

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.23362 of 2013

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Bachhi Devi Wife Of Sri Satyendra Nath Rai Resident Of Village - Chowk, Gaya,
P.S. Civil Lines, District - Gaya

.... Petitioner

Versus

1. The State Of Bihar
2. The Collector - Cum - District Magistrate, Gaya
3. The Additional Collector, Gaya
4. The District Collector Land Revenue, Gaya
5. The Circle Officer, Nagar, Gaya
6. Durga Paswan Son Of Late Gajadhar Paswan Resident Of Mohalla - Ghughri
Tar, P.S. Civil Lines, District - Gaya
7. Gopal Paswan Son Of Late Gajadhar Paswan Resident Of Mohalla - Ghughri
Tar, P.S. Civil Lines, District - Gaya
8. Bhagwan Paswan Son Of Late Gajadhar Paswan Resident Of Mohalla -
Ghughri Tar, P.S. Civil Lines, District - Gaya
9. Muni Paswan S/O Late Krishna Paswan Resident Of Mohalla - Ghughri Tar,
P.S. Civil Lines, District - Gaya
10. Indal Paswan S/O Late Krishna Paswan Resident Of Mohalla - Ghughri Tar,
P.S. Civil Lines, District - Gaya

.... Respondents

with

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Civil Writ Jurisdiction Case No. 4267 of 2012

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1. Gopal Paswan Son Of Late Gajadhar Paswan Resident Of Mohalla Ghughri Tar,
Police Station Civil Line, District Gaya
2. Bhagwan Paswan Son Of Late Gajadhar Paswan Resident Of Mohalla Ghughri
Tar, Police Station Civil Line, District Gaya
- 3(i) Matiya Devi, wife of Durga Paswan
- 3(ii) Surendra Paswan
- 3(iii) Upendra Kumar paswan
- 3(iv) Sikandar Kumar, Sl.3(ii) to 3(iv) are sons of Late Durga Paswan, resident of
Mohalla Ghughri Tar, Police Station Civil Line, District- Gaya.

.... Petitioners

Versus

1. The State Of Bihar
2. The Collector, Gaya
3. The Additional Collector, Gaya
4. Land Reforms Deputy Collector, Gaya
5. Anchal Adhikari Gaya

.... Respondents

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Appearance :
(In CWJC No. 23362 of 2013)

For the Petitioner : M/S Kumar Kaushik, Advocate and
 Dhrub Narayan, Sr. Advocate
 : Abhishek, Advocate
 For the Respondents : Mr. Saroj Kumar Sharma, A.C. to A.G.5
 (In CWJC No. 4267 of 2012)
 For the Petitioners : M/S Dhrub Narayan, Sr. Advocate and
 Abhishek, Advocate
 For the Respondents : Mr. Saroj Kumar Sharma, A.C. to A.G.5

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
ORAL JUDGMENT
Date: 16-01-2015

I have heard learned counsel for the petitioners and the respondents.

The petitioner of C.W.J.C. No.23362 of 2013 is aggrieved by the orders passed by the Circle Officer dated 4.3.2011 contained in Annexure-5, 26.9.2011 contained in Annexure-2 as well as 17.9.2013 contained in Annexure-1 and also the orders dated 23.6.2011 (Annexure-4) and 22.12.2011 (Annexure-3) passed by the Deputy Collector Land Reforms, Sadar, Gaya.

This is second round of litigation before this Court. Petitioners had earlier moved this Court against the order of the Additional Collector by which he had cancelled the Jamabandi of the petitioner and created in favour of the private respondents by filing C.W.J.C. No.151 of 2002 which was dismissed on 10.11.2008. The petitioners, thereafter, preferred L.P.A. No.1020 of 2008 which was allowed vide order dated 24.6.2009 holding that Anchal Adhikari concerned had ample power to deal with the issue against which



appeal would lie before the Land Reforms Deputy Collector but the order concerned was passed by the Additional Collector before whom revision would lie. It has been held that he had erroneously assumed the original jurisdiction to decide the case of mutation and had passed the impugned order dated 11.4.2000. After such observation, the order passed by the Additional Collector was set aside and the matter was remitted back to the Anchal Adhikari, Sadar, Gaya for taking a proper decision on the dispute. Thereafter, M.J.C. No.4180 of 2009 was preferred by the private respondents for review of the order passed by the Division Bench in the aforesaid appeal with a prayer that the matter should be remitted to the Collector, Gaya. However, the aforesaid case was dismissed vide order dated 1.4.2010 (Annexure-8). Thereafter, the Circle Officer passed the order dated 4.3.2011 in which he has recorded that the earlier order passed by the Additional Collector was correct. It was further observed that since the case was of cancellation of earlier Jamabandi and, thereafter, creating a new Jamabandi in favour of other person, he was not the competent authority rather the D.C.L.R., Sadar, Gaya would be the competent authority. Thus, after making a recommendation for cancellation of the petitioners' Jamabandi and creation of Jamabandi in favour of the private respondents, he referred the matter to the D.C.L.R., Sadar, Gaya. The D.C.L.R. vide his order dated 23.6.2011 (Annexure-4) has



simply accepted the aforesaid recommendation of cancellation of the petitioners' Jamabandi and creation of fresh Jamabandi in the name of the private respondents. Thereafter, the Circle Officer again passed an order dated 26.9.2011 holding that the land concerned is Gair Mazrua Aam land and, therefore, the Jamabandis could not stand in the name of either of the parties. He made further recommendation for cancellation of even the fresh Jamabandi created in favour of the private respondents. The D.C.L.R. vide his order dated 22.12.2011 (Annexure-3) again accepted this recommendation and directed for cancellation of the fresh Jamabandi also. The aforesaid two orders have been challenged by the private respondents by filing another writ petition being C.W.J.C. No.4267 of 2012 which has been heard along with the present case. The petitioners, thereafter, filed an application for review of the earlier order passed by the Circle Officer but the review was also dismissed vide order dated 17.9.2013, a copy of which has been appended as Annexure-1.

The Division Bench, after quashing the earlier order of the Additional Collector dated 11.4.2000, had remitted back the matter to the Anchal Adhikari, Sadar, Gaya for proper decision of the dispute in between the parties in accordance with law but the Circle Officer, after holding that the earlier order passed by the Additional Collector was correct, has further gone to hold that he is not a



competent authority to decide the case rather the D.C.L.R. is the competent authority. However, he did not stop there but had made a recommendation to the DCLR to cancel the Jamabandi running in the name of the petitioners and creation of the same in the name of the private respondents . The D.C.L.R. had accepted the recommendation and has simply passed such order without hearing the parties.

The questions which now fall for consideration are, (i) If the Circle Officer has come to the conclusion that he was not a competent authority to decide the case of Jamabandi then whether it was open to him to make a recommendation for cancellation of Jamabandi and creation of a new one ? (ii) Whether the D.C.L.R. was not required to issue notice and hear both the parties in place of passing the impugned order accepting the recommendation of the Circle Officer.

All the issues aforesaid being intertwined are being considered together.

Learned counsel for the petitioners has submitted that the Circle Officer was not required to send a recommendation if he found that he was not a competent authority to deal with the issues concerned. Similarly, the D.C.L.R. was also required to consider the issue without being prejudiced by the recommendation of Circle Officer. He should have decided the matter after granting opportunity

of hearing to both the parties.

I find force in the aforesaid submissions raised on behalf of the petitioners. If the Circle Officer has come to the conclusion that he was not a competent officer then there was no occasion for him to record his view on merit that the earlier order passed by the Additional Collector, which was set aside by the Division Bench of this Court, was correct and further he should not have gone to make a recommendation to the D.C.L.R. He could have simply referred the matter to the D.C.L.R. who should have considered the matter in accordance with law after granting reasonable opportunity to all the concerned persons. Admittedly, aforesaid procedure not having been followed raises a question mark upon the entire procedure which has been adopted by the Revenue Authorities. Subsequent orders passed by the Circle Officer as well as the D.C.L.R. also suffers from the identical vice.

Thus, in my considered opinion, all the orders impugned passed in C.W.J.C. No. 23362 of 2013 and C.W.J.C. No.4267 of 2012 cannot be sustained in law and, accordingly orders dated 17.9.2013, 26.9.2011, 22.12.2011, 23.06.2011 and 4.3.2011 passed in C.W.J.C. No. 23362 of 2013, as contained in Annexures 1, 2, 3, 4 and 5 respectively are quashed and set aside. The order dated 26.09.2011 and 22.12.2011 also challenged in C.W.J.C. No.4267 of 2012 as

Annexure- 5 also stand quashed.

It has been submitted at the bar that a new enactment has come which is Bihar Land Mutation Act, 2011 and under Section 9 of Chapter-VII, the issue of cancellation of Jamabandi can be considered and decided by the Additional Collector. Against the order of Additional Collector, there is a provision of appeal. There is provision of revision also.

In above view of the matter, since it was the direction of the Division bench of this Court that issue should be properly examined by a competent revenue authority and proper order in accordance with law should be passed by it, this matter is being remitted back to the Additional Collector concerned who would be required to examine and consider the *lis* between the parties and pass a fresh and reasoned order after granting reasonable opportunity to all the concerned.

Accordingly, both the writ petitions stand allowed. There would be no order as to cost.

(Dr. Ravi Ranjan, J)

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