

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12893 of 2021

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Swapnil Shrestha Rai @ Sonam Rai D/o Late Pradip Rai, R/o Village-Bilaspur, P.S.-Ram Nagar, District-West Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through Additional Chief Secretary, Revenue and Land Reform Department.
2. The Collector, West Champaran at Bettiah.
3. The Additional Collector, West Champaran at Bettiah.
4. The Deputy Collector, Land Reforms, Bagaha, West Champaran.
5. The Circle Officer, Ramanagar, West Champaran.
6. Ranjana Rai Wife of Late Alok Rai, R/o Village-Bilaspur, Police Station, Ramnagar, District-West Champaran.
7. Rashmi Rai Wife of Anil Deo, C/o-Dr. Vishwanath Prasad Singh Resident of Kargil By Pass Chowk, Dumara Road, Sitamarhi-843302

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. J.K. Verma, Advocate Ms. Nivedita Nirvikar, Sr. Advocate Mr. Arya Achint, Advocate Mr. Akshansh Shanker, Advocate Mr. Abhishek Kr. Srivastava, Advocate Mr. Ravi Raj, Advocate Mr. Ayansh, Advocate
For the Respondent/s	:	Mr. Md. Khurshid Alam (Aag12) Mr. Arun Kumar Bhagat, AC to AAG 12
For the Respondent No. 6	:	Mr. Surendra Kishore Thakur, Advocate Mr. Sanjay Kumar Tiwari, Advocate Mr. Rajnish Shandilya, Advocate
For the Respondent No. 7	:	Mr. Pratik Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE SOURENDRA PANDEY
ORAL JUDGMENT

Date : 14-05-2026

Heard Mr. Jitendra Kishore Verma assisted by Mr. Arya

Achint, learned Advocates appearing on behalf of the petitioner,

Mr. Surendra Kishore Thakur assisted by Mr. Rajnish Shandilya,

learned Advocates on behalf of respondent no. 6 and Mr. Pratik

Kumar, learned Advocate on behalf of respondent no. 7.



2. The present writ petition has been filed for grant of following reliefs:

i. For issuance of a writ/s, an order/s, a direction/s in the nature of mandamus for commanding the respondents to set aside the order dated 15.02.2021, passed By the Learned Chairman, Bihar Land Tribunal at Patna, in B.L.T. Case Number 188 of 2019, whereby the Chairman was pleased to uphold the order dated 31.10.2018 passed in Mutation Revision Case No. 38 of 2016-17, passed by the Additional Collector, West Champaran at Bettiah.

ii. For directing the respondents to set aside the order dated 31.10.2018 passed, Ld. Additional Collector, West Champaran at Bettiah in Mutation Revision case No. 38 of 2017-18, whereby he has dismissed the said Mutation Revision Case.

iii. For directing the respondents to set aside the order dated 28.02.2017 passed by Deputy Collector land Reforms, Bagaha, West Champaran in Mutation Appeal No. 15 of 2016-17, whereby by allowing the said appeal had set aside the order dated 11.05.2016 passed by Circle Officer, Ramanagar, West Champaran in Mutation Case No. 109 of 2016-17.

iv. For directing the respondents to maintain Status-Quo in respect to the mutation of the property in dispute and keep the mutation of the aforesaid property in abeyance till this matter is subjudice before this Hon'ble court.

v. And for any other relief/s for which the petitioner is found to be entitled under the provision of law involved in the present case.

3. The case of the petitioner is that she is the daughter-in-law of late Harendra Rai @ Chulbul Rai, who had three sons



namely, Deepak Rai, Pradeep Rai and Alok Rai and one daughter namely, Rashmi Rai. The petitioner is the daughter of Pradeep Rai, since deceased and the petitioner is the only heir of late Pradeep Rai.

4. The contention of the petitioner is that an amicable partition took place on 28.07.2001, between the heirs of late Harendra Rai @ Chulbul Rai, while he was alive and a deed of settlement was prepared and signed by the elder sister of late Harendra Rai @ Chulbul Rai, however, after the death of Harendra Rai @ Chulbul Rai, his successors ignored the earlier deed of settlement dated 28.07.2001 and referred the said matter to *panchayti*/arbitration. The cousins of late Harendra Rai @ Chulbul Rai were appointed as arbitrators/*panch* through an agreement in the form of affidavit sworn on 14.05.2015, by the petitioner being the successor of the branch of Pradeep Rai, Ranjana Rai being the widow representing the branch of Alok Rai and Rashmi Rai, daughter of late Harendra Rai @ Chulbul Rai. The case of petitioner is that such agreement was a valid arbitration agreement as all branches of late Harendra Rai @ Chulbul Rai, by virtue of the affidavit sworn, had appointed *panches* or arbitrators namely, Dr. Shyam Kishore Rai, Krishna Mohan Rai, Malay Rai, Anil Rai,



Subhash Rai and Rajesh Rai to decide the matter of partition in respect to the estate of late Harendra Rai @ Chulbul Rai.

5. The further case of the petitioner is that the arbitrators after hearing the said arbitration jointly decided and gave a *panchayati* award duly signed by all the *panches*, who were appointed with the consent of the parties. The said award was not challenged by any party in any court, rather all the parties accepted the same and accordingly the award was acted upon. The petitioner came in exclusive possession over the land allotted to her through the said award.

6. The petitioner pursuant to the aforesaid settlement/arbitration award applied for mutation of her name with respect to the property which was allotted to the petitioner and over which she had exclusive possession. The Mutation Case No. 109 of 2016-17 was initiated before Circle Office, Ramnagar, West Champaran, who after due inquiry found the contentions of the petitioner correct and allowed the mutation in favour of the petitioner *vide* Order dated 11.05.2016.

7. The petitioner has further contended that the respondent no. 6 namely, Ranjana Rai, who herself had appointed the arbitrator and, who herself had been a party to the arbitration proceeding of *panchayti* had never challenged the arbitration



award. However, all of a sudden she filed a mutation appeal before the Deputy Collector Land Reforms (DCLR), Bagaha, West Champaran *vide* Mutation Appeal No. 15 of 2016-17. It is contended that the DCLR ignoring the fact that the respondent no. 6 was not entitled to file any appeal before the DCLR rather she should have challenged the award under the provisions of ***Arbitration and Conciliation Act, 1996*** (hereinafter referred to as the '*Act*'), and without appreciating the facts and position of law allowed the appeal and set aside the order of mutation passed by the Circle Officer, Ramnagar, West Champaran.

8. The petitioner being aggrieved by such order preferred a Mutation Revision Case No. 38 of 2017-18 before the Additional Collector, West Champaran at Bettiah against the order dated 28.02.2017 passed by the DCLR, Bagaha, West Champaran in Mutation Appeal No. 15 of 2016-17. However, without appreciation of the facts and the law, even the Mutation Revision application was dismissed.

9. The petitioner being aggrieved by the dismissal of the Revision application, preferred an application before the Bihar Land Tribunal, Patna *vide* B.L.T. Case No. 188 of 2019 for setting aside the order dated 31.10.2018, passed in the Mutation Revision Case No. 38 of 2017-18 and also the appellate order dated



28.02.2017, passed by the DCLR, Bagaha, West Champaran. However, even the Bihar Land Tribunal, Patna dismissed the aforesaid application and upheld the order dated 31.10.2018, passed by the Additional Collector, West Champaran in Mutation Revision Case No. 38 of 2017-18.

10. Being aggrieved by the said dismissal of the said Bihar Land Tribunal Case, the petitioner has approached this court by way of present writ application, challenging the impugned orders.

11. Mr. Jitendra Kishore Verma, learned counsel appearing on behalf of the petitioner submits that he is primarily aggrieved by the fact that the Bihar Land Tribunal, Patna, while deciding a dispute of mutation entry cannot travel upon the issue of validity of an award passed under the Act. It has been submitted that from perusal of the impugned order passed by the Bihar Land Tribunal, Patna, it would appear that the Bihar Land Tribunal, Patna has tested the genuineness of the award while deciding the application of the petitioner, which was meant only for mutation based on such award. Mr. Verma, while referring to the impugned order, has pointed out that the Bihar Land Tribunal, Patna has discussed the contentions raised by the respondent no. 6 with regard to the various irregularities in the award, like the signatures



of all the *panches* were not on the award and the award was prepared and notarized first then the signatures of six *panches* thereon were obtained. Taking all these factors of deficiency in the award, the Bihar Land Tribunal, Patna, in paragraph no. 13, observed as under :

“..... this peculiarity to my mind is most vital which goes to root of the matter. All these circumstances appearing on the face of the Annexure-2 and make it quite doubtful and suspicious and hence it is not fit to be acted upon.”

12. The learned counsel for the petitioner further submits that as far as the point of non-signing of the award by all the *panches*, the same cannot be a criteria to disbelieve the award as Section 29 of the Act provides for majority of the members signing and it is not binding that all the members should sign the award. It has been contented that the award shall be binding on all the parties and, if any challenge is made with regard to its legality, the same can be done only before a proper forum as provided under Section 34 of the Act.

13. Mr. Jitendra Kishore Verma, learned counsel appearing on behalf of the petitioner has argued that as far as the claim by respondent nos. 6 and 7 that they were not given an opportunity of hearing as the order was passed in haste without waiting for their appearance is concerned, the same is also not



tenable in law as the principal of natural justice is to be seen and noted in cases where the prejudice caused to the person, who is alleging violation of natural justice, has also to be taken note of. Mr. Verma has referred to a judgment reported in **(2021) 19 SCC 706** in the case of ***State of Uttar Pradesh Vs. Sudhir Kumar Singh & Ors.***, wherein the Hon'ble Supreme Court has observed that natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. The breach of the audi alteram partem rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused.

14. Referring to the counter affidavit, Mr. Jitendra Kishore Verma, learned counsel appearing on behalf of the petitioner submits that the respondent no. 7, who has appeared and filed a counter affidavit in the present case has stated in paragraph no. 3 onwards that she was not aware of either the award or the mutation cases pending before the authorities prior to the present case. It has been pointed out that the respondent no. 7, namely, Rashmi Rai had appeared before the court of DCLR in Mutation Appeal Case No. 15 of 2016-17 and she had even filed a reply in the same and she had supported the case of the appellant therein *i.e.* Ranjana Rai and had requested for setting aside of the order passed by the Circle Officer, Ramnagar, West Champaran. It has



thus been stated that in the counter affidavit, the respondent no. 7 has not come out clean before this Court and has tried to suppress the material fact that she had full knowledge of the case since the mutation appeal was filed by the respondent no. 6, Ranjana Rai.

15. It has also been contended that the respondent no. 7, Rashmi Rai never challenged the earlier order passed by the Circle Officer, Ramnagar, West Champaran, and therefore, she cannot raise any complaint with regard to the passing of the said order here before this Court.

16. The arguments has thus been summarized that the DCLR, Bagaha, West Champaran as well as the Additional Collector, West Champaran, Bettiah and the Bihar Land Tribunal, Patna, all have erred in going into the legality of the award and has refused the mutation in favour of the petitioner on such ground and the same is not tenable and the writ application is fit to be allowed.

17. Mr. Surendra Kishore Thakur, the learned counsel appearing on behalf of respondent no. 6 submits that from perusal of the arbitration agreement, it would be evident that there is no signature of heirs of Alok Rai, as he had also two children at the relevant time. It has been contended that since the two children of late Alok Rai were necessary parties, therefore, the notarized agreement is not tenable in law and, therefore, cannot form basis



for mutation in favour of the petitioner. It has further been contended that Section 6(11) of the Bihar Mutation Act, 2011, bars mutation on a partition, if the same is not by court and also if the consent of all co-sharers are not there. The learned counsel for the respondent no. 6 contends that there is no partition by court of law and moreover, the consent of co-sharers namely, Diksha Rai and Divyanshu Rai, who are daughter and son of late Alok Rai having not given their consent, the same cannot be taken into account.

18. The learned counsel further submits that from perusal of the order of the Circle Officer, Ramnagar, it would be evident that he has taken into account that on the said partition document there is signature of all the co-sharers which is a wrong fact on which the mutation orders have been passed. It has been contended by the learned counsel appearing on behalf of respondent no. 6 that from para-2 of the order dated 28.02.2017 of the DCLR, Bagaha, it would be evident that the notice was pasted on the walls of the appellant/Ranjana Rai on 12.05.2016, while the order granting the mutation in favour of the petitioner was passed on 11.05.2016, which goes on to show that there was no proper service of notice and, therefore, any order without service of notice upon the relevant party could not be allowed to perpetuate.



19. The learned counsel appearing on behalf of respondent no. 6 has vehemently contended that the agreement itself becomes doubtful as conspicuously no share has been granted to the respondent no. 7, Rashmi Rai in the said agreement. It has further been submitted that there is no relinquishment in the said affidavit or award and it has also not been taken care of that Diksha Rai and Divyanshu Rai, who are the daughter and son of late Alok Rai respectively were separate entities and even their signatures are missing on the said document. Raising the other questions with regard to the award, the learned counsel contends that the award was signed only by six members, whereas the total number of *panches* were eight and even the fixing of eight *panches* was against the law, as the *panches* should be in odd number and not in even number as in this case.

20. It has thus been contended by the learned counsel appearing on behalf of respondent no. 6 that this court cannot examine the disputed question of facts and this court also does not have the jurisdiction and power to enforce the award and get it implemented through a writ application. It has also been contended that for any mutation entry in favour of the petitioner, the fact of possession is an essential ingredient and the respondent no. 6 denies any possession in favour of the petitioner and therefore, in



all possibility, mutation entry in favour of the petitioner could not have been allowed. It has been submitted that the award is being tried to be implemented through the mutation entries, which is not permissible in law. It has been submitted that Section 36 of the Arbitration and Conciliation Act, 1996, only says that arbitral award shall be enforced under C.P.C. in the same manner as a decree of the court, which means award shall be enforced *i.e.* made effective a decree of the court and for that provision for execution of decree under the C.P.C. shall be applicable. It has been submitted that the alleged arbitral award dated 28.07.2001, was never acted upon therefore, the very document has lost its genuineness and sanctity and in the garb of getting the same enforced, the petitioners were trying to get it implemented through the mutation proceedings. It has been submitted that the present writ application is fit to be dismissed.

21. Learned counsel appearing on behalf of respondent no. 7 submits that the petitioner being the daughter of late Pradeep Rai, who happens to be the full brother of respondent no.7 and respondent no. 6 is the widow of late Alok Rai, who also happens to be the brother of respondent no. 7 and therefore, the respondent no. 7 has inheritable right in the entire ancestral property of her father by virtue of succession as Class-I heir. It has been submitted



that the respondent no. 7 was not aware of any arbitral award or the mutation orders passed in favour of the writ petitioner nor the subsequent successful challenges made by the respondent no. 6 and only recently she came to know about the pendency of the proceedings when she had received the *dasti* notice. It has been submitted that the writ petitioners have created a fake affidavit dated 14.05.2015 (Annexure-1) for the purposes of appointment of arbitrators, which purportedly bears signature of this respondent. It has been submitted on behalf of respondent no. 7 that she had been asked to put her signature on a blank sheet, which was purportedly to be made before the Circle Officer for succession mutation and she had never appeared before the notary public and sworn any affidavit for the purpose of appointment of arbitrator. It has been submitted that the notarized document *i.e.* Annexure-1 is a manufactured document and the contents of the said affidavit was never made in her presence. It has been contended that as respondent no. 7 was not aware of the said documents and therefore, for want of knowledge, she had no occasion to challenge the same before proper forum. It has been submitted that the arbitral award is not a valid document and cannot have legal sanctity and the same is contrary to the mandatory provision of the *Hindu Succession Act, 1956*, as amended in the year 2005. It has



been submitted that in the arbitration agreement or the consequent award, there is no mention of the fact that the respondent no. 7 had ever relinquished her inheritable right in the vested in the property in favour of either the petitioner or the respondent no. 6, and therefore, the partition of the entire property among the only two co-parceners, living aside the respondent no. 7 without her relinquishment of right cannot be said to be legal. It has thus been prayed that since the arbitration award is void, illegal and *non est* in law and is not fit to be acted upon, therefore, any subsequent action pursuant to such award cannot be justified.

22. The other arguments forwarded by the learned counsel for the respondent no. 6 has been duly adopted by the learned counsel appearing on behalf of respondent no. 7.

23. The learned AC to AAG-12 referring to the counter affidavit filed on behalf of the respondent nos. 2 to 5 submits that the order passed by the Circle Officer, Ramnagar was not in accordance with law as laid down in Mutation Act, and therefore, the appellate authority has rightly set aside the same and the said order has been rightly upheld by the Revisional authority as also the Bihar Land Tribunal, Patna. It has been submitted that since there is no illegality in the orders impugned, therefore, the present writ petition is fit to be dismissed in *limine*.



24. Having heard the learned counsel for the parties and perused the respective pleadings, this court finds that the main question which needs to be decided in the present case is as to whether the application of the petitioner for getting the mutation in their favour for the land allotted to them on the basis of an award can be entertained?

25. From the arguments which has been forwarded, one fact which emerges is that the award is based on an affidavit sworn by three persons namely, Swapnil Shreshtha Rai @ Sonam Rai, Ranjana Rai and Rashmi Rai, who had agreed for appointment of eight persons as *panch* pursuant thereto an award was passed by the *panch*, which is contained in Annexure-2.

26. The contention of the respondent parties is that the said affidavit was falsely created subsequent to an undertaking made earlier, which got notarized later in the year 2015 and any award passed on the basis of such affidavit cannot be taken into account for creating mutation entries in favour of any of the parties. The contention of the petitioner that an award has the force of a decree of a Civil Court and the same cannot be challenged before the Revenue authorities has been opposed by the respondent nos. 6 and 7 on the ground that the petitioner is trying to get the award implemented in the garb of mutation entries.



27. It is a settled law that an award passed under the Act, if being challenged, as it would appear from the arguments forwarded by the parties, the same can be done only through a challenge before a competent Civil Court under Section 34 of the Act.

28. The sum and substance of the arguments of respondent nos. 6 and 7 is that the mutation entries cannot be permitted based on such award, however, as the law for mutation is very clear that the mutation has to be done as contained in Sub-Section (2) of Section 3 of the *Bihar Land Mutation Act, 2011*.

29. In view of such statutory provision, I see no reason as to how a Revenue authority cannot allow a mutation entry as the question of the award being not correct or obtained through fraud or after making interpolation or even their genuineness can only be tested by a competent Civil Court and not by a Revenue authority.

30. The Hon'ble Supreme Court has, in ***Inderjit Singh Grewal vs. State of Punjab and Anr.*** reported in ***(2011) 12 SCC 588*** and in various judgments, very clearly observed that a Revenue authority does not have jurisdiction to travel into the question of genuineness of a document and, therefore, any mutation entry based on a legal document has to be entertained and, therefore, the findings arrived by the Revisional authority as



well as Bihar Land Tribunal, Patna, in my view is not the correct law.

31. One argument was raised by the respondent nos. 6 and 7 that no proper service of notice was made prior to passing of the mutation order in favour of the petitioner by the Circle Officer, Ramnagar will also render the said order illegal. At this juncture, the reliance placed by the learned counsel appearing on behalf of the petitioner on the judgment passed in the case of ***State of Uttar Pradesh Vs. Sudhir Kumar Singh and Ors.*** reported in (2021) 19 SCC 706, needs to be taken note of where the court in para 42 has observed as under :

“42. An analysis of the aforesaid judgments thus reveals:

42.1 Natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. The breach of the audi alteram partem rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused.

42.2 Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest.

42.3 No prejudice is caused to the person complaining of the breach of natural justice where such person does not dispute the case against him or it. This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, in cases in which the Court finds of facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice.



42.4 In cases where facts can be stated to be admitted or indisputable, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand when there is, in fact, no prejudice caused. This conclusion must be drawn by the Court on an appraisal of the facts of a case, and not by the authority who denies natural justice to a person.

42.5 The “prejudice” exception must be more than a mere apprehension or even a reasonable suspicion of a litigant. It should exist as a matter of fact, or be based upon a definite inference of likelihood of prejudice flowing from the non-observance of natural justice.

32. Taking this aforesaid judgment into account and apply to the present facts and circumstances of this case, the contentions of respondent nos. 6 and 7 has been consistent with regard to the fact that they had not been a party to the award and the same is illegal, however, what prejudice was caused on account of non-service of notice, prior to the mutation entries, has not been shown by the respondent nos. 6 and 7. This court even travel beyond and assumes that if the respondent nos. 6 and 7 would have appeared they would have still opposed the mutation entries on the ground that the award was not correct and it was prepared behind their back and, therefore, the same cannot be taken into account for mutation entries.

33. The question ultimately would still remain as to whether the Revenue authority could have tested the genuineness of the award prior to passing the orders for mutation entries. As



already observed hereinabove the revenue authority cannot test the veracity of any document and they have to act merely on the said document and if any party objects to mutation entries, challenging the legality of the document, then the only remedy which lies before the party who challenges the document is before a Civil Court of competent jurisdiction and not a Revenue authority.

34. Thus, this court concurs with the submissions made by the learned counsel for the petitioner that the respondent nos. 6 and 7 have not been able to show prejudice caused to them on account of non-service of notice and moreover their objection to the mutation entries was based upon challenging the legality of the award on which the mutation entries were being done.

35. In view of the aforesaid discussions, this court finds that the order directing for mutation entries in favour of the petitioner was legal and all the subsequent orders whereby the authorities have set aside the mutation entries in favour of the petitioner has been passed ignoring the settled law that a Revenue authority does not go into the question of legality of any document, which forms basis of the mutation entries and, therefore, this court does not has any hesitation in holding that all the orders impugned have been passed ignoring the settled principal of law and therefore, they are fit to be set aside.



36. The order dated 15.02.2021 passed by the Chairman, Bihar Land Tribunal at Patna in B.L.T. Case No. 188 of 2019, the order dated 31.10.2018 passed by the Additional Collector, West Champaran at Bettiah in Mutation Revision Case No. 38 of 2017-18 and the order dated 28.02.2017 passed by the Deputy Collector Land Reforms, Bagha, West Champaran in Mutation Appeal No. 15 of 2016-17 are, accordingly, set aside.

37. The writ petition is hereby allowed.

(Sourendra Pandey, J)

krishna/deepak

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.05.2026
Transmission Date	NA

