

**(2014) 03 JH CK 0036****Jharkhand High Court****Case No:** W.P. (C) No. 2797 of 2006

Pradeep Kumar Rai

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

**Date of Decision:** March 13, 2014**Citation:** (2014) 4 AJR 435 : (2014) 3 JLJR 72**Hon'ble Judges:** Narendra Nath Tiwari, J**Bench:** Single Bench**Advocate:** Vineet Prakash, JC to SC (L and C) and R.P. Singh, Advocate for the Respondent**Final Decision:** Allowed**Judgement**

Narendra Nath Tiwari, J.

The petitioners purchased two decimals of land of Plot No. 58 appertaining to Khata No. 57 of village Simradhab, P.S. Birni, district: Giridih from Jang Bahadur Rai by virtue of a registered sale deed dated 20.3.2002.

2. The petitioners thereafter; applied for mutation of their names in place of vendor Jang Bahadur Rai before the Circle Officer, Birni. On receipt of application, the Circle Officer, Birni called for a report from Halka Karamchari. General Notices were also issued inviting objection. Objections were filed against the petitioners" application by Girish Rai and Rishi Rai as well as also by the vendor Jang Bahadur Rai. Halka Karamchari and the Circle Inspector submitted their reports recommending the names of the petitioners for mutation as prayed for by the petitioners.

3. Circle Officer heard the objectors and considered the report and found that according to the report of the Halka Karmachari, Jamabandi in respect of the land in question along with other lands was running in the name of petitioners" vendor Jang Bahadur Rai from whom the petitioners have purchased the said land by virtue of registered sale deed. After purchase of the land in question, the petitioners have also raised boundary wall and they are in possession of the said land. The Circle Officer also enquired from the vendor Jang Bahadur Rai about the execution of the

sale deed and he accepted the execution, but added that subsequently he executed a deed of cancellation for canceling the said sale deed. The other objectors claimed to have got interest in the property sold/transferred by the vendor Jang Bahadur Rai but no document was produced in support of the claim. The Circle Officer further found from the report that the vendor had earlier sold some of the properties out of his Jamabandi and the names of the purchasers were mutated in revenue record. Considering the said admitted position and also the reports on record, learned Circle Officer rejected the objections and allowed mutation in the petitioner's name by his order dated 29.11.2002 (Annexure-2). The objectors thereafter, filed appeal before the learned Land Reforms Deputy Collector (L.R.D.C.), Giridih which was registered as Mutation Appeal No. 105/02-03. Learned Land Reforms Deputy Collector, Giridih allowed the appeal observing that since there are objections regarding possession of the petitioners, learned Circle Officer should not have allowed the mutation in absence of peaceful possession of the petitioners and in view thereof, the order passed by the learned Circle officer is not legal. Learned Land Reforms Deputy Collector, Giridih set aside the order of the learned Circle Officer, Birni vide his order dated 14.6.2003.

4. The petitioners thereafter, filed revision before the Additional Collector, Giridih which was numbered as Mutation Revision Case No. 14/2003-04. The parties were noticed and heard. Learned Additional Collector, Giridih supported the said reason recorded by the appellate authority and upheld the order of the learned Land Reforms Deputy Collector, Giridih and dismissed the Revision vide order dated 22.7.2004(Annexure-4). The petitioners then filed Second Revision before the learned Commissioner, North Chotanagpur Division, Hazaribagh which was registered as Revision No. 51/04. Learned Commissioner, Hazaribagh heard the parties and vide his order dated 28.12.2005 dismissed the revision holding that the second revision is not maintainable and he has no jurisdiction to entertain the second revision.

5. Aggrieved by the order of the aforesaid appellate authority, revisional authority as well as the order of the learned Commissioner, North Chotanagpur Division, Hazaribagh, the petitioners have filed this writ petition.

6. Petitioners argued in person and submitted that he and his brother Pramod Kumar Rai are bona fide joint purchasers of the land in question for valuable consideration. The vendor Jang Bahadur Rai had offered to sell this land for Rs. 32,000/- to the petitioner. Before accepting the same, they verified from the record and found that Jamabandi in respect of said land was running in the name of said Jang Bahadur Rai. His vendor also assured them that the said property belongs to him and the same has been exclusively mutated in his name, and that he had sold/transferred the land to various purchasers and their names have been mutated and they are in peaceful possession. On verifying the said records and after payment of the consideration amount, the petitioner with his brother purchased the

land in question and deed of sale was registered by vendor Jang Bahadur Rai. The petitioners, thereafter, applied for mutation before the learned Circle Officer, Birni (Giridih). In the meanwhile, at the instance of other objectors and on allurement that they may purchase the property on higher price, the vendor Jang Bahadur Rai, thereafter, executed a deed for canceling the said sale deed of the petitioners. However, before the learned Circle Officer, Birni the vendor had appeared and admitted execution of the sale deed in favour of the petitioner and his brother. He further submitted that when the title and possession of the land was transferred by virtue of sale deed, dated 20.3.2002, there was no occasion for registering the deed for cancellation but the same was done at the instigation and allurement offered by the interested objectors. He further submitted that the learned Circle Officer, Birni had called for report from the Halka Karmachari and Circle Inspector and they after enquiry submitted a report that the Jamabandi of other land was running in the name of the petitioners" vendor Jang Bahadur Rai. The said Halka Karmachari (Revenue Field Staff) also held the spot inspection and found boundary wall constructed by the petitioners. He further submitted that objections were deliberate, malicious and baseless. There was no objection till the vendor completed his sale/transfer and realized money from the petitioners and till they raised boundary wall over the land in question. They all along were in peaceful possession thereon.

7. Learned counsel further submitted that the Circle Officer on the basis of the document, reports and materials on record, allowed the application for mutation in favour of the petitioners. The order is wholly legal and valid. Learned appellate authority and revisional authority under misconception of the legal principles and contrary to the facts and materials on record, illegally set aside the order of the learned Circle Officer. Those orders are wholly illegal, arbitrary and are liable to be set aside. Learned revisional Commissioner has not gone into the merits of the case and dismissed the revision on the ground that he has no jurisdiction to entertain and decide second revision. The petitioners have thus, filed this writ petition challenging the said order.

8. Writ petition has been opposed by the respondent Nos. 7, 8, 9 and 11. No one appears on behalf of the respondent No. 6.

9. Learned counsel appearing on behalf of the respondent Nos. 7, 8, 9 and 11 submitted that there is no illegality or infirmity in the order of the appellate authority and revisional authority and they have rightly set aside the erroneous order passed by learned Circle Officer, Birni. Admittedly, the petitioners have purchased land from Jang Bahadur Rai whereas the objectors are the agnates of Jang Bahadur Rai who have also got interest and share in the said property. That fact was brought to the notice of the learned Circle Officer, Birni but in spite of the said objection and claim of their interest and share in the land in question, learned Circle Officer, Birni has rejected the objections and allowed mutation in favour of the

petitioners.

10. Learned counsel for the respondents further submitted that in view of the serious dispute of title and share in respect of the land in question, the Circle Officer instead of entertaining and allowing the mutation application of the petitioners, should have referred the petitioners to the Civil Courts for getting their right, title declared and should not have himself decided the same and allowed mutation in favour of the petitioners.

11. Learned counsel for the respondents referred to and relied upon a judgment of Patna High Court in Ramjee Prasad Singh Vs. The State of Bihar and Others .

12. Learned counsel for the respondents further submitted that since objections were raised by the respondents and also by the vendor regarding validity of the sale deed and sale/transfer of the land in question in favour of the petitioners, their possession cannot be said to be a peaceful possession. In a case of mutation, factum of possession is important and the factum of possession itself was objected. In view thereof, the petitioners" application was not entertainable and maintainable. Learned appellate authority as well as revisional authority considered the said aspect and have rightly rejected the petitioners" claim of mutation. The orders of appellate authority and revisional authority are legal and valid.

13. I have heard the petitioners and learned counsel for the respondents and considered the facts and materials on record. In the instant case, material facts are not in dispute. It is admitted that vendor Jang Bahadur Rai had executed and registered sale deed dated 20.3.2002 in favour of the petitioners; the land which has been transferred by vendor Jang Bahadur Rai was recorded in his name in revenue record; no document has been brought on record to show that any body else except the said vendor had any share and interest in the suit property, and the petitioners after purchasing the land, constructed boundary walls over the land in question.

14. The dispute has been raised by the private respondents claiming that they have also got share and interest in the property. The said objection was heard, considered and rejected by the learned Circle Officer, Birni holding that no document was brought before him to support the said claim. The vendor who also joined as one of the objectors, himself appeared before the Circle Officer and admitted the execution of the sale deed dated 20.3.2002 in favour of the petitioners.

15. In a matter of mutation, the revenue officer are not competent to decide any claim related to title, share and right of possession.

16. In a case of mutation on transfer of property, the authority has to see as to whether the Jamabandi is running in the name of the vendor or his predecessor in interest and the transfer has been made by virtue of a prima-facie valid document by tenant or successor in interest whose name is running in the revenue record transferring ownership and possession to the transferee.

17. By virtue of a valid transfer of title the purchaser also acquires right of possession, if not restricted by specific covenant or any provision of law.
18. In such cases, if any body disputes possession of the transferee, he has to establish before the authority that the said right has not been exercised in spite of transfer of title in his favour.
19. Objection raised without any basis against a valid transfer has no effect of disturbing legal right of the transferee which vests in limine by virtue of the deed and operation of law.
20. Observation of learned Land Reforms Deputy Collector, Giridih as well as Additional Collector, Giridih in the instant case, that since the objectors had put objection against the prayer for mutation, the petitioners cannot be said to be in peaceful possession is wholly erroneous, misconceived and illegal.
21. Such bald objection does not also give rise to any legal issue of title and possession, except the same is raised for the purpose of adjudication before a Court of competent jurisdiction.
22. Merely, questioning title, validity of sale deed or putting the claim of share by words of mouth, without any legal basis or valid documents, cannot be said to be a serious dispute of right, title and possession as submitted by the learned counsel for the respondents.
23. The decision in the case of Ramjee Prasad Singh and another (supra), for the said reason has got no relevance to the facts of the instant case.
24. In view of the above discussions, the order dated 3.6.2003 passed by learned Land Reforms Deputy Collector, Giridih passed in Revision Case No. 105/02-03 (Annexure-3), the order dated 22.7.2004 passed by learned Additional Collector, Giridih in Mutation Revision Case No. 14/2003-04 as also the order dated 28.12.2005 passed by learned Commissioner, North Chotanagpur Division, Hazaribagh in continuity are quashed. The order dated 29.11.2002 of learned Circle Officer, Birni, Giridih (Annexure-2) is upheld.
25. Accordingly, this writ petition is allowed.