

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18048 of 2016

Richesh Anand son of Lakshmi Prasad Nayak, resident of mohalla- Adarsh Nagar, Ward No. 16, Police Station and District Araria.

... .. Petitioner/s

Versus

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

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 4235 of 2017

Lakshmi Prasad Nayak son of late Ramyash Nayak, resident of mohalla- Adarsh Nagar, Ward No. 16, Police Station and District Araria.

... .. Petitioner/s

Versus

1. The State of Bihar
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 :

(In Civil Writ Jurisdiction Case No. 18048 of 2016)

For the Petitioner/s : Mr. D.K.Sinha, Sr. Advocate
Mr.Rama Nand Poddar

For the State : Mr.Sajid Salim Khan-SC-25

(In Civil Writ Jurisdiction Case No. 4235 of 2017)

For the Petitioner/s : Mr. D.K.Sinha, Sr. Advocate
Mr.Rama Nand Poddar

For the State : Mr.Raj Kishore Roy-GP-18
Mr. Abhay Kumar Kashyap, AC to GP 18

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT AND ORDER

Date : 15-04-2019

These two cases have been heard together and are
being disposed of by the present common judgment and order,



since they involve similar issues and disputes of similar nature.

2. These writ application have been filed, challenging the initiation of *jamabandi* cancellation proceeding with registration of *Jamabandi* Cancellation Case No. 221/2016-17 and issuance of notice to these petitioners, on the ground that the notice itself is beyond jurisdiction since the notice does not disclose the mandatory requirement, as contemplated under Section 9 of the Bihar Land Mutation Act, 2011 (for short 'the Act') for initiation of an action for cancellation of *Jamabandi*.

3. Section 9 of the Act contemplates that 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'. Sub-section (1) further requires that the Additional Collector, in whose jurisdiction the land is situated, may, after giving reasonable opportunity to the parties concerned to appeal, 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.



4. Mr. D.K.Sinha, learned Senior Counsel, appearing on behalf of the petitioners, in both the cases, has submitted that the notice does not indicate that the *Jamabandi*, which was created in favour of the petitioners, was in violation of any law for the time being in force or the same was in contravention of any executive instruction issued in this behalf. He has also submitted that the *Jamabandi* had been rightly created in conformity with the decision of the Additional Collector, Purnia dated 31.10.1969 in a proceeding under Section 108A of the Bihar Tenancy Act, 1885 in Case No. 6702 of 1964-65 on a petition for correction of entries in record of rights in respect of Khata No. 388, appertaining to Mouza Hadiya, Thana No. 196. The order-sheet of the said proceeding has been brought on record by way of Annexure-2 to the writ applications. My attention has been drawn to the operative portion of the said order dated 31.10.1969 which reads thus:-

“ इस कोर्ट को खतियान में बोनोफाइड मिस्टेक देखना है और जितना रकवा का पर्चा बना है उतना रकवा का खतियान भी बना है। प्र . वि. प. का प्रतिवेदन भी है कि खतियान के अलावे जमीन बिहार सरकार के नाम से होना चाहिए। पुराना खतियान भी चरीरमना, गैरमजरुआ मालिक है। अतः आदेश दिया जाता है कि खेसरा नं. 1033 का अधिक रकवा जो 83 ए. से अधिक है यानि (132 ए. 30 डी. घटाव



83 ए.) 84 ए. 30 डी./ 49 उनचास ए. तीस. डि.
के नया खेसरा खाता नं . देकर बिहार सरकार के
खाता में दर्ज किया जाय। आवेदक का खतियान ज्यों
का त्यों रहेगा।" (emphasis added)

5. Referring to the said order, the learned Senior Counsel has argued that these petitioners are concerned with 83 acre of land, as referred to in the said order dated 31.10.1969 and they are not at all concerned with the rest of the land admeasuring 49 acres 30 decimals. He has submitted that the petitioners are purchasers of the lands covered by the said 83 acres as indicated in the order dated 31.10.1969.

6. Mr. Sajid Salim Khan, learned SC-25, appearing for the State of Bihar, has drawn my attention to the counter affidavit filed in this case in I.A.No. 9987 of 2016 and has submitted that the Additional Collector has initiated proceeding for cancellation of *Jamabandi* after having received report/material from the Sub-Divisional Officer, Araria, Circle Officer and Anchal Amin to the effect that the lands which were held to be belonging to the State of Bihar by order dated 31.10.1969 on which reliance is being placed on behalf of the petitioners, also form part of the *Jamabandi* created in favour of the petitioners. According to him, the report of the Sub-Divisional Officer in this regard is specific and, therefore, the



petitioners, instead of approaching this Court against the show cause notice, ought to have responded to the show cause by asking the relevant documents from the Additional Collector. He has argued that since the petitioners ought not to have approached this Court against issuance of notice itself, which cannot be said to be lacking in jurisdiction. He has also argued that since the petitioners have alternative statutory alternative remedy, these writ applications under Article 226 of the Constitution of India should not be entertained.

7. In reply, Mr. Sinha, learned Senior Counsel, appearing on behalf of the petitioners, has relied on a Supreme Court decision reported in **(1998) 8 SCC 1 (Whirlpool Corporation Vs. Registrar of Trade Marks Mumbai and others)**, to contend that availability of alternative remedy is not a bar for this Court to entertain a writ application. He has secondly submitted that if an order is absolutely beyond jurisdiction, this court must interfere with at the stage of issuance of notice itself, else it will cause serious prejudice.

8. I have carefully perused the impugned show cause notice dated 14.10.2016, issued by the Additional Collector. In the show cause notice, he has simply recorded that he has received a recommendation from the S.D.O. Araria for



cancellation of *Jamabandi*. The notice further indicates that a date has been fixed for hearing in this regard. On the said ground, the petitioners have been directed to appear before him along with the relevant records/evidence

9. This is to be noticed that the matter was earlier taken up by this court on 25.01.2017, when this Court had stayed the operation of show cause notice dated 14.10.2016.

10. In my opinion, language of sub section (1) of Section 9 of the Act is clear and unambiguous. The power of initiation of a proceeding for cancellation of *Jamabandi* apparently vests in the Additional Collector, but such power can be exercised only if he is satisfied that a *Jamabandi* 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. As a natural corollary, a notice issued under Section 9(1) of the Act for cancellation of *Jamabandi* must disclose specific *prima facie* opinion of the Additional Collector that the *Jamabandi* created in favour of a person is in violation of any law or is in contravention of any executive instruction, as indicated in the said provision. The notice apparently does not indicate as to which law had been violated and which executive instruction had been contravened while creating *Jamabandi* in favour of the



petitioners. It just refer to the report of the Sub-Divisional Officer and it does not disclose even an application of mind of the Additional Collector on the report so submitted by the Sub-Divisional Officer. In such circumstance, the submission made on behalf of the petitioners that the Additional Collector has not acted in a manner as prescribed under Section 9(1) of the Act before initiation of the proceeding for cancellation of *Jamabandi*, deserves to be sustained. Secondly, when the provision requires that the parties are given a reasonable opportunity to appeal, adduce evidence and be heard, it, by implication, contemplates that the notice must be clear, capable of being dealt with by the parties concerned. Since the notice, in my opinion, cannot be said to have been issued in conformity with the provision under Section 9(1) of the Act, the same deserves to be set aside and is accordingly set aside.

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.

HR/-

(Chakradhari Sharan Singh, J)

AFR/NAFR	AFR
CAV DATE	Nil
Uploading Date	26. 04.2019
Transmission Date	

