

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10429 of 2023

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Surendra Prasad Son of Late Rajaram Singh Resident of Moh/vill.- Bel, P.O. Obera, District- Aurangabad.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Revenue and Land Reform Department, Government of Bihar, Patna.
2. The Principal Secretary, Revenue and Land Reform Department, Government of Bihar, Patna.
3. The District Magistrate, Aurangabad.
4. The Deputy Collector Land Reform, Aurangabad.
5. The Circle Officer, Rafiganj, Aurangabad.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Lala Sheshendra Narayan Rais, Adv. Mr. Shashank Shekhar, Adv.
For the Respondent/s	:	Mr. Rishi Raj Sinha (SC-19)

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CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

2 15-01-2025 1. Heard learned counsel for the petitioner and learned
AC to SC-19.

2. The learned counsel for the petitioner submits that father of the petitioner Late Raja Ram Singh purchased land bearing Khata No.67, Plot No.956, Area 1.48 acres, Plot No.50, Area 0.13 decimal and Plot No.652, Area 0.18 decimal at Mauza Gamhariya, District- Aurangabad i.e. total area 1 acre 79 decimals by a registered sale deed dated 12.12.1950 from late Kebal Singh. It is next submitted that the aforesaid land was settled with Kebal Singh (vendor of petitioner's father) by Sah Mustafa Mohammad, the landlord by way of Hukumnama on



01.10.1950. After vesting of jamindari, demand with regard to the land was opened in the office of Circle Officer, Aurangabad in the name of father of the petitioner and rent was being paid, further during revisional survey, a separate khata was opened in the name of the father of the petitioner with regard to the land in dispute. It is next submitted that there was a breach in payment of rent revenue in respect of the land in dispute, on account of which, Auction Case No.22 of 1972-73 was instituted but the case was dropped after the arrears rent revenue was paid, it is further submitted that after the death of the father of the petitioner, the petitioner became the owner of the land.

3. The learned counsel next submits that vide Settlement Case No.230/1976-77 to 237/1976-77, settlement parcha was issued by the C.O., Rafiganj in favour of the name settlee on the ground that the land was Gairmajarua Malik land, it is asserted and submitted that no notice in the aforesaid Settlement Case was issued to the land owner, i.e. father of the petitioner. The petitioner, in the year 2012 filed Title Suit No.47 of 2012 for declaring his title over the land and for recovery of possession by vacating the encroachment from the Settlee and also for declaring the settlement parcha as void and setting aside the same, further, prayed for permanent injunction against the



Settlee.

4. The learned counsel submits that the State of Bihar appeared in T.S. No.47/2012 and filed written statement, notices were issued on the Settlees/defendants but they did not appear in the suit, the suit proceeded ex-parte against the Settlees and the State of Bihar. The suit was decreed ex-parte against the State of Bihar vide judgment 30.11.2018 and decree dated 22.12.2018 (Annexure-2) passed by the learned Sub-Judge-I, Aurangabad, in which, title of petitioner was declared over the land and Settlees were ordered to dispossess themselves over the land within 60 days from the date of judgment, otherwise the plaintiff (petitioner herein) shall have statutory rights to take action in accordance with law for dispossessing them and also held that parcha issued were illegal, hence would not bind the petitioner herein.

5. The petitioner, thereafter, filed Mutation Case No.206R27/2018-2019 on 31.03.2019 before the Circle Officer, Rafiganj for mutating the land pertaining to Khata No.67, Plot No.956, 50 and 652 in his name along with all the relevant documents including the judgment and decree in T.S. No.47/2012. The Circle officer, Rafiganj dismissed the Mutation case by his order dated 26.11.2019 (Annexure-3), on the ground



that Halka Karmchari and Circle Inspector have submitted their report recording that Jamabandi is not running in the name of the purchaser and parents of purchaser, on which, purchaser was asked to submit his documents but no documents were submitted in evidence.

6. The learned State counsel, at this stage, placing reliance on para-11 of the counter affidavit submits that specific plea has been raised by the Circle Officer that Parcha was issued in favor of the landless and until and unless the Parcha issued by the State Government in favour of the landless person of the village is not set aside by the competent authority, the mutation of this land in question cannot be allowed in the name of the petitioner. The learned counsel appearing on behalf of the State further submits that mutation does not give rise to title rather signifies possession but then it is an admitted fact that petitioner was ousted from the land which was settled with him, for which, he had to file title suit. It is further submitted that in the Title Suit also, the judgment and decree was passed in favour of the petitioner and the Settles were directed to dispossess themselves from the land within 60 days, failing which, the petitioner will have his statutory rights to get them evicted, in accordance with law. It is next submitted that petitioner instead



of moving this court for seeking the relief claimed, in the instant writ application, ought to have filed an execution case before the competent civil court, for getting the settlees ousted from the land of the petitioner, in terms of the judgment and decree in T.S. No.47/2012.

7. The learned counsel appearing on behalf of the petitioner submits that the petitioner challenged the order of the Circle Officer in Mutation Case No. Mutation Case No.206R27/2018-2019 by filing Mutation Appeal No.182/2019-20 before the D.C.L.R., Aurangabad, the D.C.L.R. vide his order dated 25.03.2020, after hearing the matter set aside the order dated 26.11.2019, passed by the Circle Officer and returned the record with direction for making entry and correction accordingly.

8. It is submitted that the petitioner filed petition dated 23.12.2020 (Annexure-4) before the C.O. for compliance of the order dated 25.03.2020, passed by the D.C.L.R. in Mutation Appeal No.182/2019-20, but no action was taken, thereafter, the petitioner on 22.06.2022 (Annexure-5) filed an application before the District Magistrate for mutating the land in his name to remove encroachment from the land, but the representation is pending. It is thus submitted that the instant writ petition has



been filed for directing the Circle Officer to mutate the name of the petitioner over the land in question, in compliance of the order of the D.C.L.R.

9. The learned counsel appearing on behalf of the State reiterate his submission and submits that for mutating the land, possession is necessary and it is an admitted fact that petitioner is not in possession of the land in question, whereas Settlees are and if the petitioner intends to get his land mutated, in that event, he will have to take recourse by filing an execution case before court of competent civil jurisdiction, in terms of judgment and decree in T.S No. 47/2012, for evicting the Settlees from his land.

10. At this stage, the learned counsel appearing on behalf of the petitioner submits that petitioner has already moved before a court of competent civil jurisdiction, by filing an execution case, for getting the Settlees evicted from the land in question, in terms of the judgment and decree passed in T.S. No.47/2012, thus, the learned counsel appearing on behalf of the petitioner submits that he may be permitted to withdraw the writ application with liberty to pursue his remedy in accordance with law before the executing court.

11. Permission is accorded.



12. The writ application is dismissed as withdrawn
with aforesaid liberty.

(Satyavrat Verma, J)

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