

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2843 of 1998

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Biswanath Sao, S/o Late Jagdeo Sao, Village - Khanijadpur, P.O. Jamala Bad
(Daudchapra) P.S. - Minapur, Muzaffarpur.

... .. Petitioner/s

Versus

1. State of Bihar
2. D.M. Muzaffarpur At/P.S. and Distt. Muzaffarpur.
3. A.D.M. Muzaffarpur At/P.S. and Distt. Muzaffarpur.
4. D.C.L.R. At/P.S. and Distt. Muzaffarpur.
5. Anchal Adhikari, Muzaffarpur At/P.O. Minapur, Distt. Muzaffarpur.
6. Baidnath Sah, S/o Late Jagdeo Sah Village - Khanjadpur, P.O. Jamalabad
P.S. Minapur, Distt .- Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajesh Kumar, <i>Amicus Curiae</i>
For the State	:	Mr. Prabhakar Jha, GP-27
		Mr. Umesh Narain Dubey, AC to GP-27
For the Respondent No.6:		Mr. Gaurav Kumar, <i>Amicus Curiae</i>

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

CAV JUDGMENT

Date : 16th-08-2023

In pursuance to the order dated 03.07.2023 passed by this Court, Mr. Rajesh Kumar, Advocate, and Mr. Gaurav Kumar, Advocate are appearing as *Amicus Curiae* on behalf of the petitioner and the private respondent respectively whereas Mr. Prabhakar Jha, learned GP -27, assisted by Mr. Umesh Narain Dubey, learned AC to GP-27 is appearing on behalf of the State-respondents.

2. The present writ petition has been filed for setting



aside the orders dated 29.12.1997 (Annexure-1), 02.05.1997 (Annexure-2), and 01.11.1993 (Annexure-3) passed by respondent No.3, namely, the Additional Collector, Muzaffarpur, respondent No.4, namely, the Deputy Collector Land Reforms, Muzaffarpur and respondent No. 5, namely, the Circle Officer, Minapur respectively in connection with Mutation Revision Case No. 13 of 1997-98, Mutation Appeal No. 29 of 29/96-97 and Mutation Case No. 347 of 93-94 respectively.

3. Learned *Amicus Curiae* for the petitioner submits that the petitioner has sold his land appertaining to Khata Nos. 367 & 176, Plot Nos. 413 and 178 total area 2 katha to private respondent No.6, namely, Baidnath Sah through registered sale deed No. 11154 dated 05.06.1989. He further submits that upon registration of the sale deed, respondent No. 6 did not pay the consideration amount to the petitioner and, therefore, the petitioner has executed another deed dated 23.06.1989 by which he has cancelled the earlier sale deed dated 05.06.1989. As a result of which, private respondent No.6 could not acquire title in his favour but filed Mutation Case No. 347/1993-94 for the land appertaining to Khata No. 367, Plot No. 134 situated at Village -Khanejadpur in which final order has been passed on 01.11.1993 and on the basis of the said sale deed No.11154



dated 05.06.1989 mutation was allowed in favour of the private respondent and subsequently, Jamabandi was opened in his name.

4. Being aggrieved and dissatisfied with the order dated 01.11.1993, the petitioner has preferred Mutation Appeal No. 29/1996-97. In the said mutation appeal, the final order had been passed on 02.05.1997 which was dismissed after hearing both the parties holding that the purchased land through registered sale deed No. 11154 dated 05.06.1989 is still valid, till not cancelled by the Court of competent jurisdiction. In the said appeal, the petitioner has pleaded that the mutation case has been decided without any information to the petitioner. Therefore, it should be dismissed. Whereas, respondent No.6 had taken the plea that prior to registration, he has already paid the entire consideration amount. Respondent No.6 had also pleaded that in the registered sale deed, there is no such entry mentioned that money has not been paid. It has also been pleaded at the appellate level that the petitioner is in possession of the land after purchase and it can be cancelled only by the Court of competent jurisdiction.

5. The Appellate Court upon hearing both the parties has affirmed the order passed by the Circle Officer in Mutation



Case No. 347/19993-94. The appellate Court also held that the registered deed shall be a valid document until not cancelled by a Court of competent jurisdiction. Being aggrieved and dissatisfied with the said order, the petitioner had preferred mutation revision on which the final order has been passed by the Additional Collector affirming the order passed by the original Court (Circle Officer, Minapur) and appellate Court (Deputy Collector Land Reforms, Muzaffarpur).

5. Learned *Amicus Curiae* for the petitioner has raised one legal issue in this case that the said order of mutation has been passed by the Additional Collector whereas according to the then law passing an order in revision under Section 16 of the Bihar Tenants' Holdings (Maintenance of Records) Act 1973 (hereinafter referred to as 'the Act of 1973'), the Collector of the District has been empowered to pass an order under Section 16. He further submits that here in the present case, the said order was passed by the Additional Collector and, therefore, the order passed by the revisional authority is bad in law and should be set aside.

6. Learned *Amicus Curiae* for the private respondent No.6 submits that the original as well as the appellate both orders had been passed by the Court of competent jurisdiction as



per the then law and the revisional order has been passed by the Additional Collector, Muzaffarpur. He further submits that as per the then law, order of revision under Section 16 of the Act of 1973 has to be passed by the Collector of the District, but the petitioner has preferred the writ petition in the year 1998 which was admitted in the year 1999 and presently final hearing, in this matter, is going on in the year 2023. He further submits that during the pendency of the present writ petition, the then mutation law, namely, Bihar Tenants' Holdings (Maintenance of Records) Act 1973 has been repealed by The Bihar Land Mutation Act, 2011 (Act 23 of 2011) (hereinafter referred to as 'the Act of 2011'). He further submits that in the new Act of 2011, there is a repealing and saving clause inserted, being section 23. According to which, anything done or any action taken in exercise of the powers conferred by or under the said Act shall be deemed to have been done or taken in exercise of the power conferred by or under this Act as if this Act were in force on the day on which such thing or action was done or taken.

6.1. He further submits that under the new law, i.e. the Act of 2011, the power to hear the revision has been vested under Section 8(1) in the Collector/Additional Collector of the



District under the Act. Therefore, the order passed by revisional authority is valid and fit to be sustained. He also submits that there is a consistent finding of the fact that the mutation has been made on the basis of a valid sale deed.

7. Learned counsel for the State submits that there are concurrent findings of all three courts; the original Court, the appellate Court, and the revisional court in favour of the private respondent. Therefore, the writ petitioner may be entertained in this case only on the question of law and not on the facts. To decide this case, the issue involved is; whether the revisional order which has been passed under Section 16 of the Act of 1973 shall be treated as valid in light of the Act of 2011 or not ?

7.1. With a view to answering the above question, it is necessary to quote three provisions, Section 16 of the Act of 1973, Sections 8(1) and 23 of the Act of 2011, which are as follows :-

“16. Revision- The Collector of the district may, on an application made to him in this behalf or for the purpose of satisfying himself as to the legality or propriety of any order made under this Act or the rules made thereunder by any authority or officer call for and examine the record



of any case pending before or disposed of by such authority or officer and pass such order as he thinks fit.

Provided that the Collector shall not entertain any application from any person, aggrieved by any order, unless it is made within thirty days from the date of the order;

Provided further that no order modifying, altering, or setting aside, any order made by such authority or officer shall be passed by the Collector unless the parties concerned have been given a reasonable opportunity of being heard.”

8. Revision.— (1) The Collector/ Additional Collector of the district under this Act may, on an application made to him on this behalf or for the purpose of satisfying himself as to the legality or propriety of any order made under this Act or the rules made thereunder by any officer or authority, call for and examine the records of any case pending before or disposed of by such officer or authority and pass such order as he deems fit.

23. Repeal and Savings.—(1) The Bihar Tenants Holdings (Maintenance of Records) Act, 1973 (Bihar Act 28 of 1975) is hereby repealed. (2) Notwithstanding such repeal anything done or any action taken in exercise of the powers conferred by or under the said Act shall be deemed to have been



done or taken in exercise of power conferred by or under this Act, as if this Act were in force on the day on which such thing or action were done or taken.”

8. From the bare reading of section 23(2) of the Act of 2011, it is clear that any action taken in exercise of the powers conferred by or under the said Act (Act of 1973) shall be deemed to have been done or taken in exercise of the power conferred by or under this Act (Act of 2011) as if this Act (Act of 2011) were in force on the day on which such thing or action was done or taken.

8.1. The implied meaning of these provisions is that the order which was passed by the Additional Collector in the year 1997 shall be treated to be passed under the Act of 2011 whereas Section 8(1) of the Act of 2011 empowers the Collector/Additional Collector to pass the order of revision and hence due to protection made by the saving clause 23 of the Act of 2011, the order passed by the Additional Collector in Mutation Revision Case No. 13 of 1997-98 dated 29.12.1997 shall be treated to be a valid order and revisional order is fit to be sustained. So far as the question of the validity of the sale deed is concerned, the term sale has been defined in Section 54 of The Transfer of Property Act 1882, i.e. “Sale” is a transfer of



ownership in exchange for a price paid or promised or part-paid and part-promised.

9. In this background, the sale deed cannot be said to be a forged and fabricated document and it shall be cancelled only by a Court of competent jurisdiction, i.e. Civil Court. Hence, this Court held that this writ petition has no merit and, accordingly, it is dismissed.

10. This Court appreciates the assistance rendered by both the *Amicus Curiae* in the disposal of this case. Learned *Amicus Curiae* shall be entitled to remuneration by the Patna High Court Legal Services Committee as per norms.

(Dr. Anshuman, J)

Ashwini/-

AFR/NAFR	
CAV DATE	08.08.2023
Uploading Date	16.08.2023
Transmission Date	NA

