

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15057 of 2018

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1. Prabha Shankar Prasad Singh, son of Late Awadh Kishore Pd. Singh,
 2. Rajeev Kumar, Son of Late Ganesh Poddar,
Both resident of Mohalla- Hajipur (Khagaria), Post office Road, Ward No. 19, P.S. and District- Khagaria.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Urban & Housing Development Department, Govt. of Bihar, Patna
2. The Collector, Khagaria.
3. Addl. Collector (A.D.M.) Khagaria.
4. Deputy Collector Land Reforms, Khagaria.
5. Circle Officer, Khagaria, District- Khagaria.
6. Khagaria Municipal Council, through its Chief Executive Officer, Khagaria, P.S. and District- Khaga
7. The Chief Executive Officer, Khagaria Municipal Council, Khagaria.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Dronacharya, Advocate
For the State	:	Mr. Suresh Kumar, AC to GP-1
For Respondents 6&7	:	Mr. Rakesh Chandra, Advocate

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

C.A.V. JUDGMENT

Date : 15-10-2019

This writ application involves dispute relating to lands appertaining to Tauzi No. 525, Khata No. 158, Plot No. 307 admeasuring 1 Bigha 10 Katha 6 Dhur within Khagaria Municipal Council, Khagaria. The petitioners claim that the said land was purchased by their predecessors-in-interest for a sum of Rs. 4,000/- through a registered sale-deed dated 03.03.1984. They have a grievance that the respondents are illegally proceeding to



establish a vending zone over the said private land of the petitioners and thereby interfering in their peaceful right, title and possession over the land in question. They are seeking a direction restraining the respondents from constructing a vending zone over the said land.

2. It is the petitioners' case that the said land appertaining to Khata No. 156 and 158 was settled by Raj Banaili (ex-landlord) of the then District Munger in 1943 to one Radhey Shyam Chaudhary. In the return submitted by the ex-landlord after vesting of Jamindari, the land in question was shown to be settled in the name of said Radhe Shyam Choudhary who had been regularly paying land revenue and receiving rent receipts. *Jamabandi* was also created in his name. As has already been noted above, father of petitioner no. 1, late Awadh Kishore Pd. Singh and father of petitioner no. 2, late Ganesh Poddar had jointly purchased the land for a consideration of Rs. 4,000/- through registered sale-deed dated 03.03.1984. There are averments in the writ application to the effect that certain area of land, out of total area of 1 Bigha 14 Katha And 6 Dhur, some area of land was sold by father of petitioner no.1 and petitioner no. 2. It is specific case of the petitioners that ever since the settlement of land in favour of Radhey Shyam Chaudhary, the vendor of the petitioners have



remained in continuous possession over the land in question. It is their case that the settlement made in favour of Radhey Shyam Chaudhary is saved by Section 4(a) of the Land Reforms Act, 1950 (hereinafter referred to as 'the Act').

3. It has been stated in the writ application that on the recommendation made by the Collector, Khagaria, Khagaria Municipal Council has approved in its meeting held on 28.10.2017, establishment of vending zone over the land in question on the ground that it was a *Gair Mazarua Aam Land*. For the purpose of construction of vending zone, work of earth filling has begun.

4. A counter affidavit has been filed on behalf of Nagar Parishad, Khagaria stating therein that the land in question was recorded as *Gair Mazarua Khas Land* of the ex-landlord and in the remarks column, it is mentioned as *Nadi Gandak* having total area of 22 Bigha 18 Katha 14 Dhur of the concerned Khesra, out of which only 15 Katha of land has been transferred to Nagar Parishad. Doubting the correctness of the sale-deed dated 03.03.1984, which has been brought on record by way of Annexure-4 to the writ application, it has been stated in the counter affidavit that though the said sale-deed refers to two khatahs i.e. 156 and 158 and Khesra No. 5/836,339(m)/307(M)



admeasuring 1 Bigha 14 Katha 6 Dhur, it does not mention the specific area of respective Khesra which has been purchased through the said sale-deed. The petitioners' claim of settlement by ex-landlord has also been doubted and it has been stated that the Circle Officer, Khagaria has moved for cancellation of *Jamabandi* by making recommendation in this regard to the Additional Collector, Khagaria.

5. It is the case of the respondents that pure question of title and possession cannot be adjudicated upon in a writ proceeding under Article 226 of the Constitution of India.

6. A reply to the counter affidavit has been filed on behalf of the petitioners taking a plea that question of title would not arise as their predecessors-in-interest and the petitioners have remained in continuous possession for more than 75 years. In response to the statement that the Circle Officer has approached the Additional Collector for cancellation of *Jamabandi*, it has been stated in the reply to the counter affidavit that any such exercise would be illegal and old *Jamabandi* cannot be cancelled in view of the decisions of this Court.

7. I have heard Mr. Dronacharya, learned counsel for the petitioners, Mr. Suresh Kumar, learned AC to GP-1 and Mr.



Rakesh Chandra, learned counsel appearing for Khagaria Municipal Council.

8. Mr. Dronacharya, learned counsel for the petitioners has relied on following decisions in support of his plea that the respondents are under misconception that all lands recorded in the cadestral survey records as *Gair Mazarua Aam* land are government lands and that landlord did not have any right to deal with them and further that long standing *Jamabandi* could not be cancelled :-

“(i) (2004) 3 SCC 553 (ABL International Ltd. and another vs. Export Credit Guarantee Corporation of India Ltd. and others),

(ii) 1956 BLJR 24(DB) (Chandreshwari Prasad Narain Deo and others vs. State of Bihar and another),

(iii) 1959 BLJR 310 (Musammat Husanbano vs. The State of Bihar and another),

(iv) 2014(3) PLJR 584 (Maya Devi & Ors. vs. The State of Bihar & Ors.),

(v) 2015(1) PLJR 606(DB) (The State of Bihar & Ors. vs. Harendra Nath Tiwari),

(vi) 2016(3) PLJR 237 (Yadunandan Singh vs. The State of Bihar & Ors.),

(vii) 1990(1)BLJ 457 (Laxman Sahai and others vs. State of Bihar and others)

(viii) AIR 1947 Patna 116 (Mt. Bibi Misran vs. Kishun Pasi),

(ix) AIR 1947 Patna 444 (Ram Keshwar Mahton and others vs. Hari Charan Mahton and others).”



He has contended that a landlord was competent to settle even a *Gair Mazarua Aam* land, which settlement is saved by Section 4(a) of the Act.

9. Mr. Suresh Kumar, learned AC to GP-1 and Mr. Rakesh Chandra, learned counsel for Khagaria Municipal Council have argued that as the writ application involves pure question of title over the disputed land, this Court in stead of entertaining such dispute in a writ jurisdiction, may allow the petitioners to approach the competent court of civil jurisdiction for establishing their right, title and interest.

10. After having perused the pleadings on record I find substance in submission made on behalf of the respondents. Writ proceedings are decided on admitted facts. The respondents have disputed the very genuineness of the sale-deed dated 03.03.1984. There is a series of judgments of Supreme Court to the effect that a Writ Court should not enter into disputed questions of fact, particularly, touching title over immovable properties. I cannot be completely unmindful of the fact that consideration money of Rs. 4,000/- for purchase of a peace of land, within or around municipal area, admeasuring '1 Bigha 14 Katha 6 Dhur' even 1984 appears to be on such lower side as to raise doubt over bonafide of the said transaction, if the same had ever taken place.



11. Reliance placed by Mr. Dronacharya, learned counsel for the petitioners on the decisions of this Court in case of ***Musammat Husanbano*** (supra), ***The State of Bihar vs. Harendra Nath Tiwari*** (supra) and ***Yadunandan Singh***(supra), in my view, is out of context which relate to question of cancellation of *Jamabandi*. The plea has been taken in view of recommendation made for cancellation of *Jamabandi* in question. There is no decision to cancel *Jamabandi*, which is under challenge in the present proceeding, for applying the said decisions of this Court.

12. Similarly, the decision in case of ***Laxman Sahai*** (supra) cannot be a basis for this Court to hold that the petitioners have title over the disputed property. The decision of this Court in case of ***Mt. Bibi Misran*** (supra) is on entirely different footing where right of a *Zamindar* with respect of waste land within his *zamindari* was held to be limited only by statutory, contractual and customary rights of other persons. The Division Bench in the said case observed that in villages when the inhabitants have no established right to trees standing on *Gair Majarua Aam* land they belong to the *zamindar* and he is entitled to deal with them (trees) in such manner as he chooses so long as he does not interfere with the customary rights of the villagers. It is evident from the very opening sentence of the said judgment that it arose out of a suit to



recover damages from the opposite party in respect of the usufructs of the palm trees standing in plots which were recorded in the record of rights as *Gair Majarua Aam* lands. The said decision does not support the petitioners' case at all. In any case, the decisions arise out of title suit. The petitioners may seek declaration of their title in a properly framed suit. This court in a proceeding under Article 226 of the Constitution cannot make any such declaration.

13. As has been noticed hereinabove, the petitioners rest their claim on revenue records. The contention is wholly misconceived. Entries made in the revenue records do not confer title to a property nor do they have any presumptive value on the title. The revenue records enable the person in whose favour mutation is recorded, to pay the land revenue in respect of land in question, the Supreme Court has held in case of ***Sawarni (Smt.) vs. Inder Kaur & Ors.*** reported in ***(1996) 6 SCC 223***. Similar view has been taken by Supreme Court in case of ***Bhimabai Mahadeo Kambekar vs. Arthur Import and Export Company & Ors.*** reported in ***(2019) 3 SCC 191***, ***Narasamma & Ors. vs. State of Karnataka & Ors.*** reported in ***(2009) 5 SCC 591*** and ***Balwant Singh vs. Daulat Singh*** reported in ***(1997) 7 SCC 137***.



14. Relying on the abovenoted decisions, the Supreme Court has recently reiterated in the judgment dated 16.10.2019 in case of *Prahalad Pradhan & Ors. vs. Sonu Kumar and Ors. (Civil Appeal No. 5919 of 2011)* that revenue records do not confer title to a property nor do they have any presumptive value and they only enable a person in whose favour mutation is running, to pay the land revenue in respect of land in question.

15. In view of the above discussions, I am not inclined to entertain petitioners' claim in this writ application, which is dismissed accordingly. The petitioners shall be at liberty to approach the competent court of civil jurisdiction for resolution of their dispute. It is made clear that any observation made in the present judgment and order shall not prejudice either of the parties and it shall not be taken as an expression of this Court's opinion over the merit of petitioners' claim of title in respect of disputed land.

16. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

Rajesh/-

AFR/NAFR	NAFR
CAV DATE	11.07.2019
Uploading Date	26.10.2019
Transmission Date	NA

