving proper opportunity to be heard.

17. Order dated 06.04.2018 passed in Mutation Case No.685 of 2013-14 (Annexure ‘3’) is hereby set aside and quashed. The respective parties, if so advised, may avail remedy in accordance with law, in that case the authority concerned is required to proceed to pass an order in accordance with law and discussions made herein above after giving reasonable opportunity to all the concerned parties.

18. With the above observation/direction, the present writ petition stands disposed of.

(Purnendu Singh, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	20.12.2023
Transmission Date	NA

