

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1744 of 2015

In

Civil Writ Jurisdiction Case No.2908 of 1996

1. Manoj Chaudhary
2. Rampreet Chaudhary both sons of late Charitar Chaudahry
3. Amirak Manjhi son of late Harchand Manjhi
4. Sukhdeo Chaudhary son of late Chhedi Chaudhary
5. Prakash Chaudhary son of Sukhdeo Chaudhary
6. Md. Sajid @ Md. Sazeed son of Abdul Samad

All residents of village- Paharia, P.S. Sheikhpura Sarai
(Barbiga), P.O. Paharia, District- Sheikhpura.

... .. Appellant/s

Versus

1. The State of Bihar.
2. The Deputy Collector In charge Land Reforms, Sheikhpura
3. The Anchaladhikari, Barbiga Shaikhpura
4. Nuzhat Ara wife of Late Sohail Alam (Original Petitioner), resident of village- Paharia, P.O. & P.S. Sheikhpura Sarai (Barbiga), District- Shaikhpura.
5. Atif Sohail (Minor) son of Late Sohail Alam (Original Petitioner), resident of village- Paharia, P.O. & P.S. Sheikhpura Sarai (Barbiga), District- Shaikhpura.
6. Areeba Sohail (Minor) son of Late Sohail Alam (Original Petitioner), resident of village- Paharia, P.O. & P.S. Sheikhpura Sarai (Barbiga), District- Shaikhpura.
7. Shagufta Jabeen (Minor) daughter of late Sohail Alam (Original Petitioner), resident of village- Paharia, P.O. & P.S. Sheikhpura Sarai (Barbiga), District- Shaikhpura.
8. Iama Jabeen (Minor) daughter of late Sohail Alam (Original Petitioner), resident of village- Paharia, P.O. & P.S. Sheikhpura Sarai (Barbiga), District- Shaikhpura.
9. Md. Arshad son of late Md. Razauddin resident of village- Paharia, P.O. & P.S. Sheikhpura Sarai (Barbiga), District- Shaikhpura.
10. Saryug Chaudhary
11. Punna Chaudhary
12. Hari Shankar Chaudhary All Sons of late Bundi Pasi @ Bundi Chaudhary All Residents of Village- Sheikhpur Sarai (Barbiga) P.S. Sheikhpur Sarai (Barbiga), P.O.- Paharia, District Sheikhpura.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Md. Anis Akhtar
For the State	:	Mr. Gyan Prakash Ojha, GA 7
For the private Respondents	:	Mr Raghieb Ahsan, Sr. Advocate Ms Saba Ashfaque

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD



ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 01-09-2017

Heard learned counsel for the appellants, learned counsel for the State and learned senior counsel representing the private respondents.

2. I.A. No.7489 of 2015 has been filed by appellants no.2, 3 and 4, who are sons and legal heirs of original respondent no.5 and 6 in the writ application. For the reasons mentioned in I.A., we allow the same in the interest of justice.

3. The private respondents no.4, 7, 9 10 and legal heirs of respondents no.5 and 6 in the writ application being aggrieved by the order dated 23.04.2015 passed by a learned Single Judge of this Court in CWJC No.2908 of 1996, have preferred the present Letters Patent Appeal. The writ application was filed by one Sohail Alam, who died during pendency of writ and came to be substituted by Nuzhat Ara and others, who are respondents no.4 to 8 in the present appeal. Respondent no.8 in writ application has been arrayed as respondent no.9 in appeal. The original appellant no.1 died during pendency of the present appeal. His legal heirs have already been substituted vide order dated 28.04.2017 and they are on record. The writ petitioners were aggrieved by an



order dated 24.1.1996 passed by the Deputy Collector Incharge Land Reforms, Sheikhpura (respondent no.2) in Case No.4 of 1994-95 whereby he had allowed the application filed by private respondent no.4, Bundi Pasi, and had issued orders for cancellation of Jamabandi standing in the name of the original petitioner.

4. The facts as emerging from the records have been taken note of by the learned Single Judge. As per the records, a piece of land bearing Khata No.78, Plot No.889 admeasuring 0.47 acres situated in Village Shamshuddinpur Nemi @ Paharhia, P.S. Barbiga in the district of Sheikhpura was stated to have been settled by the ex- Jamindar by way of a Hukumnama executed in favour of the father of the original petitioner, namely, Manzar Alam. The land was recorded in Cadastral Survey Khatiyan as Gairmazaru Aam Garha (ditch). It is the case of the petitioners that right from beginning after settlement in favour of father of the original petitioner, they came in possession of the land, the ditch was filled up and the land was made cultivable. A Jamabandi No.24 was opened in the original records of the State and thereafter by passage of time the land became a regular cultivable land which were later on turned into a regular pond with Bhindas on all sides, these petitioners made it fit for rearing fishes.



5. For the first time, some persons filed an application on 21.04.1989 before the Sub Divisional Magistrate, Sheikhpura for initiating a proceeding under section 144 Cr.P.C. giving rise to Case No.244(M) of 1989 in which proceeding the possession of the petitioners was upheld vide order passed on 15.06.1989. Still a second proceeding was got initiated by those persons vide Case No.553 (M) of 1989 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 entry made in Register- II on the basis of returns filed by the ex-landlord.

6. The petitioners got aggrieved when the respondent no.4 was set up by those very persons to question the settlement in favour of the petitioner, this time they succeeded as the Circle Inspector vide Annexure- 7 to the writ application submitted a report to the Deputy Collector Land Reforms though recording a finding that the pond was settled by the ex- Jamindar in favour of the ancestors of the petitioners, the Deputy Collector Land Reforms required the original petitioner to produce evidences. The petitioner appeared and supported his case with evidence including Hukumnama, rent receipts issued by Ex- Landlord and the rent receipts issued by the State of Bihar. However, the



respondent Deputy Collector Land Reforms passed the impugned order cancelling the Jamabandi standing in the name of the petitioners.

7. Before the learned Single Judge a plea was raised as to the jurisdiction of the Deputy Collector Land Reforms in cancelling the Jamabandi No.24. Learned counsel for the petitioners submitted a number of judicial pronouncements on the subjects, which have been taken note of by the learned Single Judge and are reiterated here under for a ready reference.

“(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)”

8. The learned Single Judge noticed the judicial pronouncements on the subjects and considering the same, came to



a conclusion that no power is 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 authority for cancellation of Jamabandi which power for the first time vested in the Collector under the Bihar Land Mutation Act, 2011.

9. Having found that the impugned order passed by the Deputy Collector Land Reforms is bad because of the inherent lack of jurisdiction in the Deputy Collector Land Reforms, the learned Single Judge set aside the impugned order (Annexure- 1 to the writ application) and allowed the writ.

10. Before this Court the appellants have attempted to raise the issue of the ambit and manner by which the Jamabandi or the entry in the mutation records were made. According to the appellants, those Jamabandi and entry in the mutation records were made by taking into conspiracy the Amlas and Karmachari. Learned counsel representing the appellants, however, is not in a position to controvert the legal position as emerging from the judicial pronouncements and the provisions of the Bihar Tenant's Holdings (Maintenance of Records) Act, which have been taken note of by the learned Single Judge.



11. Learned counsel representing the State submits that in fact the Circle Officer submitted a report to the Deputy Collector Land Reforms, on which he has passed the impugned order. On the question as to how the Deputy Collector can assume a jurisdiction to cancel the Jamabandi in absence of a statutory provision vesting such power in him and that too, contrary to the judicial pronouncements of this Court, learned counsel for the State could not controvert the legal position as existing prior to the amendment in Bihar Land Mutation Act, 2011. On the other hand, learned senior counsel representing the private respondents has supported the order passed by the learned Single Judge as according to him on the face of the Hukumnama of the ex-landlord followed by creation of Jamabandi and even the finding of possession in favour of the petitioners, the Deputy Collector Land Reforms could not have assumed jurisdiction to cancel the Jamabandi.

12. We have considered the rival submissions at the bar and also perused the order passed by the learned Singh Judge. We are in agreement with the view taken by the learned Single Judge that in no case Deputy Collector Land Reforms could have assumed jurisdiction upon himself to cancel the Jamabandi or to remove the name of the persons, who were already there in the



records of Register- II i.e. Mutation Register/ Demand Register.
Learned DCLR had no power/ authority to cancel Jamabandi. It is,
thus a case of inherent lack of jurisdiction.

In the result, we find no merit in the appeal. It is
dismissed.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

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