

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8121 of 2005

- =====
1. Hare Ram Rai
 2. Sanjay Kumar Rai, both sons of Ram Gulam Rai, residents of village- Daniyalpur, P.S. Teghra, and District- Begusarai.
 3. Baby Kumari Devi @ Baby Devi, daughter of Late Ram Prasad Rai and wife of Sri Vinod Kumar Singh, resident of village Muktiyarpur, P.S. Bhagwanpur, Distrit- Begusarai.
 4. Laxmi Kumari Devi @ Deji Devi, daughgter of Late Ram Prasad Rai and wife of Sunil Kumar Singh, resident of village Dularpur, P.S. Teghra, District- Begusarai.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Secretary, Department of Revenue and Land Reforms, Government of Bihar, Old Secretariat, Patna.
3. The Collector, Begusarai.
4. The Additional Collector, Begusarai.
5. The Sub-Divisional Officer, Geghra, District- Begusarai.
6. The Deputy Collector, Land Reforms, Teghra, District- Begusarai.
7. The Circle Officer, Teghra
8. Damodar Mallik son of not known to the petitioners (expunged vide order 28.01.2013 and substituted by his following heir:)
- 8(a) Girija Devi wife of Damodar Mallik, resident of village Daniyalpur, P.S. Teghra, District- Begusarai.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Dharendra Kumar Munna.

For the Respondent No.1 to 7: Mr. Ajay Kumar Sharma, AC to PAAG

For the Respondent No. 8(a) : Mr. Kaushal Kumar Singh
Mr. Ashok Kumar

=====

CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 09-11-2015

Heard the parties.

2. The petitioners have filed the present writ petition under Article 226 of the Constitution of India assailing the validity and correctness of the order dated 09.08.2002 passed in 4(h) Case No. 1 of 2000-01 by the respondent D.C.L.R., Teghra, as contained in Annexure-5, whereby a recommendation has been made for cancellation of Jamabandi with respect to a plot of land bearing khata



no. 3222 appertaining to khesra no. 11198 area 19 kathas 12 dhurs situate at mauza Salempur Titu in the district of Begusarai, recorded in the cadastral survey as 'Gairmajarua Aam' road (hereinafter to be referred to as the land in question). The petitioners are also aggrieved by the consequential order dated 04.09.2002 passed in aforesaid 4(h) Case No. 1 of 2000-01 by the respondent S.D.O., Teghra, whereby the recommendation made by the respondent D.C.L.R. was accepted and the jamabandi standing with respect to the land in question has been cancelled. The petitioners are further aggrieved by the order dated 10.06.2005 passed in Revenue Appeal Case No. 24 of 2002 by the respondent District Collector, Begusarai, as contained in Annexure-7, whereby the aforesaid revenue appeal filed on behalf of the petitioners has been dismissed and the order dated 09.08.2002 passed by the respondent D.C.L.R., Teghra and consequential order dated 04.09.2002 passed by the respondent S.D.O., Teghra vide Annexure-5 have been affirmed.

3. It is admitted case of the parties that the land in question has been recorded in the cadastral survey khatian as Gairmajarua Aam' road. Learned counsel appearing on behalf of the petitioners submits that subsequently nature of the land was changed; therefore, the ex- landlord settled the land in question in favour of one Ram Bali Singh and one Radha Singh in 1346 fasli corresponding to 1939 AD. According to him, the petitioners are the relations of aforesaid Ram Bali Singh and Radha Singh, and in that capacity the petitioners or their ancestors have been coming in possession over the land in question. It was further submitted that the settlement having been made in the year 1939 could not have been questioned in a proceeding under section 4(h) of The Bihar Land Reforms Act, 1950 (in short Act, 1950). Therefore, according to him, the impugned order



dated 09.08.2002 passed by the respondent D.C.L.R., Teghara recommending for cancellation of Jamabandi and consequential cancellation of Jamabandi by the respondent S.D.O., Teghara with respect to the land in question vide orders as contained in Annexure-5, are not sustainable. It is also submitted that the respondent District Collector, Begusarai without considering the points raised on behalf of the petitioners has dismissed the revenue appeal filed on behalf of the petitioners and has affirmed the orders passed by the respondent D.C.L.R. as also the respondent S.D.O. It is contended that even Gairmajarua Aam' land could have been settled by the ex-landlord. In support of his above contention, he has placed reliance on the judgments of this Court in the cases of **Mst. Husanbano v. State of Bihar** [1959 BLJR 310] and **Md. Ahsan v. State of Bihar** [1970 PLJR 7].

4. Per contra, learned A.C. to PAAG appearing on behalf of the respondents no. 1 to 7, as also the learned counsel appearing on behalf of the respondent no.8, have submitted that the petitioners' claim of settlement of the land in question made by the ex-landlord is based on forged and fabricated documents. According to them the orders impugned cannot be legally faulted. By referring to the averments made in the counter-affidavit filed on behalf of the respondents no. 3 to 7, it was submitted that the ex-landlord did not submit his return showing the settlement of land in question in favour of aforesaid Ram Bali Singh and Radha Singh, and the land in question having been recorded as the Gairmajarua Aam' road could not have been settled even in favour of aforesaid Ram Bali Singh and Radha Singh. It is pointed out that the petitioners claim to be merely the relations of aforesaid Ram Bali Singh and Radha Singh, and not the heirs and legal representatives of the aforesaid two alleged



settlees. It is next contended that the whole claim of the petitioners is based on disputed question of facts; therefore, unless and until their right and title as also their heirs ship are declared by the civil court of competent jurisdiction, they cannot be permitted to assail the validity and correctness of the impugned orders. In support of his above contention, he has also placed reliance on a judgment of this Court in the case of **Ramnandan Singh vs. State of Bihar** [2014(2) PLJR 636].

5. After having heard the parties and on consideration of the materials available on record, this Court finds that indisputably the land in question has been recorded as Gairmajarua Aam' land (road) in the cadastral survey khatian. Though the petitioners claim that the land in question was settled in favour of one Ram Bali Singh and Radha Singh in the year 1939, but the copy of the aforesaid settlement has not been brought on record. Despite repeated query, learned counsel appearing on behalf of the petitioners could not produce the document of alleged settlement even during the course of hearing of the case. Even the copy of the return filed by the ex-landlord at the time of vesting of Jamindari has not been brought on record and was not produced before this Court even at the time of hearing of the case to test the veracity of the claims of the writ petitioners. This Court further finds that the petitioners are not the heirs and legal representatives of the aforesaid Ram Bali Singh and Radha Singh. They simply claim to be the relations of the aforesaid two persons. They have also not stated in the whole writ petition that the aforesaid Ram Bali Singh and Radha Singh have no other surviving heirs. That being the factual position, the plea of the petitioners of their right, title and possession over the land in question cannot be accepted.

6. It is true that in a proceeding under Section 4(h) of the

Act, 1950, the settlement made prior to 01.01.1946 by the ex-landlord cannot be gone into, but for that a valid document of settlement made by the ex-landlord prior to 01.01.1946 is required to be shown by the claimants. Merely a bald statement that the settlement was made prior to 01.01.1946 cannot exclude the jurisdiction/ power of the authority/ Collector under the Act, 1950.

7. In the present case, neither before the respondent D.C.L.R./ S.D.O. nor before the respondent District Collector, Begusarai nor before this Court, the document of alleged settlement has been produced by the petitioners. Even copy of the return filed by the ex-landlord at the time of vesting of Zamindari has not been shown. The plea taken by the respondents in their counter-affidavit that the petitioners' claim of settlement is based on forged and fabricated document has not been controverted by the petitioners by filing any rejoinder affidavit. Entire claim of the petitioners is based on disputed question of fact and not supported by any valid document. The judgments relied upon by the learned counsel appearing on behalf of the petitioners are not applicable in the facts and circumstances of the present case.

8. For the reasons recorded above, this Court does not find any good ground to interfere with the orders impugned. The writ petition is devoid of merit and is accordingly dismissed, but there shall be no order as to costs.

(Birendra Prasad Verma, J)

BTiwary/-

U			
---	--	--	--