

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.723 of 2019

In
Civil Writ Jurisdiction Case No.4235 of 2017

=====

Lakshmi Prasad Nayak S/o Late Ramyash Nayak resident of mohalla-
Adarsh Nagar, Ward No. 16, Police Station and District Araria.

... .. Appellant/s

Versus

1. The State of Bihar
2. The Collector Araria
3. The Additional Collector Araria
4. The Sub Divisional Officer Araria
5. The Anchal Adhikari Block- Araria within the District of Araria

... .. Respondent/s

=====

Appearance :

For the Appellant/s	:	Mr. D.K. Sinha, Senior Advocate
		Mr. Rama Nand Poddar, Advocate
For the Respondent/s	:	Mr. Fakhruddin Ali Ahmad, A.C. to A.A.G.-12

=====

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 23-07-2019

I.A. No. 1 of 2019

Having heard learned Counsel for the parties, we
are satisfied that the delay has been sufficiently explained. The
delay condonation application is allowed. The appeal shall be
treated to be within time.



L.P.A. No. 723 of 2019

Heard Shri Sinha, learned Senior Counsel for the appellant.

The challenge raised in this appeal is to the direction given by the learned Single Judge in the second last paragraph of the impugned judgment dated 15th April, 2019.

The same is extracted hereinunder:-

11. In the facts and circumstances of the case, the Additional Collector, Araria is directed to issue a fresh show cause notice to the petitioners, disclosing the materials, which are the basis for him to form an opinion that *Jamabandi* created in the name of the petitioners deserve to be cancelled. Such a notice must be issued within one month from today. The petitioners shall themselves collect the notice from the office of the Additional Collector within two weeks thereafter for the purpose of filing their respective replies. The Additional Collector shall thereafter proceed in the matter, in accordance with the provision under the Act and the Rules framed thereunder, if any.

12. These writ applications are allowed with the direction and observation, as noted above. ”

Inviting the attention of this Court to Section 9 of the Bihar Land Mutation Act, 2011, Shri Sinha submits that once the learned Single Judge had concluded that the notice was



deficient, a direction could have been only issued to the authority to proceed in accordance with law. The direction, therefore, to the appellant to receive and collect the notice from the office of the Additional Collector, Araria is a direction beyond jurisdiction, inasmuch as that would be dependent upon only if the Additional Collector chooses to proceed in the matter on a prima facie satisfaction of the material to support the issuance of notice. Shri Sinha, therefore, submits that this discretion which is yet to be exercised by the Additional Collector, cannot be forced upon the appellant by virtue of a mandamus and, consequently, the direction issued by the learned Single Judge is not in consonance with law. He, therefore, submits that the petition ought to have been disposed of with liberty to the authority to proceed in accordance with law.

Section 9 of the Bihar Land Mutation Act, 2011, is extracted hereinunder:-

“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.

(2) The jamabandi shall not be cancelled under sub-section (1) without giving reasonable opportunity to the parties, having interest in that jamabandi, of being heard.

(3) Any person, having interest in a land or a part thereof, of any jamabandi may file a petition in the prescribed manner for the cancellation of the jamabandi before the Additional Collector in whose jurisdiction the land or a part thereof is situated.

(4) The Additional Collector, in whose jurisdiction the land or a part thereof of the jamabandi is situated, on a petition filed for the cancellation of the jamabandi or on reference from a Government Department which has an interest in the land or a part thereof or suo motu, may initiate proceedings for cancellation of the jamabandi by issuing notice to persons having interest in the jamabandi.

(5) The Additional Collector in whose jurisdiction the land or a part thereof in the jamabandi is situated, after enquiry either by himself or by an officer authorized by him in this behalf, shall pass such order as he deems fit.

(6)(a) An Appeal against the order of the Additional Collector shall lie with the Collector of the district within thirty (30) days of the order appealed



against.

(b) The Collector of the district may condone the delay in filing appeals provided he is satisfied that there are sufficient reasons for the delay.

(c) The Collector of the district shall not pass any order modifying, altering or setting aside the order appealed against unless the concerned parties have been given a reasonable opportunity of being heard.

(7)(a) An application for revision may be filed before the Commissioner of the Division by any person aggrieved by an order of the Collector of the district within 30 days from the date of such order.

(b) The Divisional Commissioner may condone the delay in filing of application for revision provided he is satisfied that there are sufficient reasons for the delay.

(c) The Divisional Commissioner may on an application made to him on this behalf or for the purposes of satisfying himself as to the legality or propriety of any order made under this Act or the rules made thereunder by an officer or authority, call for and examine the records of any case pending before or disposed of by such officer or authority and pass such order as he deems fit.

(d) The Divisional Commissioner shall not pass any order modifying, altering or setting aside an order of any authority or officer unless the concerned parties have been given reasonable opportunity of being heard.”

A perusal thereof clearly indicates that the Additional Collector for the purpose of enquiry can issue notice



to persons having interest in the Jamabandi. The notice has been found to be deficient by the learned Single Judge on account of want of material particulars. The Additional Collector, therefore, even otherwise has the authority in law to issue a fresh show cause notice in the event he finds that there was material sufficient enough to proceed against the appellant.

In our opinion, what the learned Single Judge has intended to convey is that the Additional Collector shall form his opinion and then issue a notice for the purpose of proceeding in the matter. It appears that the learned Single Judge had made it doubly sure that proceedings do not get lost in the way on account of non-service of notice and, therefore, compelled the petitioners to receive the notice themselves.

In our opinion, receiving of the notice will not denude the appellant from questioning the correctness or otherwise of the notice issued by the Additional Collector which is open to challenge by them in accordance with law in case they choose to contest the same.

We, therefore, dispose of this appeal with a direction that the appellants will appear before the Additional Collector Araria on 26th of August, 2019 and it shall be open to the Additional Collector, Araria, to proceed with the matter in



accordance with law.

The appeal is accordingly disposed of.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

K.C.Jha/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	29.07.2019
Transmission Date	N.A.

