

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7673 of 2018

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Md. Kamrujjama Son of Late Asma Tullah Resident of Village-Samesar, P.S.-
Bahadurganj, District-Kishanganj.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Commissioner Purnia Division, Purnia.
3. The District Collector, Kisanganj
4. The Deputy Collector Land Reforms Kishanganj
5. The Circle Officer, Bahadurganj, Kisanganj.
6. The Consolidation Officer, Bahadurganj, Kisanganj,
7. Alil Uddin Son of Kakimuddin Resident of Village-Devottar Birniya Post-Samesar, P.S.-Bahadurganj, District-Kisanganj.
8. Sanjari Begum Wife of Late Matiur Rahman Resident of Village-Devottar Birniya Post-Samesar, P.S.-Bahadurganj, District-Kisanganj.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Prasad, Adv.

For the Respondent/s : Mr. Md.Khurshid Alam,AAG-12

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CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT

Date : 14-11-2024

In the instant petition, the petitioner has prayed for
following reliefs:-

*That this is an application for
issuance of a writ in the nature of Certiorari or
any appropriate writ's, order's, direction's
commanding the Respondents for following
reliefs:-*

*i. For quashing of the order dated
16-11-17 passed by the Collector Cum District
Magistrate Kishanganj in Mutation Revision
case No 05/07 where by and where under*



Revision petition has been rejected without considering documentary evidence submitted by the petitioner in support of his right, title and possession over the land pertaining to R S Khata no 03, Khesra no 709, 1717 area 17 decimal 5 kari.

ii. For quashing of the order dated 15 03 07 passed by the Deputy Collector Land Reforms, Kishanganj in Mutation Appeal no 3/05-06 which has been rejected without given any reason and affirmed the order of Circle Officer, Bahadurganj.

iii. For quashing of the order dated 17 07.05 passed by the Circle Officer Bahadurganj in Mutation case no. 06/04-05 where by and where under rejected application without considering documentary evidence produced by the petitioner.

iv. For direction the Circle officer Bahadurpur to take appropriate action for mutation of the land in question in the name of petitioner.

v. For other order or direction in the facts and circumstances of the case in the interest of justice.

2. Learned counsel for the petitioner submits that the petitioner being the owner of the land pertaining to Khata No. 03, Tauzi No. 8, Khesra No. 709/1717, Thana No. 287, Area 17



decimal 5 Kari mauza Deotar Birnia, P.S. - Bahadurganj, District- Kishanganj applied for mutation with regard to the land in question before the Circle Officer, Bahadurganj and the Circle Officer has dismissed the mutation petition vide order dated 17.07.2005 (Annexure-7) passed in Mutation Case No. 06/04-05. Against the order of the Circle Officer, petitioner approached before the D.C.L.R., Kishanganj in Appeal No. 03/05-06, which was rejected by order dated 15.03.2007 (Annexure-8). Thereafter, petitioner filed Mutation Revision No. 05/07 before the Collector, Kishanganj, which has also been rejected by order dated 16.11.2017 (Annexure-10).

3. Learned counsel for the State submits that the concerned authority has made observation that there is a dispute between respondent no.7 & 8 and petitioner and the same dispute is of title of land in question and the same cannot be adjudicated. Learned counsel further submits that on 07.10.2024 certain direction was given to the petitioner and respondent nos. 7 and 8, who appeared and had taken time to file counter affidavit, but they have not filed the same. Learned counsel contended that the petitioner has directly approached this Court despite the remedy is available under statutory provision against the order of revisional court i.e. District Magistrate and



he has not availed the said forum for the redressal of his grievance.

4. From the perusal of the material available on record, it is crystal clear that there is dispute between the parties with respect to title over the land in question and same is also evident from the order of the Collector-cum-District Magistrate, Kishanganj. The order of Collector clearly mentioned that claims of petitioner is related to the title of the land in question. Petitioner is claiming title over the land in question and other parties are also claiming title over the land in question. The Hon'ble Supreme Court in catena of judgments, has held that regular suit is appropriate remedy for settlement of dispute relating to property rights between private persons. The remedy under Article 226 of the Constitution shall not be available except where there is violation of some statutory duty on the part of statutory authority is alleged. It is held that the High Court cannot allow its constitutional jurisdiction to be used for deciding disputes, for which remedies under the general law, civil or criminal are available. The jurisdiction under Article 226 of the Constitution being special and extraordinary and it should not be exercised casually or lightly on mere asking by the litigant. In this context, the decision of the Hon'ble Supreme



Court in the case of ***Sohan Lal Vs. Union of Indian & Anr.*** reported in ***AIR 1957 SC 529*** and in the case of ***Radhey Shyam & Anr. Vs. Chhabi Nath and Ors***, reported in ***(2015) SCC 423*** are quite relevant.

5. In the case of ***Sohan Lal (supra)***, Hon'ble Supreme Court has observed as under :

“We do not propose to enquire into the merits of the rival claims of title to the property in dispute set up by the appellant and Jagan Nath. If we were to do so, we would be entering into a field of investigation which is more appropriate for a Civil Court in a properly constituted suit to do rather than for a Court exercising the prerogative of issuing writs. These are questions of fact and law which are in dispute requiring determination before the respective claims of the parties to this appeal can be decided. Before the property in dispute can be restored to Jagan Nath it will be necessary to declare that he had title in that property and was entitled to recover possession of it. This would in effect amount to passing a decree in his favour. In the circumstances to be mentioned hereafter, it is a matter for serious consideration whether in proceedings under Art. 226 of the



Constitution such a declaration ought to be made and restoration of the property to Jagan Nath be ordered.”

6. In the case of **Radhey Shyam (supra)**, Hon’ble Supreme Court in paragraphs 64 and 65 has observed as under :

“64. However, this Court unfortunately discerns that of late there is growing trend amongst several High Courts to entertain writ petition in cases of pure property disputes. Disputes relating to partition suits, matters relating to execution of a decree, in case of dispute between landlord and tenant and also in a case of money decree and in various other cases where disputed question of property are involved, writ courts are entertaining such disputes. In some cases the High Courts, in a routine manner, entertain petitions under Article 227 over such disputes and such petitions are treated as writ petitions.

65. We would like to make it clear that in view of the law referred to above in cases of property rights and in disputes between private individuals writ court should not interfere unless there is any infraction of statute or it can be shown that a private individual is acting in collusion with a statutory authority.”



7. In the light of the discussion made above, disputed aspect with respect to title over a land cannot be decided in writ jurisdiction. Accordingly, the present writ petition stands disposed of as not maintainable.

8. However, dismissal of writ would not be hurdle for the petitioner to approach appropriate forum for redressal of his grievance within a period of four weeks from the date of receipt of this order.

9. It is needless to mention that the period spent in pursuing the matter before this court be considered sympathetically while dealing with the aspect of condonation of delay.

(Alok Kumar Pandey, J)

amitkumar/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	16.11.2024
Transmission Date	N/A

