

(2018) 02 PAT CK 0088

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 8995 Of 2017

Birendra Prasad Singh And Anr

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 08-02-2018

Acts Referred:

Citation : (2018) 3 PLJR 484

Hon'ble Judges : Prabhat Kumar Jha, J

Bench : Single Bench

Advocate : Rajendra Narayan, Gopal Govind Mishra, Rishi Raj Sinha, Birendra Pd. Singh, N.C. Verma, Natraj Verma

Final Decision : Allowed

Judgement

1. Heard both sides.
2. The petitioner filed this writ petition to quash the order dated 24.05.2017 (Annexure-5) passed by Member Administrative, Bihar Land Tribunal, Patna by which the Member Administrative, Bihar Land Tribunal, Patna ordered for mutation of the name of Brij Nandan Sinha with regard to Khata No.2, Khesra 2885, Area of 1.45 acre situated in village-Anaith under Ara SadarAnchal, District- Bhojpur.
3. Mr. Rajendra Narayan, the learned senior counsel, for the petitioner submits that on behalf of Badri Prasad and Beni Prasad, Mutation Case No.6341 of 2012-13 was filed before the Circle Officer, Ara. The Circle Officer vide order dated 6.2.2013 ordered for mutation of the names of Badri Yadav and Beni Yadav with regard to the land of khata No.2 Khesra No.2885, Area of 1.45 decimal. The petitioner preferred appeal before the DCLR, Ara and contended that they never sold the land in favour of any person.

The DCLR, Ara vide order dated 10.8.2015 set aside the order of the Circle Officer passed in Mutation Case No.6341 of 2012-13 holding that Badri and Beni have already died, but did not order for mutation of name of any person with regard to the aforesaid lands and allowed the lands stand in the name of such person whose name appeared in the records of rights from before. Brijnandan Sinha, respondent No.5, s/o Late Badri Yadav filed revision before the Addl. Collector, Bhojpur Ara vide Mutation Case No.4 of 2015-16, the Addl. Collector dismissed the revision petition, but at the same time ordered for mutation of the names of Birendra Prasad Sinha and Smt. Kishori Devi, the petitioners. Thereafter, Brij Nandan Sinha filed case before BLT bearing B.L.T. Case No.533 of 2016 and the learned Member Administrative, Bihar Land Tribunal, Patna set aside the order of the DCLR as well as the Addl. Collector and ordered for mutation of name of Brijnandan Sinha in the records of rights.

4. Mr. Rajendra Narain, the learned senior counsel for the petitioner submits that earlier Brijnandan Sinha s/o Badri Yadav filed mutation case before the Circle Officer. The names of the petitioners were standing in the record of right from before. Badri Yadav and Beni Yadav died much earlier.

Admittedly, Brijnandan Sinha, respondent No.5 filed Mutation Case No.6341 of 2012-13 in his sale deed executed on 15.10.2014 (Annexure-2 series)

but he retracted from such statement only when it transpires that Badri and Beni died much prior to the institution of the mutation case. Someone may

have filed the case forging the signature of Badri and Beni and stated that he did not file any mutation case before the Circle Officer. It is further

submitted that the name of the petitioners stand in the record of rights and, therefore, they are aggrieved by the order of the Circle Officer mutating

the names of Beni and Badri without hearing the petitioners. The DCLR simply set aside the order of the Circle Officer but the Additional Collector in

revision although dismissed the revision petition filed by Brij Nandan Sinha, respondent No.5, but ordered for mutation of the names of the petitioner,

although the same was standing from before in the records of rights. The Member, BLT illegally ordered for mutation of the name of Brijnandan Singh

in the record of rights while allowing the case without any basis and record.

5. On the contrary Mr. Naresh Candra Verma, learned counsel for the respondent No.5 submitted that he never filed any case for mutation before the

Circle Officer. Beni Yadav died in the year 1989 and Badri Yadav, father of respondent No.5, died in the year 1956. The mutation case itself was filed fraudulently by someone by impersonating Badri and Beni. It is further submitted that the lands fell in his share after partition in the family and his names stands in the record of right and, therefore, no questions arises to file mutation case to mutate the name of respondent No.5, Brij Nandan Sinha in the records of rights.

6. On perusal of records, it appears that both the sides claimed that their names stand in the record of rights and the petitioners are only aggrieved by the order of the Circle Officer in Mutation Case No.6341 of 2012-13 by which names of Badri Yadav and Beni Yadav were mutated in the record of rights. Even the respondent No.5 submits that he did not file any mutation case to mutate the names of Badri Yadav and Beni Yadav. The petitioner preferred mutation appeal before the DCLR against the order dated 06.02.2013 passed in Mutation Case No.6341 of 2012-13 by which the names of Badri Yadav and Beni Yadav were mutated with regard to Khata No.2, Khesra No.2885 Area 1.45 decimals. The DCLR set aside the order of the Circle Officer on the ground that the order of mutation was passed on the petition of the dead person without following the procedure. The DCLR did not order for mutation of the names of any person in the record of rights. But the Additional Collector in a revision presented by respondent No.5 although dismissed the revision but at the same time ordered for mutation of the names of the petitioners although petitioners claimed that the lands stands in their name from before, therefore, there was no need to get the names of the petitioner again mutated. The Member, BLT, Patna has committed the same illegality to order for mutation of the names of Brijnandan Sinha in the record of right with regard to the aforesaid lands.

Therefore, I find that the order of the Addl. Collector as well as the order of the Member, BLT are illegal and not sustainable in the eye of law as both parties are aggrieved by the order of the Circle Officer dated 26.02.2013 by which the names of Beni Yadav and Badri Yadav were ordered to be mutated. That order has already been set aside in Mutation Appeal, therefore, the order of the Addl. Collector to the extent ordering mutation of the names of the party and the BLT are not sustainable.

7. Accordingly, the order dated 24.05.2017 (Annexure-5) passed by Member

Administrative, Bihar Land Tribunal, Patna and order dated 18.04.2016

(Annexure-4) passed by the Addl. Collector, Bhojpur, Ara, to the extent that the names of the petitioners be mutated are set aside and thus this writ petition is allowed.