

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.972 of 2014

In

Civil Writ Jurisdiction Case No.4979 of 2005

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-
1. Virendra Kumar Singh son of Late Gaurishankar Prasad
 2. Mahesh Prasad son of Sri Sheo Jatan Prasad Both resident of village - Pachrukhi, P.S. Pachrukhi, District - Siwan
- Appellant

Versus

1. The State of Bihar
 2. The Collector, Siwan
 3. The Additional Collector, Siwan
 4. The Sub - Divisional Officer, Siwan
 5. The Deputy Collector Land Reforms, Siwan
 6. The Circle Officer, Goshi, Pachrukhi Block, Siwan
- Respondents/Respondents (1st Set)
7. Nawal Kishori Devi wife of Late Surendra Singh
 8. Pratibha Singh daughter of Late Surendra Singh
 9. Sobha Singh daughter of Late Surendra Singh
 10. Anup Rai daughter of Late Surendra Singh
 11. Seema Devi daughter of Late Surendra Singh
 12. Mona Devi daughter of Late Surendra Singh
 13. Guddi Devi daughter of Late Surendra Singh
- All Respondent No.7 to 13, resident of village - Pachrukhi Bazar, P.O. & P.S. Pachrukhi, District – Siwan
- Petitioners/Respondents (2nd Set)
14. Abdul Qaum Ansari S/o Jan Mohammad Ansari R/o vill. + P.S. Pachrukhi District - Siwan
- Intervenor-Respondent (3rd Set)

with

Letters Patent Appeal No. 1092 of 2014

In

Civil Writ Jurisdiction Case No.4979 of 2005

1. The State of Bihar
 2. Collector, Siwan
 3. Additional Collector, Siwan
 4. Sub - Divisional Officer, Siwan
 5. Deputy Collector, Land Reforms, Siwan
 6. Circle Officer, Pachrukhi Block, Siwan
- Appellants (Respondents)

Versus

1. Nawal Kishori Devi wife of late Surendra Singh
2. Pratibha Singh
3. Sobha Singh
4. Anup Rai
5. Seema Devi
6. Mona Devi
7. Guddi Devi



All daughters of late Surendra Singh resident of village - Pachrukhi Bazar,
Post office and Police Station - Pachrukhi District - Siwan
... .. Respondents (Petitioners)

Appearance :

(In Letters Patent Appeal No. 972 of 2014)

For the Appellants : Dr. Uma Shankar Prasad, Senior Advocate
Mr. Naresh Prasad, Advocate
For the Respondent State: Mr. Rishi Raj Sinha, S.C.-19
Mr. Akhilesh Kumar Sinha, A.C. to S.C.-19
For the Respondent Nos.7 to 13: Mr. Shashi Shekhar Dvivedi, Senior Advocate
Mr. Parth Gaurav, Advocate

(In Letters Patent Appeal No. 1092 of 2014)

For the Appellants : Mr. Rishi Raj Sinha, S.C.-19
Mr. Akhilesh Kumar Sinha, A.C. to S.C.-19
For the Respondents : Mr. Shashi Shekhar Dvivedi, Senior Advocate
Mr. Parth Gaurav, Advocate

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date : 18-01-2018

Heard learned counsel for the parties.

2. Two appeals have arisen from an order dated 18.11.2013 passed in C.W.J.C. No. 4979 of 2005. In L.P.A. No. 972 of 2014, there are certain interveners, who claim that they have vital interest in the decision so rendered by the learned single Judge, therefore, they should be permitted to prefer an appeal against the impugned order, which was allowed vide order dated 01.08.2014.

3. The second L.P.A., which is L.P.A. No. 1092 of 2014 is an appeal by the State of Bihar. Since both the appeals arise out of the order of the learned single Judge dated 18.11.2013, they were ordered to be heard together and have been heard together.



4. The reason for the private respondents to prefer the writ application, C.W.J.C. No. 4979 of 2005, was initiation of a proceeding for cancellation of *Jamabandi* in Case No. 1 of 2004-05 as well as a decision to cancel the *Jamabandi* of the petitioners vide order dated 11.04.2005 passed by the Collector, Siwan. The district administration also passed an order for demolition of the house of the petitioner as well as forcible ejectment and consequent to the decision of the Collector dated 11.04.2005, the Circle Officer, Pachrukhi, issued the notice of demolition on 13.04.2005. For record, it is of significance that within two days of issuance of notice of demolition by the Circle Officer, Pachrukhi, on 15.04.2005 itself, the triple storey house was brought down. Such promptitude in implementation of orders, which have serious consequence for a citizen, is not witnessed in other cases. Obviously, there was a more moving force behind the decision making and also its implementation.

5. The petitioners in the writ application claim that their ancestors obtained a settlement of a piece and parcel of land bearing *Khata* No.170, Plot No.2621 having an area of 19 *dhurs* although the total area of the plot is 5 *kathas* and 18 *dhurs*. According to the petitioners in the writ application, the land was initially recorded at *Dih-Basgeet Khata* of ex-landlord of Banaras,



namely, Shiv Prasad Gupta, and is contiguous north to the raiyati plots of the petitioners Plot Nos.2624 and 2623. The 19 *dhurs* of land was settled by the ex-landlord with one Dina Nath Singh on 5 *Fagun* 1350 *Fasli*. A *Sada Patta* was initially executed on payment of *Najrana* and rental. Subsequently, the *Sada* settlement was translated into a registered settlement executed on 08.07.1948.

6. After the vesting of the estate in the year 1956, the ex-landlord submitted his return in favour of the settlee Dina Nath Singh and a *Jamabandi* was created in his name. Dina Nath Singh started paying rent to the State of Bihar and he has been in possession of rent receipts issued by the State authorities.

7. Sometime in the year 2000-01, a notice was issued by the then Circle Officer, Pachrukhi, giving rise to Case No.26 of 2000-01 under Section 23(4) of the Bihar Tenancy Act, 1885, for enhancement of the rent by virtue of the fact that part of the plot of the land was utilised for commercial purposes. The rent was enhanced and fixed at Rs.660.60 per annum since 2002. The fixed rent is being paid by the petitioners regularly.

8. Even earlier, certain vested interests got a proceeding initiated against Dina Nath Singh giving rise to L.C. Case No.92 of 1960-61. That proceeding was ultimately dropped by the Deputy Collector Land Reforms by order dated 05.10.1971. Yet another



effort was made of similar kind when Land Encroachment Case No. 44 of 1979-80 came to be initiated but vide order dated 08.02.1979, the Circle Officer held that due to personal rivalry the issue of encroachment was being raised repeatedly. The finding of the settlement of land by the ex-landlord in favour of Dina Nath Singh and thereafter the creation of *Jamabandi* and payment of rent etc. was taken note of. The proceeding was dropped again.

9. Yet another encroachment case, which was Encroachment Case No.19 of 1995-96, was again dropped by the Circle Officer on 28.12.1996 for similar reasons.

10. It seems that when such efforts failed at the local level, certain persons filed a writ application, namely, C.W.J.C. No. 13314 of 2003, making a prayer for removal of encroachment. It was a disguised kind of application, but the thrust of the entire exercise or relief was the piece and parcel of land on which the petitioners of the writ application have been in peaceful possession for decades together. Instead of responding to the writ application by bringing these facts to the notice of the High Court, the district authorities took it as an opportunity not only to cancel the *Jamabandi* hurriedly, but also initiate a proceeding for removal of encroachment as already noticed in the earlier part of the order, even demolishing the building within two days of the notice.



11. All these facts and details have been taken note of by the learned single Judge as well in his order. Effort was made on behalf of the respondents-appellants to convince the Court that the creation of *Jamabandi* in the very first place was illegal and that no settlement of *Gairmajarua Aam* land could be done by the ex-*Jamindar* and that there were hardly any material and evidence to support the plea that the settlement of land was bonafidely made by the ex-landlord and even the State of Bihar authorities had created a *Jamabandi* and desperate measures were taken at least four times over for removal of encroachment if not cancellation of *Jamabandi*, which had failed and had been rejected by the revenue authorities of the district of Siwan.

12. This Court is not required to take note of the various decisions which were relied upon by the contesting parties for the simple reason that it will be repetitive in nature, but after having considered the entire matrix of fact and law, the learned single Judge recorded his opinion as under : -

“I have heard learned counsel for the parties and have perused the materials on record. The facts speak for themselves in the present writ proceedings. There is a Sada Patta dated 1350 Fasli which would mean of the year 1943, executed by the ex-intermediary in favour of Dinanath Singh, the father of the original writ petitioner. The matter did not rest there and a formal registered deed of settlement was executed in the year 1948. The two settlement deeds are on the



record of the writ proceedings at Annexure-5 to the writ petition and Annexure-17 to the supplementary affidavit respectively. The two settlement deeds have not been contested by the State as being a forged or fabricated document, except a bald denial at paragraph 9 of the counter affidavit. The two orders followed by the receipts issued by the ex-landlord and the State Government after the vesting of the estate, are conclusive evidence regarding settlement of the disputed land with the petitioners by the ex-landlord. This fact has been candidly admitted by the Circle Officer in the second round of proceeding bearing Encroachment Case No.44 of 1979-80. The existence of an old house at that stage was also mentioned by the Circle Officer in his order dated 8.2.1979. The proceedings appended at Annexures 11, 12 and 13 manifest that the petitioners and their ancestors have been subjected to repeated proceedings at the hands of the respondent-authorities at the instance of some one or the other. That the land in question was settled by the ex-landlord in favour of the petitioners' ancestors was admitted by the Circle officer at the stage of Encroachment Case No.44 of 1979-80. Thus where the entire records relatable to the settlement are in possession of the respondents, it was for the respondents to satisfy themselves after calling for the same from the District Records Office. The very presence of the deed of registered settlement (Annexure-17) issued by the District Records Office, Siwan is sufficient indication that the respondents have proceeded in an illegal and in an arbitrary manner. The only ground taken by the State as well as the interveners herein is that the land is in the nature of Gairmazrua-am land being a public Rasta and is recorded as such in the revisional survey khatiyan. The issue thus is whether the existence of an entry in the survey records of rights on its own is sufficient to interfere with the rights perfected by the petitioners over the disputed land by passage of time and even assuming that the said aspect did confer any semblance of right in the respondents, to proceed against the



petitioners, whether it could be enforced either by way of a summary proceeding under the Bihar Public Land Encroachment Act or by taking recourse to cancellation of Jamabandi under the Bihar Tenants' Holdings (Maintenance of Records) Act, 1973 or the Land Reforms Act, 1950. The answer has to be in the negative. The reasons are two-fold. Firstly, an entry in a survey records of right even if carrying a persuasive value, is not a conclusive evidence regarding title and secondly, the documentary evidence of settlement made as back as in the year 1948 being indisputably in existence with rent receipts being issued by the ex-intermediary followed by the State, the respondents after a lapse of almost 50 years could not have initiated a proceeding alleging encroachment by the petitioners more so when they themselves had dropped an earlier proceedings in Encroachment Case No.44 of 1979-80 after admitting to the settlement by the ex-landlord with the father of the original petitioner. The Circle Officer having admitted to the settlement by the Ex-landlord in his order dated 8.2.1979 passed in Encroachment Case No.44 of 1979-80, it was wholly mala-fide on his part to have recommended for cancellation of Jamabandi on the ground of absence of documents relatable to settlement. The factual position being as such, whether in the garb of removal of encroachment from a public land, could the respondents demolish the house of the petitioners. This issue stood settled as back as in the year 1955 by the Special bench of this Court in the case of Brij Bhukhan Kalwar (supra) when it was held that a title perfected even on a Gairmazrua-am land, upon expiry of the prescribed period, could not be interfered with by way of summary proceedings under the Bihar Public Land Encroachment Act, 1956. The same view was also opined by the Supreme Court in the Case of Government of Andhra Pradesh (supra). Thus after a lapse of almost 50 years since the settlement and after dropping two proceedings initiated in this regard, certainly it was most mala-fide for the respondent-authorities to have initiated the third proceedings in Land



Encroachment Case No.19 of 1995-96. The judgments of this Court of the Special Bench and of the Supreme Court on this issue clearly render the proceedings illegal and without jurisdiction.”

13. In addition to what has been reproduced in earlier part of the order, the learned single Judge further held with regard to cancellation of *Jamabandi*, removal of encroachment and demolition in following words: -

“This brings this Court to the main issue raised by the petitioners questioning the action taken by the authorities in initiating proceeding for the cancellation of Jamabandi bearing Case No.1 of 2004-05 and impugned at Annexure-1 to the writ proceedings. There cannot be a contest on the legal position that neither under the Bihar Tenants’ Holdings (Maintenance of Records) Act, 1973 nor under the Bihar Land Reforms Act, 1950, there is any provision for cancellation of Jamabandi. Although the Bihar Land Reforms Act in its section 4 does provide for cancellation of settlement but that is distinct to a cancellation of Jamabandi and the manner is prescribed for such exercise. This issue came up for consideration as back as in the year 1978 when this Court in the case of Harihar Singh reported in 1978 BBCJ 323 held that the authorities have no jurisdiction to cancel the Jamabandi and remove the names of the settlee from the tenants register. A Division Bench of this Court in the case of Khiru Gope (supra) while taking note of the two earlier judgments of this Court reported in 1978 BBCJ 323 (Harihar Singh vs. The Additional Collector) and 1979 BBCJ 605 (Jamaluddin Ahmad vs. S.D.O.) held that where the settlee claims settlement under a Hukumnama, there was no authority vested to the Collector to cancel the Jamabandi made in favour of a settlee from an ex-intermediary, the effect



whereof would be to cancel the settlement by the ex-intermediary. The Jamabandi in the present case having been created pursuant to a registered settlement, certainly the action of the Collector in directing cancellation of the Jamabandi is in the teeth of the Division Bench pronouncements of this Court. The remedy for the State authorities, if any, certainly was not by way of executive action under the statutory powers rather rested before the civil court of competent jurisdiction for a proper declaration.

For the reasons aforementioned the entire proceedings arising out of Case No.1 of 2004-05 initiated for cancellation of Jamabandi including the order of cancellation of Jamabandi dated 11.4.2005 passed by the Collector, Siwan as well as the consequential orders passed in Encroachment Case No.19 of 1995-96 against the petitioners, are rendered illegal, contrary to the statutory provisions and the judicial pronouncements of this Court and are thus set aside. For the same reasons the entire proceedings in Encroachment Case No.19 of 1995-56 in so far as the petitioners are concerned, is held illegal and set aside.

This writ application is allowed with costs quantified at Rs.50,000/- (Fifty thousand) only payable by the State. The order passed in the writ proceeding, however, would not preclude the parties hereto to take recourse to the remedies as may be available to them in law. The petitioners if so advised, would be at liberty to file an appropriate application before an appropriate forum for seeking damages/compensation from the State, for the loss suffered.”

14. If what had been considered and decided by the learned single Judge as a reason for interfering with the decisions of cancellation of *Jamabandi* as well as the encroachment



proceeding, which were held to be out and out illegal and was set aside, the learned single Judge was left with no option but impose a token cost of Rs.50,000.00 upon the State for being law by itself.

15. A citizen's right cannot be trampled by the brute force and the authorities of the State agencies and if the State has acted in an irrational, arbitrary and vengeful manner, where the constructions on the piece and parcel of land, which had been there for decades together, came to be demolished in such a hot haste, then imposition of a cost of Rs.50,000.00 on the State cannot be said to be unjustified.

16. Another example of the manner in which the State authorities had acted in the present case is that though the steps for cancellation of *Jamabandi* was initiated by registering Case No.1 of 2004-05, the dropped encroachment proceeding of 1995-96 was somehow revived and the order for removal of encroachment was passed in Encroachment Case No.19 of 1995-96. There could not be a better example of malafide or mindless action if not motivated action at the hands of the authorities. To that extent imposition of a cost of Rs.50,000.00 again is on the lower side and some exemplary cost should have been imposed upon all the authorities, who were responsible for taking law in their hands and being law by themselves. The cost, therefore, stands enhanced to



Rs.1,00,000.00 (Rupees One lakh) from Rs.50,000.00 payable to the respondents-petitioners in the writ.

17. Since the decision and action of the State was held to be unjustifiable and beyond the ambit of law, therefore, no justification is going to bail them out from the consequences which has come to visit them.

18. So far as the appellants are concerned in L.P.A. No. 972 of 2014, obviously, they have been the driving force behind the perils which the private respondents in two appeals have undergone. Even they are required to be saddled with certain cost, but for the time being, they are being let off with the strict warning that in future if they try to misuse the forum of any Court with their personal agenda, then the Courts will come down very heavily upon them. Obviously, the writ Court has been misused earlier while filing C.W.J.C. No. 13314 of 2003 and there seems to be some kind of complicity between the State as well as the petitioners of the said writ.

19. We are not inclined to interfere with the decision of the learned single Judge. It is a fit case where the message must go to one and all that rule of law is applicable for every one and not only to the hapless citizen. The State is expected to behave in a more



responsible manner instead of becoming a tool in the hands of certain vested interests.

20. Both the appeals, therefore, stand dismissed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Pawan/-

AFR/NAFR	A.F.R.
CAV DATE	N/A
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