

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13880 of 2010

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1. Visheshwar Yadav S/O Late Udit Yadav R/O Bodh Gaya, P.O.- Bodh Gaya, P.S.- Bodh Gaya, Distt.- Gaya
 2. Shiv Prasad Mistry S/O Late Suraj Mistry R/O Bodh Gaya, P.O.- Bodh Gaya, P.S.- Bodh Gaya, Distt.- Gaya
 3. Shivshakti Saran Sao S/O Late Kali Sao R/O Bodh Gaya, P.O.- Bodh Gaya, P.S.- Bodh Gaya, Distt.- Gaya

.... Petitioner/s

Versus

1. The State Of Bihar Through Principal Secretary Department Of Revenue And Land Reforms, Govt. Of Bihar
2. District Magistrate, Gaya
3. Additional Collector, Gaya
4. Deputy Collector, Land Reforms, Gaya
5. Circle Officer, Bodh Gaya, Gaya

.... Respondent/s

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Appearance :

For the Petitioners : Mr. K. N. Chaubey, Senior Advocate.
Ms. Ritu Priyadarshini, Advocate.
Mr. Ashok Kumar Garg, Advocate.
Mr. Animesh Kumar, Advocate.
Mr. Prashant Kumar, Advocate.

For the Respondents : Mr. Ajay Bechan Sinha, G.A.-VIII
Ms. Kalpana, A.C. to G.A.-VIII.

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR

SRIVASTAVA

ORAL JUDGMENT

Date: 18-07-2017

Reply to the second supplementary counter affidavit, filed
on behalf of the Respondent No.2, is filed on behalf of the petitioners.

Let it be kept on record.

2. The Circle Officer, Bodh Gaya, Gaya (Respondent
No.5), is present. His personal appearance stands dispensed with.

3. Heard learned counsel for the petitioners as well as
learned counsel for the State.



4. Petitioners have prayed for quashing the letter bearing memo no. 461 dated 27.11.2008 issued by the Circle Officer, Bodh Gaya, Gaya (Respondent No. 5), as contained in Annexure 10 to this petition, by which and whereunder the Circle Officer, Bodh Gaya, Gaya (Respondent No.5) cancelled the Jamabandi nos. 56/21, 57/21 and 58/21 recorded in the name of petitioners.

5. The case of the petitioners is that plot no. 2066 (Old), corresponding to new plot no. 3124, appertaining to Khata No. 812, measuring an area of 4 decimals lands and plot no. 2976(old), corresponding to new plot no. 4762, measuring an area of 5 decimals land belonged to Goswami Ramanand Giri, Chela of Mahant Krishna Dayal Giri, but in the ceiling proceeding, the aforesaid lands and several other lands were declared surplus lands. Subsequently, Smt. Sharda Devi, the wife of the petitioner no. 1, along with two other petitioners filed an application before the Collector, Gaya, for settlement of the above stated lands in their favour as they had been residing on the aforesaid lands for more than 30 years having got constructed their houses over the aforesaid lands. On the basis of aforesaid application, the Circle Officer, Bodhgaya, Gaya, submitted his report before the competent authority recommending the settlement of the aforesaid land in the name of Smt. Sharda Devi but when the competent authority did not take any step to pass the order on the aforesaid applications, the wife of petitioner no. 1 knocked the



door of concerned Minister Revenue and Land Reforms, Government of Bihar, Patna, who directed the concerned authorities to proceed with the matter and, thereafter, Misc. Case No.66/1992-93 was registered and, subsequently, after due and proper inquiry, the Additional collector, Gaya, gave order for settlement of the lands in question in favour of the petitioners vide his order dated 25.01.1993 and the Additional Collector, Gaya, also directed to open Jamabandi in the name of the petitioners. However, Jamabandi was opened in their name and rent receipts were issued to them but all of a sudden, vide impugned memo no. 461 dated 27.11.2008, the Circle Officer Bodh Gaya, Gaya (Respondent No.5) cancelled the Jamabandi opened in the name of the petitioners.

6. Second Supplementary Counter affidavit has been filed on behalf of the Respondent No.2 and it would appear from perusal of paragraph-4 of the aforesaid second supplementary counter affidavit that the case of the State is that the lands in question are very close to lord Budha temple and, as a matter of fact, the then Additional Collector, Gaya, wrongly passed the order in collusion with the petitioners and when the aforesaid facts came to the notice of higher authorities at the time of extension of roads, the higher authorities directed the DCLR and Circle Officer to cancel the Jamabandi opened in the name of petitioners on the basis of order passed by Additional Collector, Gaya as the Additional Collector, Gaya passed the order in



collusion with the petitioners and, thereafter, the Circle Officer, Bodh Gaya, Gaya,(Respondent no. 5) cancelled the Jamabandi opened in the name of petitioners

7. In course of hearing, the question arose as to whether the Circle Officer was empowered to cancel the Jamabandi opened under the Bihar Tenancy Act as well as under Bihar Tenants' Holdings (Maintenance of Records) Act, 1973.

8. Learned counsel for the petitioners submits that neither under Bihar Tenancy Act nor under Bihar Land Reforms Act, there was any provision to cancel the Jamabandi and, similarly, the Bihar Tenants' Holdings (Maintenance of Records) Act, 1973 also does not contain any such provision. Though the State Government recently introduced a New Act but under the new Act also only Additional Collector, has power to cancel the Jamabandi and under the New Act, the Circle officer and DCLR have no power to cancel the Jamabandi.

9. Learned counsel appearing for the State submits that an illegal order can be revoked even by a subordinate officer and the Circle Officer, Bodh Gaya, Gaya(Respondent no. 5) cancelled the aforesaid Jamabandi opened in the name of petitioners because the aforesaid Jamabandi was opened illegally on the basis of so called illegal order of the Additional Collector, Gaya, but I am not at all convinced with the aforesaid submission because the illegal order can



only be set aside or cancelled by the competent authority upon in which such power has been vested by the statute. Moreover, it is an admitted position that the Circle Officer, Bodhgaya as well as DCLR, Gaya had no jurisdiction to cancel the Jamabandi which had been opened on the basis of order passed by Additional Collector and, therefore, in my view, the memo no. 461 dated 27.11.2008 issued by the Circle Officer, Bodh Gaya (Respondent No.5) cannot be sustained in the eye of law.

10. Accordingly, this writ petition is allowed and the memo no. 461 dated 27.11.2008 issued by the Circle Officer, Bodh Gaya, Gaya (Respondent No.5) is, hereby, quashed and, accordingly, respondents are directed not to make any interference into the possession of the petitioners over the aforesaid land on the basis of memo no. 461 dated 27.11.2008.

11. However, this order shall not prevent the competent authority to take steps for cancellation of Jamabandi of the petitioners in accordance with law.

(Hemant Kumar Srivastava, J)

N.K/-

AFR/NAFR	NAFR
CAV DATE	NAFR
Uploading Date	31.07.2017
Transmission Date	31.07.2017

