

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1878 of 2022

- 1.1. Akbar Ali Son of Hazrat Ali R/o- Vill. and P.O.- Salimpur, P.S.- Marhaura, District- Saran at Chapra.
- 1.2. Mainuddin Mansoori Son of Hazrat Ali R/o- Vill. and P.O.- Salimpur, P.S.- Marhaura, District- Saran at Chapra.

... .. Petitioner/s

Versus

1. The State of Bihar, Bihar, Patna.
2. Additional Collector, Saran at Chapra.
3. D.C.L.R. Marhowrah, District - Saran.
4. Circle Officer, Marhowrah, District - Saran.
5. Prabhu Nath Singh, Son of Late Brahma Singh, Resident of Village - Salimpur, P.O. - Salimpur, P.S. - Marhowrah, District - Saran at Chapra.
6. Hadisan Bibi, Wife of Late Mahamjan Miyan, Resident of Village - Raghupur, P.O. - Mohammadpur, P.S. - Garkha, District - Saran at Chapra.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. S.N.P. Singh, Sr. Advocate Mr. S.P. Singh, Advocate Mr. Gaurav Kumar, Advocate
For the Respondent/s	:	Mr.Sajid Salim Khan (Sc 25)

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

8 23-04-2024 Heard learned Senior Counsel appearing on behalf of the petitioner and learned Senior Counsel representing the respondent no. 5 as also the State.

2. The present writ application is being filed for:

issuance of an appropriate writ/s, order/s or direction/s to the Respondents for setting aside the order dt. 23rd July, 2021 passed by Sri Ravindra Patwari, Member (Judicial), Bihar Land Tribunal, Patna



(Annexure-5), by which he has set aside the order passed by the Additional Collector, Saran (Respondent No.2) dt. 31st October, 2019, passed in Mutation Revision Case No.8/2019, and has thereby affirmed the order dt. 16th February, 2019 passed by D.C.L.R. (Respondent No.3), passed in Mutation Appeal No. 3/2018-19 (Annexure-4) and also order dt. 11th June 2018 passed by Anchal Adhikari (Respondent No.4) in Mutation Case No. 1012/2018-19 by which the learned Anchal Adhikari had allowed the Mutation application filed by the Respondent No.5 and 6.

3. The land in question is detailed out herein below:

<u>Khata No.</u>	<u>Plot No.</u>	<u>Area</u>
244	1782	2 Kattha, 2 Dhoor
244	1783	18 Dhoor
	Total	3 Kattha

4. It is the case of the petitioner that under the Mohamadden law, there is no concept of joint family and the co-sharers held the land as tenant, as such the case of the writ petitioner is that the land could not have devolved upon the lady (respondent no. 6) which in turn could not have been sold to the respondent no. 5.

5. He submits that a reasoned order has been passed



by the Additional Collector, Saran, Chapra (Annexure-4 to the petition) on 31.10.2019 by which the claim of the petitioner was allowed setting aside the order passed by the Circle Officer, Marhowrah in Mutation Case No. 00112/70/2018-19 as also the Appellate Court (D.C.L.R, Marhowrah) in Appeal No. 03/2018-19. Submission is that the BLT erred in passing the order dated 23.07.2021 (Annexure-5 to the petition).

6. A counter affidavit has been filed on behalf of the respondent no. 5.

7. Learned counsel has taken this Court to paragraph nos. 7 and 8 in which it has been stated that after the death of Alisar Miya (Biwi Khatoon, wife of Alisar Miya), the sale deeds were executed in favour of the son-in-law, Hazrat Ali and on the said basis *jamabandi* no. 230 was created in the circle office.

8. It has been further averred that others also executed sale deed and in continuation, the respondent no. 6 who had got the land in question has executed the same to the respondent no. 5. It was in that background that the Mutation Case No. 00112/70/2018-19 was filed before the Circle Officer, Morhowrah, which was allowed.

9. Aggrieved, the writ petitioner preferred appeal which was rejected by the D.C.L.R., Marhowrah. However,



ignoring all the facts that were incorporated in the orders, the Additional Collector, Chapra chose to set aside the two orders forcing him to move before the Bihar Land Tribunal in BLT Case No. 74 of 2020.

10. Mr. Singh has taken this Court to the findings of the BLT incorporated in paragraph 11 onwards and this Court deems it fit and proper to incorporate the same herein below:

“ 11. From the discussions aforesaid, it is thus clear that petitioner no. 1 being the purchaser of the subject land has been found in possession of the subject land and his vendor (petitioner no. 2) had got right to transfer the same. Under the situation, its mutation seems to be rightly created for collection of land revenue in the name of petitioner no. 1 by the Circle Officer and affirmed by the appellate authority. The revisional authority appears to have erroneously and exceeding its jurisdiction passed the impugned order by opining that the claim of petitioner is false and suspicious of which exclusive domain vests in the Civil Courts. In the facts and circumstances of the case, the revisional authority should not have to interfere with the mutation of the subject land created in favour of petitioner with liberty to parties to get their right, title



adjudicated through competent Civil Court in accordance with law. The impugned order is thus not sustainable in law.

12. In view of premises discussed hereinabove, the order impugned is set aside, consequently, this case is allowed. Parties are at liberty to get their right, title adjudicated through competent Civil Courts by taking proper recourse of law and if it is done so, the mutation of the subject land would depend upon the final outcome of that legal action.”

11. Having gone through the facts of the case, documents on record and the pleadings of the learned Senior Counsel and learned counsel for the respondent no. 5, this Court is of the opinion that ‘the BLT’ is/was completely justified in passing the order in question in favour of the respondent no. 5 herein (petitioner before ‘the BLT’). It has to be noted that earlier the Circle Officer, Marhowrah and then the D.C.L.R., Marhowrah too had passed orders in favour of the respondent no. 5 which however was negated by the Additional Collector, Saran Chapra. ‘The BLT’ has taken note of the fact that the Additional Collector erroneously exceeded its jurisdiction by giving its own opinion that the claim of the petitioner (respondent no. 5 herein) is false and suspicious. ‘The BLT’



held that these are the things which has to be decided by the Civil Court and the Additional Collector was not the competent authority in such matter.

12. In continuation of the order passed by ‘the BLT,’ this Court also holds that such disputed matters cannot be decided by the Additional Collector, Saran, Chapra much less the other respondent authorities. It is the exclusive domain of the Civil Court where the parties are free to take the matter if they so want.

13. This Court does not find any error in the order dated 23.07.2021 passed by ‘the BLT’.

14. The writ petition stands dismissed.

(Rajiv Roy, J)

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