

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13452 of 2013

. Md. Jamaluddin Son Of Late Maulvi Sheikh Khodabaksh Resident Of Village-
Kasma, P.O. And P.S.- Kasma, District- Aurangabad

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Commissioner, Magadh Division, Gaya
3. The District Magistrate, Aurangabad
4. The Deputy Development Commissioner, Aurangabad
5. The Sub-Divisional Officer, Aurangabad
6. The Circle Officer, Rafiganj Prakhand, Aurangabad
7. The Headmaster, Utkramit Kanya Madhya Vidyalaya, Kasma, Prakhand-
Rafiganj, District- Aurangabad

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. NAGENDRA KUMAR SINGH

For the Respondent/s : Mr. MANIKANT MISHRA

CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 17-08-2016

Heard Mr. Nagendra Kumar Singh in support of the writ application
and Mr. Anil Kumar Singh, G.P. 26 for the State.

Parties have exchanged pleadings.

The writ application prays for a direction upon the State respondent(s)
to remove the unauthorized construction of the building of Utkramit Kanya
MadhyaVidyalaya, Kasma Rafiganj Prakhand, Aurangabad, on the land of the
petitioner appertaining to khata no.167, khesra no. 185, measuring an area of 14
decimals. A further prayer is made that if the construction has already been
made the respondent(s) should be directed to pay fair compensation for the land.

According to the petitioner, the subject land was recorded as
Gairmazrua Malik land in the records of right prepared in 1941. The ex-
landlord was the proprietor of the subject land. In 1941, by way of a Hukumnama,



the subject land was settled with one Jainul Abadin who came in possession thereover. In 1963, vide Annexure-1, the subject land with other land was sold in favour of Maulvi Khodabaksh who was the ancestor of the petitioner. It is stated that the land was mutated in the name of the petitioner after creation of Jamabandi sometimes in 1967 whereafter the petitioner is paying rent to the State of Bihar under receipt. The respondents have arbitrarily considered it as government land and proposed to construct the school building thereon.

In the counter affidavit, it has been stated that the subject land was recorded in the cadastral survey records as Gair Mazrua Aam Land which could not have been settled by the ex-landlord. As soon as the State respondent came to know about creation of Jamabandi of the land in the name of the petitioner or his ancestor, a proceeding is filed before the Additional Collector for cancellation of the Jamabandi vide Case No. 60/50-16 which is pending consideration.

It is the case of the petitioner that he has already appeared in the said proceeding. The contention is that such proceeding would not be maintainable in the eye of law having been filed several decades after the creation of Jamabandi and also in the face of bar provided under section 4(h) of the Bihar Land Reforms Act. In this connection, the petitioner has relied on **2016 (3) PLJR 237 (Yadunand Singh vs. State of Bihar)**.

On the contrary, it is stated on behalf of the State respondent(s) that continuance and legality of the cancellation proceeding is not the subject matter of the writ petition. Any such case requires to be thrashed out in accordance with law. As the cancellation proceeding is pending whereat the petitioner already appeared, this Court would refrain from recording any finding on the submissions/counter submissions of the parties with respect to the

maintainability of the cancellation proceeding pending before the Additional Collector. In order to buttress his submission that any such dispute should not be entertained by the writ court, reliance has been placed on **1995 (2) PLJR (SC) 21 [State of Bihar vs. Labendra Chand Bothra]**.

The case of the petitioner for grant of fair compensation for use of his land by the State for construction of the school building is contingent upon the title of the petitioner over the subject land. A Jamabandi cancellation proceeding at the behest of the State respondent(s) relating to the subject land is pending before the authority. Legality of the same proceeding cannot be examined in this proceeding wherein a prayer for removal of encroachment thereover or payment of fair payment for the use of the land has been made.

This Court would not invoke the writ jurisdiction in order to grant the said relief to the petitioner leaving both the parties to agitate their claims before the authority where the Jamabandi cancellation case is pending. Needless to observe, depending upon the outcome of the said proceeding, the claim of the petitioner for payment of fair compensation or removal of encroachment by the State respondent over the land in question shall be examined/considered in accordance with law.

The writ application stands disposed of.

(Kishore Kumar Mandal, J)

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