

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11356 of 2015

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Shamshad Ali Khan

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna
2. The Commissioner, Saran Division, Chapra
3. The Deputy Collector, Land Reforms, Siwan
4. Abdul Qayum
5. Sajjad Hussain

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shailendra Kumar Singh

For the State : Mr. Sitaram Yadav, GP 16

For the respondent No.5 : Mr. Ranjan Kumar Dubey, advocate

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL ORDER

3 04-10-2018

Heard both sides.

The petitioner has filed this writ petition for quashing the order dated 02.02.2015 passed in B.L.T. case No. 403 of 2014 passed by Member, Administrative, Bihar Land Tribunal, Patna, (Annexure-13) whereby he dismissed the case of the petitioner and confirmed the order dated 12.04.2014 passed by Commissioner, Saran Division, Chapra in BLDR Appeal No. 228 of 2011 (Annexure-12) and also the order dated 24.10.2011 passed by DCLR, Siwan in Jamabandi Correction Case No. 3/ 2007-2008 (Annexure-11) whereby Jamabandi No. 34 standing in the name of Mian Jan Khan in respect of land of Khata No. 10, Khesra No. 410, area 3 Katha 19 dhur and land of Khata No. 9, Khesra No. 147, area 14 Katha 5 dhur situated at Mauza Sheikhpura Anchal Siwan has been cancelled by DCLR, Siwan.

The sole question arises for consideration as to whether the DCLR under Bihar Land Dispute Resolution Act, 2009 (hereinafter referred to as BLDR Act) is authorized to cancel



Jamabandi No. 34 standing in the name Mian Jan Khan mentioned in the proceeding under Section 4 of BLDR Act?

The facts relevant for disposal of this writ petition can be summarized as follows:-

The petitioner is son of Mian Jan Khan. The land of Khata No. 9, Mauza Sheikhpura was recorded as Gairmajarua Malik Pati Kadim with Bargad and Pakar trees. The ex-landlord, Ali Akhter was in possession of the land and on the request of Mian Jan Khan the ex-landlord settled the land in favour of Mian Jan Khan on annual rent of Rs. one after taking Nazrana and delivered possession to Mian Jan Khan. The ex-landlord issued Sada Hukmnama on 15.07.1932 and since then Mian Jan Khan and thereafter petitioner came in possession. Similarly, land of Khata No. 10, plot No. 410, area 5 katha 13 dhur with trees thereon was recorded as Gairmajarua Aam. One katha 14 dhur land situated from southern portion of plot No. 410 was used as Rasta and 3 katha 19 dhur and trees thereon was in possession of ex-landlord and the same was also settled with the father of the petitioner on fixation of rent of 12 Anna and the father of the petitioner came in possession since 15.07.1939. The ex-landlord submitted return and on the basis of settlement and return Jamabandi of the aforesaid land was opened in the name of Mian Jan Khan and he was paying rent. Abdul Qayum and Sajjad Hussain filed petition on 19.07.2007 before the Collector, Siwan for cancellation of Jamabandi of land of Khata No. 10. The petition was referred to Additional Collector who enquired and recommended for cancellation of Jamabandi and directed the Circle Officer to submit proposal for cancellation of Jamabandi. The Circle Officer accordingly recommended for cancellation of



Jamabandi of Khata No. 10. The petitioner appeared before the DCLR and the DCLR recording the facts sent the record to Additional Collector for cancellation of Jamabandi of lands of Khata No. 9 and 10. The Additional Collector sent the matter to Collector. On such the Collector opined that the DCLR under Section 4 of BLDR Act is competent to cancel Jamabandi and on such the DCLR without hearing the petitioner cancelled the Jamabandi standing in the name of Mian Jan Khan with regard to land of Khata No. 9 and 10. The petitioner preferred BLDR Appeal No. 228 of 2011, as provided under the Act, but the Commissioner also vide order dated 12.04.2014 dismissed the appeal. The Member, Administrative, B.L.T. also dismissed the B.L.T. case No. 403 of 2014 without appreciating the points and question of law raised by the petitioner.

The learned counsel for the petitioner submits that the DCLR under the BLDR Act is not at all vested with power to cancel Jamabandi standing in the name of father of the petitioner. Section 4 of BLDR Act vests power in the DCLR to settle the dispute already decided. Cancellation of Jamabandi is not mentioned in any of the provisions of Section 4 of BLDR Act but the DCLR passed the order of cancellation of Jamabandi No. 34 standing in the name of father of the petitioner and the same is without jurisdiction. Subsequently, the Commissioner and the Member, Administrative B.L.T. also dismissed the appeal and case of the petitioner without hearing him on merit and the orders are without jurisdiction and not unsustainable.

The learned counsel for the respondent No.5 and the learned counsel for the State supported the order and submitted that the orders are within jurisdiction and the same do not require



any interference as there is concurrent finding of facts.

From perusal of the records and the provision as contained in Section 4 of BLDR Act, it is crystal clear that under Section 4 the BLDR Act the DCLR has got no jurisdiction to cancel the Jamabandi standing in the name of father of the petitioner. Before enactment of Bihar Mutation Act in the year 2011 there was no provision under the Mutation laws of Bihar for cancellation of Jamabandi and the Collector in revisional jurisdiction was vested with power to cancel Jamabandi but after coming into force of Bihar Mutation Act, 2011 the Additional Collector under Section 9 of the Mutation Act is vested with power to cancel Jamabandi in the name of a person if Jamabandi was created in violation of any Act or order issued therein but the DCLR is not at all vested with power either under BLDR Act or under Mutation Act to cancel the Jamabandi standing in the name of father of the petitioner. Therefore, I find that the order dated 24.10.2011 passed by the DCLR (Annexure-11) is without jurisdiction. Consequently, the order of Commissioner dated 12.04.2014 (Annexure-12) and the order of Member, Administrative, B.L.T. dated 02.02.2015 (Annexure-13) confirming the order of the DCLR are also illegal and not sustainable and, accordingly, the orders are set aside. This writ petition is allowed.

(Prabhat Kumar Jha, J)

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