

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19008 of 2024

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Renu Giri wife of Late Chandra Vansh Giri @ Tunna Giri, Resident of Ward No. -13, Sareya, Gopalganj, P.S.-Gopalganj Town, District-Gopalganj, Bihar-841428.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Revenue and Land Reforms Department, Govt. of Bihar.
2. The Additional Chief Secretary, Revenue and Land Reforms Department, Govt. of Bihar.
3. The Collector, Gopalganj, Bihar.
4. The Additional Collector, Gopalganj, Bihar.
5. The Land Reforms Deputy Collector, Gopalganj, Bihar.
6. The Circle Officer, Manjha, Gopalganj, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Mrigank Mauli, Sr. Advocate Mr. Devashish Giri, Advocate
For the Respondent/s	:	Mr. Kinkar Kumar, SC-9 Mr. Ashutosh Kumar Upadhyay, AC to SC-9

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CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL JUDGMENT

Date : 21-04-2025

Heard Mr. Mrigank Mauli, learned Senior Counsel assisted by Mr. Devashish Giri, learned counsel on behalf of the petitioner and Mr. Kinkar Kumar, SC-9 on behalf of the State.

2. Learned Senior Counsel for the petitioner submits that husband of the petitioner purchased four plots of land vide two sale deeds from Jai Prakash Gupta. A registered sale deed dated 08.08.2011 (Annexure-1) was executed by the vendor in favour of Late Chandra Vansh Giri (vendee) in respect of nine dhurs of land pertaining to Khata No.145, Khesra No.917 and 3 katha of



land pertaining to Khata No.147, Khesra No.915 for an amount of Rs.6,48,000/-. Further vide registered sale deed dated 12.08.2011 (Annexure-1/A) executed by the vendor in favour of vendee was in respect of 3 katha 10 dhurs of land pertaining of Khata No.145, Khesra No.918 and 6 katha 1 dhur of land pertaining to Khata No.147, Khesra No.915 for an amount of Rs.2,32,000/-.

3. It is submitted that Jamabandi No.341 was running in the name of Jai Prakash Gupta (vendor) with respect to land pertaining to Khesra No.915, 917 and 918. It is submitted that respondent in their counter affidavit have not rebutted the said fact pleaded in the writ application rather have given an evasive reply that same is subject to strict proof by the petitioner at para-9 of the counter affidavit.

4. It is next submitted that the authorities are custodian of records and if Jamabandi No.341 was not in the name of the vendor of the husband of the petitioner, then the same would have been rebutted by the authorities after perusing the records. It is next submitted that this submission has been made as it has relevance for adjudicating the *lis* in this case.

5. It is next submitted that Jai Prakash Gupta had purchased the land in dispute vide registered sale deed 2168 and 2169,



both dated 10.02.2003 and registered sale deed no.2170 dated 10.02.2003, from Mankeshwar Nath Singh, further Mankeshwar Nath Singh had exchanged the land from khatiyani raiyat namely, Surendra Pandey and Upendra Pandey, vide deed of exchange bearing no.10384, dated 18.06.1991, which becomes clear from perusal of the legal opinion dated 13.12.2017 (Annexure-P/3 series), given by the Advocate, Legal Advisor, Oriental Bank of Commerce, as Late Chandra Vansh Giri, had mortgaged the purchased land with the bank and No Encumbrance Certificate was also issued by the District Registrar Office, Gopalganj, as would manifest from Annexure-3 series.

6. It is further submitted that the land in dispute in C.S. Khatiyan prepared in the year 1916 (Annexure-4) stands recorded in the name of Amika Pandey and others, who were ancestors of Surendra Pandey and Upendra Pandey. It is next submitted that Khesra No.917 and 918 under Khata No.145 is recorded as 'Bakasht Biritdar' while Khesra No.915 under Khata No.147 is recorded as 'Gairmazrua Biritdar'. It is submitted that the land was transferred by the erstwhile landlord as a 'Birit' (grant in lieu of religious service) to Amika Pandey and others.

7. It is submitted that vide order dated 21.01.1984, in Rent



Fixation Case No.03/1983-84, passed by the Land Reforms Deputy Collector, Gopalganj, rent of Rs.8 per acre per year to be recovered from the date of vesting of zamindari was fixed in favour of Surendra Pandey and Upendra Pandey with respect to Khesra No.915 under Khata No.147, the order sheet also record that the land in dispute are not for the use of Sairat or the Government. It is submitted that the rent was also fixed with regard to Khesra No.917 and 918, under Khata No.145, which gets corroborated from the fact that Jamabandi No.341 was created with respect to the aforesaid khesras. It is submitted that respondent in their counter affidavit have not rebutted the said pleading rather have given an evasive reply.

8. It is further submitted that Jamabandi No.456 was created in the name of the husband of the petitioner. It is submitted that Jamabandi No.456 emanates from Jamabandi No.341 and the rent stands paid uptill 2024-25 (Annexure-6 and 6A). Thereafter, L.P.C., (Annexure-7) was also issued in favour of the husband of the petitioner.

9. It is further submitted that the petitioner after the death of her husband applied online for mutating the land in dispute in her name along with the death certificate of her husband on 23.07.2023 (Annexure-9) vide mutation case no.1199



R27/2023-24, Manjha, Gopalganj.

10. It is submitted that the mutation case was rejected by the Circle Officer, Manjha vide order dated 12.01.2024 (Annexure-10), impugned in the instant writ application. It is submitted from order sheet of Mutation Case no.1199 R27/2023-2024, it would manifest that the Circle Officer on 25.07.2023 had directed the petitioner to submit certain documents but the order dated 25.07.2023 was passed behind the back of the petitioner and the order was never served upon the petitioner, the said submission of the learned Senior Counsel is rebutted by the learned State Counsel, it is submitted that at para-12 of the counter affidavit, it has been specifically pleaded that order dated 25.07.2023 was passed online as such petitioner could have checked the same online but since documents were not produced hence, the mutation application was rejected as such it can not be said that the order passed by the Circle Officer was behind the back of the petitioner.

11. The learned Senior Counsel next submitted that karamchari submitted a report in pursuance of order dated 09.07.2023 in mutation case in favour of the petitioner but the same was not taken into consideration, despite *karamchari* reporting that Jamabandi No.456 is in the name of the husband of the petitioner



and petitioner is in possession of the land apart from other facts but then the mutation case was rejected by an order dated 12.01.2024 on the ground that the documents asked were not submitted.

12. Learned Senior Counsel next submitted that the petitioner filed Mutation Appeal Case No.172/2024-2025 against the order dated 12.01.2024 (Annexure-10), passed by the Circle Officer, Manjha, before the D.C.L.R., Gopalganj.

13. It is submitted that the District Bar Association, Gopalganj boycotted the Court of D.C.L.R., as such, when the appeal was taken up on 08.08.2024, time was sought by the petitioner for producing some documents but the D.C.L.R., rejected the appeal by an order dated 08.08.2024 (Annexure-12) without giving any proper opportunity of hearing to the petitioner. The order dated 08.08.2024, passed by the D.C.L.R. is also impugned in the instant writ application. It is next submitted that the land in dispute in C.S. Khatiyani was recorded as Bakasth Biritdar and Gairmazrua Biritdar, it is also submitted that this Court in the case of **Chariter Dusadh & Anr. Vs. Bhagwati Pandey 1934 SCC OnLine Patna 125** held that Birt is a rent free land in consideration of religious services, past, present or future and such grants are almost invariably heritable and trans-



ferrable even to persons who can not be expected to keep up the particular observances for which the grants were originally made. Learned Senior Counsel thus submits that Birt land is an absolute property of a person to whom it is transferred and is not the property of the landlord.

14. It is next submitted that the petitioner thereafter filed Mutation Revision Case No.08 of 2024-25 under Section 8(1) of Bihar Land Mutation Act, 2011, before the Additional Collector, Gopalganj, assailing the order dated 12.01.2024 (Annexure-10) and 08.08.2024 (Annexure-12) passed by the Circle Officer and D.C.L.R., in mutation case and mutation appeal, respectively.

15. The Additional Collector finding that D.C.L.R., Gopalganj, without providing reasonable opportunity of hearing passed the order dated 08.08.2024 in Mutation Appeal Case No.172/2024-25, remanding the case back to him vide order dated 12.11.2024 (Annexure-17) with a direction to conduct a proper hearing and pass an appropriate order. It is submitted that Additional Collector though not expressly set aside the order of the D.C.L.R. but remand can be construed that the order was set aside as the D.C.L.R. was directed to pass order afresh.

16. It is next submitted that the D.C.L.R., on 13.11.2024, i.e. on the very next date of remand by the Additional Collector,



without issuing any notice and affording any opportunity of hearing to the petitioner passed the order dated 13.11.2024 (Annexure-18), affirming the earlier order dated 08.08.2024 passed in Mutation Appeal Case No.172/2024-25, the order dated 13.11.2024 is also impugned in the instant writ petition. The learned Senior Counsel next submits that from perusal of para-35 of the counter affidavit filed on behalf of the respondents, it would manifest that the said pleading that no proper opportunity was given by the D.C.L.R. to the petitioner, before passing order dated 13.11.2024 is not rebutted.

17. It is next submitted that the D.C.L.R., in his order dated 13.11.2024, without any material on record observed that creation of Jamabandi is suspicious and recommended for cancellation of Jamabandi existing in the name of the husband of the petitioner.

18. Learned Senior Counsel for the petitioner submitted that from the facts recorded herein above it becomes clear that the manner in which the Circle Officer and DCLR has passed order in mutation case and the mutation appeal amply demonstrates that they are not aware of the law. It is next submitted that what is not in dispute rather stands admitted is that Jamabandi No.456, was created in the name of the husband of the petitioner



by the Circle Officer and after the death of the husband of the petitioner, petitioner filed an application online seeking mutation of the land in her name.

19. It is next submitted that whether the Jamabandi No.456, created in the name of the husband of the petitioner was legal or illegal was not an issue before the Circle Officer. It is submitted that once Jamabandi was created in the name of the husband of the petitioner then the Circle Officer had no option but to mutate the land in the name of the petitioner on the ground that earlier mutation was in the name of her husband. It is further submitted that the *karamchari* in his report had also recorded that possession of the land in dispute was with the petitioner. It is next submitted that the Circle Officer unnecessarily was harassing the petitioner by seeking documents from her, it is submitted that if Circle Officer had any suspicion that the Jamabandi earlier created in the name of the husband of the petitioner by his predecessors was not in accordance with law, in that event he could have recommended for cancellation of Jamabandi in terms of Section 9 of the Mutation Act, but then mutation could not have been denied on the ground that documents asked for was not produced by the petitioner. It is next submitted that rejection of the application of the petitioner seeking mutation of the land in



her name by the Circle Officer, amounted to reviewing the order creating Jamabandi in the name of the husband of the petitioner by the predecessor of the present Circle Officer, it is next submitted that Mutation Act does not give power of review to the Circle Officer, but then Section 9 of the Mutation Act 2011, provides for cancellation of Jamabandi on the grounds mentioned therein, hence, it is reiterated and submitted that the Circle Officer, if was of the view that Jamabandi created in the name of the husband of the petitioner was not in accordance with law or appeared suspicious, in that event the Circle Officer could have recommended for cancellation of Jamabandi standing in the name of the husband of the petitioner, instead of rejecting the application of the petitioner seeking mutation for want of documents.

20. It is also submitted that the D.C.L.R., in appeal also was not able to appreciate the said fact rather in a mechanical manner rejected the appeal of the petitioner but subsequently on remand by the Additional Collector, it appears that the D.C.L.R., realized his mistake as such while passing the order impugned dated 13.11.2024 also recorded that recommendation can be made for cancelling the Jamabandi.

21. Learned SC-9, Mr. Kinkar Kumar, appearing on behalf of



the State submits that the petitioner has rushed to this Court without awaiting her alternative remedy of appeal before the Additional Collector against the order passed by the D.C.L.R., in mutation appeal, the said submission on behalf of the State is vehemently rebutted by the learned Senior Counsel for the petitioner on the ground that order dated 13.11.2024, passed by the D.C.L.R. in Mutation Appeal No.172/2024-25, was passed without giving any opportunity of hearing to the petitioner and thus, was in complete breach of principles of natural justice and secondly, the authorities could not have rejected the mutation application of the petitioner on the ground that the documents were not submitted when earlier Jamabandi was already running in the name of her husband and the *karamchari* had reported that the petitioner was in possession. It is also submitted that alternative remedy will not fetter the power of the constitutional court, if the same has been passed in breach of the principles of natural justice.

22. After hearing learned counsels for the parties, the Court is in complete agreement with the submissions made on behalf of the petitioner recorded at para-18 and 19 hereinabove.

23. Having regard to the facts and circumstances of the case, the order dated 12.01.2024, passed by the Circle Officer, Man-



jha, Gopalganj in Mutation Case No.1199 R27/2023-24, the order dated 08.08.2024, passed by the D.C.L.R., Gopalganj in Mutation Appeal No.172/2024-25 and the order dated 13.11.2024, passed by the D.C.L.R., Gopalganj in Mutation Appeal No.172/2024-25 in pursuance of the order of remand dated 12.11.2024, passed by the Additional Collector in Mutation Revision Case No.08/2024-2025 are hereby quashed.

24. It is made clear that the Authorities are not precluded to act in accordance with law.

(Satyavrat Verma, J)

shikha/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.04.2025
Transmission Date	NA

