

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8490 of 2015

1. Pintu Sah
2. Raj Kumar Sah
3. Vikram Sah
4. Anjani Sah All four sons of Late Shatrughan Sah
5. Santosh Sah son of Late Bindeshwar Sah
6. Ramhari Sah son of Late Bindeshwar Sah
7. Sudhir Sah son of Late Bindeshwar Sah All are resident of Mohalla - Azam Nagar, Police Station - Lalit Narayan Mithila University District - Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna.
2. The Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna.
3. The Divisional Commissioner, Darbhanga.
4. The District Collector, Darbhanga.
5. The Additional Collector, Darbhanga.
6. The Circle Officer, Bahadurpur Circle, Darbhanga.
7. Ginni Lal Sah son of not known to the petitioner at present posted as Circle Officer, Bahadurpur Circle, Darbhanga.
8. Meena Kumari @ Meena Jumnani, Wife of Late Om Prakash @ Prakash Kumar @ Prakash Jumnani, Resident of 58, Shital Colony, Sector-11, Jakrohi, Indranagar, P.S. Gajipur, District Lucknow, Uttar Pradesh.
- 8(a) Jeetendra Jumnani, Son of Late Om Prakash @ Prakash Kumar @ Prakash Jumnani, Resident of 58, Shital Colony, Sector-11, Jakrohi, Indranagar, P.S. Gajipur, District Lucknow, Uttar Pradesh.
9. Pawan Kumar Poddar son of Late Atma Ram Poddar
10. Kiran Devi Poddar wife of Shri Pawan Kumar Poddar Both resident of Poddar House, Bada Bazar, P.S. - Town, District - Darbhanga.
11. Sanjay Kumar Mahto son of Shri Devi Lal Mahto resident of village - Mabbi Belona, P.S. - Mabbi, District - Darbhanga.

... .. Respondent/s

Appearance :

For the Petitioners	:	Mr. Kamal Nayan Choubey, Senior Advocate Mr. Ambuj Nayan Choubey, Advocate Mr. Dineshwar Pandey, Advocate Mr. Prashant Kumar, Advocate
For the State	:	Mr. Kinkar Kumar, SC27
For Res. No.8	:	Mr. Anil Kumar Jha, Senior Advocate
For Res. Nos.9 to 11	:	Mr. Kumar Binod Bariar, Advocate

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT

Date : 04-09-2018



Heard Mr. Kamal Nayan Choubey, the learned senior counsel appearing on behalf of the petitioners, Mr. Anil Kumar Jha, the learned senior counsel appearing on behalf of substituted legal heirs of respondent no.8, Mr. Kumar Binod Bariar, the learned counsel appearing on behalf of the respondents no.9 to 11 as well as the learned counsel appearing on behalf of the State.

2. The petitioners have filed this writ petition against the order dated 06.05.2015, passed in Jamabandi Cancellation Case No.16 of 2014-15 by the Additional Collector, Darbhanga who cancelled the Jamabandi No.100/120 and 109/131 standing in the name of the petitioners/their fathers. The petitioners further seek by filing supplementary affidavit to quash the order dated 27.05.2015, passed by the Circle Officer, Bahadurpur Circle, Darbhanga cancelling Jamabandi standing in the name of the petitioners/their fathers in pursuance of the order dated 06.05.2015 passed by the Additional Collector, Darbhanga.

3. The facts, which are admitted for disposal of this case, are that the lands of Khesra No.147/107, 108, 150, 151/106, 104 and 145/105 area 3 Bighas, 17 Katthas, 12 Dhurs and 8 Dhurkis of Khata Nos.42, 51, 39 and 162 are standing in the name of Gokul Mal and Teju Mal, the uncle and father of Om Prakash, now deceased-respondent no.8 duly represented through his legal



representative. Teju Mal and Gokul Mal, the father and uncle of respondent no.8, executed sale deeds in the year 1978 in favour of the fathers of the petitioners and on such the lands were mutated in the names of the fathers of the petitioners. The respondent no.8 filed petition before the Additional Collector, Darbhanga stating the facts that original Jamabandi No.100 was standing in the name of Gokul Mal and Teju Mal but presently standing in the name of Shatrughan Sah vide Jamabandi No.100/120. Similarly Jamabandi No.109 was opened in the name of Bindeshwar Sah vide Jamabandi No.109/131. The respondent no.8 claimed that neither he nor his father nor his uncle executed any sale deed. His uncle died issueless. The petitioners appeared on being noticed and filed rejoinder stating therein that Teju Mal and Gokul Mal executed a sale deed on 28.04.1978 with regard to 3 Bighas, 8 Katthas and 15 Dhurs land after receiving the entire consideration money. Om Prakash, respondent no.8, himself executed a sale deed on 10.05.1982 vide Sale Deed Nos.8889 and 8890 with respect to 3 Bighas, 17 Katthas and 12½ Dhurs in favour of Bindeshwar Sah and on the basis of the sale deeds, their names were mutated. The Additional Collector on the basis of the report of the Circle Officer cancelled the Jamabandi created in the name of the petitioners/their fathers on the ground that there is no order of



mutation and the Circle Officer reported that the lands are in possession of Om Prakash and his transferees.

4. Mr. Kamal Nayan Choubey, the learned senior counsel appearing on behalf of the petitioners submits that the names of the petitioners were mutated by virtue of the sale deed. The same Circle Officer issued Land Possession Certificate. The Additional Collector has got no power to cancel the sale deed. The mutation was done on the basis of the sale deed but on one pretext or the other without looking into the genuineness of the sale deed, the Additional Collector cancelled the Jamabandi acting beyond his jurisdictions under Section 9 of the Mutation Act, 2011.

5. On the other hand, Mr. Anil Kumar Jha, the learned senior counsel appearing on behalf of the substituted legal heirs of respondent no.8 submitted that the respondent no.8, now deceased, never executed any sale deed. The father and uncle of respondent no.8 did not execute any sale deed. The petitioners have not produced any order of mutation. It is further submitted that the order passed under Section 9 of the Mutation Act, 2011 is appealable and once there is alternative remedy, this Court should not have entertained the writ petition. The Additional Collector full fledgedly heard the petitioners and cancelled the Jamabandi standing in their names.



6. Respondents no.9 to 11 are the purchasers from respondent no.8, now deceased.

7. The sole question arises for consideration is as to whether the Additional Collector lacks jurisdiction in cancellation of Jamabandi standing in the name of the petitioners/their fathers? It is relevant to mention Section 9 of the Bihar Land Mutation Act, 2011, which vests power in the Additional Collector for cancellation of Jamabandi. Sub-section (1) of Section 9 of the Bihar Land Mutation Act, 2011 reads as under:

9. Cancellation of Jamabandi.-(1) *The Additional Collector, either suo motu or on an application, shall have the power to make inquiries in respect of any Jamabandi, which has been created in violation of any law for the time being in force or in contravention of any executive instruction issued in this behalf. The Additional Collector, in whose jurisdiction the land is situated, may, after giving reasonable opportunity to the parties concerned to appear, adduce evidence and be heard, cancel such Jamabandi, dispossess the person claiming under it and deliver the possession to the legitimate owner/custodian, on such terms as may appear to the Additional Collector to be fair and equitable.*

8. From bare perusal of sub-section (1) of Section 9 of the Bihar Land Mutation Act, 2011, it would appear that Additional Collector either *suo motu* or on application has got the power to make inquiry with regard to any Jamabandi which has been created in violation of any law for the time being in force or in contravention of any executive instruction issued in this behalf. There are two conditions precedent for using the power by the



Additional Collector. The Additional Collector on application of respondent no.8 issued notice to the petitioners and petitioners stated that their names were mutated by virtue of the sale deed executed by the father and uncle of respondent no.8, now deceased, in the year 1978 and also by virtue of the sale deed executed by respondent no.8, now deceased, himself in the year 1982, therefore, the two conditions mentioned in Section 9 of the Mutation Act, 2011 are non-existent. Mutation done in the name of the father of the respondents are on the basis of the sale deed executed by the father and uncle of respondent no.8 and respondent no.8 himself. The mutation was not done in contravention of any law or circulars issued by the State of Bihar. In absence of the two conditions, the Additional Collector has got no jurisdiction to cancel Jamabandi standing in the name of any person, therefore, I find that when the authority has passed the order without having jurisdiction, the alternative remedy is of no use. I also find that the order of the Additional Collector is without jurisdiction and illegal and fit to be set aside.

9. In the result, this writ petition is allowed. The order dated 06.05.2015, passed in Jamabandi Cancellation Case No.16 of 2014-15 by the Additional Collector, Darbhanga and the order



dated 27.05.2015, passed by the Circle Officer, Bahadurpur Circle, Darbhanga are set aside.

10. Before parting with this order, I am constrained to say that the Circle Officer cancelled the Jamabandi standing in the name of the petitioners in pursuance of the order dated 06.05.2015 passed by the Additional Collector, although on 22.05.2015, the petitioners filed certificate duly issued by the learned Advocate that against the order of the Additional Collector, they preferred writ but even then the Circle Officer cancelled Jamabandi standing in the name of the petitioners on 27.05.2015. The petitioners filed the order dated 03.07.2015 passed by this Court staying the order of the Additional Collector passed in Jamabandi Cancellation Case No.16 of 2014-15 on 06.05.2015 but the Circle Officer preferred to sit over the matter and did not act thereupon. This fact itself shows that the Circle Officer as well as the Additional Collector, who reported about the possession of the petitioners over the land, acted in collusion with each other and in spite of the order by this Court, the Circle Officer, Bahadurpur Circle, Darbhanga did not record his own order although the order dated 06.05.2015, passed by the Additional Collector, Darbhanga ordering for cancellation of Jamabandi standing in the names of the petitioners had already been stayed by this Court.



11. Let a copy of this order be sent to the Principal Secretary, Revenue and Land Reforms Department, Government of Bihar for taking necessary action against such officials.

(Prabhat Kumar Jha, J)

S.KUMAR/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.09.2018
Transmission Date	NA

