

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13770 of 2022

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Ajay Mehta Son of Late Sitaram Mehta, Resident of Village - Sikahar, P.S.
Muffasil, District - Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Revenue and Land Reforms, Govt. of Bihar, Patna.
2. The District Magistrate, Gaya.
3. The Deputy Collector, Land Reforms, Gaya Sadar, District - Gaya.
4. The Circle Officer, Manpur Circle, Manpur, District - Gaya.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Bishwa Nath Chaudhary, Advocate Mr. Mithlesh Kumar, Advocate
For the Respondent/s	:	Mr. Sajid Salim Khan, SC-25 Mr. Prabhat Kumar Dipak, Advocate Mr. Jitendra Prasad Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
Date : 17-02-2023

Heard learned counsel for the parties.

The petitioner has filed the instant application for the following relief(s):-

“That this is an application for issuance of an appropriate writ(s), order(s) or direction(s) to the Respondents specifically the Respondent no. 4 to mutate the name of the petitioner in view of the order dated 29.04.2021 passed by the Respondent no. 3 in Mutation Appeal Case No. Kamalpur 41/2020-21 in respect of Mauza- Kamalpur, Thana No. 313, Khata No. 40, Plot No. 16 & 14 and their respective areas are 1 Acres 28 decimals respectively.”



The subject matter of the instant application is the land measuring an area of 1 acre 28 decimals appertaining to Plot nos. 16 & 14, Khata no. 40, Thana no. 313 in Mauza-Kamalpur in the district of Gaya.

The case of the petitioner in brief is that inspite of the petitioner having succeeded in Mutation Appeal Case no. 41/2020-21 and order dated 29.4.2021 having been passed by the Deputy Collector, Land Reforms (DCLR), Sadar, District-Gaya, the Circle Officer, Manpur Circle, Manpur, District- Gaya is not mutating the land in question in the name of the petitioner.

Bereft of unnecessary details it may be stated that a counter affidavit has been filed on behalf of the respondent nos. 2 to 4 and personally sworn by the Circle Officer, Manpur District- Gaya. The relevant paragraph nos. 5, 14, 15, 16 and 17 of the said counter affidavit are quoted herein below:-

“5. That the writ petitioner entitled for the relief as sought in Para 1 of the writ petition. It be humbly submitted that in compliance of the order dated 29.4.2021 passed by DCLR Sadar, Gaya in Mutation Appeal No. 41/2020-21, the Circle officer, Manpur Anchal, Gaya called for a report from the Halka Karamchari, who after enquiry submitted his that as per survey Khatiyani and demand register an area of 28 dec. in plot No. 16 and 01 acre in plot No. 14 appertains to Khata No. 40 demand is running in the name of one Manwati Kuar W/O Ramlagan Singh, and



further after mutation in different names the demand has become "Zero" in the said demand. It has further been reported that in such circumstances mutation of land in compliance of order passed in Mutation Appeal No. 41/2020-21 is not possible.

14. That it is also humbly submitted that since both the demands are with respect to village Kamalpur Thana No. 313 and the other for land of village Sikhar Thana No. 312 was running in the name of Manmati kuer whose total area has been mutated in the name of various raiyats, and in both the 10 demands of Manmati Kuer the area has become "Zero". In such circumstances, the name of the petitioner could not be mutated in compliance of passed in Mutation Appeal no. 41/2020- 21 and 42/2020-21. Therefore, - 'A' aforesaid a guidelines was sought from the DCLR, Sadar, Gaya. It be submitted that the DCLR, Sadar Gaya vide litter no. 805 d 12.07.2022 directed the Circle Office manpur to ensure further action in the light of appellate order and The order passed by Hon'ble High Court, Patna and the legality of such created jamabandi.

15. That it is also submitted that the vendor of petitioner had neither any possession nor any jamabandi was running in his name. Whereas, the private respondents have got jamabandi on the basis of Regd. Sale deed which can be declared illegal only by a Competent Tribunal. It be also submitted that till date Jamabandi of the private respondents has not been verified by any competent forum.

16. That it is also submitted that so long the existing Jamabandi is running in the name of private



respondents it can only be cancelled by a forum. An order for creation of Jamabandi in the name of petitioner will amounts to a parallel Jamabandi, competent which is forbidden in law.

17. That it is also submitted that the main ingredient for deciding matter of Mutation is the factum of possession. It be submitted that the petitioner has no possession over the land. Whereas, the private respondent is in peaceful possession over the land in question.

It is also submitted that the Anchal Adhikari, Manpur, after proper enquiry submitted a detail enquiry report under Memo No. 2290 dated 18.11.2022.”

Referring to the above paragraphs as also Annexure-C to the counter affidavit, it is submitted by learned counsel appearing for the respondents-State that the land in question having been mutated in favour of Visundeo Singh vide Mutation Case no. 457/95-96 (Jamabandi no. 96/1) as also in favour of Dharmendra Kumar vide Mutation Case no. 247/09-10 (Jamabandi no. 28/2) and Dharmendra Kumar vide Mutation Case no. 1240/09-10 (Jamabandi no. 42/2), the petitioner not having made these persons as parties in the mutation proceedings before the authority concerned, the order impugned is not sustainable.

In response, it is submitted by learned counsel for the



petitioner that from perusal of the order impugned dated 29.4.2021 it would transpire that notice was issued to the Circle Officer concerned, he appeared, however, he chose not to file any written objection. No reason has been assigned in the counter affidavit as to why these details were not brought on record in the learned Court below.

Having heard learned counsel for the parties and having perused the material on record as also the details brought on record in the counter affidavit filed on behalf of the respondent-State, there remains no doubt that pursuant to fresh Mutation Case, Jamabandis have been opened in the name of Visundeo Singh, Dharmendra Kumar besides others as would be evident from Annexure-C to the counter affidavit. It is also not in dispute that these persons were not parties in the mutation proceedings before the authorities whose orders are under challenge.

In the facts of the case, the order impugned dated 29.4.2021 passed by the DCLR, Gaya Sadar, District- Gaya (respondent no. 3) in Mutation Appeal Case no. 41/2020-21 is set aside. The petitioner will file a fresh application making parties all the persons in whose name the Jamabandis have been opened as is evident from Annexure- C to the counter affidavit.



If such an application is filed before the DCLR (respondent no.3)/ appropriate authority, within a period of four weeks from today, the same shall be decided expeditiously in accordance with law.

This writ application stands disposed of.

(Partha Sarthy, J)

shiv/-

AFR/NAFR	
CAV DATE	
Uploading Date	.02.2023
Transmission Date	

