
(1999) 08 PAT CK 0127
In the Patna High Court
Case No : C.W.J.C. No. 2214 of 1989

Bauki Ram and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 18-08-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (1999) 3 PLJR 667

Hon'ble Judges : A.K. Ganguly, J

Bench : Single Bench

Advocate : Md. S. Ali, for the Appellant; K.P. Yadav for the State, for the Respondent

Final Decision : Allowed

Judgement

A.K. Ganguly, J.—Heard Learned Counsel for the Petitioner. No one appears either for the private parties or for the Municipal Corporation. Learned Counsel for the State is present. The subject matter of challenge in this writ petition is an order which is at Annexure-2 passed by respondent No. 2. The said order, as contended by the Learned Counsel for the petitioner, is wholly without jurisdiction.

2. The case of the petitioners is that the petitioners own and possess Holding No. 6 Ward No. 15 of Upper Qlib Land Road of Homestead land having got an area of 4 bighas 13 kathas appertaining to recent Survey Khata No. 731 Khesra Nos. 193, 199, 200, 201, 179, 194, 195 & 197. This relates to A.D. Case No. 1435 of 1986-87. The petitioner has also given the description of other lands in the writ petition which they own.

3. The petitioners came to know that respondent Nos. 3 to 6 have fraudulently entered his name in Municipal Register with respect to the disputed lands. After coming to know said fact, the petitioner filed an application before the municipal authorities for mutation of their names in the Municipal Register in place of their

father.

4. Thereupon, respondent No. 2 on the basis of the said application of the petitioner called for a report from the Halka Tahsildar of the Bhagalpur Municipal Corporation, and the said Tahsildar has submitted his report on 22.10.1986. From the said report, it appears that the petitioners are in peaceful possession of the land in question. The Election Officer Bhagalpur also submitted a report on 1.8.1986 that the petitioners are in peaceful continuous possession of the lands in question.

5. The respondent No. 2 on perusal of the aforesaid two reports and after hearing the parties by its order dated 27.11.1987 directed that the name of the petitioners be mutated in place of Late Lakshmi Narayan Choudhary and also ordered that after final disposal of title suit in Civil court the matter will be reheard. The said order is at Annexure-1.

6. It is not in dispute that between the parties title suits are pending.

7. The respondent no.3 without waiting for the result of the title suit filed two review petitions before respondent No. 2 for reviewing his order dated 27.11.1987. The grievance of the petitioner is that on the basis of the said petition filed by the private parties the respondent No. 2 reviewed the order. The main grievance of the petitioner is that there is no power of review conferred under the Municipal Act. But respondent No. 2 has exercised such power and passed Annexure-2 which is wholly without jurisdiction. Learned Counsel further submits that no power of review u/s 151 of C.P.C. is vested with respondent No. 2. It is obvious that power u/s 151 of the C.P.C. is not available to respondent No. 2 the Administrator of the Bhagalpur Municipal Corporation.

8. Learned Counsel for the petitioner has drawn attention of this Court to the decision of the Division Bench Judgment of this Court in the Case of Daroga Lal Vs. State of Bihar and Others, in order to contend that under the Municipal Act, Municipal authorities have no power of review.

9. It is well settled that without specific power the statutory authority cannot review its earlier order. In this case nobody appears for the respondent Corporation to show that respondent No. 2 has power to review. There is also no affidavit filed by them.

10. In that view of the matter this Court accepts the case made out by the petitioner and quashes the order at Annexure-2 which is without jurisdiction, in as much as, the same was passed in the manner which is not sanctioned under the relevant statutes. This writ petition is thus allowed. Annexure-2 is quashed.