

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2908 of 1996

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1. Nuzhat Ara, W/O Late Sohail Alam (original petitioner), R/O Village- Paharia, P.O. & P.S.- Sekhupur Sarai (Barbigha), District- Shaikhpura.
 2. Atif Sohail (minor), S/O Late Sohail Alam, R/O Village- Paharia, P.O. & P.S.- Sekhupur Sarai (Barbigha), District- Shaikhpura.
 3. Areeb Sohail (Minor, S/O Late Sohail Alam, R/O Village- Paharia, P.O. & P.S.- Sekhupur Sarai (Barbigha), District- Shaikhpura.
 4. Shagufta Jabeen (Minor), D/O Late Sohail Alam, R/O Village- Paharia, P.O. & P.S.- Sekhupur Sarai (Barbigha), District- Shaikhpura.
 5. Isma Jabeen (Minor), D/O Late Sohail Alam, R/O Village- Paharia, P.O. & P.S.- Sekhupur Sarai (Barbigha), District- Shaikhpura.

.... Petitioner/s

Versus

1. State Of Bihar.
2. Deputy Collector Incharge, Land Reforms, Shaikhpura.
3. Anchaladhikari, Barbigha.
4. Bundi Pasi, S/O Late Tilak Choudhary, R/O Paharia, P.S.- Shakhupur Sarai (Barbigha), District- Shaikhpura.
5. Charitar Choudhary, son of Rameshwar Choudhary.
6. Harchand Manjhi, son of late Sukar Manjhi.
7. Sukhdeo Choudhary, son of late Chhedi Choudhary.
8. Md. Arsad, son of late Md. Razauddin.
9. Prakash Choudhary, son of Sudhdeo Choudhary
10. Md. Sazeed, son of Abdul Samad.

All are residents of Village- Sheikhupur Sarai (Barbigha), District- Sheikhpura.

.... Respondent/s

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Appearance :

For the Petitioner/s :	Mr. Raghieb Ahsan, Sr. Advocate with Mr. Md. Matloob Rab Mr. Khurshid Ahmad Siddiqui Mr. Sanjay Sinha Mr. Deepak Kumar Singh Mr. S.M.Shabbir Alam
For the Respondent/s :	Ms. Nivedita Nirvikar, GA-10 Mr. Gopal Tiwari Mr. Khalid Ahsan

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 23-04-2015

Mr. Raghieb Ahsan, learned senior counsel has appeared for the petitioners and the State is represented by Ms. Nivedita Nirvikar, learned Government Advocate No.10.



This writ petition under Article 226 of the Constitution of India has been filed with a prayer for quashing the order dated 24.1.1996 passed by the respondent no.2 i.e. the Deputy Collector, Incharge Land Reforms, Sheikhpura in Case No.4 of 1994-95, whereby he has allowed the application filed by the private respondent no.4 Bundi Pasi and has issued orders for cancellation of Jamabandi standing in the name of the original petitioner.

The facts of the case briefly stated is that a piece of land bearing khata No.78, plot no.889 admeasuring 0.47 acres situated in Village-Shamshuddinpur Nemi @ Paharhia, P.S. Barbigha in the district of Sheikhpura was stated to have been settled by the Ex-Jamindar, namely, Md. Fakruddin in the year 1350 Fasli (1943) by way of a Hukumnama executed in favour of the father of the original petitioner late Manzar Alam. The land was recorded in Cadastral Survey Khatian as *Gairmazaru Aam Garha* (ditch). It is the case of the petitioners that right since after the settlement made by way of *Hukumnama* in favour of the father of the original petitioner by the *Ex-Jamindar* they came in possession of the land. In course of time the ditch was filled up and it became cultivable. It is claimed by the petitioners that a return was filed by the *Ex-Jamindar* in the name of the father of the original petitioner and a Jamabandi no.24 was opened in the revenue records of the State. It is their case that since thereafter the State in its Revenue Department



are issuing rent-receipt year after year. The petitioners by passage of time have turned the ditch into a regular pond with 'Bhindas' on all sides making it fit for rearing fishes. This exercise is stated to have been done way back in the year 1953-54. It is the case of the petitioners that some persons having their houses towards north and west of the plot tried to encroach over the land and fill up the tank which was obstructed by the original petitioner and his brother and whereupon a petition was filed against him before the Circle Officer in the year 1988 but was not proceeded. It is stated that again in the year 1989 the said persons filed an application on 21.4.1989 before the Sub-Divisional Magistrate, Sheikhpura for initiating a proceeding under section 144 of the Code of Criminal Procedure giving rise to Case No.244 (M) of 1989 and in which proceeding the possession of the petitioners was upheld vide order passed on 15.6.1989. It is the case of the petitioners that a second proceeding was again got initiated by these persons bearing Case No.553 (M) of 1989 and when the Sub-Divisional Magistrate again upheld the possession of the petitioners over the land in question under Jamabandi No.24 which has been opened on the basis of the entry made in Register-II on the basis of returns filed by the Ex-landlord. The Sub-Divisional Magistrate while upholding the possession of the petitioners required such persons to take recourse of the Civil Court in case they yet felt aggrieved. It is the case of the petitioners



that these persons not being satisfied set up respondent no.4 to question the settlement in favour of the petitioners as well as the *Jamabandi* opened and the Circle Officer proceeding on a petition filed by the private respondents issued notice against cancellation of *Jamabandi*. The Circle Inspector submitted his report, a copy of which is placed at Annexure-7, in which it has been categorically stated that the pond in question was settled by the *Ex-Jamindar* in favour of the ancestors of the petitioners. The report is dated 9.6.1994. The records were thereafter transferred to the Deputy Collector, Land Reforms who issued notice to the original petitioner requiring him to produce his evidence. It is stated that the petitioner appeared and supported his case with evidence which included the *Hukumnama*, rent-receipts issued by the Ex-landlord followed by the rent-receipts issued by the State of Bihar, the order passed by the Sub-Divisional Magistrate in a proceeding initiated under section 144 of the Code of Criminal Procedure etc. The respondent-Deputy Collector Land Reforms without appreciating the documents has vide impugned order dated 24.1.1996 cancelled the *Jamabandi* standing in the name of the petitioners and being aggrieved the petitioners are before this Court.

Mr. Raghiv Ahsan, learned senior counsel appearing for the petitioner has raised the following issues for consideration by this Court :

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- (a) The Deputy Collector Land Reforms has no jurisdiction to pass the impugned order of cancellation of Jamabandi;
 - (b) A Jamabandi opened way back in the 1955 cannot be cancelled;
 - (c) Even a *Gairmazarua Aam* land can be settled in the circumstances that it was a ditch and thus not being used for community purpose;
 - (d) The Deputy Collector Land Reforms had no jurisdiction to declare the land as a public land;
 - (e) The Deputy Collector Land Reforms has failed to appreciate the documents presented by the petitioners which included the *Hukumnama* as well as the orders passed by the authorities, the rent-receipts etc.;
 - (f) The Deputy Collector Land Reforms has not appreciated the facts on record including the report of the Circle Inspector nor has paid consideration to the long possession of the petitioners.

Learned senior counsel in support of his submission has relied upon the following judgments of this Court:

- (a) AIR 1970 Patna 7 (S.Gurdial Singh Bedi vs. Sunda Hire Purchase Corporation).
- (b) 1978 BBCJ 323 (Harihar Singh Vs. The Addl.

Collector I/c Land Reforms, Monghyr);

- (c) 1983 PLJR 727 (Khiru Gope Vs. The Land Reforms Deputy Collector, Jamui).
- (d) 1985 BBCJ 212 (Hiraman Yadav vs. Land Reforms Deputy Collector, Jamui)
- (e) 2014 (4) BBCJ 152 (Maya Devi vs. The State of Bihar);
- (f) 2015 (1) PLJR 606 (The State of Bihar vs. Harendra Nath Tiwari)

The arguments of Mr. Ahsan has been contested by Ms. Nirvikar, learned counsel appearing on behalf of the State inter alia on grounds that the report of the Karmchari is not reliable and even the opening of the *Jamabandi* is a suspect. It was also argued that the manner in which the *Jamabandi* was opened is also not established. Learned counsel while contesting the right of the original petitioner as well as his father to the settlement of *Gairmazarua Aam* land, submits that the name of the father of the original petitioner is not even found in the return. Learned counsel though tried to question the very opening of the *Jamabandi* but while doing so fairly admitted that the Deputy Collector Land Reforms had no jurisdiction to cancel the *Jamabandi* which jurisdiction exclusively lies with the Collector.

I have heard learned counsel for the parties and I have

perused the materials on record.

The law on the issue of cancellation of *Jamabandi* stands well settled in the judgment of this Court rendered in the case of **Harihar Singh** (supra) and **Khiru Gope** (supra) and the Division Bench in no uncertain terms has held that there is no power vested in the authorities to cancel a *Jamabandi*. In fact the Bihar Tenant's Holdings (Maintenance of Records) Act, 1973 and 'the Rules' framed thereunder bestowed no such power to any statutory authority for cancellation of *Jamabandi* which power for the first time was vested in the Collector under the Bihar Land Mutation Act, 2011. It is in consideration of the legal position existing that the Division Bench of this Court in the case of **Harihar Singh** (supra) has categorically held in paragraph 16 of the judgment as follows:

“16.

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. “

This legal position has been reiterated in the decision of **Khiru Gope** (supra) when in paragraph 15 & 16 of the judgment the Division Bench while taking note of the judgment in **Harihar Singh** (supra) has held that where there is no authority given to the Collector under the Bihar Land Reforms Act, 1950 to cancel a *Jamabandi*, it is obvious that the Land Reforms Deputy Collector

had no jurisdiction to cancel the Jamabandi and remove the names of the petitioner from the land.

Law being so well settled way back in 1978 and thereafter in 1983, the Deputy Collector Land Reforms remains oblivious of the legal position to pass the impugned order.

Apart from the fact that the order passed by the Deputy Collector Land Reforms is wholly without jurisdiction even otherwise the position settled under the judgments relied upon by Mr. Ahsan, learned senior counsel appearing for the petitioners there would be a question mark whether at this stage when the land remains in the possession of the petitioners since more than 60 years, they can initiate any proceeding of such kind. Even the argument of Ms. Nirvikar regarding the nature of land is not sustainable for many a reason. In the first place the land was described as *Gairmazarua Aam Garha* (ditch) which means that such land was not being used for community purposes and thus could have been settled by the Ex-landlord in view of the judgment of this Court reported in **1959 BLJR 311(Bansidhar vs. Matru Mal)** even otherwise an entry in the cadastral survey record merely depicts a position which existed during the cadastral survey but does not reflect the nature which has undergone a change over the period of time. This issue has been discussed in the Bench decision reported in **Maya Devi** (supra) and considering the fact that the land

in question has remained in possession of the petitioner since last 60 years, if not more, an issue as to the nature of land would be more than academic at this stage.

For the reasons aforementioned and in view of the clear legal position reflecting from the judgments discussed by me coupled with the admitted position that the Deputy Collector Land Reforms is not vested with any such jurisdiction, the order impugned cannot be upheld.

In result, the order dated 24.1.1996 passed by the Deputy Collector Land Reforms, Sheikhpura in Case No.4 of 1994-95 impugned at Annexure-1 to the writ petition is set aside.

This writ petition is allowed but without any order as to costs.

(Jyoti Saran, J)

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