

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8887 of 2013

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Vijay Kumar Prasad Son Of Dr. Nand Kishore Prasad Resident Of Village -
Lakhnaura, Block Lakri Nabiganj, P.S. Basantpur, District - Siwan, Presently
Residing At Mohalla Sareya, Ward No. 4, Near Kali Mandir, P.O., P.S. & District -
Gopalganj

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Collector - Cum - District Magistrate, Siwan
3. The Additional Collector, Siwan
4. The D.C.L.R. Maharajganj, District - Siwan
5. The Sub - Divisional Officer, Maharajganj, District - Siwan
6. The Block Development Officer, Lakri Nabiganj Block, District Siwan
7. The Circle Officer, Lakri Nabiganj Circle (Anchal), District - Siwan
8. The Manager, Pradhan Mantri Gramin Sadak Yojna For Ircon International Ltd.
C/O Mr. B.B. Singh, 1st Nabiganj Circle, District - Siwan
9. The Anchal Amin - Cum - Halka Karmachari, Lakri Nabiganj Circle, District -
Siwan

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 02-12-2016

Heard parties

Petitioner challenges the order dated 25.09.2012/21.12.2012
passed in Miscellaneous Case No. 96/2009-10 by the Collector-cum-
District Magistrate, Siwan by which it has been held that Jamabandi



of the petitioner is doubtful and there is apprehension of it being fraudulent, therefore, the demand of the petitioner for compensation for the alleged use of Plot No. 1682 appertaining to Khata No. 101, area about 9 khatta is unacceptable and further the Anchal Adhikari has been directed to make a detailed enquiry and, thereafter, take steps for cancellation of Jamabandi, which is running in the name of the petitioner. The petitioner has admittedly purchased the land through a registered sale deed dated 02.03.1977 from one Baiju Lal Prasad and thereafter, his Jamabandi No. 315 was created by the State of Bihar. Petitioner claims that the rent was being paid by him and receipt was being granted by the State authority. When 3 kattha and 5 Dhur of land was being used for construction of a road then the petitioner approached this Court by filing C.W.J.C. No. 5779 of 2007 which was disposed of vide Annexure 4 dated 28.10.2009 granting liberty to the petitioner to file representation before the Collector, Siwan and *status quo* was directed to be maintained.

The Collector, Siwan has rejected the representation of the petitioner vide Annexure 8. One of the grounds for rejection which has been taken by the Collector is that the case of the petitioner before this Court in C.W.J.C. No. 5779 of 2007 was that ex-landlord had executed a registered Patta in favour of Ganga Tiwary in the year 1940 and the land was purchased from him by the ancestor of his



vendor. However, before the Collector, the petitioner has changed the story and submitted that the settlement was through Sada Patta and not in favour of Ganga Tiwari rather it was in favour of one Motilal Sah from whom the ancestor of his vendor namely, Smt. Kunti Devi, wife of Chandrika Prasad purchased the land concerned through a registered deed on 21.12.1953, a copy of which has been appended as Annexure 9, i.e. well before vesting of Jamabandi in the year 1956. However, the Collector has questioned that how the name has now been changed from Ganga Tiwary to Motilal Sah. When the petitioner was directed to produce Sada Patta executed in the year 1940, he allegedly failed to produce the same. It is admitted position that after purchase of the land in the names of Smt. Kamli Devi, Kunti Devi and Sheo Dulari Devi, Jamabandi Nos. 92, 93 and 186 were created in their names which was never questioned by the State of Bihar on any earlier occasion. Thereafter, in the year 1977 by a registered sale deed, the petitioner has purchased the land from the son of Kunti Devi namely, Bajul Lal Prasad, vide Annexure 10. After that also, the State accepted rent and was granting rent receipt but nothing was questioned. Now, when the petitioner has claimed that his land is being used for construction of a road then Sada Patta in the year 1940 is being questioned by the Collector. The petitioner has produced the sale deed executed in the year 1953 in which the vendor



has disclosed that he was in possession of the land and is transferring title and possession in favour of the purchaser who paid Malgujari with respect to the Jamabandi concerned and got his name mutated in his records. In such a situation, when there is admitted long time possession and transfer through registered sale deed which was never questioned, that cannot be disbelieved and petitioner's claim cannot be ousted in a manner in which it has been done by the Collector while passing the impugned order.

There is second aspect of the matter. The Collector has come to the conclusion that people of the locality were using the plot as a 'Aam Rasta' therefore, they have some right and, thus, the road shall be constructed over it.

I completely fail to understand as to how such plea could be decided by the Collector in a summary proceeding. The information given to the petitioner under Right to Information Act, a copy of which has been appended as Annexure 3, indicates in clear terms that the concerned part of the constructed road was never entered in any survey map as road or lane rather the entry is as Gair Mazarua Malik which could have well been settled as a Raiyati land by the Jamindar. That apart the Hon'ble Supreme Court in **Gauri Shanker vs. Ram Singhasan** (AIR 1952 Patna 472) has held that the entry in the record of rights though has a presumptive value but it weakens or



wanes through passage of time. The collector must be indicating towards entry of Gair Mazarua in cadastral survey of right which must have been prepared between the year 1906 to 1911. After 30-40 years, there was a possibility that the nature of land might have changed from Gair Mazarua and could have been settled. However, it was unfair on part of the Collector to direct the petitioner to produce that Sadda Pattta which was executed in the year 1940 to the ancestor of his vendor without explaining as to why the Jamabandi was created in the name of Kamli Devi, Kunti Devi and Sheo Dulari Devi and was never questioned. If a person or even State has some reason to question the manner in which Jamabandi was created in 1950 after several decades then onus would be upon it or such person to prove that such Jamabandi was created wrongly. That apart, after such a long time after creation of Jamabandi and, thereafter, further mutation after purchase in the year 1977 by the petitioner, it cannot be held in the year 2013 by the collector that Jamabandi was created fraudulently as the fraud would have to be proved before a Court of competent jurisdiction. Thus, the option before the State of Bihar would be to file a suit before the competent court for getting such declaration. It cannot be done even under Section 9 of the Bihar Mutation Act in the facts and circumstances of the case. He cannot become a factotum i.e. a party and the judge and would decide the matter and annul such



Jamabandi which is standing for several decades. A reference in this regard is made to a decision of a Coordinate Bench of this Court rendered in **C.W.J.C. No. 22052 of 2013 & analogous cases (Shyam Mohan Shahi & Anr vs. the State of Bihar and Ors.)** holding that only option open in such matters to the State would be to file a suit and get a decree from the Civil Court of Competent Jurisdiction. The aforesaid judgment was upheld by a Division Bench of this Court in **State of Bihar vs. Harendra Nath Tiwary** reported in **2015 (1) PLJR 606**. Apart from the above, this is also intriguing as to under which authority, the Collector has himself recorded a positive finding as if deciding and declaring title in favour of the State and, thereafter, directed the Circle Officer to initiate a proceeding for cancellation of Jamabandi. The Circle Officer does not have power to cancel the Jamabandi when such power has been vested in the Additional Collector under Section 9 of the Bihar Land Mutation Act, 2011. Even if it assumed that he has such power then again if the Collector, being a superior authority, has already applied his mind as he had practically decided a title suit, it would be unwise to think that an authority who is lower in the rank to the Collector would have courage to take a decision contrary to the findings which have been recorded by his superior authority. In my view such action is wholly arbitrary and undesirable.



Accordingly, the order impugned is quashed and set aside and it is held that unless the State of Bihar obtains a decree in its favour with respect to land in dispute from a civil court of competent jurisdiction, the Jamabandi would stand as it is and the same cannot be questioned in a summary proceeding after lapse of such a long period and in a manner it has been done.

Accordingly, this writ application stands allowed.

(Dr. Ravi Ranjan, J)

Prakash/-

AFR/NAFR	NA
CAV DATE	
Uploading Date	21.01.2017
Transmission Date	

