

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.501 of 2021

In
Civil Writ Jurisdiction Case No.17683 of 2019

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1. Islam Mian @ Islam Khalifa Son of Late Baladin Darjee @ Baladin Khalifa, Resident of Village and P.O.- Kauriram, P.S.- Mohania, Dist. - Kaimur.
 2. Salim Mian @ Salim Son of Late Baladin Darjee @ Baladin Khalifa, Resident of Village and P.O.- Kauriram, P.S.- Mohania, Dist. - Kaimur.
 3. Mohd Wasim Akhtar Son of Late Kaleem Mian, Resident of Village and P.O.- Kauriram, P.S.- Mohania, Dist. - Kaimur.
 4. Mohd. Naim Alam Son of late Kaleem Mian, Resident of Village and P.O.- Kauriram, P.S.- Mohania, Dist. - Kaimur.
 5. Amana Bibi W/o Latee Munshi Miyan, Resident of Village and P.O.- Kauriram, P.S.- Mohania, Dist. - Kaimur.
 6. Mumtaj Khalifa S/o Late Idrish Miyan, Resident of Village and P.O.- Kauriram, P.S.- Mohania, Dist. - Kaimur.

... .. Appellant/s

Versus

1. The State of Bihar, through the Principal Secretary, Deptt. of Revenue and Land Reforms, Patna.
2. The Additional Collector, Kaimur at Bhabhua.
3. The Deputy Collector Land Reforms, Mohania, P.S. Mohania, Dist. Kaimur (Bhabhua)
4. The Circle Officer, Mohania, Dist. Kaimur.
5. Ram Bahadur Singh Son of Late Ram Murat Singh, R/o village Barej, P.O. Kauriram, P.S. Mohania, Dist. Kaimur at Bhabhua.
6. Jang Bahadur Singh Son of Late Ram Murat Singh, R/o village Barej, P.O. Kauriram, P.S. Mohania, Dist. Kaimur at Bhabhua
7. Shiv Dular Singh Son of Late Ram Murat Singh, R/o village Barej, P.O. Kauriram, P.S. Mohania, Dist. Kaimur at Bhabhua



8. Chandrama Singh Son of Late Ram Murat Singh, R/o village Barej, P.O. Kauriram, P.S. Mohania, Dist. Kaimur at Bhabhua
9. Dhanwat Kumar S/o Late Dinanath Singh, R/o Village Ekhlaspore, P.O. and P.S. Bhabhua, Dist. Kaimru at Bhabhua.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Mahesh Prasad, Advocate
For the Resp. Nos. 5 to 8:		Mr. Parth Gaurav, Advocate
		Mr. Anshu Raj Singh, Advocate
		Mr. Ashutosh Pr. Pandey, Advocate
		Mr. Praveer, Advocate
		Ms. Shilpa, Advocate
For the State	:	Asif Kalim, AC to AAG 12

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR PANDEY

and

HONOURABLE MR. JUSTICE NAWNEET KUMAR

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAWNEET KUMAR PANDEY)

Date : 25-01-2023

This Letters Patent Appeal has been filed by the appellants being aggrieved and dissatisfied by the order dated 29.08.2019 passed by the learned Single Judge in C.W.J.C. No. 17683 of 2019, whereby the learned Single Judge has dismissed the writ petition filed by the appellants and upheld the order of the learned Member (Judicial), Bihar Land Tribunal in B.L.T. Case No. 21 of 2018, whereby he affirmed the order dated 29.09.2017,



passed by the Additional Collector, Kaimur in Mutation Revision Case No. 36 of 2014-15 and the order dated 25.04.2015 passed by the D.C.L.R, Mohania in Mutation Appeal No. 105 of 2014-15, whereby the names of respondent nos. 5 to 8 were ordered to be mutated.

The brief fact of this case is that the appellants claim their rights of occupancy tenancy being *Bataidar* of ancestors of vendors of respondent nos. 5 to 8, whereas respondent nos. 5 to 8 had got their names mutated over the land in dispute on the basis of sale deed from the lineal descendants of the recorded *Raiyat*. The matter has travelled thrice to this Court, but the up-to-date position is that the *Bataidari* rights of the appellants has not been adjudicated upon and is still sub-judice before the Bihar Land Tribunal in B.L.T. Case No. 155/2021 (still pending).

It is an admitted fact that the disputed lands are ancestral lands of vendors of respondent nos. 5 to 8.

In the year 1948-1949, the names of Baladin



Darji and others (ancestors of appellants) were entered as *Sikmidar* during revisional survey showing them to be settlees from the original *Raiyat*. A proceeding under Section 145 of the Cr.PC. was initiated, in which, the ancestors of the vendor of respondent nos. 5 to 8 appeared and contested. That matter was referred to Civil Court as Miscellaneous Case No. 119 (M) of 1966. The Additional Munsif heard and decided that case and held the possession of ancestors of vendor of respondent nos. 5 to 8, vide order dated 27.09.1967. The ancestors of the appellants filed Criminal Revision No. 418 of 1968 before the Sessions Judge, Sasaram, challenging the order of the Munsif in Miscellaneous Case No. 119 (M) of 1966. That Criminal Revision No. 418 of 1968 was dismissed.

After *Jamindari* abolition, the ex-landlord submitted return in favour of Paudhari Kuer, mother of vendor of respondent nos. 5 to 8. As the *Sikmidar* entry was existing in the name of ancestors of the appellants,



the ancestors of the vendor filed Title Suit No. 636 of 1970 in Civil Court under Section 109 of B.T. Act for correction of wrong revisional survey entry standing in the name of appellants' ancestors claiming it to be baseless. During pendency of that title suit, Section 109 of B.T. Act was struck down by this Court, consequently, Title Suit No. 636 of 1970 was dismissed. After death of Paudhari Kuer, her son Dinanath Singh filed Mutation Case No. 645/1974-75, which was allowed. Meanwhile consolidation proceeding started in the area. In consolidation proceedings, the register of lands was prepared in the name of ancestors of the appellants. Against which, Dinanath Singh filed objection. That objection was rejected by the Consolidation Officer, vide order dated 18.10.1986. Against that order, vendor of respondent nos. 5 to 8 filed Consolidation Appeal No. 290/1987-88. That appeal was allowed, vide order dated 16.08.1988, and the order of Consolidation Officer was set aside. The ancestors of the appellants preferred



Consolidation Revision No. 2377 of 1988 against the order of the Consolidation Appellate Authority, and that revision was dismissed, vide order dated 06.09.1993. Ancestors of the appellants filed C.W.J.C. No. 9579/1993 before this Court against the order of the revisional authority, which was dismissed on 06.07.1995. Thereafter, ancestors of the appellants filed Case No. 3M of 1994 before the Circle Officer under Section 48 (D) of the B.T. Act for declaration of their *Raiyati* rights on the basis of prescription of occupancy under *Raiyat* rights. The Circle Officer allowed that case, vide order dated 29.11.1994, against which, Bataidari Appeal No. 305/1995-96 was filed by the vendors of respondent Nos. 5 to 8, and in the meantime, respondent Nos. 5 to 8 had purchased that land through the sale deed. Bataidari Appeal No. 305/1995-96 was dismissed, vide order dated 07.05.1996. The vendors preferred civil writ as C.W.J.C. No. 11014 of 1996, which was allowed, vide order dated 28.07.1998. While allowing C.W.J.C. No.



11014 of 1996, this Court observed that for determining the rights of parties in terms of Section 48 (D) of the B.T. Act, the concerned authorities should first get the right of the parties determined under Section 48 (E) of the B.T. Act, i.e., the status of the *Bataidar* being under *raiyat* has to be tested first and only thereafter, any proceeding under Section 48 (D) of the B.T. Act would proceed. But despite the specific observation by this Court in C.W.J.C. No. 11014 of 1996, again Circle Officer, Mohania allowed the prayer of appellants herein under Section 48 (D) of B.T. Act. Contrary to the direction in that writ petition, then against the order of Circle Officer, respondent nos. 5 to 8 filed C.W.J.C. No. 241 of 1999 before this Court. That civil writ was allowed and the matter was remanded back to the Circle Officer, Mohania to proceed in accordance with the direction issued in C.W.J.C. No. 11014 of 1996. On remand, a Board was constituted by the Circle Officer, Mohania. The Board submitted its report under Section



48 (E) of the B.T. Act holding the possession of respondent nos. 5 to 8 over the disputed land and the claim of appellants under Section 48 (E) of the B.T. Act was rejected vide order dated 08.07.2003. Against that order, the appellants filed Bataidari Appeal No. 01/2003-04 before the S.D.O., Mohania, which was allowed. Being aggrieved and dissatisfied with the order of S.D.O., Mohania, respondent nos. 5 to 8 preferred again civil writ as C.W.J.C. No. 4174 of 2004 before this Court. That civil writ was allowed, vide order dated 22.08.2013 and the order of S.D.O., Mohania was set-aside, holding the order of S.D.O. without jurisdiction and the appellants herein were granted liberty to approach the appropriate authority for redressal of their grievance then the appellants herein filed Bataidari Appeal No. 1/2013-14 before the Collector-cum-District Magistrate, Kaimur challenging the order dated 08.07.2003 passed by the Circle Officer in Bataidari Case No. 3M/1994. That Bataidari Appeal No.1/2013-14



was dismissed by the Collector-cum-District Magistrate, Kaimur, vide order dated 26.02.2019, as discussed above, the appellants have preferred B.L.T. Case No.155/2021, which is still pending.

In the meantime, on the basis of order dated 22.08.2013 passed in favour of respondent nos. 5 to 8 in C.W.J.C. No. 4174 of 2004, they applied for mutation, but their mutation application was rejected, vide order dated 12.06.2014, in Mutation Case No. 426/2014-15, by the Circle Officer. They preferred an appeal before the D.C.L.R. as Appeal No. 105/2014-15, which was allowed as discussed above. The revision against that as well as C.W.J.C. No. 17683 of 2019 preferred by the appellants were dismissed by the impugned orders.

From perusal of the prolonged travel history of the case from one authority to another, it appears that the claim of the appellants of their *Raiyati* rights on the basis of their occupancy rights was rejected by the last



court, i.e., the Collector, Kaimur at Bhabhua court and their BLT Case No. 155/2021 is pending before the Bihar Land Tribunal.

Under the provisions of Bihar Land Mutation Act, 2011, if a person claims himself to be occupancy *Raiyat*, his name can only be mutated on acquiring his interest on conferment of occupancy rights on acquisition of occupancy rights as under *Raiyat* under the Bihar Tenancy Act, 1885. Sub-section 2 of section 3 of Bihar Land Mutation Act, 2011 is being extracted herein below:-

"Any person acquiring any interest in any holding or a part thereof by sale, gift, exchange, partition, whether by court or otherwise, succession interstate or testamentary, will, Land Acquired by the various departments/ Boards and Corporations of the State Government through registered deed (under conditions of perpetual lease), settlement/transfer/assignment of public land by Competent Authority, grant of land



by the Bhoodan Yagna Samiti,
conferment of tenancy rights under
the Bihar Privileged Persons' Homestead
Tenancy Act, 1947, acquisition of
occupancy rights as under raiyat-under
the Bihar Tenancy Act, 1885,
restoration of holding or part thereof to a
former raiyat under the land Acquisition
Act, 1894, Restoration of holding or part
thereof to a former raiyat under the Land
Acquisition Act, 1894, The Right to Fair
Compensation and Transparency in Land
Acquisition, Rehabilitation and
Resettlement Act, 2013 (RFCTLARR Act,
2013) The National Highways Act, 1956
and The Railways (Special) Act, 2008,
house-sites purchased under Policy for
Purchase of Raiyati land for house-siteless
Mahadalit families 2010, restoration of
holding or a part thereof to former raiyats
under the Kosi Area (Restoration of land to
Raiyat) Act, 1951, settlement of surplus
and under the Bihar Land Reforms
(Fixation of Ceiling Area and Acquisition of
Surplus Land) Act, 1961, an order/decrece



of any court or any other means/instrument of transfer notified by the Government, may file a petition in the prescribed manner for mutation of his name in respect of that holding or a part thereof in the Continuous Khatian, Tenants' Ledger Register/Jamabandi Register and Khesra Register in the office of the Circle Officer in whose jurisdiction the holding or a part thereof is situated or in a camp organized by the Circle Officer for the receipt of mutation petitions of the area."

From bare perusal of that section, it transpires that it is a *sine qua non* for making an application for mutation on the basis of acquisition of tenancy rights, that there should have been conferment of his acquisition of rights as occupancy under *Raiyat*. The acquisition of occupancy rights must have been acquired. As discussed above, the petition of conferment of that right preferred by the appellants is still sub-judice in B.L.T. Case No. 155 of 2021, as they had lost their case



from the court of Addl. Collector.

The learned counsel for the appellants has submitted that it has wrongly been held by the learned Single Judge that the appellants were not in possession over the disputed land. As their names are still recorded as *Sikmidar* in revisional records of right, which shows that they are in possession over the disputed land.

The submission of the learned counsel for the appellants does not find favour of our views. Though, the names of the ancestors of the appellants are existing in revisional survey records, but that entry was challenged by the vendors of respondents nos. 5 to 8 in consolidation operation and the names of the vendors of respondent nos. 5 to 8 were entered during consolidation proceedings, as discussed above. When the Circle Officer, Mohania proceeded with the direction issued in C.W.J.C. No. 11014 of 1996, he constituted a Board and as per report of the Board, respondent nos. 5 to 8 were found in possession of the land in dispute. They are



the vendees of the recorded *Raiyats* and their possession has been found by the Mutation Authority upto Bihar Land Tribunal in B.L.T. Case No. 21 of 2018, which was affirmed by the learned Single Judge by the impugned order.

The learned counsel for the appellants has submitted further that the land in question has already been declared as surplus land under Bihar Land Reforms [Fixation of Ceiling Area and Acquisition of Surplus Land] (Amendment) Act, 1972 on 06.04.1983 and this fact was also considered by the learned S.D.O., Mohaniya in Bataidari Appeal No. 1/2003-04 and he allowed the appeal filed by the appellants vide order dated 16.02.2004, as such, no title can be passed to respondent nos. 5 to 8, as they are purchaser of the land, which has already been declared as surplus land.

We are not in agreement with the submission of the learned counsel for the reasons that the above-mentioned order of the S.D.O. was set aside by this



Court in C.W.J.C. No. 4174 of 2004 and as per the direction of this Court in C.W.J.C. No. 4174 of 2004, the appellants filed Bataidari Appeal No. 1/2013-14 before the Collector-cum-District Magistrate, Kaimur which was also dismissed and their BLT Case No. 155 of 2021 against the order of the Collector is still pending. Needless to say that they may raise this point at the appropriate forum where the matter is pending for final adjudication.

The learned counsel for the appellants has also submitted that the order dated 28.07.1998 passed in C.W.J.C. No. 11014/1996 of this Court was cited as precedent in another Bench and was held as not a good law, as such, the Courts cannot proceed on the basis of that order.

We are not convinced with the submission of the learned counsel for the appellants. The order passed in C.W.J.C. No. 11014/1996 has attained finality, as the appellants did not challenge it before the superior



authority/court. If it is cited as precedent in some other case and it is held as not a good law, is not the reason for disobeying that order, as it is binding between the parties of the litigation. Moreover much water has flown since passing of the order dated 28.07.1998 in C.W.J.C. No. 11014/1996 and after travelling from the three authorities in hierarchy, the petition under Section 48 (E) of the B.T. Act filed by the appellants is still pending for adjudication in B.L.T. Case No. 155/2021 against the order of the Collector. Needless to say that the appellants may raise their points before the authority/court where their matter for title is still pending for adjudication.

The respondent nos. 5 to 8 have purchased the land from the lineal descendants of the recorded *Raiyats* and on this ground their names have been mutated in the revenue records.

On the basis of above-mentioned observation, we do not find any cogent reason to interfere with the



order of the learned Single Judge.

The appeal is dismissed, but without costs.

(Nawneet Kumar Pandey, J)

(Ashutosh Kumar, J)

Mahesh/Kundan

AFR/NAFR	NAFR
CAV DATE	08.12.2022
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