

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17595 of 2024

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Suresh Shah S/o Yogendra Shah Resident of Village- Shaid Nagar, P.S.-
Muffasil, District- East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Revenue and Land Reforms, Govt. of Bihar, Patna.
2. The Additional Chief Secretary, Department of Revenue and Land Reforms, Govt. of Bihar, Patna.
3. The Divisional Commissioner, Tirhut Division, Muzaffarpur.
4. The Collector, District- East Champaran at Motihari.
5. The Additional Collector, District- East Champaran at Motihari.
6. The Deputy Collector, Land Reforms, Motihari Sadar, District- East Champaran.
7. The Circle Officer, Circle- Motihari, District- East Champaran.
8. The Revenue Officer, Circle- Motihari, District- East Champaran.
9. The Revenue Karamchari, Circle- Motihari, District- East Champaran.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Y.V. Giri, Sr. Advocate Mr. Madhu Prasun, Advocate Ms. Renu Kumari, Advocate
For the Respondent/s	:	Mr. P.K. Shahi, Advocate General

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 26-11-2024

The challenge in the above writ petition is against Section 6(12) of the Bihar Land Mutation Act, 2011 (hereinafter referred to as the ‘Mutation Act’) as *ultra vires* to the Constitution of India and for reason of its unreasonableness.

2. Mr. Y.V. Giri, the learned Senior Counsel took us



through the various provisions of the Mutation Act to argue that the provision is unconstitutional. Sub-section (12) of Section 6 does not refer to the parties to the suit and any dispute with respect to a property agitated in a suit would result in mutation being denied in a rightful claim. The various provisions of the statute were read over to contend that the impugned rule was *ultra vires*.

3. Reference was made to the definition of mutation, as per Section 2(1) of the Mutation Act, which speaks of alteration in the entries in the continuous Khatian, Tenants Ledger and Khesra Register on account of transfer of right of a person in a holding or a part thereof by way of the means or instruments as delineated in sub-clauses (a) to (p).

4. Section 4 of the Mutation Act speaks of the responsibility of the Authority to intimate the Circle Officer regarding acquisition of interest of any person in any holding or a part thereof based on which, by Section 5, enquiry has to be proceeded with. Based on the report of such enquiry, mutation has to be carried out. Unless the Civil Court has stayed the proceedings there could be no restriction to carrying out mutation, is the contention.

5. The definition clause 2(1) specifically speaks of



alteration in the entries on account of transfer of right of a person in a holding or part thereof. On registration of any instrument of transfer by way of sale, purchase, exchange partition, gift or by any other mode of transfer, the Registering Authority should give notice of such registration in the prescribed form along with a photocopy of the registered deed to the Circle Officer, in whose jurisdiction the holding or a part thereof is situated. Section 5 enables the Circle Officer on receipt of petitions for mutation or in pursuance of an intimation of Section 4 or even *suo moto*, to initiate a mutation proceeding seeking a detailed report in the prescribed form from the Karmachari and the Circle Inspector. Sub-section (2) provides for the Karmachari to enquire into the petition and submit a report to the Circle Inspector. The Circle Inspector by sub-section (3) has to examine the veracity of the report and make his recommendations which shall be submitted, along with the enquiry report of the Karmachari, to the Circle Officer by virtue of sub-section (4). The Circle Officer, if not satisfied with the enquiry report of the Karmachari and the Circle Inspector shall, if necessary enquire himself and record his findings in the prescribed manner.

6. Section 6 having the nominal heading 'Disposal of



Mutation Cases' require the Circle Officer on receipt of enquiry report from Karmachari and Circle Inspector to dispose of the mutation case in the prescribed manner after inviting objections in the manner prescribed from persons having interest in the holding or a part thereof as well as the general public. Hence, it is the satisfaction of the Circle Officer which reigns supreme insofar as effecting mutation. The provision under sub-section (12) of Section 6 prohibits a mutation in the circumstance of an existing title suit pending in a competent Court with regard to the holding or a part thereof, which is sought to be mutated.

7. Mutation admittedly is not an absolute evidence of title and the record of rights in the continuous Khatian, Tenants Ledger and Khesra Register, by itself does not confer title on the person whose name is recorded therein. The Civil Court's right to adjudicate disputes on title cannot be disturbed by a mutation effected.

8. We are of the opinion that sub-section (12) only ensures that the rights of a title holder who has agitated his cause in the Civil Court, is not defeated by a sham transaction, upon which a mutation is effected to a 3rd party, who is not even a party in the suit. There is no argument put forth as to how the provision is *ultra vires* the Constitution; though a plea has been



raised; albit feebly.

9. We do not find anything unconstitutional or unreasonable insofar as the impugned provision is concerned. Further, we find that though the petitioner has sought to challenge an order which declined mutation due to the pendency of Title Suit No. 778 of 2023; the parties in the suit have not been impleaded herein.

10. The writ petition is rejected *in limine* for both the above reasons.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Anushka/-

AFR/NAFR	
CAV DATE	
Uploading Date	04.12.2024
Transmission Date	

