

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1097 of 2019

-
1. Om Prakash Pandey and Son of late Murlidhar Pandey Resident of Village-Gheghiya, P.S. Mohania, District- Kaimur(Bhabua).
 2. Uma Shankar Pandey Son of late Ram Janam Pandey Resident of Village-Gheghiya, P.S.Mohania, District- Kaimur(Bhabua).
 3. Sachchidanand Pandey Son of late Ram Janam Pandey Resident of Village-Gheghiya, P.S.Mohania, District- Kaimur(Bhabua).

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Member (Administrative), Bihar Land Tribunal, Patna.
3. The Collector-cum-District Magistrate, Kaimur (Bhabua).
4. The Additional Collector, Kaimur (Bhabua).
5. The Land Reforms, Deputy Collector, Mohania, Kaimur.
6. The Circle Officer, Mohania, District- Kaimur (Bhabua).
7. Saraswati Kumari, Wife of Diwakar Singh Resident of Village- Sahuka, P.S. Ramgarh, District- Kaimur (Bhabua).
8. Shashi Bhushan Pandey, Son of late Sudarshan Pandey Resident of Village-Gheghiya, P.S. Mohania, District- Kaimur(Bhabua).

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Kumar Sunil, Advocate
For the Respondent/s	:	Mr. Subash Chandra Yadav, Advocate
		Mr. Vinay Krishna Tripathy, Advocate
		Mr. Sajal Kumar Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL ORDER

6 08-05-2023 1. Heard learned counsel for the petitioners, learned counsel for the respondents-State, learned counsel for respondent no.7 and learned counsel for the respondent no.8.

2. The petitioners have filed the instant application for the following relief(s):-

“(i) For Quashing the Order dated 25.10.2018, Passed in B.L.T. Case No. 911/2016, Passed by Sri Dr. C. Ashokvardhan, the learned Member Administrative,



Bihar Land Tribunal, Patna, by which the case of these Petitioners challenging the Order dated 21.7.2016, Passed in Mutation Revision Case No. 24/2015-16, Passed by learned Collector, Kaimur (Bhabua) has been Dismissed and the order for mutation in favour of Respondent No. 7 was allowed despite bar Bar of mutation in case of pendency of Title Suit as provided under Section 6 (2) of Bihar Land Mutation Act, 2011.

(ii) For Quashing the Order dated 21.7.2016, Passed in Mutation Revision Case No. 24/2015-16, Passed by the learned Passed by the learned Collector, Kaimur (Bhabua), Whereby and where under Mutation Revision application of the Respondent No. 7 was Allowed by Setting aside the Order dated 12.3.2015, Passed in Mutation Appeal No. 37/2012-13, Passed by D.C.L.R., Mohania, Kaimur (Bhabua) and upholding the Order dated 23.1.2012, Passed in Mutation Case No. 3362/2011-12, Passed by Circle Officer, Mohania, Kaimur (Bhabua).

(iii) For Quashing the Order dated 23.1.2012, Passed in Mutation Case No. 3362/2011-12, Passed by Circle Officer, Mohania, Kaimur (Bhabua), whereby and where under Mutation of the land in question appertaining to Khata No. 62, Khesra / Plot No. 294, Area 0.21 Decimals, Situated at Mauza Gheghiya, P.S. Mohania, Thana No. 532, District - Kaimur (Bhabua) was done in favour of the Respondent No. 7, by ignoring the law.

(iv) For Restoring the old Jamabandi as it was existed prior to the passing of Order dated 23.1.2012, by Circle Officer. Kaimur, in the Joint name of Coparcener, till final decision of Title Suit No.



148/2011.

(v) For Stay of the operation of Impugned Orders dated 25.10.2018 (Annexure-1), 21.7.2016 (Annexure-2), 23.1.2012 (Annexure-3) during the pendency of this case.

(vi) Any other relief/ reliefs for which Petitioners may found entitled be given under the facts and circumstances of the case.”

3. The case of the petitioners in brief is that the land in question which is the subject matter of the instant application is an area of 0.21 acres appertaining to *Khata* no.62, Plot no.294 in *Mauja* Gheghiya in Thana no.532 in the District-Kaimur (Bhabua). The same is recorded in the joint names of the members of the joint family. No partition by metes and bounds has taken place among the family members. The names of petitioners and the respondent no.8 have been recorded jointly in Register-II and on payment of rent, rent receipt is also being granted in the joint names of the family members.

4. It is further case of the petitioners that the petitioner no.2 filed Title Suit no.148 of 2011 in the Court of learned Sub-Judge-VIII, Bhabua, Kaimur on 29.4.2011 praying therein for partition of the joint family property. Both the petitioner no.2 as also the respondent no.8 besides others are parties in the said suit wherein the land in question in the instant writ application



is also the subject matter of the suit.

5. Learned counsel for the petitioners submits that by filing an application on 25.3.2011, the respondent no.8 made an attempt to illegally get his name entered, to the exclusion of all others, in Register-II. On a petition/objection being filed by the petitioner no.2, the Circle Officer vide his order dated 26.3.2011 directed the Revenue *Karamchari* to conduct an inquiry. The Revenue *Karamchari* submitted his report on 23.5.2011 on which the Circle Officer was pleased to write a letter bearing no.275 dated 3.6.2011 to the Revenue *Karamchari* that as the jamabandi is in the joint names and one of the *raiyats* has objected, rent receipt should not be issued in a single name.

6. Learned counsel for the petitioners further submits that in the meantime, the petitioner no.2 and his son filed a partition suit which was registered as Title Partition Suit no.148 of 2011 on 29.4.2011 in the Court of learned Sub-Judge-I, Bhabua, praying therein for partition of the joint family property which included the land in question in the instant writ application. The respondent no.8 is defendant no.4 in the said partition suit which is pending as of today and a copy of the plaint has been brought on record as annexure-5 to the writ application.



7. It is further submitted by learned counsel for the petitioners that inspite of the pendency of the Title Partition Suit and no partition having taken place by metes and bounds in the family, the respondent no.8 executed a registered sale deed on 24.10.2011 in favour of respondent no.7. Thereafter, the respondent no.7 filed an application on 16.1.2012 before the Circle Officer praying for mutation of his name with respect to the land in question. The application was registered as Mutation Case no.3362/11-12. By order dated 23.1.2012, the Circle Officer was pleased to allow the application for mutation filed by respondent no.7.

8. Against the order of the Circle Officer allowing the application for mutation, the petitioners preferred Mutation Appeal no.37/12-13 which was allowed by order dated 12.3.2015 by the D.C.L.R., Mohania.

9. A mutation revision was preferred by the respondent no.7 against the order passed in mutation appeal which was registered as Mutation Revision Case no.24/2015-16 and the same was allowed by order dated 21.7.2016 passed by the Collector, Kaimur (Bhabua).

10. The petitioners preferred an application in the Bihar Land Tribunal, Patna against the order of the Collector



allowing the revision application and the same was registered in the Tribunal as B.L.T Case no.911 of 2016. The learned Member(Administrative), Bihar Land Tribunal, Patna vide his order dated 25.10.2018 was pleased to dismiss the B.L.T Case no.911 of 2016 and hence the instant application has been filed by the writ petitioner for the relief prayed for as stated herein above.

11. Learned counsel for the petitioners submits that the order dated 23.1.2012 allowing the Mutation Case no.3362/11-12 of the respondent no.7 is bad on two accounts. Firstly for the reason that no notice was issued to the petitioners and secondly that the same is in teeth of section 6(12) of the Bihar Land Mutation Act, 2011.

12. Learned counsel appearing for the respondents-State of Bihar and its authorities as also learned counsels appearing for respondent nos.7 and 8 have opposed the application filed by the petitioners.

13. It is submitted by learned counsel appearing for respondent nos.7 and 8 that an application for mutation is to be decided on the basis of possession. On an inquiry having got conducted by the Circle Officer as also the Collector, the respondent no.7 having been found to be in possession, the



order passed by the Circle Officer allowing the application for mutation of respondent no.7 is in accordance with law. It is further submitted that the orders passed by the Collector and the Bihar Land Tribunal are also in accordance with law and should not be interfered with.

14. Heard learned counsel for petitioners and learned counsel for the respondents.

15. Bereft of unnecessary details, the relevant facts for the purpose of the instant application are that a Title Partition Suit no.148 of 2011 was filed by the petitioner no.2 and his son in the Court of learned Sub-Judge-I, Bhabhua praying therein for partition of the suit property which includes the land in Plot no.294, *Khata* no.62 in *Mauza*-Gheghiya in Thana no.532. The land in question in the instant writ application is also the subject matter of the said title partition suit. During pendency of the title suit, the registered sale deed was executed by respondent no.8 on 24.10.2011 in favour of respondent no.7.

16. It would be relevant to note that at this time, on 22.12.2011, the Bihar Land Mutation Act, 2011 (hereinafter referred to as the Act) came into effect.

17. An application was filed by respondent no.7 on 16.1.2012 before the Circle Officer, Mohania (Kaimur) praying



for mutating her name with respect to the land in question which she purchased by a registered sale deed dated 24.10.2011. The said application for mutation of respondent no.7 was allowed by order dated 23.1.2012 by the Circle Officer but in the appeal preferred by the writ petitioner, the same was reversed by the D.C.L.R by his order dated 12.3.2015. Once again the revision preferred by the respondent no.7 was allowed by the Collector vide his order dated 22.7.2016 and the application preferred by the petitioners before the Bihar Land Tribunal against the said order was dismissed by the learned tribunal on 25.10.2018, thus affirming the order of the Collector.

18. In view of the contention raised by the petitioners it would be relevant to refer to section 6 of the Act and more particularly section 6(12) which is quoted herein below for ready reference:-

“6. Disposal of Mutation cases:-

(1)

(12) Mutation of a holding or a part thereof shall not be allowed in cases in which Title Suit with regard to that holding or a part thereof is pending in the competent court.”

19. On perusal of section 6(12) of the Act, as quoted herein above, it would transpire that the same clearly stipulates that the mutation of a holding or a part thereof shall not be



allowed in cases in which title suit with regard to that holding or a part thereof is pending in the competent Court.

20. The facts as narrated above clearly show that the land in question which is the subject matter of the proceedings under the Bihar Land Mutation Act, 2011 and this instant writ application is also the subject matter of the Title partition Suit no.148 of 2011 pending in the learned Court below. The title partition suit was filed on 29.4.2011 whereas the application for mutation under the Bihar Land Mutation Act, 2011 was filed by the respondent no.7 on 16.1.2012. Thus in view of the specific provisions as contained under section 6(12) of the Act, as also quoted herein above, mutation of the land in question could not have been allowed as the title suit with respect to the land in question was pending on the date of filing of the application for mutation and continues to remain pending today.

21. Thus in the opinion of this Court, the order dated 23.1.2012 of the Circle Officer allowing the application for mutation filed by respondent no.7 as also the order dated 21.7.2016 passed by the Collector and the order dated 25.10.2018 passed by the Bihar Land Tribunal are in the teeth of section 6(12) of the Act, illegal, not sustainable and fit to be set aside.



22. In view of the facts and circumstances of the case, the order dated 23.1.2012 (Annexure-3) passed in Mutation Case no.3362/11-12 by the Circle Officer, Mohania, District-Kaimur(Bhabua) (respondent no.6), the order dated 21.7.2016 (Annexure-2) passed in Mutation Revision Case no. 24/2015-16 by the Collector, Kaimur (Bhabua) (respondent no.3) and the order dated 25.10.2018 (Annexure-1) passed in B.L.T. Case no.911 of 2016 by the learned Member (Administrative), Bihar Land Tribunal, Patna are all set aside.

23. The writ application is allowed.

(Partha Sarthy, J)

Shiv/-

U			
---	--	--	--

