

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8244 of 2016

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1. Sita Ram Mehta Son of late Bhattu Mahto
 2. Arun Kumar Nirala
 3. Om Prakash Mahto
 Both Sons of late Brahmdeo Mahto Mohalla- Lakhisarai English P.O. P.S And District Lakhisarai.

.... Petitioner/s

Versus

1. The State of Bihar through the Collector Lakhisarai.
 2. The Collector Lakhisarai P.O. P.S and District - Lakhisarai.
 3. The Deputy Collector, In Charge Legal Section, Collectorate, Lakhisarai P.O. and P.S. and District Lakhisarai.
 4. The Vijay Kumar Sinha S/o Jagdish Mahto Resident of Village Sultanpur, P.S. Mokamah, District Lakhisarai.
 5. Geeta Prasad Singh S/o late Vishnudeo Singh Resident of Village- Khutha, Po, P.S and District Lakhisarai.
 6. Sanjay Kumar S/o Karu Singh resident of Village- Hirde, Bigha P.S Barahiya District Lakhisarai.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bal Bhushan Choudhary
 For the Respondent/s : Mr. R.B. Prasad AAG II

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
ORAL JUDGMENT

Date: 11-12-2017

1. This petition under Article 226 of the Constitution of India has been preferred for quashing the order dated 30.3.2016 passed by the Collector, Lakhisarai (respondent no.2) in Jamabandi Sudhar Appeal no. 02/2010-11 annexed as annexure 10 to the petition.

2. The brief fact, which lies to file this writ petition, is that plot no. 189 area 0.34 acres of village Faridabad district Lakhisarai was recorded in the name of



Kharo Gope, Palo Gope and Lalo Gope. Recorded tenant Kharo Gope sold his half share i.e. 0.17 acres towards west by registered deed of sale dated 7.4.2014 to Champa @ Chamo. Subsequently, Chamo also sold the aforesaid land by executing registered sale deed dated 20.12.1948 in favour of Mostt. Laxmi Devi. Similarly, another recoded tenant, namely, Palo Gope also sold 0.17 acres eastern part of the said plot by executing registered sale deed dated 20.12.1948. The aforesaid sale deed dated 20.12.1948 was executed in the name of Raghunath Mahto of village Sultanpur P.S. Mokama District Patna. The case of the petitioners is that the above stated 0.17 acres eastern part of the land of plot no. 189 was purchased by Bhatto Mahto, father of petitioner no.1, in the name of his brother-in-law, namely, Raghunath Mahto. The aforesaid transaction was a benami transaction but, as a matter of fact, Bhatto Mahto came in possession of the aforesaid purchased land and to maintain farzi character of the aforesaid transaction Bhatto Mahto got the name of his brother-in-law mutated in the laggit of the ex-landlord. Though rent receipts were issued in the name of Raghunath Mahto but actually, rent



was paid to ex-landlord by the said Bhatto Mahto. Bhatto Mahto sunk boring over the above stated plot and also got constructed Bathan etc. Ex-landlord submitted return in the name of Farzidar Raghunath Mahto and accordingly, name of Raghunath Mahto was recorded in register II and rent receipts were issued in the name of Raghunath Mahto, though actual rent was paid by Bhatto Mahto. The aforesaid Bhatto Mahto died in the year 1962. The said Bhatto Mahto was ancestor of the petitioners. However, after death of Bhatto Mahto the State took earth from the aforesaid land and for that notice for temporary acquisition of land was given to petitioner no.1 and compensation was paid to petitioner no.1.

3. The said Bhatto Mahto had three sons, namely, Brahmdev Mahto, father of petitioner nos.2 and 3, petitioner no.1 and one Ganga Prasad. The partition between sons of Bhatto Mahto took place and plot in question was partitioned in two equal parts out of which $8\frac{1}{2}$ decimal land was allotted to petitioner no.1 towards eastern side whereas remaining $8\frac{1}{2}$ decimal land was allotted to father of petitioner nos.2 and 3. Ganga Prasad, third son of Bhatto Mahto did not get any share in the



above stated plot and he was allotted share in another plot. Memorandum of partition was executed on 18.7.1971. However, Raghunath Mahto died in the year 1972-73 leaving behind his son, namely, Jagdish Mahto, who happens to be father of respondent no.4. Petitioner no.1 started paying rent to the State of Bihar in respect of plot in question in the name of Raghunath Mahto and even after death of Raghunath Mahto, rent was paid for some time in the name of Raghunath Mahto but subsequently, when petitioner no.1 and father of petitioner nos.2 and 3 felt difficulty in paying rent in the name of Raghunath Mahto, they filed a petition before Anchal Adhikari on 25.8.1987 for correction of Jamabandi.

4. The aforesaid petition for correction Jamabandi was forwarded to DCLR with report of Circle officer and on that basis Jamabandi Sudhar Case no. 01/1988-89 was registered. Jagdish Mahto, the only son of farzidar Raghunath Mahto, contested the aforesaid Jamabandi Sudhar Case no. 01/1988-89 by filing written objection but the learned DCLR vide his order dated 24.10.1989 passed order for correction of jamabandi in



the name of father of petitioner nos.2 and 3. Subsequently, on the basis of the aforesaid order, correction slip was issued and rent receipts were issued in the name of the petitioners. Brahmdev Mahto, father of petitioner nos.2 and 3, died on 15.3.1994 and after that petitioner nos.2 and 3 orally partitioned the land in question in two equal parts and subsequently, petitioner no.3 sold 4.25 decimal land to Nirmala Devi and Mostt. Bimla Devi by executing registered sale deed dated 27.7.2009 and both the aforesaid vendees came in possession over the aforesaid land and they got mutated their names in revenue records. However, respondent no.4, who happens to be son of Jagdish Mahto and grand son of Raghunath Mahto, on 23.9.2009 executed registered sale deed in favour of respondent no.5 in respect of one decimal of plot no. 189 claiming the aforesaid land as his ancestral land. Respondent no.5 made attempt to get his name mutated by filing Mutation case no. 38/2009 but the same was rejected by Anchal Adhikari on 18.12.2009. Mutation Appeal no. 10/2009-10 was filed by respondent no.3 but the same was, too, dismissed on 26.6.2010. A proceeding under section 144



of the Cr.P.C was initiated between the petitioners and the aforesaid respondent no.5 but the same was vacated in favour of the petitioners.

5. Further case of the petitioners is that when respondent no.5 failed in his attempt, the respondent no.4 filed Jamabandi Sudhar Appeal no. 02/2010-11 on 5.8.2010 against the order dated 24.10.1989 passed in Jamabandi Sudhar Case no. 01/1988-89. The aforesaid Jamabandi Sudhar Appeal no. 02/2010-11 was allowed by the Collector, Lakhisarai passing the impugned order dated 30.3.2016 setting aside the order dated 24.10.1989 passed in Jamabandi Sudhar Case no. 01/1988-89 and also directed that jamabandi be corrected. It is also pertinent to note here that during the pendency of Jamabandi Sudhar Appeal no. 02/2010-11, respondent nos.5 and 6 got executed sale deed dated 4.2.2011 in respect of 3 1/8 decimal land of plot in question from respondent no.4 and after execution of the aforesaid sale deed, they made attempt to dispossess the petitioners from the land in question and thereafter, petitioners filed Title suit no. 62/2011 in the court of Sub Judge, Lakhisarai which is still pending.



6. Counter affidavit has been filed on behalf of respondent nos.4 to 6 pleading therein that recorded tenant Palo Gope had sold 17 decimal area of plot no. 189 to Raghunath Mahto, grand father of respondent no.4 and after purchase of the aforesaid land, Raghunath Mahto got mutated his name in the sarista of zamindar and started paying rent to zamindar and subsequently, his name was entered in register II and rent receipts were issued in his name. After death of Raghunath Mahto, his sole son, namely, Jagdish Mahto inherited the property and came in possession of the lands in question.

7. The aforesaid respondents also pleaded in the counter affidavit that Bhatto Mahto was never in possession of land in question nor his name was mutated in the sarista of zamindar or in the register II of the State. Return was also not submitted by Zamindar in the name of Bhatto Mahto rather the return was submitted in the name of Raghunath Mahto. Factum of grant of compensation by Land Acquisition officer was also denied. It has also been pleaded that the order dated 24.10.1989 passed by DCLR, Lakhisarai was not in the knowledge of respondent no.4 who was minor at that time



and his father, namely, Jagdish Mahto due to his illness could not challenge the aforesaid order and when mutation petition of his vendee Geeta Singh was rejected, then he came to know about the order dated 24.10.1989 and thereafter, he filed Jamabandi Appeal no. 09/2010-11 before the Collector with petition for condonation of delay and thereafter delay was condoned and appeal was admitted. The above stated respondent completely denied the title of Bhatto Mahto as well as story propounded by the petitioners before this court.

8. A separate counter affidavit has been filed on behalf of the respondent nos.2 and 3.

9. Learned counsel appearing for the petitioners assailed the impugned order dated 30.3.2016 passed in Jamabandi Sudhar Appeal no. 02/2010-11 submitting that the aforesaid Jamabandi Sudhar Appeal no. 02/2010-11 was filed on 5.8.2010 and the same was put up before Deputy Collector In-charge who was not competent to entertain the aforesaid appeal but even then, he passed various orders and subsequently, the aforesaid appeal was put up before the Collector, Lakhisarai who admitted the aforesaid appeal on 21.7.2011.



10. Learned counsel for the petitioners submitted that the aforesaid appeal was admitted near about after 21 years of passing the order dated 24.10.1989 in Jamabandi Sudhar Case no. 01/1988-89 and no prayer for condonation of delay was made on behalf of the (respondent no.4) appellant of the aforesaid appeal but even then the Collector, Lakhisarai admitted the aforesaid appeal without passing any order of condonation of delay. Learned counsel for the petitioners further submitted that the petitioners challenged the order dated 21.7.2011 before this court by filing CWJC no. 1241/2012 but subsequently, petitioners were permitted to withdraw the aforesaid CWJC no. 1241/2012 with liberty to raise all relevant points including point of limitation before the Collector, Lakhisarai at appropriate stage and furthermore, learned Collector, Lakhisarai was directed to decide the matter on merit, if any valid issue is raised by the petitioners. He, further, submitted that after order passed in CWJC no. 1241/2012, petitioners filed a petition before the Collector, Lakhisarai raising their points including point of limitation but the learned Collector, Lakhisarai did not pay any heed towards the



objection raised on behalf of the petitioners and completely ignored this fact that Jamabandi Sudhar Appeal no. 02/2010-11 was highly time barred and by lapse of time, valuable right has already accrued in favour of the petitioners. He, further, submitted that the Collector, Lakhisarai has mentioned in the impugned order dated 30.3.2016 that petition for condonation of delay was filed and considered and after that delay was condoned but the aforesaid observation of the learned Collector, Lakhisarai is palpably false and beyond the record because no petition for condonation of delay was filed nor prayer for condonation of delay was ever considered by the learned Collector, Lakhisarai. He, further, submitted that admittedly, in Jamabandi Sudhar Case no. 01/1988-89, there was sole opposite party namely, Jagdish Mahto, who happens to be father of respondent no.4 and the sole opposite party Jagdish Mahto contested the aforesaid case but lost the case and thereafter, he never challenged the order dated 24.10.1989 passed in Jamabandi Sudhar Case no. 01/1988-89. He, further, submitted that the aforesaid Jagdish Mahto never challenged the jurisdiction of DCLR



in Jamabandi Sudhar Case no. 01/1988-89 and, as a matter of fact, he had already waived his right to challenge the jurisdiction of the DCLR. He, further, submitted that the order dated 24.10.1989 passed in Jamabandi Sudhar Case no. 01/1988-89 had already attained its finality but the Collector, Lakhisarai failed to take note of the aforesaid fact.

11. He, further, submitted that, as a matter of fact, land in question was purchased by Bhatto Mahto in farzi name of his brother-in-law, namely, Raghunath Mahto and entire consideration amount was paid by Bhatto Mahto. He, further, submitted that original registered sale deed was withdrawn by Bhatto Mahto from registry office and the same remained in his custody and after his death the aforesaid document came in possession of petitioner no.1. Therefore, the aforesaid circumstances go to show that real owner of the disputed plot was Bhatto Mahto and, as a matter of fact, Raghunath Mahto was only farzidar. He, further, submitted that after partition in the family when some difficulty was felt in payment of rent of lands in question, petitioner no.1 filed Jamabandi Sudhar Case no. 01/1988-



89 against Jagdish Mahto and thereafter, order dated 24.10.1989 was passed. He, further, submitted that Bhatto Mahto got possession of disputed land immediately after purchase of land and after his death petitioner no.1 as well as father of petitioner nos.2 and 3 got possession and still plot in question is in possession of the petitioners and, therefore, on the basis of the aforesaid materials, learned DCLR corrected the Jamabandi passing the order dated 24.10.1989.

12. He, further, submitted that after passing the order dated 24.10.1989 in Jamabandi Sudhar Case no. 01/1988-89, admittedly, Jagdish Mahto did not challenge the aforesaid order before appropriate authority under the relevant provision of the Mutation Act, 1973 and, therefore, respondents of the writ petition have no right to challenge the order dated 24.10.1989 passed in Jamabandi Sudhar Case no. 01/1988-89 before the Collector, Lakhisarai after delay of near about 21 years. He, further, submitted that admittedly, Bihar Land Mutation Act, 2011 has already come into force and section 6(12) of the aforesaid Act says that mutation of a holding or a part thereof shall not be allowed in cases in



which title suit with regard to that holding or a part thereof is pending in the competent court. He, further, submitted that it is admitted position that in the present case a title suit between the parties of Jamabandi Sudhar Appeal no. 02/2010-11 in respect of disputed holding was pending and admittedly, the learned Collector, Lakhisarai passed the impugned order dated 30.3.2016 after coming into force of Bihar Land Mutation Act, 2011. Therefore, in view of section 6(12) of the aforesaid Act, the Collector, Lakhisarai ought to have dropped the proceeding of Jamabandi Sudhar Appeal no. 02/2010-11.

13. Learned counsel for the petitioners referred several decisions in support of his above stated contentions such as 1998(2) PLJR 148, (1998) 8 SCC 1, (2009) 16 SCC 187, AIR 1961 SC 1506, AIR 1983 Patna 121, 1990 (2) PLJR 819, 1978 BBCJ 323, 2017 (I) PLJR 818, 2015 (I) PLJR 606 and 1985 PLJR 554.

14. On the other hand, learned counsel for respondents refuted the above stated submissions arguing that admittedly, disputed land stood recorded in the name of Raghunath Mahto not only in the sarista of zamindar but also in the record of the State of Bihar after vesting



zamindari and Raghunath Mahto died in the year 1972-73 but even then the Jamabandi continued his name. He, further, submitted that according to the petitioners, Jamabandi Sudhar Case no. 01/1988-89 was filed by the petitioners for correction of jamabandi recorded in the name of Raghunath Mahto on the ground that the aforesaid Raghunath Mahto was a benamidar and land in question was purchased by Bhatto Mahto and on the basis of the above petition, DCLR passed the order dated 24.10.1989 in the aforesaid Jamabandi Sudhar Case no. 01/1988-89 but, as a matter of fact, DCLR had no jurisdiction to decide the title of the parties in the aforesaid Jamabandi Sudhar Case no. 01/1988-89. He, further, submitted that even if it is assumed that the Collector has got no jurisdiction to cancel jamabandi, then also, it is well settled principle of law that by setting aside an illegal order the court can not permit to restore another illegal order. He, further, submitted that neither Circle officer nor DCLR was competent to cancel jamabandi recorded in the name of Raghunath Mahto and, therefore, the order dated 24.10.1989 was itself an illegal order. Moreover, State Government, vide several



executive directions, directed its officers not to take up cases of mutation when question of title involves because question of title can only be decided by the civil court. He, further, submitted that, as a matter of fact, when respondent no.4 sold some land to respondent nos.5 and 6 and when mutation of purchaser was not allowed, then it came to the notice of respondent no.4 that DCLR had illegally cancelled jamabandi of Raghunath Mahto and thereafter, he filed petition before the Collector for correction of jamabandi as well as for setting aside the order of DCLR passed in Jamabandi Sudhar Case no. 01/1988-89 and thereafter, the learned Collector, Lakhisarai set aside the order dated 24.10.1989 passing the impugned order and, as a matter of fact, Collector rectified the mistake earlier committed by the revenue officials.

15. He, further, submitted that, no doubt, respondent no.4 filed Jamabandi Sudhar Appeal no. 02/2010-11 near about after 21 year of passing the order dated 24.10.1989 in Jamabandi Sudhar Case no. 01/1988-89 but, as a matter of fact, when notice was issued to the petitioners in the aforesaid Jamabandi Sudhar Appeal no.



02/2010-11, petitioners challenged issuance of notice before this court by filing CWJC no. 1241/2012 but a coordinate bench of this court refused to interfere into the order of the Collector, Lakhisarai rather held that notices were validly issued to the petitioners in Jamabandi Sudhar Appeal no. 02/2010-11 and, therefore, it is obvious that a coordinate bench of this court ignored the delay in filing Jamabandi Sudhar Appeal no. 02/2010-11 and moreover, the impugned order goes to show that the Collector had condoned the delay in filing Jamabandi Sudhar Appeal no. 02/2010-11. He, further, submitted that the learned Collector rightly passed the impugned order because the then DCLR while allowing Jamabandi Sudhar Case no. 01/1988-89 had committed gross illegality and, therefore, there is no occasion before this court to interfere into the impugned order while exercising power vested under Article 226 of the Constitution of India. Learned counsel for the respondents, too, relied upon decisions reported in 1989 PLJR 80, 1988 PLJR 174, 1961 SC 1506, 2010(I) PLJR 499, AIR 1954 SC 340 and AIR 1951 SC 230.

16. Having heard the contentions of both parties,



I have gone through the record as well as decisions cited on behalf of the parties. It is admitted position that registered sale deed dated 20.12.1948 was executed by recorded tenant Palo Gope and the aforesaid registered sale deed stood in the name of Raghunath Mahto. Further, it is admitted position that name of Raghunath Mahto was entered into sarista of zamindar and rent receipts were issued in his name by the concerned zamindar. It is also admitted position that after vesting of zamindari into the State, jamabandi was opened in the name of the aforesaid Raghunath Mahto who died in the year 1972-73 and after his death, Jamabandi of disputed land continued for some period in the name of aforesaid Raghunath Mahto. It is also admitted position that rent receipts were issued in the name of Raghunath Mahto.

17. However, it is also an admitted position that for the first time, petitioners raised objection regarding entry of Jamabandi before the revenue officials and after due verification and report of karamchari and circle officer, DCLR struck off name of Raghunath Mahto and ordered for recording the names of the petitioners in Jamabandi vide order dated 24.10.1989 in Jamabandi



Sudhar Case no. 01/1988-89. It is further admitted position that Jagdish Mahto, who happens to be father of respondent no.4, appeared and contested the aforesaid Jamabandi Sudhar Case no. 01/1988-89 but after passing the order dated 24.10.1989 in the aforesaid case, he never challenged the said order before the superior authority. So, even if it assumed that DCLR had no jurisdiction to pass the aforesaid order dated 24.10.1989 in Jamabandi Sudhar Case no. 01/1988-89, then also, the aforesaid order has already attained its finality.

18. Furthermore, it is also an admitted position that respondent no.4 challenged the order dated 24.10.1989 passed in Jamabandi Sudhar Case no. 01/1988-89 after 21 years of passing the aforesaid order, though he was not party to the aforesaid Jamabandi Sudhar Case no. 01/1988-89. Admittedly, Jagdish Mahto was alive when respondent no.4 filed Jamabandi Sudhar Appeal no. 02/2010-11 but Jagdish Mahto did not join respondent no.4 in Jamabandi Sudhar Appeal no. 02/2010-11. Therefore, in the aforesaid circumstances, in my view, respondent no.4 had no locus standi to file Jamabandi Sudhar Appeal no. 02/2010-11, particularly, in



the life time of his father, namely, Jagdish Mahto.

19. It would appear from perusal of annexure 6 to the petition that the Collector, Lakhisarai did not pay any heed towards the delay in filing the aforesaid Jamabandi Sudhar Appeal no. 02/2010-11 nor condoned the delay in filing the aforesaid Jamabandi Sudhar Appeal no. 02/2010-11, particularly, in the circumstances when Jamabandi Sudhar Appeal no. 02/2010-11 was filed near about after 21 years of the order passed in Jamabandi Sudhar Case no. 01/1988-89 and that, too, on behalf of a person who had no locus standi to file Jamabandi Sudhar Appeal no. 02/2010-11. It is not in dispute that neither the Collector had jurisdiction to cancel Jamabandi under the old Mutation Act 1973 or prior to that Act nor under the Bihar Land Mutation Act, 2011 but even then Collector passed the impugned order dated 30.3.2016. However, it has been argued on behalf of the respondents that the Collector had only rectified the error committed by the DCLR and, as a matter of fact, Jamabandi Sudhar Appeal no. 02/2010-11 was not an appeal in true sense rather the Collector entertained the aforesaid case as Jamabandi Sudhar Case but I am not at all convinced with the



aforesaid submissions because the Collector had got no jurisdiction to correct or cancel Jamabandi and after coming into force of Bihar Land Mutation Act, 2011, power of cancellation of Jamabandi has been given to Additional Collector and admittedly, the impugned order was passed after coming into force of Bihar Land Mutation Act, 2011. Therefore, at the time of passing the impugned order, the Collector had got no right either to cancel or correct Jamabandi.

20. It is admitted position that a title suit between the parties in respect of disputed lands was pending before the civil court at the time of passing the impugned order but the Collector over-looked section 6(12) of the Bihar Land Mutation Act, 2011 which mandates that mutation of a holding or a part thereof shall not be allowed in case in which title suit with regard to that holding or a part thereof is pending in the competent court.

21. No doubt, in the present case, it has been argued on behalf of the respondents that the Collector has corrected Jamabandi in question passing the impugned order and, therefore, section 6(12) of the Bihar Land



Mutation Act, 2011 is not attracted in this case because the aforesaid provision speaks about mutation but I am not at all convinced with the aforesaid submissions because admittedly, dispute arose between the parties after death of Raghunath Mahto on 24.10.1989. After death of Raghunath Mahto, Jamabandi was corrected and name of petitioner no.1 as well as father of petitioner nos.2 and 3 were entered which was subsequently, again, corrected by the impugned order. Therefore, the aforesaid fact goes to show that there was dispute of mutation between the parties though in the guise of correction of Jamabandi. Moreover, it is well known fact that Jamabandi does not create right and title of the parties and Jamabandi is prepared only with a view to collect rent of the land. Although entry in Jamabandi is to some extent, prima facie, proves possession of the parties but that is always rebuttal. It appears to me that keeping in view of the aforesaid proposition of law, section 6(12) of the Bihar Land Mutation Act, 2011 has been introduced and revenue officials have been restrained to pass an order of mutation in cases in which title suit with regard to holding is pending in the competent court because it is



admitted position that revenue court has got no jurisdiction to declare right and title of the party in mutation case.

22. In the present case, admittedly, the Collector having passed the impugned order directed for making correction in Jamabandi which was stood in the name of petitioner no.1 and father of petitioner nos. 2 and 3 though the Collector had got no jurisdiction to entertain the said proceeding. Moreover, after application of Bihar Land Mutation Act, 2011, the Collector was bound to drop the aforesaid proceeding till the final decision of the title suit pending between the parties before the competent court in respect of disputed lands.

23. However, a proceeding for cancellation of Jamabandi could not have been entertained by the Collector as the Collector had got no jurisdiction to entertain the aforesaid proceeding because neither in the old Act nor in the present Act, the Collector had got jurisdiction to cancel Jamabandi or entertain the appeal against the order of DCLR. In Bihar Land Mutation Act, 2011, the Additional Collector has been empowered for cancellation of Jamabandi and appeal shall lie against the



order of Additional Collector before the Collector.
Therefore, in the aforesaid circumstances, in my view, the
impugned order can not sustain in the eye of law.

24. On the basis of the aforesaid discussions, this
writ petition stands allowed and the impugned order dated
30.3.2016 annexed as annexure 10 to the writ petition
passed in Jamabandi Sudhar Appeal no. 02/2010-11
stands quashed. It is made clear that findings/observations
given in this order shall not affect right, title and
possession of the parties in future litigation.

Shahid

(Hemant Kumar Srivastava, J)

AFR	
CAV DATE	06.09.2017
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