

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8492 of 2015

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Brajnandan Prasad Singh, S/o - Late Azim Mahto, Resident of Village - Narhi, P.S. - Dulhin Bazar, Distt. - Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Gram Panchayat Raj, Bihar, Patna.
2. District Magistrate, Patna, Bihar.
3. The S.D.O. Paliganj, District - Patna.
4. The Block Development Officer, Dulhin Bazar Block, District Patna.
5. The Circle Officer, Dulhin Bazar Block, District - Patna.
6. Junior Engineer, Dulhin Bazar Block, District - Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prakritita Sharma, Adv.

For the Respondent/s : Mr. Madan Mohan, AC to SC-5

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 18-09-2017 Heard Ms. Prakritita Sharma, learned Counsel appearing on behalf of the petitioner and Mr. Madan Mohan, learned AC to SC-5, appearing on behalf of the respondent – State.

The present Writ application has been filed for restraining the respondent authorities to proceed with the construction work of Anganwari centre on the *raiyati* land of the petitioner, situated on the land appertaining to Plot No. 373, Khata No. 123, in Village- Narhi, P.S.-Bikram, District- Patna. Further prayer has been made to restrain the respondent authorities from taking physical possession of the land in question.

It is submitted by learned Counsel appearing on behalf of the petitioner that the father of the petitioner was in possession of the land in question and constructed his house over the said



land in the year 1934, hence, the ex-landlord made settlement of two katha of land of plot No. 373 ,out of total 39 decimal of the land, situated in Village- Narhi, P.S.- Bikram, District – Patna, through registered deed of settlement vide deed no.6565, dated 27.10.1950 in the name of father of the petitioner after accepting salami of Rs.150/- and fixing early rent of 8 Anna. Photocopy of the deed has been brought on record as Annexure- 1. Thereafter, the father of the petitioner started paying rent to the ex-landlord till 1955. After vesting of Zamindari in the State of Bihar, the ex-landlord submitted return of two kathas of land in the name of the father of the petitioner as *raiya* in possession and with regard to other portion of the land of the same plot in favour of others. After remaining in possession of the land in question, the name of the petitioner was entered in Register-II, since the father of the petitioner paid the rent to the State of Bihar. After death of the father of the petitioner, the name of the petitioner and his brother Banke Bihari Sinha was mutated and they are paying the rent till date. The rent receipt from the year 1988-89 to 2014-15 has been brought on record as Annexure 3 series. On 20.03.2015, all of sudden, the Block Development Officer, Circle Officer, Panchayat Mukhiya and, Junior Engineer came over the land in question and got the land



measured through Amin and fixed pegs for certain construction. On enquiry, the petitioner came to know that Anganwari centre is going to be constructed over the land of the petitioner. The petitioner represented to the authorities concerned in this regard, but the authorities did not pay any attention to the prayer of the petitioner. Hence, the Writ application.

Learned Counsel for the petitioner further submits that the petitioner is still in possession of the land in question and the construction of the Anganwari centre has not been started as yet. From the averments made in paragraph no.9, of the counter affidavit, filed on behalf of respondent nos. 2 to 5, it appears that the respondents are admitting the execution of deed of settlement dated 27.10.1950 in favour of the father of the petitioner and that the Jamabandi is existing in the name of the father of the petitioner.

However, a proceeding for cancelling the Jamabandi, being Jamabandi Case No. 121/2015-16 has been initiated, which is pending in the Court of Additional Collector, Patna. Learned Counsel has relied upon a judgment of this Court rendered in the case of Ramnandan Singh and Ors. Versus the State of Bihar, reported in 2014(2) PLJR 636 and submits that



Jamabandi cancellation after grant of 17 years cannot be initiated, as the same can be initiated only under three contingencies, as envisaged under Section 4(h) of the Bihar Land Reforms Act, 1950, such as, firstly, when soon after vesting it is found that any settlement had been made by the ex-landlord after first day of January, 1946, the genuineness of those settlements could be examined for the reason of avoidance of consequences of Jamindari abolition. Secondly, where settlements were made to enhance the claim of compensation on jamindari abolition and, thirdly, when such settlements were made to cheat the Government. But all three contingencies do not exist in the present case. Hence, the very initiation of cancellation of Jamabandi proceeding is malicious and without jurisdiction.

Learned AC to SC-5 appearing on behalf of the respondent – State submits that the land in question is recorded in cadastral survey khatian as ‘Gair Majarua Aam’ and considering the same a proceeding for cancelling the Jamabandi was initiated.

Having heard learned Counsel for the parties, it appears that the present Writ application has simply been filed for restraining the respondent authorities from constructing Anganwari centre on the land in question and from restraining



the respondent authorities from taking physical possession of the land in question. It is admitted position that till date the construction work has not started nor the possession of the petitioner has been disturbed. This is also not in dispute that till date on the basis of settlement made in 1950, the Jamabandi is existing in the name of the petitioner.

In the circumstances, the respondent cannot make any construction or dispossess the petitioner from the land in question till settlement in favour of petitioner is annulled by a competent Civil Court.

So far as cancellation of Jamabandi is concerned, since the same is not under challenge in the present proceeding, this Court is not expressing any opinion and is disposing of the Writ application with liberty to the petitioner to challenge the same in appropriate proceeding.

This Writ application is, accordingly, disposed of.

(Dinesh Kumar Singh, J)

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