

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.844 of 2014

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Yadunandan Singh, son of Late Ramgulam Singh, resident of Village - Moldiyar
Tola, P.S. - Mokama, District – Patna.

.... Petitioner/s

Versus

1. The State of Bihar.
2. District Magistrate and Collector, Patna.
3. The Senior Superintendent of Police, Patna.
4. The Sub-Divisional Officer, Mokama, Patna.
5. Deputy Collector Land Reforms, Barh, Patna.
6. Circle Officer, Mokama.
7. Chairman, Nagar Parishad, Mokama, Patna.
8. Mukti Prasad Singh, S/o late Bishundeo Singh, resident of Village- Moldiyar
Tola, P.S.- Mokama, District- Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Tuhin Shankar
For the Respondent-State	:	Mr. Mritunjay Kr. Singh, AC to SC-23
For Nagar Parishad, Mokama	:	Mr. Arbind Nath Pandey
For Private Respondent No.8	:	Mr. Kapildeo Singh

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 03-08-2015

In this writ petition the petitioner prays for quashing of the order dated 3.12.2013 passed by the respondent nos.2 and 3 i.e. the District Magistrate, Patna and the Superintendent of Police, Patna as contained in Annexure-6, whereby the Circle Officer, Mokama has been directed to initiate proceedings under section 4(h) of the Bihar Land Reforms Act, 1950 (hereinafter referred to as ‘the Act’) for cancellation of the jamabandi bearing no.79 standing in the name of the father of the petitioner Ramgulam Singh in respect of the land bearing khata no.1258, plot no.4027 situated in Mauza-

Moldiyar Tola, Ward No.11, P.S.- Mokama in the district of Patna.

Mr. Tuhin Shankar, learned counsel has appeared for the petitioner, Mr. Mritunjay Kumar Singh, learned Assisting Counsel to Standing Counsel No.23 has appeared for the State, Mr. Arvind Nath Pandey has appeared for the Nagar Parishad, Mokama and Mr. Kapildeo Singh has appeared for the private respondent no.8 at whose instance the proceeding has been initiated against the petitioner.

Mr. Shankar, learned counsel appearing for the petitioner while advancing the case of the petitioner has submitted that the plot of land in question is a joint ancestral family property of the petitioner and was settled by the Ex-Zamindar in favour of the father of the petitioner Ramgulam Singh way back in 1936. He submits that although the plot of land is having a larger area but an area of $27\frac{3}{4}$ decimals was settled with the father of the petitioner. It is submitted that the name of the father of the petitioner was entered in Register-II and a jamabandi bearing no.79 was created and which has continued since 1956. He submits that since after the settlement of the land by the Ex-Zamindar, the father of the petitioner and thereafter the present petitioner has been paying rent and are in possession of the rent-receipts. It is with reference to an order of the Deputy Collector Land Reforms, Barh (hereinafter referred to as



‘the DCLR’) present at Annexure-2 submitted that upon some complaint being made that the Circle Officer, Mokama recommended for cancellation of the jamabandi bearing no.79 standing in the name of the father of the petitioner and which was registered as Miscellaneous Case No.01 of 1993-94. “The DCLR’ taking note of the documents in possession of the father of the petitioner supporting his claim of settlement and possession over the land since 1936 and while taking note of the judgments rendered on the issue, upheld the claim of the father of the petitioner and dropped the proceedings vide order passed on 6.6.1994. He submits that the matter having put to rest in 1994, resurfaced after 20 years when a public interest litigation was filed by the private respondent giving rise to CWJC No.21487 of 2013 charging the petitioner of unauthorizedly encroaching on land of the Nagar Parishad. He submits that without any notice to the petitioner, the writ petition was disposed of by the Division Bench vide order passed on 28.10.2013 placed at Annexure-5 with a direction to the District Magistrate, Patna and the Superintendent of Police, Patna to examine the issue of unauthorized encroachment and act in accordance with law. It is submitted that the impugned order has thereafter been passed signed jointly by the two authorities impugned at Annexure-6 whereby the two authorities without



appreciating the legal provisions and the binding precedent of the judgment on the issue have recommended for initiation of proceedings under section 4(h) of 'the Act' for cancellation of jamabandi of the petitioner. He submits that the two authorities while passing the impugned order have also issued direction to the Station House Officer, Mokama and the Circle Officer, Mokama to ensure that the petitioner does not carry out any construction work on the land. He submits that although the plot admeasures 47 decimals of which the petitioner was settled and is paying rent in respect of $27\frac{3}{4}$ decimals as manifest from the Land Possession Certificate present at Annexure-1 but only 10 decimals thereof is in possession of the petitioner.

The short submissions made by Mr. Tuhin Shankar with reference to the order of this Court passed in the present proceedings on 22.1.2014 is that the recommendation is without jurisdiction, contrary to the provisions of section 4(h) of 'the Act' and dehors the direction of the Division Bench which required the two authorities to act in accordance with law.

Whereas the counsel for the State and the Nagar Parishad have supported the impugned order by submitting that it is in tune with the direction of the Division Bench, the main charge is led by the private respondent to submit that a mere continuation of



the writ petitioner on a piece of land which is Gairmazarua Aam, does not bestow any legal right upon him. Mr. Kapildeo Singh, learned counsel appearing for the private respondent has submitted that the land belonged to the Nagar Parishad and could not have been settled in favour of the father of the writ petitioner and it is on account of collusiveness of the State that the writ petitioner and his father, have been allowed to remain on the plot which does not confer any title upon them and thus the order impugned requires no interference.

I have heard learned counsel for the parties and I have perused the materials on record.

This case is a classical example of a mechanical execution of the order passed by the High Court in CWJC No.21487 of 2013. Apart from the fact that the writ petitioner was never heard by the Division Bench, yet the mandamus so issued required the District Magistrate, Patna and the Superintendent of Police, Patna to act in accordance with law. When a complaint is referred for adjudication at the level of the administrative/statutory authorities for its disposal in accordance with law it neither reflects a decision in favour of the complainant nor requires the authority concerned to proceed in a mechanical manner rather the administrative/statutory authorities are required to examine the matter in observance of the



legal provisions, the judicial pronouncement on the issue and the facts available on record. The counsel for the State and the Nagar Parishad have rightly reflected the mindset of the District Magistrate, Patna who along with the Superintendent of Police, Patna has mechanically upheld the complaint of the private respondent to recommend initiation of a proceeding under section 4(h) of 'the Act' without bothering to satisfy themselves as to whether the law permits them to make any such recommendation.

Even when the law as to the circumstances in which a proceeding under section 4(h) of 'the Act' can be initiated was settled as back as in 1956 by the Division Bench of this Court and has been regularly interpreted in catena of judgments passed thereafter most of which stands noticed in a recent judgment of this Court reported in **2014(2) PLJR 636 (Ramnandan Singh vs. The State of Bihar)** yet the statutory authorities under 'the Act' continue to falter thus burdening this Court with unwarranted avoidable litigations.

Some of the facts as stated by the petitioner remain uncontested and i.e.:

- (a) The settlement by the Ex-Zamindar was made in the year 1936 in favour of the father of the petitioner late Ramgulam Singh;

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- (b) The name of the father of the petitioner as settlee was entered in the revenue records and jamabandi was created as back as in the year 1956;
- (c) A proceeding for cancellation of jamabandi was initiated almost two decades back in Miscellaneous Case No.01 of 1993-94 and 'the DCLR' upon examination of the records vide order passed on 6.6.1994 upheld the claim of the father of the petitioner and dropped the proceedings which has attained finality since the same was never questioned before any superior authority;
- (d) The father of the petitioner and after his death the petitioner has been paying rent and obtaining rent receipts; and
- (e) The three pre-requisites for invoking the provisions of section 4(h) of 'the Act, namely,
- (i) transfer made after 1946 in order to defeat the provisions of 'the Act';
 - (ii) transfer made to get higher compensation; and
 - (iii) transfer made to cause loss to the Government;
- do not apply to the case of the petitioner.

This Court while requiring the authorities to respond



to the issues raised in the writ petition had framed these issues in its order dated 22.1.2014 and though a counter affidavit has been filed by the respondents but they have miserably failed to respond to the issue rather have parroted the stand that the land is in the nature of Gairmazarua Aam. There is no answer to the issues framed by this Court on 22.1.2014. Whether at all the respondents can initiate any proceeding under section 4(h) of 'the Act' even in absence of these pre-requisites and after 50 years of the creation of jamabandi in 1956, the law has been settled by this Court in the judgment rendered in the case of **Ramnandan Singh** (supra) and also in the case of **Shyam Mohan Shahi vs. The State of Bihar** arising from CWJC No.22052 of 2013 and **Harendra Nath Tiwary vs. State of Bihar** arising from CWJC No.22072 of 2013 which judgment of the learned Single Judge has been affirmed by the Division Bench in a judgment reported in **2015(1) PLJR 606 (State of Bihar vs. Harendra Nath Tiwari)**. It has been held that such power of cancellation has to be exercised within a reasonable time and cannot be taken recourse to for unsettling things which have attained finality existing for more than five decades and in absence of the essential pre-requisites.

As I have already observed this issue stands settled way back in 1956 in the judgment rendered in the case of



Chandreshwari Prasad Narain Deo vs. The State of Bihar since reported in **1956(4) BLJR 24** and has been exhaustively discussed in the judgment of **Ramnandan Singh** (supra) yet the wisdom continues to evade the authorities. It is the specific stand of the petitioner that the settlement was made by the Ex-Zamindar with the father of the petitioner in 1936 and there is nothing on record to controvert this statement of the petitioner rather there are documents to support that the jamabandi was created in the name of petitioner's father and was entered in the revenue records in 1956 and when jamabandi no.79 was created against his name. Thus neither the recommendation stands supported by the statutory provisions of section 4(h) of 'the Act' nor the judicial pronouncements on the issue permit the respondent to unsettle a position existing for almost 60 years.

The only ground raised by the private respondents to unsettle the possession which is existing for almost six decades is that the nature of the land is Gairmazarua Aam and according to the impugned recommendation, it is being used by the public.

I fail to understand as to how this objection can again be raised to exercise jurisdiction when on a similar charge the Circle Officer had earlier recommended for cancellation of jamabandi standing in the name of father of the petitioner which led to



registration of Miscellaneous Case No.01 of 1993-94. 'The DCLR' after examining the legal provisions on the issue of settlement on a Gairmazarua Aam land, the law of limitation as well as the judicial pronouncements on the issue had upheld the claim of the father of the petitioner considering that his possession on the land was continuing since almost 40 years of the creation of jamabandi in 1956 and for even a greater period since the settlement made in the year 1936.

The issue of settlement on a Gairmazarua Aam land was a subject matter of a decision in the case of **Maya Devi Vs. State of Bihar** since reported in **2014(4) BBCJ 152** and I can do no better than to reproduce the observation of this Court on the issue:

“7. The next thing is whether the nature of land being as aforesaid does the law permit change? In my view, State and its officials are still harbouring a misconception that once a land is recorded as Gair Mazarua Aam or such land, no settlement can be made by anyone at any point of time. The sooner this wrong impression is erased, the better it is because on this spacious plea, lot of damage is being done. It is well settled judicially that such lands can be settled. That being so, it cannot be said that as the lands were recorded as Gair Mazarua Aam, Gair Mazarua Khas or Qaisar-e-Hind, the settlements in respect thereof and the Jamabandi in respect thereof becomes suspect or becomes illegal. There cannot be any such presumption or assumption. Those assumptions and presumptions are clearly misplaced. I can here usefully refer to the judgment of this Court in the case of **Chandeshwari Prasad Narain Deo and others vs. State of Bihar and another** since reported in **1956 BLJR 24** as also to the case of

Laxman Sahai and others Vs. State of Bihar and others since reported in **1990(1) BLJ 457.**

I would usefully also refer to the judgment of this Court reported in **AIR 1955 Patna page 1 (Brij Bhukan Kalwar vs. S.D.O.)** and **1959 BLJR 310 (Musammat Husanbano vs. The State of Bihar)** to clear all misapprehension in the mind of the respondents that there cannot be any settlement on a Gairmazarua Aam land.

My discussions made hereinabove, would lead to only one conclusion and which is that the order dated 3.12.2013 passed by the District Magistrate, Patna and the Superintendent of Police, Patna as contained in Annexure-6 cannot be upheld and is accordingly set aside and as a consequence any proceeding initiated in the light of such recommendation also is quashed and set aside.

The writ petition is allowed.

(Jyoti Saran, J)

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