

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10019 of 2002

- =====
1. Ram Shankar Pd. Singh
 2. Mani Kant Prasad Singh
 3. Shiv Shankar Prasad Singh, all sons of late Pramod Roy, resident of Village Narayan Pipar, P.S. Cheria Bariarpur, District Begusarai.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Collector-cum-District Magistrate, Begusarai, District Begusarai
3. Shri Ram Chandra Prasad, the Sub Divisional Officer, Manjhaul, District Begusarai
4. The Circle Officer, Chhaurahi, District Begusarai
5. The Circle Inspector, Chhaurahi, District Begusarai
6. The Revenue Karmchari, Narayan Pipar, Manjhaul, District Begusarai

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Dronacharya,
Dr. Amrendra Kumar I
For the State : Mr. Nirbhay Kumar Singh, GP 26,
Mr. Krishna Kumar, AC to GP 26.

=====

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 06-04-2015

Heard learned counsel for the petitioners and learned counsel for the State.

2. In the present writ petition, petitioners are challenging letter no.1166 dated 29.7.2002 passed by the Collector-cum-District Magistrate, Begusarai (respondent no.2) by which he has approved the proposal of the Sub Divisional Officer, Manjhaul (respondent no.3) and ordered to demolish the house of these petitioners and subsequently vide order dated 2.5.2002 passed by respondent no.3 in Misc. Case No.1 of 2001-2002 and

also to quash the order of the Circle Officer, Charia Bariarpur passed in pursuance of the aforesaid orders passed by respondent nos. 2 and 3 vide order no.110 dated 21.8.2002.

3. The fact of the present case is that the father of the petitioners, namely late Pramod Roy, has got the settlement of land through Hukumnama from Narham Estate , Ex-land-lord appertaining to Khata No.365, Kheshra No.446, area 13 Kathas, 3 Dhurs and 15 Dhurki which is part of land having an area of 2 Acres and 14 Decimals situated in Mauza Narayan Pipar. After vesting of Jamindari, Jamabandi was opened in the name of father of the petitioners vide Jamabandi No. 474 and accordingly the name of the father of the petitioners was also recorded in register II prepared in 1981-82 it was recorded vide Jamabandi No.1753 and in the latest Jamabandi it has been claimed as recorded Jamabandi No.345. Claim has been made, on account of enlargement of family the father of petitioners had decided to make additional construction of building for adjustment of their family members, accordingly construction was started but all on a sudden, on 8.6.2001, received a notice from the office of Sub Divisional Officer, Manjhaul who has mentioned that while he was in routine round, he found that father of the petitioners were making construction the building of three rooms and one



Varandah over the Gairmajurua Khas land, directed for production of relevant records in support of his right over the land in dispute, till then father of the petitioners would not make any further construction over the land in question. From the receipt of the same he approached to the office of the Sub Divisional Officer where he was directed to file records through proper channel.

4. On the verbal instruction of the Sub Divisional Officer, Anchala Adhikari has sought report from the Halka Karamchari with regard to the status of the structure over the land. The Halka Karamchari submitted his report dated 16.6.2001 where by he informed, the land in question was settled by the Narhan Estate in favour of the father of the petitioners, was constructing the building over certain portion of land which has been settled with him and rest land is open field.. The Halka Karamchari mentioned in his report that father of the petitioners was paying rent receipt regularly. On receipt of the report from Halka Karamchari the Circle Officer, Cheriya Bariyarpur vide order dated 7.7.2001 repeated the same statement and transmitting the same along with his order to the Sub Divisional Officer, Manjaul for proper action.

5. It appears that while the matter was pending the



petitioners approached this Court vide C.W.J.C. No.1980 of 2002 and this Court vide order dated 20.3.2007 directed the Sub Divisional Officer for disposal of the case within four weeks from the date of submission of the copy of the order and on that basis the Sub Divisional Officer vide his order dated 2.5.2002 (Annexure-6) recorded that the land being Gairmajurua Malik nature (ditch) though the land has been recorded in the name of father of petitioners and Circle Officer informed, that land lord having settled in favour of petitioners but no return in support of his claim was filed which was admitted by land holder that ex-intermediary did not file any return in his favour which has been disputed by the learned counsel for the petitioners claiming wrong record of finding, also recorded that complaint was received from the villagers that the land in question is a Nala, water of the entire village passes through the said Nala and accordingly in exercise of power conferred under Section 4(h) of the Bihar Lands Reforms Act he cancelled Jamabandi recorded in the name of petitioners and placed before the Collector who approved the same vide letter no.1166 dated 29.7.2002 and accordingly the Circle Officer vide letter no.110 dated 21.8.2002 informed the Halka Karamchari that settlement has been cancelled, accordingly directed to record the said land as

Government land.



6. Learned counsel for the petitioners submits that the land was settled with the petitioners before 1.1.1946 and that settlement would not be subject matter of proceeding under Section 4(h) of the B.L.R. Act, so much so the Sub Divisional Officer, not being proper authority without proper initiation of proceeding has cancelled the settlement of land itself without following the due process of law. He has further submitted that if respondents are of the view that, by fraudulent manner, the land has been settled by the ex-landlord, the only remedy available is to file a proper suit before the appropriate civil court and get the settlement cancelled, placing reliance on the judgment passed in C.W.J.C. No.19317 of 2010 claiming that the fact of that case and the present case are by and large identical. So much so proceeding under Section 4(h) of B.L.R. Act was never issued except mentioning provision of law in the order.

7. Learned counsel for the State has justified the action and has submitted that the land is Gairmajurua Malik land. Petitioners have encroached upon the Government land right action has been taken in the matter.

8. Having considered the rival contentions of learned



counsel for the parties, it appears that, in the present case this Court is of the view that the Sub Divisional Officer has not properly exercised his power as it appears that Sub Divisional Officer has first issued a show cause notice for production of relevant record to show the right over the land. When the record along with report were submitted he abruptly dealt with the matter and has cancelled the jamabandi itself as a Sub Divisional Officer, not Collector under the Act and so much so when the petitioners have been paying the rent for such a long period, the Sub Divisional Officer without initiating, proper proceeding in such hurried manner should not have cancelled the Jamabandi in exercise of power under Section 4(h) of the Act. This Court holds same view that after such a long time, if the authorities were of the view that the petitioners have wrongly and fraudulently had got the land settled from ex-intermediary and basically, a Government land, the proper course was for them to approach the civil court of competent jurisdiction and get an appropriate order. This Court is of the view that there is no proper proceeding under the Act, the Sub Divisional Officer has exercised his executive power, in that power alone he has passed the order for cancellation of Jamabandi which is not permissible as in law, exercise of power under the B.L.R. Act is

quasi judicial power.

9. Accordingly the impugned orders dated 2.5.2006 (Annexure-6), letter no.1666 dated 29.7.2002 (Annexure-7), and letter no.110 dated 21.8.2002 (Annexure 8) are hereby quashed and this writ petition is allowed.

(Shivaji Pandey, J)

Vinay/-

U			
---	--	--	--