

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5404 of 2015

1. Upendra Prasad Singh, Son of Late Adha Prasad Singh, Resident of village - Bhelura Rampur, Police Station - Janipur, District - Patna.
2. Mohan Kumar, Son of Late Bijendra Prasad Singh, Resident of village - Bhelura Rampur, Police Station - Janipur, District - Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Revenue and Land Reforms Department, Govt. of Bihar, New Secretariat, Patna.
2. The Bihar Land Tribunal, Patna.
3. The Additional Collector, Patna.
4. The Deputy Collector Land Reforms, Patna Sadar, Patna.
5. The Circle Officer, Phulwarisharif, Patna.
6. Rajendra Prasad Singh, Son of Late Adha Prasad Singh. At present residing at 65 Shivalik Puram, G.M.S. Road, Dehradun, District - Dehradun (Uttarakhand).
7. Raj Kumar, S/o Baijnath Prasad Singh R/o Village- Shahjahanpur, P.O.- Benibigha, P.S.- Bikram, District- Patna (Bihar).
8. Indrawati Devi, W/o Nityanand Sharma R/o Vill.- Neuri, P.O.- Neura, P.S.- Bihta, Dist.- Patna (Bihar).
9. Ramji Singh, S/o Iqbali Singh R/o Vill.- Neuri, P.O.- Neura, Neuri, P.S.- Bihta, District- Patna (Bihar).
10. Kavita Kumari, W/o Surjeet Kumar R/o Vill.- Neuri, P.O.- Neura, P.S.- Bihta, District- Patna (Bihar).
11. Mukul Kumar, S/o Paras Nath Sharma R/o - Neuri, (Neori), P.O.- Neura, P.S.- Bihta, District- Patna (Bihar).
12. Sanjay Kumar, S/o Suresh Singh R/o - Neuri, P.O.- Neura, P.S.- Bihta, District- Patna (Bihar).
13. Alka Kumari, W/o Pawan Kumar R/o 75 Upherpura, P.O.- Phulwari, P.S.- Phulwarisarif, District- Patna (Bihar).

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Sanjay Kumar Verma, Advocate
For the State	:	Mr. Manoj Kumar Ambastha, SC-26
For the Intervenor	:	Mr. Shiw Kumar Prabhakar, Advocate

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN



ORAL JUDGMENT

Date : 31-08-2023

Heard learned counsel for the petitioners, learned counsel for the State and learned counsel for the intervenor.

2. The present writ petition has been filed for quashing of the order dated 12.02.2015 passed by the Chairman, Bihar Land Tribunal, Patna in connection with B.L.T. Case No. 459 of 2014 whereby the Bihar Land Tribunal had declined to interfere with the order dated 21.05.2014 passed by the Additional Collector, Patna in Mutation Revision Case No. 96/2013-14 in confirming the order dated 12.11.2013 passed by the Deputy Collector Land Reforms, Patna in Mutation Appeal Case No. 41/12-13 who set aside the order passed by the Circle Officer, Phulwarisharif in ordering for mutation in favour of the petitioners.

3. Learned counsel for the petitioners submits that the order passed by the Bihar Land Tribunal has been passed in violation of Rule 11(3) and 12(3) of the Bihar Land Mutation Rules, 2012 (amended Rules 2017). He further submits that the order of Mutation Case No. 02/2012-13 was allowed in favour of the petitioners vide order dated 11.05.2012 and being aggrieved with the said order, respondent No.6 had preferred Miscellaneous Appeal No. 41/2012-13 against the enquiry



report dated 16.04.2012, but ignoring this aspect that order dated 11.05.2012 has not been challenged, the appellate Court has set aside the order of mutation dated 11.05.2012 passed in Mutation Case No. 02 of 2012-13. The petitioner preferred Mutation Revision Case No. 96 of 2012-13 raising all the grievances but it was also rejected. Subsequently, the petitioner approached the Bihar Land Tribunal bearing by filing BLT Case No. 459/2014, but the said case had also been rejected by the Bihar Land Tribunal.

4. The contention of the petitioners is that the basis of the order passed in Mutation Case No. 02/2012-13 is the deed of memorandum dated 23.09.2000 executed by respondent No.5 in favour of the petitioners by which respondent No.5 had relinquished the entire right in the house property in lieu of payment of Rupees Six Lacs. He further submits that at the time of deciding the mutation appeal, the appellate authority had violated Rule 11(3) of the Bihar Land Mutation Rule, 2012 whereas the revisional Court had violated Rule 12(3) of Bihar Land Mutation Rule, 2012. According to which the appellate Court as well as the revisional Court shall have to call for the case record which they have not made.

5. Learned Sr. Counsel for private respondent no.6



submits that it is a unique case where one brother is trying to grab the property of another brother. He further submits that petitioner no.1 and respondent no.6 of the writ petition are full brothers and on the basis of settlement written on a non-judicial stamp paper which is non-registered document, petitioners had taken steps to mutate the entire property of the share of respondent no.6. He further submits that from the record of mutation case, it is clear that no notice of mutation case have ever been served upon respondent no.6 and behind his back the said order has been passed.

5.1 He also submits that upon getting information, the respondent no.6 preferred Mutation Appeal No.41/2012-13 challenging the mutation in favour of the petitioners which was decided in his favour and subsequently, the petitioner preferred revision, i.e. Mutation Revision Case No. 96/2013-14 which has also been decided in his favour. Thereafter, the petitioners being aggrieved with the order passed in revision case, approached the Bihar Land Tribunal. The Tribunal vide order dated 12.02.2015 passed in BLT Case No. 459 of 2014 had rejected the claim of the petitioners holding that neither the provision of Rule 11(3) of Bihar Mutation Rule nor of 12(3) of Bihar Mutation Rule were violated.



6. Learned counsel submits that in the order passed by the appellate forum, it has been mentioned that Title Partition Suit No. 109 of 2012 and Title Suit No. 110 of 2012 both were filed on 09.02.2012 whereas the order in mutation case was passed on 11.05.2012. It has also been mentioned that in all the three cases, the lands are same. As such, the order passed by the Circle Officer is in gross violation of Section 6(16) of the Bihar Land Mutation Act, 2011.

7. Learned counsel also submits that the Bihar Land Tribunal has pleased to acknowledge about Section 4(3) of the Bihar Mutation Rule 2011.

8. A written argument has been filed on behalf of respondent no.6 denying the factum of deed of relinquishment dated 23.09.2002. Learned counsel for respondent No.6 submits that bare perusal of deed of relinquishment itself reflects that it is an unregistered document which has no value in the eye of law. He further submits that the order of the Circle Officer dated 11.05.2012 passed in Mutation Case No. 02/2012-13 was itself bad, illegal and unjust as admittedly two Title Suits being Title Suit No. 109/2012 and 110/2012 were pending before the Court of learned Sub-Judge-VII, Patna and as per the provision of Section 6(12) of the Bihar Mutation Act, 2011, no order on



mutation could have been passed when the suit in respect thereof was pending. He further submits that the Deputy Collector Land Reforms had rightly set aside the order dated 11.05.2012 passed by the Circle Officer in Mutation Case N. 02/2012-13 and, subsequently, the Additional Collector, Patna has also affirmed the order passed by the Deputy Collector Land Reforms vide order dated 21.05.2014 passed in Mutation Revision Case No. 96/2013-14. Thereafter, the BLT has also denied to interfere with the orders under challenge vide BLT Case No. 459 of 2014. In this background, there is no violation of Rule 13(3), 4(3) or 11(3) of the Bihar Land Mutation Rules, 2012.

9. On the basis of arguments and pleadings of the case, the legal questions involved in the present case are as :-

(i) whether the mutation on the basis of unregistered document followed by filing of mutation case in which notice was not validly served upon respondent no.6 and particularly when for the lands which are subject to the mutation case for which two title suits were pending are valid ?

(ii) What shall be the legal effect when there are concurrent findings of three courts, namely, the Deputy Collector Land Reforms (Appellate Court), Additional Collector



(Revisional Court) and the Court of Bihar Land Tribunal are against the petitioners ?

10. It transpires to this Court from the pleadings made that the basic documents on the basis of which mutation was made in favour of the petitioners is unregistered by which the right in the property has been alleged to be transferred in favour of the petitioners. In this regard Section 17 of the Indian Registration Act, 1908 is very much relevant, which states as follows :-

“17. Documents of which registration is compulsory.— (1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:—

(a) instruments of gift of immovable property;

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;



(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and

(d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent; 1

[(e) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property:] Provided that the 2 [State Government] may, by order published in the 3 [Official Gazette], exempt from the operation of this sub-section any lease executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees.”

10.1 From the bare perusal of section 17, it is crystal clear that all the documents by which right, title, and interest whether in the present or future have been made are necessary to be registered. Therefore, on this count alone, the mutation made in favour of the petitioner by the Circle Officer, Phulwarisharif, Patna in Mutation Case No.02/2012-13 is



absolutely bad in law. There was a violation of natural justice as well as due to the pendency of two title suits for the said land which was the subject matter of mutation case shall also make the order of mutation bad in law. The BLT has passed the order upon going through the records and found that there is no violation of Rules 11(3) and 12(3) of the Bihar Land Mutation Rule, 2012.

11. Hence, the consideration by the Circle Officer, Phulwarisharif to transfer the lands of the petitioners' brother in his name is absolutely illegal according to Section 3(2) of the Bihar Mutation Act, 2011 which states as follows :

“3(2) Any person acquiring any interest in any holding or a part thereof by sale, gift, exchange, partition, whether by court or otherwise, succession intestate or testamentary, will, settlement / transfer/assignment of public land by Competent Authority, grant of land by the Bhoodan Yajna 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, house-sites purchased under Policy for Purchase of Raiyati land for housesiteless 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 land under the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961, an order/decreed 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 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 that area.”

12. It is also clear by the said section that petitioners have not filed application following the principles laid down under Section 3(2) of the Bihar Mutation Act, 2011 as the document in his possession is not a registered deed. Therefore, on this ground also the mutation order passed in his favour by virtue of Mutation Case No. 02/2012-13 is bad in law.

13. It has also come to the knowledge of this Court that notice of Mutation Case No. 02/2012-13 was not served upon respondent No.6 as the report has been made on the notice that respondent No.6 does not stay in Village-Bhelura Rampur, P.S. -Janipur. This is also proof of the fact that the notice issued in Mutation Case No. 02/2012-13 was never served upon



respondent No.6 and without proper notice, the Mutation Case was allowed by the Circle Officer, Phulwarisharif in favour of the petitioners. Hence, in this view of the matter, the order passed by the Circle Officer, Phulwarisharif in Mutation Case No. 02/2012-13 is bad in law.

14. From the record, it also transpires that prior to the date of passing of the final order dated 11.05.2012, there were two title suits, Title Suit No. 109/2012 and Title Suit No. 110/2012 (both filed on 09.02.2012) containing the land which is the subject matter of the present writ petition, were pending. In the said suit, declaration of rights on the basis of an unregistered deed of relinquishment executed by respondent No.6 (which is the basis of the mutation case) was prayed for.

15. As such, the said mutation order was passed in violation of Section 6(12) of the Bihar Mutation Act, 2011, as well as this issue that whether the mutation on the basis of an unregistered document of Mutation Case No. 02/2012-13 is legally valid, has been decided against the petitioner and in favour of private respondents.

16. On the point of the second issue what shall be the legal effect of the concurrent finding of three Courts, namely, Deputy Collector Land Reforms (Appellate Court),



Additional Collector (Revisional Court), and the Bihar Land Tribunal (the Special Court framed under the Bihar Land Tribunal Act, 2010), this Court answers that on the finding of facts, there is concurrent decision against the petitioners and on the ground of legal points which has been discussed in this writ petition, this Court decides this issue also against the petitioners and in favour of respondent No.6. This Court is also of the opinion that there is no violation of Rules 11(3) and Rule 12(3) of Bihar Land Mutation Rule, 2012 as the Bihar Land Tribunal has passed the order upon going through the records of right on finding that there is no violation of rules 11(3) and 12(3) of Bihar Mutation Rule, 2012.

17. In the result, this Court finds no merit in this writ petition. Accordingly, it is dismissed.

(Dr. Anshuman, J)

Ashwini/-

AFR/NAFR	
CAV DATE	NA
Uploading Date	31.08.2023
Transmission Date	NA

