

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1506 of 2020

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1. Bhola Rabidas @ Bhola Das S/o Late Sita Ram Rabidas Resident of Village -Kabar, P.S.-Barari, District-Katihar.
 - 2.1. Praveen Kumar Das Son of Late Bhagwan Ravidas @ Bhagwan Das Resident of Village - Kavar, P.S.- Barari, District - Katihar.
 - 2.2. Pawan Kumar Das Son of Late Bhagwan Ravidas @ Bhagwan Das, Resident of Village - Kavar, P.S.- Barari, District - Katihar.
 - 2.3. Neeraj Kumar Das Son of Late Bhagwan Ravidas @ Bhagwan Das, Resident of Village - Kavar, P.S.- Barari, District - Katihar.
 3. Naresh Rabidas @ Naresh Das, S/o Late Sita Ram Rabidas Resident of Village -Kabar, P.S.-Barari, District-Katihar.
 4. Mina Devi D/o Late Sita Ram Rabidas W/o Pramod Das, Resident of Madhepura, Ward No. 23, P.S.-Madhepura, District-Madhepura.
 5. Most Shanti Devi D/o Late Sita Ram Rabidas and Widow of Late Prakash Ram Resident of Village -Damgarha Western Tola, P.S.-Dhamdaha, District-Purnea.
 6. Kanti Devi D/o Late Sita Ram Das W/o Tetar Rabidas @ Ashok Rabidas, Resident of Mohalla-Laliyahi (Shivajee Nagar), P.S.-Katihar Sahayak, District-Katihar.
 7. Ranjan Devi D/o Late Sita Ram Rabidas W/o Balram Rabidas, Resident of Village -Milik Tola, Muradhia, P.S.-Barari, District-Katihar.
 8. Mostt. Manju Devi D/o Late Sita Ram Rabidas W/o Late Bhola Rabidas, Resident of Village -Giriyama Ward No.2, P.S.-Falka, District-Katihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Revenue and Land Reforms Bihar, Patna.
2. That Collector, Katihar.
3. The Additional Collector, Katihar.
4. The Deputy Collector, Land Reforms, Katihar.
5. The Circle Officer, Barari, District-Katihar.
6. Ram Narayan Mahto S/o Late Ramchela Mahto, Resident of Village -Kabar, (Kal Tola), P.S.-Barari, District-Katihar.
7. Lalu Rabidas S/o Late Baijnath Rabidas, Resident of Village -Sisia, P.O.- Kant Nagar, P.S.-Barari, District-Katihar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Mukesh Kumar Jha
For the Respondent/s	:	Mr.Rishi Raj Sinha (Sc19)



CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

12 08-04-2024

Heard the parties.

2. The petitioners have prayed for the following
reliefs:-

(i) for quashing the order dated 15.11.2019 passed by the learned Member (Administrative) Bihar Land Tribunal, Patna in B.L.T. Case No. 355/2019 whereby the application was allowed and order dated 16.02.2019 passed by the learned Additional Collector, Katihar in Mutation Revision Case No. 888/2005-06 as well as order dated 18.01.2005 passed by the learned D.C.L.R., Katihar in Mutation Appeal No. 192 of 2003-04/36 of 2004-05 have been set-aside.

(ii) For quashing the order dated 13.01.2004 passed by the learned Circle Officer, Barari in Mutation Case No. 1305/2003-04 whereby the Mutation Case filed by the father of the petitioner was dismissed.

3. The claim of the petitioners in the writ petition is that when the Suit No. 221 of 1972 was decided by the Assistant Revenue Officer vide an order dated 9.11.1972 (Annexure-2 to



the petition), the findings arrived at by the learned Tribunal is erroneous and fit to be set aside.

4. The facts of the case leading to the present writ petition reads as follows.

The detail of the land in question is on regard relates to Plot No. 378, 379 and 380 under Khata No. 230 in the Mouza - Kabar under Anchal - Barari in the District of Katihar. The petitioner claim that when the Assistant Revenue Officer decided the matter in their favour in the year 1972. They rightly moved for mutation in the year 2003 vide Mutation Case No. 1305/2003-04. As the respondent No.6 objected with respect to Plot No. 379 (Area 73 decimal) stating that he belongs to his father and he is in possession, Jamabandi created and are paying rent.

5. The Circle Officer, Barari rejected the claim of the mutation of the father of the petitioners vide an order dated 13.01.2004 (Annexure-5 to the writ petition).

6. Aggrieved, the father of the petitioners preferred appeal before the District Collector, Land Reforms, Bihar vide Mutation Appeal No. 192/2003-04/83/2004-05 which came to be allowed on 18.01.2005 (Annexure-7).

7. This was challenged by the respondent No.6 before the Additional Collector, Katihar vide Mutation Revision No. 888/2005 which again came to be dismissed on 16.02.2019 vide (Annexure-8 to the petition).



8. Still aggrieved, the B.L.T. Case No. 355 of 2019 was preferred before the Bihar Land Tribunal, Patna whereupon on notice, the petitioners appeared and raised their respective points.

9. The matter was taken up by the Tribunal and vide an order dated 15.11.2019 after taking note of the entire facts, as incorporated aforesaid, held as follows :-

Discussions and Findings

1. From the copies of the Judgment dated 09.11.1972 passed in the Title Suit No. 221 of 1962 and the decree dated 27.11.1972 it is apparent that the Judgment and Decree in the said suit has been passed by Assistant Settlement Officer, Katihar.

2. I find that the question with regard to the Constitutional validity and scope of Section 109 of the B.T. Act came for decision before the Full Bench of Hon'ble Patna High Court in C.W.J.C. No. 1428 of 2018 of 1970 and C.R. 847 of 1970 (Nand Kumar Rai and others v/s the State of Bihar & Ors). The Hon'ble Court held that the provision in the related rules that the decision of the Revenue Officer given in a suit under Section 109(2) shall have the force of a decree of a civil court, is ultra-vires as it is beyond the rule-making power of the State Government. It has also been held further that clause(b) of sub-section(1) and sub-section (2) of Section 109 of the Act are constitutionally invalid as a corollary to that sub-section(3) and (4) of Section 109 also must be struck down as void.

3. Thereby the Judgment and decree in the said Title



Suit in apparently illegal. They could not have been given effect to by the impugned orders. This appears to be the reason that even after 31 long years from 1972 no prayer for mutation was made by the ancestors of the opposite party and possession over the land in dispute was not claimed.

4. Consolidation entry admittedly on the basis of the Title Suit decree alone is thus of no help and it cannot be said to have any adverse effect on the right of the present petitioner.

5. In the R.S record of rights, the ancestors of the petitioner were recorded as raiyats in possession. The possession of the petitioner continued and he has been granted rent receipts from 1958. In the R.S record of rights, the ancestors of the petitioner were recorded as raiyats in possession. The possession of the petitioner continued and he has been granted rent receipts from 1958 (when the Record of Rights was finally published) till 2018-19, i.e. for 60 years, the Jamabandi of petitioner's ancestor has continued. Such a long standing Jamabandi cannot be disturbed and that also on the basis of a decree passed by the Revenue Officer in the Title Suit.

8 (when the Record of Rights was finally published) till 2018-19, i.e. for 60 years, the Jamabandi of petitioner's ancestor has continued. Such a long standing Jamabandi cannot be disturbed and that also on the basis of a decree passed by the Revenue Officer in the Title Suit.

In view of the foregoing, the impugned appellate order dated 18.01.2005 and the impugned Revisional Order dated 16.02.2019, both are set aside and this case is allowed.

10. This Court has gone through the order of the



full Bench of the Patna High Court in the case of (***Nand Kumar Rai and Ors. vs. State of Bihar Ors.***) and analogous cases reported in the ***1974 PLJR 27*** and paragraph 31 and 32 read as follows :-

31. After a careful consideration of the matter, I have come to the conclusion that clause (d) of Sub-section (1) and Sub-section (2) of Section 109 of the Act introduced by Bihar Act 6 of 1970 are constitutionally invalid. As a corollary to that, Sub-sections (3) and (4) of Section 109 also must be struck down as void. Clauses (a), (b) and (c) of Sub-section (1) of Section 109 are not being struck down as they correspond to Section 109 as it stood after amendment by Bihar Act 2 of 1965. In the matter of transfer of applications and suits pending in the Civil Courts, similarly, the operation of Section 3 of Bihar Act 6 of 1970 must be confined to such applications and suits which are covered by clauses (a), (b) and (c) of Sub-section (1) of Section 109 and not clause (d). It also follows that Sub-sections (2), (3) and (4) of Section 3 of Bihar Act 6 of 1970, must be struck down, because if within the limited scope of Section 3 any suit shall stand transferred, it shall be disposed of as a suit under Section 106 of the Act, for which a provision of appeal is already there in Section 109A. It is also to be made clear that I respectfully agree with the Bench decision of this Court in Chhatri Mehta's case reported in 1967 B. L. J. R. 236. The portion of Bihar Act 6 of 1970 which has not been struck down as invalid by me must be understood to be operative in the light of the said decision. In other words, suits pending in the Civil Courts for declaration of title,



confirmation of possession or recovery of possession will remain pending in these Courts and will be triable only by them even though entry in survey has been challenged expressly or impliedly. It is no doubt true, as stated in the reasons for the impugned enactment, that "in the suits for correction of records.....disputes relating to title and possession are generally involved", but it does not seem to be sound in law to enlarge the ambit of the power of the Revenue Courts for deciding complicated title suits merely because in them are involved questions of correction of record-of-rights, as the main plank of dispute in such cases would be title and possession. Compared to that, an allegedly wrong entry is an insignificant matter.

32. For the reasons stated above, both the writ applications are allowed, the impugned order of the learned Munsif dated 12.5.1970, contained in Annexure 4 of C. W. J. C. 1428 of 1970, passed in Title Suit no. 48 of 1969 is quashed and so is also quashed the order dated 5.12.1970, contained in Annexure I of C. W. J. C. 2080 of 1970, passed in Title Suit no. 175 of 1970. Both the title suits shall proceed in the Civil Courts accordance with law. Since C.W.J.C. 1428 of 1970 has been allowed, it is not necessary to make any order in Civil Revision no. 847 of 1970, and it is dismissed as infructuous. There will be no order as to costs in any of the cases.

11. Learned counsel for the petitioner submits that though the Full Bench has decided the matter, his contention is that he had preferred petition under Section 106 of the Bihar



Tenancy Act (for short B.T. Act).

12. Learned counsel appearing on behalf of the respondent No.6 submits that this is just and alibi to defeat the order of the Full Bench. The order in question is under Section 109 of the B.T. Act and further when the father of the petitioners got an order in the year 1972, they have no explanation as to why they waited for 31 years and moved before the Circle Officer for the mutation of the land only in the year 2003, if they indeed were in possession of the land.

13. This Court finds force that in the submission put forth by the learned counsel for the respondent No.6. The father of the petitioners got an order in the year 1972. As per the contention of the learned counsel for the petitioner he was alive for all the 31 years and it was same Sitaram Ravidas who late preferred the mutation petition before the concerned Circle Officer.

14. In that background and in absence of any explanation for this delay of 31 years coupled with the fact that the Full Bench has already decided that the Assistant Revenue Officer has no authority to decide the title, this Court does not find any infirmity in the order dated 15.11.2019 passed by the learned Member (Administrative) Bihar Land Tribunal, Patna.



15. The present petition devoid of merit and the same is dismissed.

(Rajiv Roy, J)

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