

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8231 of 1998

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- (1) Shanti Devi wife of late Indu Bhushan Tripathi.
(2) Shanti Bhushan Tripathi
(3) Shanti Kant Tripathi
(4) Rabi Bhushan Tripathi
(5) Rabi Kant Tripathi, all sons of late Indu Bhushan Tripathi
(6) Madhu Devi wife of Indu Bhushan Tripathi, all resident of village-
Nawahi, R.S. Naubatpur, District-Patna

.... Petitioner/s

Versus

1. State of Bihar
2. The Additional Collector, Patna
3. The Dy. Collector, Land Reforms, Danapur, Patna
4. The Circle Officer, Nabatpur at P.O. and P.S. Naubatpur, District Patna
5. Congress Paswan son of Sipahi Paswan.
6. Nathun Paswan son of Sipahi Paswan.
7. Manki Paswan, son of Muneshwar Paswan.
8. Ambika Mochi son of Dhoch Mochi.
9. Shiv Narayan Mochi, son of Chotta Mochi
10. Janki Paswan son of Muneshwar Paswan.
11. Kalutan Mochi, son of Nanhak Mochi.
12. Ramun Mochi, son of Nanhak Mochi.
13. Baljit Mochi, son of Nanhak Mochi.
14. Ram Nasib Paswan, son of Ram Balak Paswan.
15. Mahesh Paswan, son of Ganauri Paswan
16. Bhola Paswan son of late Budhu Paswan
17. Dhuri Paswan son of late Budhu Paswan.
18. Saroj Paswan, son of late Bhawan Paswan.
19. Hiralal Paswan, son of Muneshwar Paswan.
20. Sudhu Sao, son of Nand Keshwar Sao
21. Akhleshwar Ram, son of Badri Ram
22. Ali Hussain Anssari son of late Idrish Ansari.
23. Ram Narayan Mochi son of Bhoch Mochi
24. Bal Mohan Mochi, son of Dhoch Mochi, all are resident of village Nawahi, P.S.
Naubatpur, District Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mahesh Narayan Parbat, Sr. Adv.
Mr. Ved Prakash Srivastava, Adv.
Mr. Deota Charan Dubey, Adv.
Mr. Chandra Shekhar Jha, Adv.
For the Respondent/s : Mr. Rajeev Kumar Singh, GP-2
Mr. Praveen Kumar Agrawal, Adv.
For the private respondents: Mr. Radhey Shyam Prasad, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

C.A.V. JUDGMENT

Date: 21-05-2015



This writ petition under Article 226 of the Constitution of India has been filed with the prayer to issue a writ in the nature of certiorari for quashing the order dated 26.5.1998 passed by the Additional Collector, Patna in Misc. Appeal No. 2 of 1997-98 whereby the Additional Collector has confirmed the order dated 27.6.1997 passed by the Deputy Collector Land Reforms in Misc. Case No. 3 of 1992-93 whereunder the Jamabandi running in the name of the petitioner has been cancelled. Copy of the orders passed by the Additional Collector and the Deputy Collector Land Reforms are annexed vide Annexures 7 and 6 respectively to the writ petition.

The land in dispute pertains to Khata No. 367 (Khata No.342 in the impugned orders), Plot No. 855 Tauzi No. 2901 having an area of 4.74 acres situated in Mauza Naubatpur in the district of Patna. The land is recorded as 'Gairmajarua Parti Kadim' and is in the nature of 'Bakast' land of the ex-landlord. The petitioner claimed to be the proprietor of the land having received the same through partition vide Partition Case No. 42 of 1921-22.

It is the case of the petitioner that the land in question forms part of the Tauzi No. 2901 which relates to the lands owned by the family and finds mention in the return filed. On the other hand, the private respondents claim ownership over the land by virtue of settlement by the ex-landlord.

Mr. Mahesh Narain Parbat, learned Senior counsel has appeared for the petitioner while the State is represented by Mr. Rajeev Kumar Singh, G.P.2 and the private respondents are represented by Mr. Radhe Shyam Prasad.

Mr. Parbat, learned Senior counsel for the petitioner submits that the land in question was owned by the family of the petitioner and in a family partition the said land came to be allotted in the share of the present petitioner, vide Partition Case No. 42 of 1921-22. He submits that these land finds mention in the return filed by the family. He submits that in the year 1985 the petitioner filed Rent Fixation Case No. 1 of 1985-86 for fixation of rent. The attempt by the petitioner was opposed by the private respondents which resulted in a proceeding under Section 144 of the Code of Criminal Procedure (hereinafter referred to as 'the Code') and which was drawn in favour of the petitioners and even the Cr. Rev.No.570 of 1986 preferred by the private respondents was dismissed. He submits that the private respondents not being satisfied attempted to initiate a second proceeding under Section 144 of 'the Code' and under the orders of the Sub Divisional Magistrate the same was dropped with a further direction to the Circle Officer to examine the same. He submits that the direction of the Sub Divisional Magistrate resulted in registration of Misc. Case No. 3 of 1992-93 and the Circle Officer submitted his



report to the Deputy Collector Land Reforms (hereinafter referred to as the 'DCLR') certifying the possession of the petitioner on the land in question. It is submitted that despite the position that the factual finding of the Circle Officer in his report remained unchallenged, the 'DCLR' on complete misconception of fact and law proceeded to cancel the Jamabandi vide order dated 27.6.1997 placed at Annexure-6 and which has been affirmed by the Additional Collector vide order passed on 26.5.1998 present at Annexure-7.

It is the argument of Mr. Parbat learned Senior counsel appearing for the petitioner that once the Circle Officer has recorded a finding as regarding possession of the petitioner on the disputed land to open the Jamabandi on the basis of materials on record which finds discussed in the orders itself, there was no occasion nor any jurisdiction vested in the DCLR to cancel the Jamabandi. He submits that even the Additional Collector affirmed the order of the DCLR on the sole point that the order of the Circle Officer to open the Jamabandi was not with due approval of the Sub Divisional Officer who is the competent authority. He submits that since the nature of land is Bakast, this by itself is sufficient to uphold the claim of the petitioners and to reject the claim made by the private respondent. He submits that the orders have been passed without drawing any proceeding under Section 4(h) of the Bihar Land Reforms Act and



thus are unsustainable. With reference to the judgment of this Court rendered in the case of **Harihar Singh** reported in **1978 BBCJ 323** and **Khiru Gope Vs. DCLR** reported in **1983 PLJR 727** he submits that the lack of jurisdiction on the part of the 'DCLR' to cancel a Jamabandi is settled under the judgments. With reference to the reasons assigned by the Additional Collector to uphold the cancellation order passed by the 'DCLR' it is submitted that it is on the sole presumption that the Circle Officer had not obtained the approval of the superior authority and which is an error of fact as apparent from the order dated 16.9.1985 whereby the Circle Officer has clearly mentioned that the receipts would be issued after approval of the Sub Divisional Officer. He further submits that the documents relied upon by the Circle Officer to accept the contention of the petitioners finds mention in the order dated 20.8.1985 and the veracity of which has not been contested by any authority. It is thus submitted that this Court appreciating the issue involved, had stayed the operation of the impugned orders vide order passed on 16.10.1998 and which has continued to operate after admission of the case vide order passed on 3.4.2000.

Although Mr. Rajeev Kumar Singh, learned G.P.2 fairly accepts the legal position in the backdrop of the judicial pronouncement of this Court but the argument of Mr. Parbat has been

vehemently contested by Mr. Radhe Shyam Prasad appearing for the private respondents.

It is submitted by Mr. Prasad that by virtue of settlement made by the ex Jamindar the private respondents belonging to the weaker sections have continued to be in possession of the land and thus there is no infirmity in the order of the 'DCLR' as affirmed by the appellate authority to cancel the Jamabandi. With reference to the counter affidavit filed on behalf of the private respondents it is submitted that the land in question is not recorded as 'Bakast' rather it is mentioned as 'Parti Kadim' and a division of tauzi does not result in physical division of land. It was contended that the land was in the nature of no rent land and thus there was no occasion for the petitioners to either get the name recorded in the Jamabandi nor were they required to pay any rent. He submits that the enquiry report submitted in the Rent Fixation Case No. 1 of 1985-86 was collusive and based on no evidence. It was submitted that notice was not served on any of the villagers rather the entire proceedings was conducted by the Circle Officer in the rent fixation case in a secretive manner to avoid a possible opposition. The orders in the proceedings initiated under Section 144 of 'the Code' declaring the possession of the petitioners has also been termed as a collusive finding. It was argued that the petitioners are settlee over the land and are in cultivating possession



thereof. Supporting the jurisdiction exercised by the 'DCLR' to cancel the Jamabandi, learned counsel relied upon Section 40(1) of the Bihar Land Reforms Act, 1950 to submit that the order is perfectly justified and in accordance with law. To support the settlement in favour of the private respondents, Mr. Prasad has relied upon some 'Parwana' issued in Settlement Case No. 1 of 1998-99 by the Sub Divisional Officer-Danapur and the rent receipts issued thereunder.

I have heard learned counsel for the parties and I have perused the materials on record.

Whereas the petitioners herein claim to be the ex-landlord and seek to establish their right, title and interest over the lands in question by virtue of family partition, on the other hand, the private respondents claim their right, title and interest in the disputed land on the basis of settlement by the ex-Jamindar but there is no document supporting such settlement rather all that I find on record are 'Parwanas' issued in favour of the private respondents as late as in 1998, copies of which are enclosed with the counter affidavit of the private respondents at Annexure-A series. Thus whereas the petitioners claim to be bona fide title holders of the land in question, the private respondents are claiming it on the basis of settlement.

It is by now well settled that creation of Jamabandi is merely a confirmation of possession and is not an adjudication on the issue of



title. The orders passed by the revenue authority though statutory in nature and character but they are neither orders of a court nor these revenue authorities have any jurisdiction to decide disputed issues of title. Reference in this regard is made to judgment of this Court reported in **1987 PLJR 1037 (Depta Tewari & Ors. Vs. State of Bihar & Ors.)**.

The issue which arises for consideration in the present case is whether the application of the petitioners for fixation of rent could have resulted in cancellation of the Jamabandi by the 'DCLR'. The ordersheet in Rent Fixation Case No. 1 of 1985-86 is present at Annexure-3 and confirms that the land was recorded as 'Parti Kadim' and was in the nature of 'Bakast' which is confirmed vide Annexure 1 and 2 to the writ petition which are copies of the Khatiyani and extract of the revenue records respectively.

Annexure-3 is the ordersheet in Rent Fixation Case No. 1 of 1985-86 and which reflects that despite notice to all and sundry, there was no objection forthcoming and that the Circle Officer taking note of the documents submitted by the petitioner which finds noted in the order dated 9.9.1985, allowed the prayer of the petitioner for fixation of rent, vide order passed on 16.9.1985. It was further directed that the receipts would be issued after approval of the Sub Divisional Officer. This order makes all the difference as it shows that the rent

fixation was subject to approval by the Sub Divisional Officer.

The order dated 9.9.1985 further reflects that of the total disputed area of 4.80 acres the private respondents were in occupation of 6 decimals of land and had constructed their homestead and Sahan. This finding of fact by the Circle Officer is very relevant to the issue raised in the present writ petition in the backdrop of the stand taken by Mr. Prasad appearing for the private respondents. Even when the petitioners were praying for fixation of rent in respect of 4.80 acres, the Circle Officer has recorded a finding of fact regarding possession of the private respondents over 6 decimals of land and has also recommended for issuance of purcha in their name. The Circle Officer has recommended for fixation of rent at the rate of 10 rupees per acre and also for issuance of correction slip under Form M under the provisions of the Bihar Land Reforms Act and the rules framed thereunder. By the same order the Circle Officer has also directed the Revenue Officer and the Circle Amin to obtain approval of the Sub Divisional Officer on his recommendation and which order has been reiterated in the order dated 16.9.1985.

The order impugned dated 27.6.1997 of the 'DCLR' is present at Annexure-6 and which manifests that the records of the matter was forwarded by the Circle Officer himself for appropriate orders by the 'DCLR' which has been registered as Misc. Case No. 3 of 1992-93.



The 'DCLR' has taken note of the documents presented by the petitioner and has also taken note of the fact that no documents were submitted by the private respondents. Paragraph 4 of the order of the 'DCLR' is very relevant for the issue in question and which further confirms the possession of the private respondents on 6 decimals of land out of the total disputed land measuring 4.80 acres bearing Plot No.855. The 'DCLR' has taken note of the fact that though the Circle Officer had recommended for fixation of rent on 4.74 acres of land and had also issued directions for issuance of correction slip but the said order of the Circle Officer was made subject to the approval of the Sub Divisional Officer. The 'DCLR' has further observed that there was nothing on record of the proceedings to support that any approval was granted by the Sub Divisional Officer. It is in the aforementioned circumstances that the 'DCLR' opined that where the order of the Circle Officer was made subject to approval of the Sub Divisional Officer, he had no jurisdiction to either create Jamabandi No.259 in favour of the petitioners nor had any jurisdiction to issue rent receipts. It is on this limited count that the order of the Circle Officer has been set aside and the matter has been remanded to the Circle Officer for the needful. The petitioners preferred Miscellaneous Appeal against the order of the 'DCLR' giving rise to Misc. Appeal No. 2 of 1997-98 and the Additional Collector has

confirmed the order of the DCLR on grounds that the order of the Circle Officer did not have the approval of the Sub Divisional Officer.

Although extensive arguments have been advanced by Mr. Parbat as well as Mr. Radheshyam Prasad supporting the claim of the respective parties but in my opinion the issue as it stands does not warrant any such adjudication at its present stage. In my opinion, in the backdrop of the circumstances noted hereinabove where the order of the 'DCLR' as well as the Additional Collector is not an order of cancellation of Jamabandi either on merits or upon adjudication of the respective rights of the parties rather is on grounds of procedural infraction, in my opinion, the issue involved in the present proceeding would not be governed by the judgments of this Court rendered in the case of **Harihar Singh or Khiru Gope** (supra).

This Court while adjudicating on the issue raised in the case of Harihar Singh or Khiru Gope (supra) had downsized the jurisdiction of the 'DCLR' or the Additional Collector to cancel a Jamabandi where it went to the root of the matter. The judgments relied upon by Mr. Parbat is in a completely different context and in those cases, this Court was adjudicating on the jurisdiction of the 'DCLR' and the Additional Collector to cancel a Jamabandi which had been created by the Circle Officer on the basis of a Sada Hukumnama and when it was held that where such Jamabandi had been created on the basis of a

Sada Hukumnama, any adjudication as to the veracity of the Hukumnama could only be through the process of the Civil Court and which jurisdiction did not vest in the revenue authority.

In so far as the present case is concerned, the order of the Circle Officer dated 9.9.1985 and 16.9.1985 reflects that the rent fixation was subject to approval of the Sub Divisional Officer but without waiting for the approval so asked that not only the correction slip in Form M rather even rent receipts were issued by the Circle Officer. The 'DCLR' as well as the Additional Collector, Patna while taking note of the stand taken by the contesting parties herein have interfered with the order of the Circle Officer on solitary ground that it did not have the approval of the Sub Divisional Officer though it had been made subject to his approval. The orders passed by the superior authorities certainly does not adjudicate on the respective rights of the contesting parties rather the interference with the order of the Circle Officer is on grounds of procedural infirmity.

In the circumstances discussed, the order impugned passed by the 'DCLR' dated 27.6.1997 whereby he has cancelled the Jamabandi created in favour of the petitioners on grounds of procedural infirmity and has remanded the records to the Circle Officer, Naubatpur for necessary action and which order of the 'DCLR' stands affirmed in the order of the Additional Collector present at Annexure-7, in my

opinion, do not suffer from any infirmity warranting interference for the order of the Circle Officer dated 9.9.1985 was subject to approval of the Sub Divisional Officer and even when such approval was yet to be received, that he has proceeded to open Jamabandi which amounts to bypassing the statutory requirement and has been rightly interfered with by the superior statutory authorities. That under the order of the 'DCLR' as affirmed by the Additional Collector the matter stands remanded to Circle Officer, Naubatpur for completion of the legal formality, the Circle Officer and the Sub Divisional Officer are directed dispose of the matter in accordance with law expeditiously and preferably within 3 months of production/receipt of a copy of this order.

The writ petition is disposed of accordingly.

The interim order dated 16.10.1998 stands vacated.

sBibhash/-

(Jyoti Saran, J)

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