

IN THE HIGH COURT OF JHARKHAND AT RANCHI
(Letters Patent Appellate Jurisdiction)

LPA No. 620 of 2022

Birendra Singh, son of Matuki Singh, aged about 52 years, resident of village Karni, Nawadih, PO and PS Itkhor, District Chatra, Jharkhand

.....Appellant

Versus

1. The State of Jharkhand
2. Commissioner, North Chhotanagpur Division, Hazaribagh, PO, PS and District Hazaribagh
3. Additional Collector, Chatra, PO, PS and District Chatra
4. Land Reforms Deputy Collector, Chatra, PO, PS and District Chatra
5. Circle Officer, Itkhori, PO and PS Itkhori, District Chatra
6. Kapil Singh, son of late Bisho Singh, resident of village Nawadih, PO and PS Itkhori, District Chatra
7. Sudhir Singh, son of late Bisho Singh, resident of village Nawadih, PO and PS Itkhori, District Chatra
8. Kamehwar Singh, son of late Charan Singh
9. Purnima Devi, wife of late Sanjay Singh
10. Gunjan Kumar Singh, son of late Sanjay Singh
11. Juli Kumari, daughter of late Sanjay Singh
12. Chhoti, daughter of late Sanjay Singh
13. Mostt. Champa Devi, widow of late Pyari Singh

Sl. Nos. 8 to 13 are residents of village Nawadih, PO and PS Itkhori, District Chatra, Jharkhand

..... Respondents

..... Respondents

**CORAM: HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR
HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY**

For the Appellant : Ms. Aprajita Bhardwaj, Advocate
Mr. Sushant Kumar Sinha, Advocate

For the State : Mr. Rakesh Kumar Shahi, AC to SC (L&C)-I
For the Resp. Nos. 6&7 : Ms. Chandana Kumari, Advocate

30th November 2023

Per, Shree Chandrashekhar, J.

Against the writ Court's order dated 08th March 2022, the appellant who was one of the writ petitioners has filed the present Letters Patent Appeal.

2. Briefly stated, the lands comprised under Plot No. 214 appertaining to Khata No.1 in village Nawadih within PO and PS Itkhori in the district of Chatra were recorded in the cadastral survey record of rights in the name of Khirodhar Singh and Charan Singh under the Raja of Padma. Khirodhar Singh being the elder brother was acting as *karta* of the joint

family paid rent to the ex-landlord and, later on, to Rani Rishinath Kunwar after the death of the Raja of Padma. For the reason that Khirodhar Singh made defaults in the payment of rent, a rent suit was instituted by Rani Rishinath Kunwar claiming arrears of rent and the said suit was decreed in her favor. Pursuant thereto, Execution Case No. 20 of 1920-21 was instituted in the Court of the Deputy Commissioner at Hazaribagh and the subject properties were sold in auction and a certificate of sale was granted on 11th September 1920. By virtue of the auction sale, Rani Rishinath Kunwar became full owner of the subject lands and consequently the subject lands acquired the character of “Bakast Land”. The materials on record indicate that Rani Rishinath Kunwar settled the subject lands in favor of Charan Singh by executing a registered *Kabuliyat* on 14th April 1924 and granted *Hukumnama* in his favor with respect to 7.70 acres of land. The writ petitioners pleaded that Charan Singh came in exclusive physical possession of the subject lands and his tenancy was acknowledged and recognized by the State of Bihar on coming into force of the Bihar Land Reforms Act, 1950. Charan Singh paid rent to the State of Bihar and was granted rent receipts and his name was duly entered in Register-II. The writ petitioner no. 1 is the son of Matuki Singh and the writ petitioner no. 2 is the son of Charan Singh and the other writ petitioners are the legal heirs and representatives of Charan Singh. It appears that during pendency of the writ petition Ranjan Singh who was the writ petitioner no.2 died and in his place his legal heirs were substituted.

3. This is the case of the writ petitioners that the *Halka Karamchari* refused to accept rent for whole of the subject lands as half of the subject lands was separated in favor of the respondent nos. 6 and 7 and that is how he came to know about mutation ordered in the name of the respondent nos.6 and 7 in the year 2001. The writ petitioners therefore filed Mutation Appeal No. 21 of 2001 which was allowed by an order dated 10th December 2001. However, this appellate order was reversed in Mutation Revision No. 27 of 2002 by the Additional Collector against which the writ petitioners preferred Mutation Revision No. 86 of 2003. By an order dated 17th March 2004, this revision petition was dismissed with a liberty to the writ petitioners to move the competent Court of civil jurisdiction for declaration of their right, title and interest.

4. Though on 8th March 2022 when the writ petition was taken up for hearing, no one appeared on behalf of the writ petitioners but the writ Court proceeded to dispose of the writ petition on the basis of the submissions made by the learned State Counsel and the learned senior counsel for the respondent nos. 6 and 7. The writ Court after advertizing to the history how the property came in possession of Charan Singh from Rani Rishinath Kunwar arrived at a conclusion that the writ petitioners should approach the civil Court for resolving the dispute as regards their right, title and interest over the subject properties. The writ petitioners are the descendants of Charan Singh.

5. W.P.(C) No. 4394 of 2004 was disposed of by the writ Court observing as under:

“13. However, no body appeared on behalf of the petitioners.

14. It appears that the instant Writ Petition is pending before this Court since the year 2004. This Court has perused the materials brought and heard Mr. P.C. Roy, learned S.C. (L&C)-I for the State as well as learned counsel for the private respondent Nos.6 & 7, Mr. Anil Kumar, learned Senior advocate.

15. Mr. P.C. Roy, learned S.C. (L&C)-I for the State has submitted that there is no illegality in the order passed by the learned Commissioner, North Chotanagpur Division, Hazaribagh and the legal remedy is available to the petitioners to file an application before the competent court of civil law for declaration of their documents to be valid and operative. The revenue court is not granting title to a person but only showing possession and since, after verification, the Circle Officer, Itkhori, has found possession of both the parties as such, 50% of rent was collected from the petitioners, who are legal heirs of Charan Singh and 50% of rent was collected from the respondent nos.6 & 7, namely, Kapil Singh and Sudhir Singh, both legal heirs of Khirodhar Singh, as such, this Hon’ble Court may not interfere with the same.

16. Mr. Anil Kumar, learned Senior advocate has also submitted the same.

17. Having gone through the materials available on records and having heard, Mr. P.C. Roy, learned S.C. (L&C)-I for the State as well as learned counsel for the private respondents, this Court is not inclined to interfere with the impugned order. Accordingly, the instant Writ Petition stands dismissed, as the Commissioner, North Chotanagpur Division, Hazaribagh has rightly directed the petitioners to approach the competent court having jurisdiction of civil law on the basis of the documents, they wanted to place for declaration of their title over entire land as order of Mutation does not confer the title.

18. However, liberty is granted to the petitioners to approach the revenue authorities for correction in mutation order after having a decree from competent court of law.”

6. Ms. Aprajita Bhardwaj, the learned counsel for the appellant refers to sub-section (2) to section 14 of the Bihar Tenant's Holdings (Maintenance of Records) Act, 1973 (in short, Tenant's Holdings Act) to submit that the order passed by the Circle Officer ignoring the mandatory requirement under sub-section (2) was rightly set-aside in appeal by the Land Reforms Deputy Collector but the Additional Collector, Chatra and the Commissioner, North Chhotanagpur Division, Hazaribagh delved into the merits of the case and held that the respondent nos. 6 and 7 are entitled to half share in the subject properties. Simply put, the plea urged on behalf of the appellant is that the revenue authorities do not possess any power and jurisdiction to decide a dispute as regards right, title and interest in the subject properties.

7. The Tenant's Holdings Act was enacted with a view to maintain up-to-date records of holdings of the raiyats in the State of Bihar and the matters connected therewith. It lays down a procedure for maintaining continuous khatian, tenant's ledger register and village maps by the Anchal Adhikaries. Under section 4, the Registering Authority is required to give notice of transfer and registration to the Circle Officer. Similarly, the Civil Courts are also required to give notice of delivery of possession to the decree holder or auction purchaser or of decree for partition or for foreclosure to the Circle Officer, under section 5. Similar provisions for giving notice to the Circle Officer by the Certificate Officer in case of delivery of possession to the auction purchaser and the Collector regarding notice of acquisition under the Land Acquisition Act, 1894 are also provided under this Act. Furthermore, this is also provided under this Act that Mukhiya, Circle Inspector or Halka Karamchari as the case may be is required to report cases of partition or intestate or acquisition by any other means to the Circle Officer.

8. Section 12 of the Tenant's Holdings Act provides that the persons claiming interest by partition effected either privately or through Court or intestate or on the basis of testamentary succession, transfer, exchange, agreement, settlement, lease, mortgage, gift or by any other means are required to file application before the Circle Officer for mutation in his name in the continuous khatian and the tenant's ledger register. And, section 14 which lays down the procedure for requisition and disposal of

mutation cases provides that the Circle Officer upon receipt of notice under sections 4 to 10 or application under sections 11 and 12 or a report under section 13 shall start a mutation procedure and after entering it in the mutation case register which shall be maintained in the prescribed form and shall cause such inquiry as may be deemed necessary. Sub-section 2 to section 14, on which Ms. Aprajita Bhardwaj, the learned counsel for the appellant has based her case, provides that the Circle Officer shall issue a general notice and also give notice to the parties concerned to file objection, if any, within 15 days of the issue of the notice. Sub-section 2 further provides that the Circle Officer shall give reasonable opportunities to the parties concerned to adduce evidence, if any, and also offer opportunity of personal hearing.

9. Section 14 of the Tenant's Holdings Act provides the manner of disposal of mutation cases, as under:

“14. Requisition and disposal of mutation cases.—(1) On receipt of notice under Sections 4, 5, 6, 7, 8, 9 and 10 or an application under Sections 11 and 12 or a report under Section 13, the Anchal Adhikari shall start a mutation proceedings and after entering it in the mutation case register which shall be maintained in the prescribed form, shall cause such enquiry to be made as may be deemed necessary.

(2) The Anchal Adhikari shall issue a general notice and also give notice to the parties concerned to file objection, if any, within fifteen days of the issue of the notice. On receipt of objection, if any, the Anchal Adhikari shall give reasonable opportunity to the parties concerned to adduce evidence, if any, and of being heard and dispose of the objection and pass such orders as may be deemed necessary,

(3) In cases in which no objections are received the Anchal Adhikari shall dispose them of within one month of the date of expiry of filing objection and in cases in which objections are received, the Anchal Adhikari shall dispose them of in not more than three months from the date of expiry of the period of filing objections.”

10. The writ petitioners claimed that they were in possession of a piece of land in respect of plot no. 214, khata no. 1, measuring an area of 7.70 acres of village Nawadih, PO and PS Itkhori, District Chatra and paying rent regularly. However, without hearing them, the Circle Officer by an order dated 26th June 1996 accepted the application filed by respondent nos. 6 and 7 and ordered mutation in their favor to the extent of half of the subject properties to which they laid a claim on the basis of inheritance.

Ms. Aprajita Bhardwaj, the learned counsel for the appellant has rightly contended that the revisional authority could not have entered into the merits of the claim raised by the respondent nos. 6 and 7 and their claim of acquiring right, title and interest in half portion of the subject properties through inheritance can be decided by the civil Court in a suit instituted by them and not by the revenue authorities and, that, the appellant in whose name/name of his father the mutation was ordered is not required to file a civil suit.

11. This is too well settled that the mutation proceedings are merely in the nature of fiscal inquiries and the orders passed by the revenue authority do not decide right, title and interest in the landed property. In “*Nirman Singh and others v. Lal Rudra Partab Narain Singh and others*” AIR 1926 PC 100, Lord Atkinson observed that the proceedings for mutation of names are not judicial proceedings in which the title suit and the proprietary rights in the immovable property are determined. In “*Nirman Singh*” the Privy Council observed as under:

“The perusal by their Lordships of the judgment of the Court of the Judicial Commissioner of Oudh leads their Lordships to think that it is to a great degree based on the mischievous but persistent error that the proceedings for the mutation of names are judicial proceedings in which the title to and the proprietary rights in immovable property are determined. They are nothing of the kind, as has been pointed out times innumerable by the Judicial Committee. They are much more in the nature of fiscal inquiries instituted in the interest of the State for the purpose of ascertaining which of the several claimants for the occupation of certain denominations of immovable property may be put into occupation of it with the greater confidence that the revenue for it will be paid.”

12. In “*Nand Kishwar Bux Roy v. Gopal Bux Rai*” AIR 1940 PC 93 the Privy Council has observed as under:

“...mutation proceedings are merely in the nature of fiscal inquiries, instituted in the interest of the State for the purpose of ascertaining which of the several claimants for the occupation of the property may be put into occupation of it with the greater confidence that the revenue for it will be paid...”

13. The law laid down by the Privy Council in “*Nirman Singh*” and “*Nand Kishwar Bux Roy*” seems to have been approved by the Hon’ble Supreme Court. In “*State of Gujarat v. Patil Raghav Natha*” (1969) 2 SCC 187 the Hon’ble Supreme Court observed that wherever there is a dispute as

regards title of the occupant of the landed property the appropriate course for the revenue authority would be to refer the parties to a competent Court and not to decide the question of title himself. In “*Suraj Bhan v. Financial Commr.*” (2007) 6 SCC 186 the Hon’ble Supreme Court observed that an entry in the revenue records does not confer title on a person whose name appears in the record of rights.

14. In “*Patil Raghav Natha*” the Hon’ble Supreme Court held as under:

“14. We are also of the opinion that the Commissioner should not have gone into the question of title. It seems to us that when the title of an occupant is disputed by any party before the Collector or the Commissioner and the dispute is serious the appropriate course for the Collector or the Commissioner would be to refer the parties to a competent court and not to decide the question of title himself against the occupant.”

15. In “*Suraj Bhan*” the Hon’ble Supreme Court has held as under:

“8. In the case of Suraj Bhan v. Financial Commissioner, (2007) 6 SCC 186, it is observed and held by this Court that an entry in revenue records does not confer title on a person whose name appears in record-of-rights. Entries in the revenue records or jamabandi have only “fiscal purpose”, i.e., payment of land revenue, and no ownership is conferred on the basis of such entries. It is further observed that so far as the title of the property is concerned, it can only be decided by a competent civil court.”

16. As is apparent from the order dated 26th June 1996, it is quite evident that the Circle Officer did not issue any notice to the appellant and he was not heard before the order dated 26th June 1996 was passed by him. The appellate authority rightly interfered with the order passed by the Circle Officer and remanded the matter to him for the passing of a fresh order in accordance with law, but, the revisional authority misconstrued the nature of the proceedings under the Tenant’s Holdings Act and ignored the mandatory condition under sub-section 2 to section 14 and restored the order dated 26th June 1996 passed by the Circle Officer erroneously directing the appellant to approach the civil Court. The writ Court also overlooked the fundamental flaw in the revisional order that it is for the claimants respondent nos. 6 and 7 who are required to approach the civil Court for a declaration of their right, title and interest for half share in the subject properties.

17. Having regard to aforesaid discussions, writ Court’s order dated 08th March 2022 is set-aside.

18. Consequently, the order dated 1st September 2003 passed by the Additional Collector, Chatra and order dated 17th March 2004 passed by the Commissioner, North Chhotanagpur Division, Hazaribagh are also quashed.

19. The Mutation Case No.69 of 1996-97 is restored to its original records, in which the Circle Officer shall take a decision in accordance with law.

20. LPA No. 620 of 2022 is allowed.

(Shree Chandrashekhar, J.)

(Anubha Rawat Choudhary, J.)

Tanuj/Amit
AFR