

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20697 of 2019

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Rabindra Singh Son of Late Sheo Gulam Singh, Resident of Village-Jethian,
Post-Jethian, P.S.-Atri, District-Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar through the Collector, Gaya.
2. Additional Collector, Gaya, District-Gaya.
3. Anchal Adhikari, Mohra, Anchal-Mohra, P.S.-Atri, District-Gaya.
4. Birendra Singh, Son of Late Ram Gulam Singh, Resident of Village-Jethian,
Post-Jethian, P.S.-Atri, District-Gaya.
5. Vinay Kumar Singh, Son of Late Arjun Singh, Resident of Village-Jethian,
Post-Jethian, P.S.-Atri, District-Gaya. At present resident of Village-Chiraili,
Post-Chiraili, P.S. Kasma, District-Aurangabad.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Praveen Prakash
For the Respondent/s : Mr.Sajid Salim Khan (Sc25)

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

3 19-12-2019 Heard both sides.

2. Petitioner filed this writ petition for quashing the orders dated 16.04.2019 and 28.06.2019 (Annexure 1) and the notice issued by the Additional Collector, Gaya for cancellation of Jamabandi in the name of petitioner.

3. Learned counsel for the petitioner submits that under section 9 of the Mutation Act, 2011, the Additional Collector is vested with power either suo motu or on an application to make enquiry 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 instructions issued in



this behalf. The Additional Collector after such enquiry may issue notice to the person in whose name Jamabandi is standing but the Additional Collector did not state any reason in the order or in the notice issued to the petitioner for cancellation of Jamabandi. Therefore, the order passed in Jamabandi Cancellation Case No.11/2019-20 pursuant thereto the notice issued to the petitioner does not disclose any reason whether Jamabandi in the name of petitioner was created either in violation of any law for the time being in force or in contravention of any executive instruction issued in this behalf. Therefore, the order as well as the notice is illegal and not sustainable.

4. Learned counsel for respondent no.4 on whose instance the notice for cancellation of Jamabandi has been issued submits that it is not necessary that the Additional Collector shall state the reasons in the notice for cancellation of Jamabandi standing in the name of a person. It is further submitted that Jamabandi was earlier standing in the name of respondent no.4 but the Circle Officer on the petition of the petitioner got his name mutated without giving any notice to respondent no.4. Therefore, respondent no.4 filed petition before the Additional Collector for cancellation of Jamabandi.



5. The only question arises for consideration whether the Additional Collector before issuance of notice is legally bound to state the grounds and the reasons found during the preliminary enquiry about cancellation of Jamabandi standing in favour of a person or whether the Additional Collector can cancel Jamabandi opened in the name of a person in violation of any law for the time being in force or in contravention of any executive instruction issued in this behalf?

6. Section 9(1) of the Mutation Act, 2011 reads as follows:-

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.

7. On bare perusal of the provisions, it is evident that it contains two parts. The Additional Collector either suo motu or on an application on behalf of any person shall have the power to make enquiry in respect of any Jamabandi which has been created (i) in violation of any law for the time being in



force or (ii) in contravention of any executive instruction.

8. The provision mandates the Additional Collector to hold preliminary enquiry whether any Jamabandi was created in violation of any law for the time being in force or against the executive instruction issued in this behalf. The scope of enquiry is limited. The Additional Collector cannot hold any enquiry with regard to any Jamabandi standing in the name of a person without giving notice to the person in whose name earlier Jamabandi was standing. The power of cancellation of Jamabandi is vested with the Additional Collector only on two grounds; firstly Jamabandi was opened in violation of any law and secondly in contravention of any executive instruction. If both conditions are not fulfilled, the Additional Collector is not at all empowered to cancel Jamabandi standing in the name of a person without giving any notice to the person in whose name Jamabandi was standing.

9. From perusal of the records, I find that the Additional Collector has not stated any reason for initiation of cancellation of Jamabandi in his order nor disclosed any reason for issuance of notice to the petitioner. Therefore, the orders as well as the notice for cancellation of Jamabandi are fit to be quashed.



10. Accordingly, this writ petition is allowed. The orders dated 16.04.2019 and 28.06.2019 (Annexure 1) and the notice issued thereupon are quashed with liberty to the Additional Collector that if the conditions for initiation of Jamabandi cancellation case are existing, the Additional Collector may initiate a fresh Jamabandi cancellation case after stating the grounds for such cancellation.

(Prabhat Kumar Jha, J)

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