

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1741 of 1993

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1. Bimal Chandra Mishra, resident of Village Bhual Khutwania, P.S. Kuchaikote, District Gopalganj.
 2. Dayashankar Mishra S/O Late Dinanath Mishra, resident of Village Bhual Khutwania, P.S. Kuchaikote, District Gopalganj

.... Petitioners

Versus

1. The State of Bihar
2. The Anchal Adhikari, Kuchaikote , District -Gopalganj
3. The Sub-Divisional Officer,
4. The Additional Collector, Gopalganj.
5. The Collector, Gopalganj.
6. Gharbharan Ram S/O Late Khubi Ram, resident of village Bhual Khutwania, P.S. Kuchaikot, District Gopalganj

.... Respondents

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Appearance :

For the Petitioner/s : M/S Ravi Shankar Sahay, Adv.
Mr. Chandra Mohan Jha, Adv.

For the Respondent/s : Mr. Praveen Kumar, Adv.
A.C. to G.P.-27

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
ORAL JUDGMENT

Date: 20-07-2015

The petitioners in the present writ application under Article 226 of the Constitution of India seek quashing of the order dated 07.01.1993 passed by the Additional Collector, Gopalganj in Zamabandi Cancellation Case No. 15/92-93 (State of Bihar Vs. Bhagirath Mishra) as well as the order dated 13.01.1993



passed by the Collector, Gopalganj, whereby Zamabandi created in favour of the petitioners with respect to land having area 10 Katha, 04 Dhurs from the total area of 53 Bigha, 04 Katha, 05 Dhurs of Zamabandi No. 38 is sought to be cancelled. There is no dispute about the fact that Zamabandi was created in favour of these petitioners with respect to the land appertaining to Khata No. 30, Kheshra No. 224 vide Zamabandi No. 38 with respect to 53 Bigha, 04 Kathas and 05 Dhurs of land. It appears from the pleadings on record that one Gharbharan Ram filed an application before the Collector, Gopalganj alleging that Zamabandi with respect to 10 Katha, 04 Dhurs out of total 53 Bigha, 04 Katha, 05 Dhurs was wrongly created in favour of the petitioners, as the said land was a pond, which was in public use. On the basis of the said application, the Sub-divisional Officer, Gopalganj appears to have proceeded to cancel the Zamabandi invoking provision under Section 4(h) of the Bihar Land Reforms Act, 1950.

2. Learned counsel for the petitioners submits that because of a typographical error in Interlocutory Application No. 2155 of 2000, name of the substituted

petitioner has been mentioned as Binod Chandra Mishra in place of Bimal Chandra Mishra.

3. Learned counsel for the petitioners is permitted to make necessary correction in the said Interlocutory Application.

4. The Registry will make necessary correction in the party position accordingly.

5. Learned counsel appearing on behalf of the petitioners has submitted that the said Gharbharan Ram subsequently filed an application before the Collector, which has been brought on record by way of Annexure-13 to the present writ application, wherein he is said to have stated that he had not filed any petition before the Collector, at any point of time alleging wrong entry or for cancellation of Zamabandi in favour of the petitioners, with respect to the land in dispute.

6. It is submitted on behalf of the petitioners that Zamabandi was duly created in favour of the petitioners and the land, in question, was in Khash possession of the petitioners at the time of vesting of Zamindari. He has also submitted that once Zamabandi was created in favour of the petitioners, the Revenue

Authorities did not have any jurisdiction to cancel it, more so by invoking provisions under Section 4(h) of the Bihar Land Reforms Act, 1950.

7. Learned counsel appearing on behalf of the State of Bihar, on the other hand, has relied upon the counter affidavit and supplementary counter affidavit filed on their behalf and has submitted that the land in question is, in fact, in use of public at large and the petitioners did not have exclusive possession over it at any point of time. It has been contended that the pond is situated in Plot No. 224 under Khata No. 30, which is now under the State Government of Bihar.

8. The said Gharbharan Ram on whose application, the Revenue Authorities proceeded to cancel the Zamabandi, created in favour of the petitioners, has been impleaded as Respondent No. 6. Despite notice, he has not entered appearance.

9. I find substance in submission made on behalf of the petitioners that Section 4(h) of the Bihar Land Reforms Act, 1950 does not confer any jurisdiction upon the Revenue Authorities to cancel the Zamabandi, once created in favour of a person.

10. The impugned orders are, therefore, quashed on the ground of being beyond jurisdiction.

11. Lenard counsel for the respondents-State of Bihar has drawn my attention to Section 9 of the Bihar Land Reforms Mutation Act, 2011 in order to submit that the Additional Collector has been vested with the jurisdiction to cancel Zamabandi under the said Act. It will be open to the Additional Collector to proceed in accordance with Section 9 of the Bihar Land Reforms Mutation Act, 2011 and in accordance with law after giving the parties due opportunity of hearing.

12. This application is allowed but with the observation, as aforesaid.

13. There shall, however, be no order as to costs.

(Chakradhari Sharan Singh, J.)

Vats/-

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