

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3157 of 2024

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Md. Asrul @ Md. Asrul Haque S/o Late Md. Altaf Hussain R/O Village-
Mallikpur, P.S.- Azamnagar, District- Katihar.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Land Reforms Department,
Government of Bihar, Patna.
2. The Addl. Collector, Katihar.
3. The Deputy Collector, Land Reforms, Barsoi, District- Katihar.
4. The Circle Officer, Anchal- Azamnagar, District- Katihar.
5. Bibi Khurshida Khatoon @ Khursheda Khatun W/O Md. Khairuddin R/O
Village- Mallikpur, P.O.- Nemoul, P.S.- Azamnagar, District- Katihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjeev Kumar Singh, Advocate
For the Respondent/s : Mr. Standing Counsel 7

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

2 20-06-2024 Heard the parties.

2. The present writ petition has been preferred for the
grant of following relief/s:-

*“1. For setting aside the order dated 21-
10-2022 passed by the learned Chairman, Bihar
Land Tribunal, Patna passed in B.L.T. case no
251 of 2020 (Annexure-P/4) by which the
learned Tribunal has set aside the order dated
16-3-2020 passed by the learned Addl.
Collector, Katihar in Mutation case no. 80/2018
without appreciating the facts and
circumstances of the case.*



II. For issuance of a writ of mandamus and any other appropriate writ/writs, order/orders, direction/directions to the respondent's authority not to initiate any action till the disposal of the writ petition.

III. And, be further pleased to pass the order/orders as your lordship may deem fit and proper.”

3. Learned counsel for the petitioner submits that before passing the order in question, he was not given any opportunity of being heard and in that background, it is a fit case for remitting it back before the Bihar Land Tribunal, Patna (“the BLT”).

4. Learned State counsel objected to it and submitted that a bare perusal of paragraph-2 would show that notices were validly served upon the respondent no. 5 (the petitioner herein) but he chose not to appear and in that background, the matter was taken up and decided *ex-parte*.

5. Paragraph-2 of the order read as follows:-

“02. Heard Mr. Qumrul Hoda, learned counsel for the petitioner and Mr. Ravindra Rai, learned A.G.P. for the State. Nobody has appeared on behalf of opposite party no. 5 in



spite of valid service of notice. Therefore, this case has been heard ex-parte against him.”

6. Having gone through the facts of the case and the materials on record as also the order of the BLT in BLT Case No. 251 of 2020, this Court deems it fit to incorporate paragraph-9 onwards:-

“09. Counsel for petitioner has submitted that the Additional Collector has failed to consider that opposite party no. 5 was witness on the aforesaid sale deed executed in favour of petitioner vide Sale Deed No. 923 dated 19.01.2010. This fact established that opposite party no. 5 had full knowledge of purchase of land in question by the petitioner. Photocopy of Sale Deed No. 923 dated 19.01.2010 is enclosed as Annexure-4 to the petition which shows that opposite party no. 5 is witness on sale deed.

10. Having heard the counsel for petitioner and the State and after perusing the impugned order passed by learned Circle Officer, learned D.C.L.R and learned Additional Collector, this Tribunal finds that learned Circle Officer vide order dated 04.01.2013 passed in Mutation Case No. 10376 of 2012-13 allowed



the mutation for 6.5 decimal of land in favour of petitioner of Khata No. 48 Plot No. 100 Mauza-Nemoul on the basis of registered Sale Deed No. 923 dated 19.01.2010 executed by Altaf Hussain. The aforesaid order was challenged by opposite party no. 5 before learned D.C.L.R., Barsoi after four years by filing Mutation Appeal No. 101 of 2016-17 The learned D.C.L.R. after hearing both the parties by speaking order dismissed the appeal by order dated 19.12.2017 (Annexure-2).

11. From perusal of impugned order dated 16.03.2020 passed by learned Additional Collector, Katihar in Mutation Revision Case No. 80 of 2018 as well as order dated 19.12.2017 passed by learned D.C.L.R., Barsor in Mutation Appeal No. 101 of 2016-17, it appears that opposite party no. 5 applied for mutation of land in question on 30.12.2016 on the basis of sale deed executed in his favour. He learnt that mutation has already been done in favour of petitioner with respect to land in question by Mutation Case No. 10376 of 2012-137.



12 In this manner, mutation of aforesaid land was already done in favour of petitioner on the basis of Sale Deed No. 973 dated 19.01.2010 with respect to land of Khata No. 48 Plot No. 100 Area 6.5 decimal executed by Altaf Hussain by the Circle Officer, Azamnagar by order dated 04.01.2013 passed in Mutation Case No. 10376 of 2012-13. The opposite party no. 5. was witness on the sale deed executed in favour of petitioner. The learned Additional Collector has illegally decided right and title of the parties in the impugned order, which was not within his jurisdiction. The learned Additional Collector has ordered to create jamabandi in the name of opposite party no. 5 on the basis of sale deed executed in his favour on the ground that aforesaid sale deed is prior to the sale deed executed in favour of petitioner but failed to consider the fact that earlier jamabandi was already running in the name of petitioner with respect to 6.5 decimal of land of Plot No. 106 Khata No. 48 on the basis of registered Sale Deed No. 923 dated 19.01.2010 executed by Altaf Hussain, on which opposite party no. 5



was one of the witnesses.

13. The Circle Officer has passed order of mutation dated 04.01.2013 in Mutation Case No. 10376 of 2012-13 on the basis of Sale Deed No. 923 dated 19.01.2010 executed in favour of petitioner with respect to land of Khata No. 48 Plot No. 100 Mauza- Nemoul after finding peaceful possession of petitioner. Thereafter, rent receipt was issued in favour of petitioner by Annexure-1/1. The learned DCLR after hearing both the parties dismissed the appeal filed by opposite party no. 5 by speaking order.

14. This court finds that learned Additional Collector, Katihar has committed illegality in setting aside the order passed by learned D.C.I.R., Barsoi in Mutation Appeal No. 101 of 2016-17 after deciding right and title of the parties with respect to land in question and came to the finding that only 500 square kari land was left under ownership of recorded raiyat Altaf Hussain and he had illegally executed sale deed with respect to 6.5 decimal land of Plot No. 106 Khata No. 48 in favour of petitioner. This Tribunal finds that learned



Additional Collector was not competent to decide right and title of the parties and also genuineness of sale deed executed in favour of petitioner by registered Sale Deed No. 923 dated 19.01.2010 on which opposite party no. 5 was one of the witness.

15. Therefore, the impugned order dated 16.03.2020 passed by learned Additional Collector, Katihar in Mutation Revision Case No. 80 of 2018 is not in accordance with law and the same is hereby set aside. This court does not find any illegality in order passed by learned DCLR Barson in Mutation Appeal No. 101 of 2016-17, dated 19.12.2017, by which he has affirmed the order dated 04.01.2013, passed by learned Circle Officer, Azamnagar, in Mutation Case No. 10376 of 2012-13

This application is accordingly allowed. The opposite party no. 5 shall be at liberty to file Civil Suit in competent Civil Court for appropriate relief.”

7. In that background, this Court is of the view that the learned BLT came to a considerate decision in favour of the petitioner therein (Bibi Khurshida Khatoon @ Khursheda



Khatoon), respondent no. 5 herein.

8. Liberty was also granted to the petitioner herein to file Civil Suit before a competent Civil Court for appropriate relief.

9. The order of the DCLR, Barsoi in Mutation Appeal No. 101 of 2016-17 was also fully justified and no interference required.

10. In that background, this Court does not deem it fit and proper to interfere with the order.

11. The present writ application stands dismissed.

(Rajiv Roy, J)

Adnan/-

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