

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10430 of 2019

Prabhat Kumar, S/o Suryadev Singh, Proprietor of M/S Civelec Services, C/o Anand Steemet India Pvt. Ltd, having its registered Office at Patliputra Patna, Resident of Sudha Sadan, West Gandhi Murti, Dujra, P.s. Budha Colony District Patna-800001.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary.
2. The Principal Secretary, Department of Revenue and Land Reforms, Government of Bihar.
3. The District Magistrate, Nalanda.
4. The Director, Land Records and Survey, Government of Bihar.
5. The Circle Officer, Silao, Nalanda.
6. The Bihar State Credit and Investment Corporation Limited.
7. The Director, Bihar State Credit and Investment Corporation Limited. 4th Floor, Indra Bhawan, Ram Charitra Singh Path, Near Hartali More, Bailey Road, Patna-800001.
8. The Managing Director, Bihar State Credit and Investment Corporation Ltd. 4th Floor

... .. Respondents

Appearance :

For the Petitioner	:	Mr. Y.V. Giri, Sr. Advocate Mr. Rajeev Kumar Singh, Advocate Ms. Deepika Sharma, Advocate Mr. Rajat Tiwari, Advocate
For the State	:	Mr. Subash Chandra Yadav (GP-15)
For the BICICO	:	Mr. Kumar Ravish, Advocate

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT
Date : 08-12-2023

The present application has been filed for quashing the order dated 26.09.2018 passed by the District Magistrate, Nalanda, in Miscellaneous (Raiyatikaran) Case No.03 of 2018.

2. The facts of this case are that the Bihar State Credit and Investment Corporation Limited (for short



“BICICO”) issued sale notice dated 16.06.2011 and invited all the interested persons/firms/companies for purchasing the assets of the companies including the assets of M/S Kiran Re-Rollers Private Limited on the ground that the promoters/directors of the companies have defaulted in repayment of their loans. While quoting the minimum reserved price of the property, in question, it has specifically been mentioned that the land is free hold land. In pursuance of the aforesaid sale notice dated 16.06.2011, the petitioner submitted his bid to purchase the assets of M/S Kiran Re-Rollers Private Limited (hereinafter to be referred to as “Company”). The offer of the petitioner to purchase the assets of the Company was Rs.3,31,51,000/-. Thereafter, the petitioner paid the entire amount as per the terms and conditions of the sale notice. However, the Company challenged the action of the BICICO in taking over the assets of the company by way of filing a writ petition bearing C.W.J.C. No.9994 of 2011 before this Court. This Court vide order dated 30.06.2011 dismissed the said writ petition. Against the order dated 30.06.2011 passed in C.W.J.C. No. 9994 of 2011, the petitioner preferred L.P.A. No. 1244 of 2011, which was also dismissed vide order dated 06.03.2012.

3. In the year 2015, the petitioner filed a writ



petition vide C.W.J.C. No.2930 of 2015 seeking a direction to the BICICO to execute and register the sale deed of the assets of the Company, which has been bought by him in auction sale. This Court vide order dated 10.01.2017 disposed of the writ petition with a direction to the BICICO to execute and register the sale deed for the premises in question within three weeks from the date of receipt of a copy of the order. In light of the order dated 10.01.2017, deed of sale was executed between the petitioner and the BICICO. In page no.11 of the sale deed, it has been mentioned that *“in case the vendee shall be deprived of the possession of the said property or part thereof by virtue of any act of the vendor or by his heirs or by any persons claiming the title thereto, the vendor and his estate shall be bound to compensate the vendee for such loss or damages arising out from such act and shall be liable to refund the compensation amount with cost and interest from the date of accrual of such loss”*. After the sale deed, the petitioner moved for mutation entry in respect of the land in question before the Circle Officer, Silao, who mutated only 0.18 acres of land in favour of the petitioner out of 1.41 acres of land, as according to the Circle Officer, out of total 1.41 acres of land, 1.23 acres of land is “Gairmajarua Malik” land. Against the order of the Circle



Officer, the petitioner moved before the District Magistrate, Nalanda with regard to mutation of remaining land. However, the District Magistrate, vide impugned order dated 26.09.2018 rejected the claim of the petitioner and affirmed the order of the Circle Officer. Hence, this writ petition.

4. Learned senior counsel for the petitioner submits that the impugned orders declaring 1.23 acres of land as “Gairmajarua Malik” is illegal as the Company had obtained the entire land i.e. 1.41 acres of land vide seven registered sale deeds which have been executed by seven individuals and subsequently, in order to avail the loan from BICICO, the Company had executed the loan agreement with BICICO and BICICO had sanctioned a term loan of Rs.90,00,000/- in favour of the Company. Thereafter, the Company availed the said loan by submitted the said registered sale deeds and other documents. He further submits that the Company did not repay the loan amount from the very beginning and in this regard notices for repayment of dues have been sent to the Company and when the Company failed to make repayment of the dues of the principal amount with interest, the BICICO took over the possession and auction sold the entire immovable/moveable assets of the Company and in auction sale, the petitioner had purchased the



assets of the Company and thereafter, the assets of the Company including the land in question was transferred to the petitioner.

5. Learned senior counsel for the petitioner further submits that it is a clear case of malafide on the part of the respondent authorities as they have never mentioned or raised issue with regard to the nature of land that it is a “Gairmajarua Malik” land before the petitioner paid the whole consideration amount and only after taking the amount they are creating dispute only with a view to harass the petitioner. He further submits that in whole transaction, the State is involved and now its officials are raising the issue that the nature of the land is “Gairmajarua land”, which is not permissible.

6. By making the aforesaid submissions, learned senior counsel for the petitioner submits the action of the respondent authorities is arbitrary, malafide and illegal and it is a clear case of non-application of mind.

7. In this case, the State as well as the BICICO have also filed their counter affidavits and have clarified their stand. The BICICO has no say in the mutation as it had auctioned the land in question after it was mortgaged with the BICICO for non-payment of loan amount. The stand of the State is that the land in question belongs to the State as it being a part



of “Gairmajarua Malik” land.

8. I have considered the submissions of the parties. From the facts stated above and argued by the petitioner, it appears that M/S Kiran Re-Rollers Private Limited had purchased the land in question through seven sale deeds for the total area of 1.41 acres of land on 04.02.1988. Thereafter, the Company availed loan by mortgaging the registered sale deeds of aforesaid lands as well as moveable and immovable assets of the Company in favour of the BICICO for securing a loan. BICICO took over the properties of the Company and in an auction sale, the petitioner had purchased the entire properties of the Company. So, it is an admitted position that at no point of time, the District authorities raised any objection with regard to the title of the land in question i.e. from the year 1988. Moreover, the sale deeds were executed in favour of the Company. The name of the Company i.e. M/S Kiran Re-Rollers Private Limited has been mentioned in Register-II pertaining to an area of 1.41 acres of land, which goes to show that the land in question has been mutated in the name of erstwhile Company i.e. Kiran Re-Rollers Private Limited and the impugned order has been passed without considering the transfers in favour of the Company and entry in Register-II. Further, the transactions



has never been objected by the State authorities at any point of time. Once the land is recorded in the name of the Company in Register-II, now the State cannot say that it is the land belonging to the State and therefore, the same cannot be mutated. Moreover, this kind of stand of the State cannot be appreciated when the land has been auction sold in favour of the petitioner by the BICICO, which is a Government organization.

9. For the reasons discussed above, this writ petition is allowed. Accordingly, the impugned order dated 26.09.2018 passed by the District Magistrate, Nalanda, in Miscellaneous (Raiyatikaran) Case No.03 of 2018 is hereby quashed with a direction to the respondent authorities to proceed for mutation for remaining land in question in the name of the petitioner.

(Sandeep Kumar, J)

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AFR/NAFR	N.A.F.R.
CAV DATE	N/A
Uploading Date	08.12.2023
Transmission Date	

