

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4363 of 2006

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Nazir Hussain, son of late Raju Mian, resident of Village Khajuria , P.S Sidhwalia(Biraulh) District Gopalganj. Petitioner.

Versus

1. The State of Bihar through Commissioner, Saran Division, Chapra,
 2. The Deputy Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna,
 3. The Collector, Gopalganj,
 4. The Additional Collector, Gopalganj,
 5. The D.C.L.R., Gopalganj,
 6. The Anchal Adhikari, Barauli, Gopalganj Respondent/s
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Appearance :

For the Petitioner/s :	Mr. Wasi Ahmad Khan, Advocate.
	Mr. Md. Sufiya, Advocate.
For the State Respondents:	Mr. Subhash Pd. Singh, G.A. 7.
For the Intervenor/ Respondents:	Mr. Shailendra Kr. Dwivedi, Advocate.
	Mr. Ranjan Kr. Dubey, Advocate.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 14-01-2016

Heard the parties.

2. The petitioner has filed the present writ petition under Article 226 of the Constitution of India assailing the validity and correctness of the order dated 18.02.2006 passed in Jamabandi Cancellation Appeal No.74 of 1996-97 by the respondent Commissioner, Saran Division, Chapra, as contained in Annexure-5, whereby the aforesaid appeal filed on behalf of the petitioner was dismissed and the order dated 21.09.1996 passed by the respondent Additional Collector, Gopalganj in Jamabandi Cancellation Case No. 17 of 1995-96 has been affirmed. The petitioner has also challenged the validity and correctness of the order /recommendation dated 01.09.1995 passed in Jamabandi Cancellation Case No. 06 of 1994-95 by the respondent D.C.L.R., Gopalganj, as contained in Annexure-3 whereby a recommendation was made for passing appropriate order

by the respondent District Collector.

3. A small area of 1 Katha 5 Dhurs of land of Khata No. 461, Plot No. 963 situate at Village Khajuria, P.S. Barauli, District Gopalganj is/ was the subject matter of consideration in the preset proceeding as also in the proceedings before the authorities concerned, henceforth referred to as the land in question.

4. It appears that the respondent Anchal Adhikari, Barauli started a proceeding with respect to the land in question giving rise to Jamabandi Cancellation Case No. 06 of 1994-95 and made a recommendation to the respondent D.C.L.R for passing appropriate final order. Thereafter, the matter was taken up by the respondent D.C.L.R. Gopalganj, but he, by the impugned order dated 01.09.1995, (Annexure-3), did not pass any final order regarding the land in question and referred the matter to the court of respondent District Collector, Gopalganj for passing appropriate final order. On receipt of the record, the matter was taken up for consideration by the respondent Additional Collector, Gopalganj and not by the respondent District Collector, Gopalganj. The respondent Additional Collector, Gopalganj started a proceeding under Section 4(h) of The Bihar Land Reforms Act, 1950 (in short Act, 1950) and by his final order dated 01.09.1996 (Annexure-4), he directed for cancellation of Jamabandi No. 66 standing in the name of the petitioner or his ancestor with respect to the lands in question. The petitioner, being aggrieved by the aforesaid order, preferred his appeal before the respondent Commissioner, Saran Division, Chapra, who, by his impugned order dated 18.02.2006 (Annexure-5), dismissed the appeal filed on behalf of the petitioner and affirmed the order passed by the respondent Additional Collector, Gopalganj.

5. The learned Counsel appearing on behalf of the petitioner



submits that the lands in question was settled by the ex-landlord in favour of one Rojan Jolha, the grand-father of the petitioner on 19.08.1941. Therefore, no proceeding under Section 4(h) of the Act, 1950 could have been started by the respondent Additional Collector. According to him all the impugned orders passed by the authorities concerned regarding the lands in question are liable to be set aside and quashed on that ground alone. To buttress his above contention, he produced original copy of the order of settlement before this Court for perusal, which was allegedly made in the year 1941. However, from the materials available on record, it appears that earlier the petitioner had taken a plea that the settlement of the lands in question in favour of aforesaid Rojan Jolha was made in the year 1948. It is further contended that for exercise of his power under Section 4(h) of the Act, 1950, the Collector under the Act is required to follow the procedure and only after the final order passed by him, after being affirmed by the State Government, he could have taken the follow up action for cancellation of Jamabandi, but that has not been done in the present case.

6. The matter has been contested by the respondents as also by the intervenor. According to them, the lands in question was Gairmajarua Aam land. Therefore, no settlement could have been made even by the ex-landlord. According to the learned G.A.-7, appearing on behalf of the respondents, the orders impugned can not be legally faulted. However, he has not been able to show as to how the Jamabandi of the petitioner or his ancestor was cancelled without final order passed by the Collector under the Act under Section 4(h) of the Act, 1950 and without being approved by the State Government. He further submits that the document of settlement allegedly made in the year 1941 has been produced for the first time



before this Court, and the genuineness or otherwise of the document is required to be tested by the authorities concerned by referring to other documents, as the petitioner had not produced this document before the authorities concerned at the time when the final order was being passed. He fairly conceded that the matter requires reconsideration and submitted that the matter may be remanded back for fresh consideration with respect to the claim of the petitioner regarding the land in question. The learned counsel appearing on behalf of the intervenor has adopted the submissions made by the learned G.A.-7.

7. After having heard the parties and on consideration of the materials available on record, this Court is of the opinion that the entire matter requires reconsideration and fresh decision for two reasons; firstly, while the respondent Additional Collector was passing the impugned order, as contained in Annexure-4, he has not followed the procedure prescribed under Section 4(h) of the Act, 1950 and the Rules made thereunder, and secondly, the genuineness or otherwise of the documents of settlement allegedly made in the year 1941 is required to be examined by the authorities concerned by looking into the relevant records. If the document of settlement is held to be valid then that will go to root of the matter, as no settlement made prior to 1.1.1946 can be annulled in exercise of power under Section 4(h) of the Act, 1950.

8. For the reasons recorded above, the impugned order/recommendation dated 01.09.1995 passed in Jamabandi Cancellation Case No. 06 of 1994-95 by the respondent D.C.L.R., Gopalganj, as contained in Annexure-3, the impugned order dated 21.09.1996 passed in Jamabandi Cancellation Case No. 17 of 1995-96 by the respondent Additional Collector, Gopalganj, as contained in Annexure-4, and the impugned order dated 18.02.2006 passed in

Jamabandi Cancellation Appeal No. 74 of 1996-97 by the respondent Commissioner, Saran Division, Chapra, as contained in Annexure-5, are hereby set aside and quashed and the matter is remitted back to the respondent District Collector, Gopalganj for passing a fresh order in accordance with law in terms of Section 4(h) of the Act, 1950. However, before passing any final order, opportunity of hearing must be given to the petitioner and the intervenor, besides others, if any. While passing a fresh order, he shall also examine genuineness or otherwise of the document of settlement made in the year 1941. At the same time, he shall also be at liberty to examine other relevant document of the State Government with respect to the lands in question.

9. In order to expedite the matter, the petitioner as also the interveor are hereby directed to appear before the respondent District Collector, Gopalganj within a period of one month from today with a certified copy of the present order, where after, he shall fix a firm date and shall proceed further for deciding the impugned proceeding afresh strictly in accordance with law.

10. The respondent District Collector shall make all the endeavours to conclude the proceeding at an early date preferably within a period of three months from the date of the appearance of the parties, as indicated above. The parties shall be obliged to co-operate for early disposal of the proceeding.

11. The writ petition stands allowed to the extent indicated, but with observations and directions made above. However, the parties are left to bear their own costs.

(Birendra Prasad Verma, J)

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