

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.699 of 2017

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Musafir Choudhary Son of late Jethu Choudhary Resident of Village- Bhadai, Anchal, P.O. & P.S. Giriyak, District- Nalanda, at present resides at Mohalla- Ramchandrapur, Behind Bank of India, P.O. Biharsharif, P.S. Laheri, District- Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna.
2. The District Magistrate, District- Nalanda.
3. The Additional Collector(land Reforms), District- Nalanda.
4. The Sub-Divisional Officer, Rajgir, District- Nalanda.
5. The Deputy Collector Land Reforms, Rajgir, District-Nalanda.
6. The Circle Officer, Giriyak, District- Nalanda.
7. The Block Development Officer, Giriyak, District- Nalanda.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Satish Chandra Mishra, Adv
Mr. Nurul Hoda, Adv

For the Respondent/s : Mr. Rishi Raj Sinha- SC-19

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 13-09-2018

By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for the following reliefs:-



"(i) For issuance of appropriate writ/writs in the nature of certiorary for quashing the impugned order contained in Memo No. 1785 dated 07.09.2016 (Annexure-25) passed by Respondent No. 2 i.e. the District Magistrate, Nalanda in pursuance of the Order dated 23.01.2015 (Annexure-21) passed by this Hon'ble Court in Petitioner's C.W.J.C. No. 22528 of 2013 whereby and where under the prayer made by the petitioner in his Representation dated 26.08.2013 (Annexure-6 to C.W.J.C. No. 22528 of 2013 and Annexure-20 to this writ application) in which the petitioner had made prayer for getting the small canal (water channel) called PAIN Dug (Water Drainage for irrigation) and constructed by the villagers of Pyarepur village in connivance of the then Anchal Addikari (Circle Officer) in the raiyati lands of the petitioner; for removal and for filling up of the same or for allowing the petitioner to fill up the same as the land in question is his Raiyati land (private land): has been wrongly rejected without application of mind and without considering the case of the petitioner under colorable exercise of power due to legal malice and with mala fide intention which is against the direction of this Hon'ble Court passed in the aforesaid writ



petition.

(ii) For further issuance of appropriate writ/writs in the nature of certiorari for quashing purported impugned Report dated 02.03.2016 (Annexure-24) submitted by a team of Officers including the Additional Collector, Nalanda, the Deputy Collector Land Reforms, Rajgir and Anchal Adhikari, Giriyak which has been submitted against the petitioner to harass and humiliate him with malafide intention purportedly with wrong and concocted facts when the petitioner did not dance at the tune of the said Officers.

(iii) This Hon'ble Court be further pleased to take Judicial notice of the Order dated 23.01.2015 passed by this Hon'ble Court in petitioner's C.W.J.C. No. 22528 of 2013 as the same has been deliberately and willfully over looked and violated only for the reason that against the delaying and recalcitrant attitude of the Respondents as the petitioner preferred to move before this Hon'ble Court for justice in this matter which irked the Respondents.

(iv) For issuance of appropriate writ/writs in the nature of mandamus directing/commanding the concerned Respondents to restrain themselves from taking any step against the Raiyati Lands of



the petitioner as the petitioner has got valid title and peaceful possession of the land in question since the life time of his parents i.e. for more than 50 to 60 years, but, due to ulterior motive to harass and humiliate the petitioner the PAIN (small canal) has been dug in the lands of the petitioner due to the reason that he belongs to weaker section of the society i.e. Scheduled Caste and Mahadalit Community.

(v) Any other appropriate relief/reliefs may also be granted to the petitioner for which he is found entitled in the facts and circumstances of the case."

Earlier, the petitioner had preferred C.W.J.C. No. 22528 of 2013 before this Court for a direction to the respondent authorities in the District of Nalanda to remove the construction from the *raiya* land of the petitioner. At this stage, it is required to be noted that at the relevant time, the writ petition was filed for Khata no. 576, Plot No. 3299, total area measuring 1.40 acres and Khata No. 575, Plot No. 2828, total area measuring 0.10 acres.

It was the case of the petitioner that the



land in question was a *raiya* land and the order of *Jamabandi* was passed in favour of the father/mother of the petitioner, therefore, the canal could not be opened to be constructed on the said land. It was also apprehended that the Circle Officer is likely to take action/steps for cancellation of *Jamabandi* of the petitioner.

It appears that as representation made by the petitioner addressed to the District Magistrate, Nalanda was pending consideration by the District Magistrate, the learned Single Judge disposed of the said petition by directing the District Magistrate, Nalanda to consider the grievance of the petitioner, as reflected in his representation, after giving opportunity to the petitioner.

The impugned order has been passed, rejecting the representation of the petitioner in which, it has been observed that the land in question was river land and therefore, no *Jamabandi* could be



issued in favour of the father/mother of the petitioner and therefore the District Magistrate has directed the appropriate authority to take further steps to cancel the *Jamabandi* of the petitioner.

The said order dated 07.09.2016 of the District Magistrate, which is as such, on the representation made by the petitioner before him, directing him to be decided and disposed of by the learned Single Judge of this Court pursuant to the order dated 23.01.2015 passed in C.W.J.C. No. 22528 of 2013, is the subject matter in the present writ petition.

Having heard the learned counsel for the respective parties and considering the impugned order, it appears that the District Magistrate, Nalanda has directed the appropriate authority to take further steps, in accordance with law, to cancel the *Jamabandi* and therefore, the appropriate authority has to take an appropriate decision for the



cancellation of the *Jamabandi*. However, it is apprehended that the District Magistrate, Nalanda has made some observation and therefore, the appropriate authority shall be bound for the same. The said apprehension is not well founded. The District Magistrate has only directed the appropriate authority to take steps for cancellation of *Jamabandi* of the petitioner, in accordance with law and therefore, the appropriate authority is bound to consider the case on merits and after giving an opportunity to the petitioner.

Therefore, keeping all the contentions which were advanced, which may be available to the petitioner and that the appropriate authority is yet to take a decision on the aspect of cancelling the *Jamabandi*, as observed by the District Magistrate, the present petition is not entertained, however, keeping all the defence and submissions made on behalf of the respective parties to be kept open to be



considered by the appropriate authority, in accordance with law and on its own merits.

With this, the present petition stands disposed of.

(Mukesh R. Shah, CJ)

(Ashutosh Kumar, J)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17/09/2018
Transmission Date	

