

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4325 of 1993

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1B. Dinanath Singh , son of Jai Mandal Singh, resident of village-Kateya P.O Kashi Tingrahi at present P.O. Teknawas, P.S. Mohammadpur District-Gopalganj

1C. Binod Singh, son of Jai Mangal Singh, resident of village-Kateya, PO Kashi Tingrahi, at present P.O. Teknawas P.S. Mohammadpur, District Gopalganj

1D. Girija Devi daughter of Jai Mangal Singh and wife of Lallan Singh, resident of Basaon, PO Basaon, P.S. Basantpur, District Siwan.

1E. Rajan Kumar Ojha (son of deceased daughter of Jai Mangal Singh,), son of Harendra Ojha, resident of village Sanwalia, PO & PS Baikunthpur, District Gopalganj

1F. Niraj Kumar Ojha (son of deceased daughter of Jai Mandal Singh), son of Harendra Ojha, resident of village Sanwalia, PO & PS Baikunthpur, District Gopalganj.

2A. Shambhu Singh, son of Late Raj Mangal Singh

2B. Most. Prabha Devi, wife of late Ramesh Singh (Late son of petitioner No.2)

2C. Suresh Singh, son of Late Raj Mangal Singh

2D Umesh Singh son of late Raj Mangal Singh

2E. Prakash Kumar Singh, son of late Ramesh Singh

All permanent residents of Village- Kateya, PO Kashi Tingrahi, at present PO Teknawas, P.S. Mohammadpur, District Gopalganj.

.... Petitioner/s

Versus

1. State of Bihar through the Secretary Department of Revenue, Old Secretariat, Patna
2. Collector, Gopalganj
3. Additional Collector, Gopalganj
4. Sub Divisional Officer, Gopalganj
5. Deputy Collector, Land Reforms, Gopalganj
6. The Circle Officer, Baikunthpur, District Gopalganj
7. Bikarma Sahani, son of Pujan Sahani, resident of village Kateya, PO Kashi Tengrahi, P.S. Muhamadpur, District Gopalganj

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Y. V.Giri, Sr. Advocate

With Mr. Nikhil Kr. Agarwal

For the State : Mr. Mahboob Ashraf, AC to SC 27

For Respondent No.7 : Mr. Naresh Prasad, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

CAV JUDGMENT

Date: 22-06-2015

1. The present writ application has been filed against the order passed by the Additional Collector, Gopalganj dated 08.04.1993 in case No. 1 of 1990/91/Misc. 18 of 1991-92 and the approval granted to the said order by the Collector, Gopalganj dated 14.4.1993.

2. I have heard learned Senior counsel appearing on behalf of the petitioners, learned counsel appearing on behalf of the State of Bihar as well as learned counsel appearing on behalf of Respondent no.7.

3. From the facts pleaded, it appears that respondent no.7 claiming to be ex-military Personnel sought for settlement of the land admeasuring 2 acres appertaining to Keshra No. 245 of Khata No. 45. Upon such application having been made, the Circle Officer, Baikunthpur of District Gopalganj reported that Jamabandi with respect to lands of Khata No. 45, which the respondent No.7 wanted to be settled in his favour, was already created in the name of Raghunandan Prasad Singh and Kapildeo Prasad Singh and, therefore, the said land could not be considered for settlement with respondent no.7, except R.S. Plot No. 32 admeasuring 1 Katha and 7 dhurs. It



appears that thereafter, the Deputy Collector. Land Reforms, Gopalganj was of the view that Circle Officer should take initiative for cancellation of the said Jamabandi No.68 running in the name of Raghunandan Prasad Singh and Kapildeo Prasad Singh and if the said Jamabandi was found to be wrong, it should be cancelled and step should be taken for settling the said land in favour of respondent no.7. Accordingly, settlement Case No. 2 of 12989-90 was registered.

3. It is the case of the petitioners that Circle Officer, upon spot inspection found that Jamabandi was rightly created in favour of the said settlers. The order-sheet dated 30.12.1990 in Settlement Case No. 2 of 1980-90 has been brought on record by way of Annexure-5 in support of this plea. It also seems that the Additional Collector, Gopalganj initiated a proceeding being Case No. 1 of 1990-91/Misc. 18/1991-92, for the purpose of examining the details of Gairmazarua land which were in possession of the individuals. It is the pleading of the writ petitioners that in respect to the said Khata No. 45 of village Kateya Tole Muhammad Rai, bearing Jamabandi No. 68 in favour of said Raghunandan Prasad Singh and others were taken note of. The Circle Officer is said to have reported that Jamabandi created in favour of Raghunandan Prasad Singh and Kapildeo Prasad Singh and others bearing No. 68 is correct and he decided to drop the proceeding vide order dated 30.12.1990.



4. However, the Additional Collector, Gopalganj vide his order dated 20.1.1992 decided to go into the correctness of the Jamabandi in the name of Raghunandan Prasad Singh and Kapildeo Prasad Singh for the purpose of its settlement in favour of respondent no.7. According to the Additional Collector, the settlement in favour of Raghunandan Prasad Singh and others with respect to said Katha No. 45 appeared to be doubtful and accordingly, notices were issued.

5. It appears from the order-sheet brought on record by way of Annexure- 6 of Case No. 1/1990-91/ Misc. 18/1991-92 that respondent no.7 took a plea that total area of the land appertaining to Khata No. 45 was 14 Bigha 19 Katha 3 dhurs which was distributed amongst six persons. 3.06 Acres of land was distributed out of Keshra No. 245 and proceeding for settlement of remaining 2 and half acres of land of Plot No. 245 of Katha no.45 was pending. Respondent no. 7 took a plea that Jamabandi created with respect to the said land in the name of Raghunandan Prasad Singh and Kapildeo Prasad Singh was incorrect and required to be cancelled. It appears from an order dated 20.1.1992 that the Additional Collector, Gopalganj was of the opinion that Jamabandi so created in the name of Raghunandan Prasad Singh and Kapildeo Prasad Singh appeared to be doubtful. He accordingly, by an order dated 20.1.1992 passed in Case No. 1/1990-91/Misc. 18/1991-92 directed for issuance of notice

to Raghunandan Prasad Singh and Kapildeo Prasad Singh and the then owners Jai Mangal Singh (Petitioner no.1) (Since deceased) and Raj Mangal Singh (Petitioner No.2) (Since deceased), seeking their response as to why said Jamabandi No. 68 be not cancelled.

6. The genesis of the initiation of proceeding for cancellation of said Jamabandi No. 68 in favour of said Raghunandan Prasad Singh and Kapildeo Prasad Singh and others is thus, the application filed by respondent no.7 seeking settlement of the said land in his favour, in his capacity, being an ex-army personnel on the ground that said land was Gairmazuara land and a wrong Jamabandi was created in the name of the said persons.

7. The said Jai Mangal Singh and Raj Mangal Singh filed their response in the light of notice issued by the Additional Collector, Gopalganj pursuant to the order dated 20.1.1992. Justifying the Jamabandi, the petitioners submitted objections and filed documents. The petitioners took specific plea that lands had never been donated in Boodhan by the ex-landlord. The Additional Collector, Gopalganj, however, by an order dated 8.4.1993 recommended for cancellation of the said Jamabandi on the ground that it was wrongly created. The Collector, Gopalganj subsequently, by an order dated 14.4.1993 accepted the said recommendation as according to him, there was no ground for differing with the recommendation made by the Additional



Collector, regarding cancellation of Jamabandi and he accordingly, cancelled the Jamabandi vide his order dated 14.4.1993 and directed the Deputy Collector, Land Reforms to take further necessary action for settlement of land in question among deserving persons. This is the circumstance in which present writ application has been filed seeking quashing of the order of the Additional Collector, Gopalganj dated 8.4.1993 and subsequent approval granted by the Collector, Gopalganj vide his order dated 14.4.1993.

8. The original petitioners Jai Mangal Singh and Raj Mangal Singh died during the pendency of the writ application and have been substituted by their legal heirs.

9. It is the case of the petitioners that land in question admeasuring 14 bigha 17 Katha and 16 dhurs appeartaining to Khata no. 45 Plot Nos. 245, 185,332,61/383 and 316 originally belonged to one Sarjug Narayan Singh. By way of registered sale deed dated 12.2.1939, the said land was settled in favour of Raghunandan Prasad Singh and Kapildeo Prasad Singh, who came in possession over the same thereafter. Kabuliyat was registered in favour of settlee and before vesting of Zamindari, settlee paid rent to the ex-landlord and rent receipts were also issued. Upon enforcement of the Bihar Land Reforms Act, 1950, after vesting of land in the State of Bihar, names of the said settlees were entered in Register-II and since 1956, rent



receipts have been issued in their favour. It has further been stated that the said Kapildeo Prasad Singh died issueless in jointness with his brother Jai Mangal Singh and Raghunandan Prasad Singh died in jointness of his brother Raj Mangal Singh and upon their death, said Jai Mangal Singh and Raj Mangal Singh came in possession over the said land and they have been paying rent and they are in possession of the land. It is thus, their case that petitioners have been coming in possession over the said land, and their predecessors-in-interest were in possession continuously over the land on the date of vesting, to the knowledge and recognition of the State of Bihar. It has also been stated that out of the said land, 2 bigha 11 katha 8 dhurs of land have been transferred to various persons as described in paragraph 10 of the writ application and whose names have been duly mutated by the State of Bihar and they are paying rent accordingly.

10. It is the specific case of the petitioners that the revenue Court or no other Court has any authority to cancel the said settlement in favour of the settlees, through registered deeds and revenue Courts do not have any jurisdiction to cancel the said Jamabandi. It is also their plea that even while exercising jurisdiction under Section 4(h) of the Bihar Land Reforms Act, 1950, the revenue authorities have no power to annul any transfer of settlement made on or before 1.1.1946 through a registered sale deed, though a plea has been taken that no

proceeding under Section 4(h) of the Bihar Land Reforms Act, 1950 was initiated against the petitioners. It is also their plea that once Jamabandi was created in favour of the settlees, they would be treated to be settled Raiyat of the village and they acquired occupancy rights and can be ejected only on the ground mentioned therein.

11. Mr. Y.V. Giri, learned senior counsel appearing on behalf of the petitioners has submitted that the authorities has no jurisdiction to annul the transfer or settlement made before 1.1.1946 through a registered sale deed. He has relied upon following decisions of this Courts in support of his submission:-

- “1. 1986 PLJR 963 (*Rohini Kumar Chatterjee vs. State of Bihar and others*)
- 2. 2007(4) PLJR 205 (*Md. Shahabuddin Ansari Vs. State of Bihar*)

12. He has also submitted with reference to the following decisions of this Court that the revenue authorities did not have any jurisdiction under Section 4(h) of the Bihar Land Reforms Act, 1950 to cancel a duly created Jamabandi:-

- “1. 1978 BBCJ 323 (*Harihar Singh Vs. Additional Collector Land Reforms*)
- 2. 1979 BBCJ 605 (*Jamaluddin Vrs. S.D.O, Khagaria*)
- 3. 1983 PLJR 727 (*Khuru Gope vs. L.R.D.C*)

13. He has further contended that though the said land was

a Gairmazura land but could be validly settled by the ex-landlord in favour of the predecessors-in-interest of petitioners. In support of this plea, he has relied upon the decision of this Court reported in 1990 PLJR 170 (Laxman Sahni vs. State of Bihar) and 1970 PLJR and 1970 PLR 7.

14. Counter affidavit has been filed on behalf of the respondents State of Bihar. It has been stated that since the petitioners failed to produce the papers relating to Kabuliyat, there arose serious doubt over the so-called registered Patta as the rent receipts granted by the ex-landlord, which the petitioners claimed to have in their possession, appeared to be fake and doubtful in view of the fact that Jamabandi mentioned in the rent receipts differed from year to year. It has further been stated that regular rent receipts were not produced by the petitioners from the date of taking settlement of the land till vesting of estate in the State of Bihar. It has been stated that the petitioners failed to produce the rent receipts for the period from 1941 to 1945 and 1947 to 1949. From the averment made in the counter affidavit, it appears that the stand of the State of Bihar is that the petitioners have not been paying rent regularly. The Bujharat entry produced by the petitioners, according to the respondent State of Bihar is also doubtful, as according to them, the writ petitioners “somehow “managed to obtain the same”. As regards the claim of



possession of the petitioners over the land in question, the respondents have further asserted that the land was donated to the Bhoodan Committee admeasuring 11.07 acres out of which some land was distributed among the persons through different Bhoodan purchases and the writ petitioners attempted to grab the land of the poor and down trodden people by manufacturing unreliable papers.

15. Respondent No. 7 has also filed a counter affidavit in support of the stand that Jamabandi was wrongly created in the name of the petitioners and they claim that the land settled by ex-landlord in the name of Raghunandan Prasad Singh and Kapildeo Prasad Singh became doubtful, as they failed to produce the kabuliyat when called upon by the Additional Collector, Gopalganj.

16. Learned counsel appearing on behalf of Respondent no.7, on the other hand, replying to the contention made on behalf of the petitioners, has submitted that the decisions of this Court cited on behalf of the petitioners to the effect that Jamabandi once created cannot be cancelled, has no relevance in the facts and circumstances of the case as no jamabandi was created in the name of these petitioners. He has referred to Section 3(3) of the Bihar Tenancy Act, 1885 in order to contend that the petitioners cannot be treated to be tenants within the meaning of Bihar Tenancy Act, 1885. He has, however, not disputed the fact that Jai Mangal Singh (Original

petitioner no.1) is the legal heir of the settlee Kapildeo Pd. Singh in whose name Jamabandi was created. He has also not disputed the fact that Raj Mangal Singh (Original petitioner NO.2) is the legal heir of Raghunandan Pd. Singh in whose name the Jamabandi was created being Jamabandi No. 68.

17. Respondent no.7 has not claimed any right title or interest over the lands in question except that he had filed an application for settlement of land in his favour, on the ground of him being an ex service man.

18.. From the rival pleadings of the parties and submission made on their behalf, the only question which needs to be decided in the present writ application is as to whether the Additional Collector/ Collector, Gopalganj could have cancelled the Jamabandi admittedly created in the name of the petitioners/predecessor-in-interest. From the order which is under challenge, it appears that failure on the part of the petitioner to produce Kabuliyat before the Additional Collector, when demanded, was one of the grounds for cancelling Jamabandi. In a supplementary affidavit filed on behalf of the petitioners on 2.11.1998, the petitioners have asserted in paragraph 2 that they have got a certified copy of the said registered Kabuliyat dated 17.1.1940, a typed copy of which has been brought on record by way of Annexure-8 to the said supplementary affidavit. There is no denial to

this averment by any of the State Respondents or the private respondent no.7. It has accordingly, been contended by the petitioner that whatever little cloud of doubt was created against the petitioners' possession and title over the lands in question, stands cleared in view of the said certified copy of the registered Kabuliyat.

19. Another question has arisen in the present proceeding as to whether the Additional Collector/Collector could annul the transfer for settlement made before 1.1.1946 in exercise of power under Section 4(h) of the Bihar Land Reforms Act, 1950. This aspect fell for consideration by a Division Bench of this Court in case of Harihar Singh Vs. Additional Collector (supra). The Division Bench held in paragraphs 16 and 17 of its decision, dealing the question as follows:-

“16. The question that remains to be considered is whether the learned Additional Collector's order dated 5.6.1975 cancelling the Jamabandi is in accordance with law. The notice issued to the petitioner no.1 merely directed him to produce rent receipts and other papers issued by the ex-intermediary with regard to plot No. 95. The learned Standing counsel submitted that this notice was under the provisions of Section 40(1) of the Bihar Land Reforms Act without going into the question whether the notice can be deemed to be one under section 40 of the Bihar Land Reforms Act, I will assume that the notice was issued under this provision. However, merely by issuing such a notice the learned Additional Collector was not entitled, after hearing petitioner No.1 to cancel the Jamabandi created in favour of the petitioners. Under this provision, the authority has the right to call for the records and if the person concerned does

not submit requisite papers, he can be fined. There is no provision in the Land Reforms Act which would indicate that after issuance of such a notice, learned Additional Collector could cancel the Jamabandi settlement can only be cancelled under Section 4(h) of the Bihar Land Reforms Act and the impugned order of the learned Collector does not show that he had proceeded in the matter as contemplated by that provision. In fact, apart from referring to Section 40(1) of the Bihar Land Reforms Act, Mr. Standing counsel no. 2 was unable to refer to any provisions of law or any instruction issued by the Revenue Department authorizing the Additional Collector to cancel a Jamabandi opened in accordance with law under the direction of the Anchal Adhikari. The reason given by the Additional Collector for cancelling the jamabandi is that the petitioner no.1 has not claimed that he was in possession of the land, therefore, the Anchal Adhikari should have himself enquired into the matter. The second reason given is that as the land was Gairmazarua Malik and was a big plot the Anchal Adhikari should have personally enquired into the matter particularly because in the return filed by the ex-intermediary, no entry had been made in favour of the petitioners. In the absence of any authority given to the Additional Collector either by law or by executive instructions, I am constrained to hold that he had no jurisdiction to annul the jamabandi made in favour of the petitioners by the Anchal Adhikari.

17. The order suffers from two other infirmities. The first is as I have stated earlier that in pursuance of the notice by the Additional Collector, the petitioner no.1 in support of his statement filed 9 documents. It included the sada Hukumnama by which the settlement was made in favour of the petitioner on 15.6.1940. Not one of these documents has been considered by him. The statement in the counter affidavit that these documents had been considered by the

Additional Collector cannot be accepted.”

20. In the present case also, it is not indicated by the Additional Collector while issuing notice as to under what provision he was proceeding to cancel Jamabandi in favour of the said Raghunandan Pd. Singh and Kapildeo Pd. Singh. No provision of law has been mentioned by the learned counsel appearing on behalf of the respondents, which confers jurisdiction upon the Additional Collector/Collector to cancel the Jamabandi. From the orders under challenge, it appears that in fact the Additional Collector, Gopalganj was making inquiries in respect of settlement of land through registered sale deed dated 12.12.1939 in favour of Raghunandan Pd. Singh and Kapildo Pd. Singh, as is vested in him under Section 4(h) of the Bihar Land Reforms Act, 1950, with respect to settlement/transfer made subsequent to January, 1946. In the present case, the Jamabandi was created on the basis of registered sale deed executed in the year 1939. That being so, the Additional Collector or the Collector could not have invoked his jurisdiction under Section 4(h) of the Bihar Land Reforms Act, 1956. The Division Bench decision of this Court in case of Harihar Singh (supra) has been followed subsequently in case of Jamaluddin Vrs. SDO, Khagaria (supra) holding that Jamabandi once created could not be cancelled in the absence of any appeal/revision against the creation of Jamabandi.

Another Division Bench of this Court in case of Hiru Gope Vs. Land Reforms, Deputy Collector, Jamui (supra), reaffirmed that the Revenue authorities did not have jurisdiction or power to cancel Jamabandi and removal of the names of the tenants from the tenants' Register, having effect of cancelling the settlement made by the ex-intermediary.

21. In the present case, I find that the effect of the impugned orders passed by the Additional Collector/Collector is of cancelling the settlements by ex-landlord made in the year 1939 in favour of said Raghunandan Pd. Singh and Kapildeo Pd. Singh, by cancelling Jamabandi created in their favour, which in my opinion, is impermissible. Reference may also be made in this regard to the case of Rohini Kumar Chatterjee Vs. State of Bihar (supra) where this Court held that cancellation of settlement made in the year 1936 (i.e. prior to 1.1.1946), by the Collector was without jurisdiction and beyond the powers conferred under Section 4(h) of the Bihar Land Reforms Act, 1950.

22. I do not find much substance in the submission made on behalf of respondent no.7 that these petitioners could not be treated as tenants as they were not the settlees by the ex-landlord, in view of the admitted fact that the petitioners are successors-in-interest and rent receipts were subsequently issued with respect to the lands in

question.

23. In view of the above, I hold the orders dated 8.4.1993 passed by the Additional Collector, Land Reforms, Gopalganj and the order dated 14.4.1993 (Annexure-7) passed by the Collector, Gopalganj in case No. 1/1990-91/Misc. 18 of 1991-92 to be illegal being without jurisdiction. The orders are accordingly, quashed.

24. The Collector, Gopalganj, shall, however, be at liberty to take appropriate steps in accordance with law if according to him the actual title of the petitioners over the lands in dispute is questionable. The Court expects that before proceeding for any action, the Collector will take into account the document, which has been brought on record by way of Annexure-8 to the Supplementary affidavit filed on behalf of petitioner dated 2.11.1998, said to be the copy of the certified copy of the Kabuliyat dated 12.12.1939 registered on 17.1.1940, in support of the case of the petitioners of settlement of the lands in favour of Raghunandan Prasad Singh and Kapildeo Prasad Singh by the ex-landlord.

25. This application is accordingly, allowed.

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

(Chakradhari Sharan Singh, J)

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