IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9849 of 2022

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1. Padam Chand Jain Son of Late Dharam Chand Jain Resident of Mohalla- Naya Bazar, Mahabir Prasad Dwivedi Road, Police Station- Kotwali, District- Bhagalpur and presently residing at Todar Mal Lane, Kanya Pathshala Gali, Police Station- Kotwali, District- Bhagalpur.
2. Nirendra Kumar Jain Son of Late Shanti Lal Sarogi Resident of Mohalla- Naya Bazar, M.P. Dwivedi Road, Police Station- Kotwali, District- Bhagalpur and presently residing at Chitrakut Apartment, Marwari Tola Lane, Police Station- Kotwali, District- Bhagalpur.
3. Rajeev Kumar Jain Son of Padam Chand Jain Resident of Mohalla- Naya Bazar, Mahabir Prasad Dwivedi Road, Police Station- Kotwali, District- Bhagalpur and presently residing at Todar Mal Lane, Kanya Pathshala Gali, Police Station- Kotwali, District- Bhagalpur.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Housing and Urban Development Department, Government of Bihar, Patna.
2. The Principal Secretary, Housing and Urban Development Department, Government of Bihar, Patna.
3. Bhagalpur Municipal Corporation, through Municipal Commissioner, Bhagalpur.
4. The Municipal Commissioner, Bhagalpur Municipal Corporation, Bhagalpur.
5. Mr. Awnish Kumar, the then Municipal Commissioner, Bhagalpur Municipal Corporation, Bhagalpur.
6. Raman Kumar Singh Son of not known Resident of Mohalla- Sukhpur, Police Station and District- Supaul.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. P.N. Shahi, Sr. Advocate Mr. Sanjeev Kumar, Advocate Mr. Pravashankar Mishra, Advocate Mr. Anand Bhushan, Advocate Mr. Rajeev Shekhar, Advocate
For the Res. Nos. 3 & 4	:	Mr. Manish Kumar, Advocate
For the Res. No. 6	:	None
For the State	:	Mr. Yogendra Pd. Sinha (AAG-07) Mr. Deepak Kumar, AC to AAG-07

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

ORAL ORDER

7 20-01-2026 Heard learned counsel for the parties concerned.

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2. The petitioners have challenged the order dated 05.05.2012 passed in AD case bearing no. 1293/2010-11 by which part of holdings of petitioners have been transferred in the name of respondent no. 6.

3. Mr. P.N. Shahi, learned senior counsel for the petitioners submits that one Mr. Champa Lal Sarawagi (now deceased) has two sons, namely, Mr. Shanti Lal Saragai (now deceased) and Mr. Dharam Chand Jain (now deceased). The area of 3½ Katha situated at holding no. 14, Ward No. 3, Circle No. 6 was acquired by late Champa Lal Sarawagi in the auction held by the Corporation and a Sale Certificate was issued in his favour. The said plot was divided between two sons of late Champa Lal Sarawagi. The half area admeasuring 1¾ Katha was given to his son, namely, late Shanti Lal Sarawagi which has been registered as holding no. 163 and the remaining area admeasuring 1¾ katha was given to his second son, namely, late Dharam Chand Jain which has been registered in the records of the Corporation bearing holding number 163A. The petitioner no. 1 is the son of late Dharam Chand Jain who is the rightful owner of holding no. 163A whereas, the petitioner no. 2 is the son of late Shanti Lal Sarawagi who is the rightful owner of holding no. 163. The petitioner no. 3 is the son of petitioner

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no.1.

4. It has further been submitted that the aforesaid holdings have been running in the name of the petitioners for about 60 years. From the holdings numbers 163 and 163A another holding bearing 163/1 and 163A/1 have been culled out vide order dated 05.05.2012. The petitioners did not come to know about the illegal transfer of part of the holding in favour of respondent no. 6 and the holding tax was being paid by the petitioners to the Municipal Corporation and the receipt was issued in the year 2016-17. When for the year 2017-18, the holding tax was not being accepted, the petitioner inquired into the matter and came to know about impugned order of transfer of holding in the name of respondent no. 6 passed by the then Municipal Commissioner. With great difficulty, the petitioners got the information and knowledge about the impugned order by virtue of Right to Information Act and finally the certified copy was obtained by the petitioners on 08.06.2022. It has further been argued that the inquiry was conducted by Secretary to the commissioner under the Public Grievance Redressal Act, 2015 and a report thereof was submitted on 27.06.2019. It was mentioned in the said inquiry that any case bearing no. 1293 of 2010-11 was initiated on 15.09.2010 by the then Municipal

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Commissioner directing the Tax Collector/Assistant Tax Collector to submit an inquiry report with regard to present holding in question. On 15.09.2010 it was directed by the Municipal Commissioner to issue notice (aam Suchna) upon all concerned parties. The report of Tax Collector was submitted on 05.05.2012 and services of notice and the service report of notice (aam suchna) received in the records of A.D. case no. 1293-2010-11 pertained to another A.D. case bearing no. 2553/2010-11 and on the same day, i.e., 05.05.2012, the Municipal Commissioner, Bhagalpur passed the order granting mutation in favour of respondent no. 6, namely, Raman Kumar Singh.

5. The entire proceeding of mutation was carried out in a mechanical fashion in one sitting itself in connivance with respondent no. 6. It has also been submitted by learned senior counsel for the petitioners that mutation in the name of respondent no. 6 was done on the basis of decree in partition suit passed by learned Sub Judge, Saharsa in case no. 12 of 1955 by which the property in question was partitioned amongst the family members of respondent no. 6 and others. The submission is that after the partition decree, the auction of the property was held by the Municipal Corporation in the year 1956.

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6. No-one appears for private respondent no. 6 despite service of notice.

7. Mr. Manish Kumar, learned counsel appearing for Bhagalpur Municipal Corporation referring to the counter affidavit submits that the entire exercise of mutation was done in mechanical manner by the then Municipal Commissioner. The notice was allegedly issued under the signature of Municipal Commissioner on 15.03.2011 whereas the date of service of notice has been shown as 29.09.2010 which is logical discrepancy. The petitioners and their family are in physical possession of the property and the holding nos. 163 and 163A had been running in their names since long. The irregularity in the mutation process has been highlighted by the Secretary to the Commissioner in his report and since the administrative authority does not have power to review the order, Municipal Commissioner is not in a position to recall the impugned order.

8. I have heard learned counsel for the parties and have perused the materials on record including the report of the secretary of the Municipal Commissioner. It appears that the predecessor in interest of the petitioners are auction purchasers of the property in question situated at holding nos. 163 and

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163A and after purchase of the property in auction sale, the partition was done between the family members of the petitioners and one 1 ¾ Katha each was divided between petitioner nos. 1 and 2. The holdings in favour of the petitioners were created in AD Case No. 2 of 1963-64 on 29.06.1963 and since then the holdings created in favour of the petitioners have been continuing and the petitioners have been paying rent continuously and the last holding tax paid and accepted by the respondent corporation is in the year 2017. The respondent Municipal Corporation in its counter affidavit has accepted that mutation in the name of respondent no. 6 of the present property and creation of new holding in his name having holding nos. 163/1 and 163A/1 was done in illegal and mechanical manner.

9. Considering the aforesaid discussion, the impugned order dated 05.05.2012 annexed at Annexure 12 is set aside. The Municipal Commissioner, Bhagalpur is directed to restore the holding nos. 160 and 160A in favour of the petitioner nos. 1 and 2. Municipal Corporation is also directed to accept holding tax from the petitioners and issue receipt of the same in favour of the petitioners starting from the year 2017-18 up till now and shall also continue to accept the holding tax from the petitioners till further decision is taken in accordance with law regarding

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the mutation and creation of holding in favour of bonafide third person, if any.

10. Accordingly, with aforesaid direction, the present application stands disposed of.

(Anil Kumar Sinha, J)

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