

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.802 of 2024

Ujjwal Sharma S/o Ugal Kishor Sharma, Resident of Village- Musapur, P.S.-
Korha, District- Katihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Revenue and Land Reforms Department, Govt. of Bihar, Patna.
2. The Collector, Katihar.
3. The Additional Collector, Katihar.
4. The Deputy Collector Land Reform, Katihar Sadar, Katihar.
5. The Circle Officer, Korha, District- Katihar.
6. Mosmat Subhadra, W/o Late Dhir Narayan Sharma, Resident of Village- Musapur, P.S.- Korha, District- Katihar.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Bhola Prasad, Advocate
For the Respondent/s : Mr. Mithilesh Kumar Singh, AC to SC -15

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

2 02-05-2024 Heard Mr. Bhola Prasad, learned counsel for the
petitioner and the State.

2. The present writ petition has been preferred for the
following reliefs:

*(i) for quashing the order dated 22.09.2023
passed by learned Member (Judicial) the
Bihar Land Tribunal Patna in BLT Case No.
456/2022 whereby the case of Respondent
No. 6 was allowed and order of learned
Addl. Collector, Katihar dated 30.05.2022 in
Mutation Revision Case No. 278/2021
affirming the order of Mutation in favour of*



the petitioner has been set-aside;

(ii) for quashing the order dated 29.01.2021 passed by the learned DCLR, Katihar in Mutation Appeal No. 1006/2016-17 and 455/2020-21 by which the order of mutation in favour of the petitioner was set-aside.

(iii) further direct the respondent to restore mutation with respect to the land in question in respect to the petitioner.

3. Though, learned counsel for the petitioner tried to impress upon this Court that it is a case of transfer of the land by way of partition even if the documents executed in his favour by late uncle is ignored, a bare perusal of the paragraph-5 onward of the order passed by the Bihar Land Tribunal, Patna in BLT Case No. 456 of 2022 would show that the claim put forward by the petitioner is frivolous.

4. The extract of the paragraph nos. 5 to 10 of the order dated 22.09.2023 passed in BLT Case No. 456 of 2022 is incorporated hereinbelow:

“5. Considered the submissions of parties. It is admitted herein that the land of area 5.92 acres except the land of Khata No. 24, Plot Nos. 1904 and 1905 of total area 1.40 acres belonged to late Dhir Narayan Sharma, the husband of petitioner and it was allocated to him in partition amongst his



brothers. It was thus his ancestral property and its jamabandi was running in his name. It is also admitted one that said Dhir Narayan Sharma had got three daughters out of which two are alive now and they were the coparceners of that property. Annexure-2 is the partition panchnama dated 16.06.2016 said to be executed by late Dhir Narayan Sharma in favour of opposite party no. 4. It appears that through this deed, executant has transferred the property of total area 5.92 acres to opposite party no. 4 by stating that opposite party no. 4 would be his heir and successor of that property. Obviously, this is an unregistered deed. It is somewhat strange to see that how through a deed having nomenclature panchnama batwara, successor to certain properties can be appointed. It is the stand of petitioner that this deed is forged and fabricated and it bears the forged signature of the husband of petitioner. On the other hand, opposite party has to submit that it is the genuine deed and since opposite party no. 4 was the adopted grandson of late Dhir Narayan Sharma, so he gave the property to him through such deed. There is nothing stated when such adoption had taken place and whether any ceremony for that adoption had been performed or not. Under Section 7 of the



Hindu Adoptions and Maintenance Act, 1956, the consent of wife is the condition precedent for adoption by a male Hindu. But, nothing in this regard has been disclosed here.

6. It is obvious that opposite party no. 4 Ujjawal Sharma filed application for mutation on the basis of said partition panchnama (Annexure-2) and then Mutation Case No. 1068 of 2016-17 was initiated. Annexure-4 is the order sheet passed by the Circle Officer and this order sheet mentions the particulars of landed properties of area 5.92 acres as mentioned in Annexure-2 as also the land of Khata No. 24, Plot Nos. 1904 and 1905 of total area 1.40 acres which is not the part of said partition panchnama. The order sheet passed by the Circle Officer states that he obtained report of halka karmchari and then khas notice was issued. The Circle Officer finally on 08.07.2016 passed order allowing mutation in favour of opposite party no. 4. There is nothing mentioned in the order sheet to whom khas notice were issued.

7. It further transpires that against the order passed by the Circle Officer, two mutation appeals were preferred, Mutation Appeal Case No. 1006 of 2016-17 was preferred by one Kaushal Kishore assailing



that the mutation of the land of Khata No. 24, Plot Nos. 1904 and 1905 of area 1.40 acres has illegally been created in the name of opposite party no. 4 though he has got ½ (half) share in it. Petitioner filed Mutation Appeal Case No. 455 of 2020-21 whereby he challenged the mutation of the land of area 5.92 acres created in the name of opposite party on the basis of alleged partition panchnama. Ld. D.C.L.R. having heard both the sides passed order whereby he allowed the appeals and set aside the mutation order passed by the Circle Officer. The Appellate Authority has opined that it appears to him that vide panchnama batwara deed which is unregistered one, a succession paper has been prepared which is not justified though through a panchnama batwara, partition of the joint property among the co-sharers is effectuated. Secondly, it has been observed that the property in the hand of said Dhir Narayan Sharma was his ancestral property in which all the coparceners had got share. Ld. Appellate Authority has further opined that with respect to land of Khata No. 24 of area 1.40 acres, the jamabandi was running in the name of Jugal Kishore Sharma, the father of opposite party no. 4 though the Circle Officer has mutated this land also in the name of opposite party stating to be



under the jamabandi of Dhir Narayan Sharma whereas the mutation of this land should be created by deducting it from the jamabandi of Jugal Kishore Sharma and in this way, the mutation order passed by the Circle Officer also suffers from procedural lapses. On the above grounds, Appellate Authority allowed the appeals and set aside the mutation order passed by Circle Officer. On careful appraisal, it seems to me that appellate authority had passed order giving just and proper reasonings and to my view it was a well reasoned and speaking order. But, it would appear to me that ld. Revisional Authority i.e. Addl. Collector has passed order wholly relying upon the statements advanced by the revisionist i.e. opposite party no. 4 herein. At one place, he has recorded that as per the revisionist, said Dhir Narayan Sharma himself came to the circle office and gave statement in his favour but the order passed by Circle Officer as contained in Annexure- 4 speaks nothing in this regard. On careful consideration, it transpires to me that the Additional Collector without proper considering the reasonings and findings recorded by the Appellate Authority has passed the order only relying upon the submissions by the revisionist hence, the order passed by the



Addl. Collector is bereft of any merit as such it cannot be allowed to sustain in law.

9. There is one aspect of the matter. As noticed above, opposite party herein has claimed mutation on the basis of partition panchnama deed (Annexure-2) which is an unregistered document. This deed does not appear to be a partition deed rather through it, late Dhir Narayan Sharma, the husband of petitioner has given his entire landed property of area 5.92 acres to opposite party. Now, question arises whether on the basis of such an unregistered deed of conveyance, mutation can be effectuated. Section 6 (9) of the Bihar Land Mutation Act, 2011 says that mutation claimed on the basis of transfer through sale-purchase, gift or exchange shall not be allowed unless it is registered. Section 6 (11) of the Act, 2011 (supra) further provides for that mutation claimed on the basis of partition other than by the court or registered deed, shall not be allowed unless there is consent of all co-sharers. In view of these provisions of law, I am of considered opinion that mutation claimed on the basis of such a unregistered deed of conveyance like Annexure-2 herein, mutation in favour of opposite party should not be allowed. On this score also, impugned order cannot be



allowed to sustain in law.

10. In view of the premises discussed hereinabove, this Tribunal concludes that order impugned herein passed by Additional Collector, Katihar is not at all sustainable in law as such, it is hereby set aside. Parties are at liberty to take appropriate recourse to resolve their disputes in accordance with law through the court of competent jurisdiction. This case is thus allowed. Let send the copy of this order to the Circle Officer concerned for information and needful.”

5. This Court is in full conformity with the order passed by the Bihar Land Tribunal. The land being an ancestral one, his late uncle had no right to give up the rights of his family members in favour of the petitioner.

6. The writ petition stands dismissed.

(Rajiv Roy, J)

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