

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20268 of 2016

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Sanoj Kumar Yadav @ Sujit Kumar @ Sanjha Yadav Son of Late Arvind Kumar Yadav, Resident of Village- Dirachandpur, Police Station- Falka, District- Katihar.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Additional Collector, Katihar
3. The Deputy Collector, Land Reforms, Katihar
4. The Circle Officer, Samaili, District- Katihar
5. Awadhesh Kumar
6. Akhilesh Yadav
7. Mithilesh Yadav, All Sons of Late Bhagwat Yadav, resident of Village- Dirachandpur, Police Station- Falka, District- Katihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. D.K. Sinha, Sr. Adv. Mr.Umesh Prasad, Adv.
For the State	:	Mr. Dhurjati Kumar Prasad, G.P.-14

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CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR PANDEY

CAV ORDER

12 17-03-2025 I have already heard the learned counsel for the parties.

2. The present writ application has been preferred by the petitioner to quash the order dated 14.09.2016 passed in B.L.T. Case No. 1226 of 2015, by which the order dated 22.07.2015 passed by learned Additional Collector, Katihar in Mutation Revision Case No. 468 of 2014 has been set aside and the order of the Deputy Collector, Land Reforms, Katihar dated 25.07.2014 passed in Mutation Appeal No. 581 of 2012-13 has



been affirmed and the contesting respondents were directed to go before the competent Civil Court for declaration of their right and title over the property in question.

3. The brief facts of the case are that the land appertaining to Khata No. 2164, Khesra No. 421, area 1.30 acres, situated in Mauja Muradpur, Anchal, Sameli, District-Katihar, originally belonged to Late Shashidhar Yadav, the grandfather of respondent no. 5 to 7. Shashidar Yadav had purchased that land from one Bilakshan Yadav in the year 1959. Shashidhar Yadav had executed a sale deed in favour of the petitioner on 29.10.1974 for entire 1.30 acres of land through sale deed no. 17630. Late Bhagwat Yadav, the father of respondent nos. 5 to 7 was one of the attesting witnesses of the sale deed. The petitioner applied for mutation on the basis of the sale deed through Mutation Case No. 708 of 2011-12 and only thereafter, he came to know that the respondent nos. 5 to 7 had mutated their names on that land, which was sold by their grand-father in favour of the petitioner vide order dated 23.09.2010 passed in Mutation Case No. 1583/09-10, on the basis of family partition between respondent nos. 5 to 7. Since the order of mutation in favour of respondent nos. 5 to 7 was fraudulent, the petitioner applied for its cancellation. The



concerned Circle Officer dismissed the application of the petitioner, against which he filed Mutation Appeal No. 581 of 2012-13 before the DCLR, Katihar, but vide order dated 25.07.2014, the DCLR also dismissed his appeal. The petitioner approached the Additional Collector, Katihar and filed Revision Case No. 468 of 2014 and the Additional Collector, Katihar allowed the revision of the petitioner, vide order dated 22.07.2015 and set aside the order of the DCLR and also that of the Circle Officer.

4. Respondent nos. 5 to 7 challenged the order dated 22.07.2015 passed by the Additional Collector, Katihar in Bihar Land Tribunal (for short 'the Tribunal') by filing B.L.T.Case No. 1226 of 2015 and the learned Member of the Tribunal, vide the impugned order dated 14.09.2016, set-aside the order of the Additional Collector, Katihar.

5. The learned counsel for the petitioner has submitted that learned Member of the Tribunal as well as the DCLR have mentioned in their orders that on 29.10.1974, the petitioner was not born, as such, the said sale deed, claimed to be executed in his favour, is fraudulent document. He submitted that the date of birth of the petitioner is 20.06.1974 and when the sale deed was executed by Shashidhar Yadav in his favour, he was four months



of age. The petitioner's father Late Arvind Kumar Yadav had purchased the property in question in the name of the petitioner from the grand-father of the respondent nos. 5 to 7. He has submitted further that the learned DCLR as well as the Tribunal have considered the date of birth of the petitioner mentioned in voter list and they didn't consider the date of birth mentioned in his matriculation as well as in other educational certificates. The date of birth of the petitioner in educational certificate and matriculation certificate shall prevail on the date of birth entered into voter list. The father of the petitioner was a teacher and his name was Arvind Kumar Yadav, but his alias name was Panchanand. Similarly, the name of the petitioner is Sujeet Kumar, but his family members used to call him as Sanoj Kumar, as such, his alias name is Sanoj Kumar. The learned counsel has also submitted that that physical possession over the land is an essential ingredient for mutation As per Section 6 (13) of the Bihar Land Mutation Act, 2011 (for short 'the Act of 2011', no mutation can be allowed unless the person is in physical possession over the holding or a part thereof. The petitioner is in physical possession over the land in question and this finding of fact has been discussed in the order of Tribunal, the Additional Collector and the DCLR, but despite this fact,



the mutation has been made in name of the respondent nos. 5 to 7, ignoring the fact that they are not in physical possession.

6. On the other hand, the learned counsel for the respondent nos. 5 to 7 have submitted that the petitioner was not born on the date of execution of the sale deed, as such, the sale deed in his favour is a fraudulent document. He has submitted that the entry in voter list shows that the sale deed in favour of the petitioner is prior to his birth. The date of birth of the petitioner is a fact in issue. The petitioner claims his date of birth as 20.06.1974 on the basis of his school certificate, whereas respondent nos. 5 to 7 are challenging his date of birth on the basis of the entry in the voter list.

7. It is settled law that the date of birth entered into school certificate shall prevail upon the entry in the voter list. The learned Member of the Tribunal is not right in giving precedence on the voter list over the matriculation certificate and other educational certificates, in which the date of birth of the petitioner has been entered.

8. Section 6(13) of the Act of 2011 says specifically that the mutation application cannot be allowed if the applicant is not in physical possessions over the land.

Section 6(13) of the Act of 2011 is being extracted



herein below:-

“6(13). Mutation of a holding or a part thereof shall not be allowed in cases in which acquirer of an interest in the holding or part thereof does not have physical possession over that holding or a part thereof.”

9. From bare perusal of the said Section, it is clear that no mutation can be made if a person is not in physical position of the land, for which the mutation is sought.

10. Before considering the application of the petitioner, the Circle Officer had conducted an inquiry and found the physical possession of the petitioner over the land in dispute, and this fact has also been mentioned in the order of the DCLR, Additional Collector and the Tribunal and despite this fact, the Tribunal has passed the impugned order, which is not sustainable in the eye of law. Accordingly, it is set aside.

11. Consequently, the writ application is allowed.

(Nawneet Kumar Pandey, J)

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