

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1696 of 2014

In

Civil Writ Jurisdiction Case No. 22072 of 2013

With

Interlocutory Application No.9582 of 2014

And

Interlocutory Application No.9583 of 2014

In

Letters Patent Appeal No.1696 of 2014



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1. The State of Bihar through the Collector, Siwan.
 2. The Additional Collector, Siwan.
 3. The Sub-Divisional Officer, Siwan.
 4. The Deputy Collector Land Reforms, Siwan, District-Siwan.
 5. The Anchal Adhikari, Siwan, District-Siwan

.... Respondents-Appellant/s

Versus

Harendra Nath Tiwari, son of Late Devnandan, Tiwary, resident of Village-Chainpur Mubarakpur, P.S.-Siswan, District-Siwan.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Mritunjay Kumar, Advocate

For the Respondent/s : None

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE I. A. ANSARI

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

2 07-01-2015

I.A. No.9583 of 2014

This application is filed with a prayer to condone the

delay of 190 days in filing the Letters Patent Appeal stating that the delay occurred in the process of taking administrative decision and legal opinion and that there was no lapse or indifference on the part of the Department.

No counter affidavit was filed by the respondent opposing the application.

We are satisfied with the reasons assigned for the belated filing of the Letters Patent Appeal.

The application is, accordingly, ordered, and delay is condoned.

Letters Patent Appeal No.1696 of 2014

This Letters Patent Appeal is preferred against the common order dated 18.02.2014 passed by the learned Single Judge in Civil Writ Jurisdiction Case Nos.22052 and 22072 of 2013.

Both the writ petitions were directed against the order dated 26.02.2013/23.07.2013 passed by the Collector, Siwan- the first appellant herein, cancelling the Jamabandi dated 01.01.1946 in relation to Khata no.9, Survey No.50, of village-Mehandar, P.S. Siwan, District-Siwan, covering an area measuring 16 Katha 19 dhurs.

The plea of the respondent was that the first appellant- Collector, is not empowered to cancel the Jamabandi and Section 9 of the Bihar Land Mutation Act, 2011 (for short, 'the Act') empowers only the Additional Collector. Another contention was about the timing and delay. It was urged that the Jamabandi took place in 1946 and it can not be interfered with after seven decades.

During the pendency of the writ petitions, the first appellant has withdrawn the order dated 26.02.2013/23.07.2013 through a communication dated 30th December, 2013. However he directed the Additional Collector to initiate a proceeding. The writ petitions were opposed by the appellants on other grounds.

The learned Single Judge allowed the writ petitions by taking the view that the Collector does not have the jurisdiction to initiate a proceeding; and that in view of the long passage of time, the only remedy open to the Government is to file a suit. The said order is assailed in this Letters Patent Appeal.

Sri Mritunjay Kumar, learned A.C. to S.C.-23, for the appellants, submits that the *suo motu* power conferred under Section 9 of the Act can be exercised at any point of time, if the circumstances permit and that the view taken by the learned

Single Judge cannot be sustained in law.

The Jamabandi in question has taken place way back in 1946. The District Collector initiated proceedings in relation to that and passed an order dated 26.02.2013/23.07.2013 cancelling the same. At the outset, we fail to understand as to how there can be two dates for one order. Assuming, one of the dates becomes relevant for the proceeding, it is clear that the first appellant passed the said order in exercise of power under Section 9 of the Act.

The illegality on the part of the first appellant, i.e. Collector, Siwan, was so patent that, once the writ petition was filed challenging his order, he realised the mistake committed by him and has passed another order dated 30th December, 2013 withdrawing his earlier order. However, his determination to tinker with the matter did not stop at that. He virtually exhorted the Additional Collector, i.e. the second appellant, to initiate proceedings for cancellation of the Jamabandi. The learned Single Judge took note of the fact that even *suo motu* proceedings albeit by the competent authority cannot be initiated at this length of time and the only remedy available to the Government, if at all, is to file a suit. We are totally in agreement with the view expressed by the learned Single Judge.



We also take serious exception to the manner in which the District Collector dealt with the matter. Firstly, he passed an order without verifying whether he has jurisdiction. Once, he realised that he did not have jurisdiction, he virtually exhorted the Additional Collector, i.e. the second appellant, to initiate a proceeding for cancellation of the Jamabandi. This is nothing but usurpation of the jurisdiction or an attempt to influence an inferior officer. When statutory power is conferred upon a particular authority, it is for him to decide whether or not exercise that power. Merely because an officer happens to be the superior in the hierarchy, he cannot issue direction to another for initiation of proceedings.

Further, the *suo motu* powers, whenever conferred, are required to be exercised within a reasonable time. Such a power cannot be taken recourse to, unsettle the things which have assumed finality over the decades, in the instant case, more seven decades. Another important aspect is that the Act came into force in the year 2011; whereas the Jamabandi was of the year 1946. Valuable rights accrued to the parties and they cannot be unsettled nearly after three generations. There was no allegation of fraud, at any point of time.

Viewed from that angle, we are not inclined to

interfere with the order of the learned Single Judge. Accordingly,
we dismiss this Letters Patent Appeal.

Interlocutory applications, if any, shall stand
disposed of. There shall be no order as to costs.

(L. Narasimha Reddy, CJ)

(I. A. Ansari, J)

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