

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 24801 of 2019

Harihar Choudhary, (Male) aged about 68 years, Son of Late Raghuni Choudhary At resident of Village- Sahabajpur, Post- Habib Nagar, P.S.- Hussainganj, District- Siwan (Bihar), Pin Code- 841226.

... .. Petitioner/s

Versus

1. The State of Bihar, through Principal Secretary, Bihar Revenue and Land Reforms Department at New Secretariate, Bihar, Patna.
2. The District Collector Siwan, District- Siwan.
3. The District Additional Collector Siwan, District- Siwan.
4. The Deputy Collector Land Reforms, Siwan Sadar, District- Siwan.
5. The District Sub- Divisional Officer Siwan, District- Siwan.
6. The Circle Officer at Block- Hussainganj, District- Siwan.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Satish Kumar, Advocate
For the State	:	Mr. Rakesh Kumar Shrivastava, AC to GP 15

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL JUDGMENT

Date : 12-12-2019

Heard learned counsel for the petitioner and learned AC to GP 15 for the State.

2. The petitioner has moved the Court for the following reliefs:

“1. That this writ application is being preferred for issuance appropriate writ/writs, order/orders, direction/ directions , relief/reliefs in nature of certiorari for the quashing of passed order dated 08.07.19 by learned court of Additional Collector, Siwan in the cancellation of Jamabandi Case No. 32 of 2018-19 State Versus Sewak Ahir. Present Harihar Choudhary and the petitioner is seeking relief on following grounds:



(i) For that aforesaid Jamabandi no. 41 was created in the name of the petitioner's ancestral namely Sewak Ahir at village of Shahbajpur of Thana no. 221 of pertaining khata no. 43, Plot no. 458, total land area is 0.15.1 (Fifteen Khatas, one Dhur land) and aforesaid rewrite of land is situated in register-II in year 1963-64 of this petitioner's property.

(ii) For that petitioner's ancestral namely Sewak Ahir of his obtained or settled or huknama or patta Gairmazarua malik land since 1932 of this khata no. 43, plot no. 458 area 0.15.1 (Fifteen Khatas, one Dhur land) from Gairmazarua Malik land of ex-land holder namely Raj Govind Tiwary and Bake Bihari Tiwari or Hari Kishore Tiwari.

(iii) For that the petitioner has also filed title suit no. 201 of 2016 before learned court of Sub-Judge-V, Siwan for this title disputes of this Gair Majarua land of Pertaining khata no. 43, plot no. 458 area is 0.15.1 (Fifteen Khatas, one Dhur land) and this against issued notice in encroachment case no. 3 of 2015-16."

3. The grievance of the petitioner is that despite the land in question having been settled with him by the ex-landlord and *Jamabandi* also opened in the name of his grandfather in the year 1963-64, under an anti encroachment drive, a proceeding for cancellation of the said *Jamabandi* was initiated by the authorities under *Jamabandi* Cancellation Case No. 32 of 2018-19, in which, by order dated 08.07.2019, his *Jamabandi* was also cancelled. It was submitted that the said order is based on *non est* grounds and moreover, in Title Suit No. 201 of 2016 (CIS Registration No. 255 of 2016), filed by the petitioner, which is pending before the Sub



Judge-V, Siwan, by order dated 01.10.2016, there is an interim order restraining both the parties with respect to changing the nature of construction already existing over the suit land, either by further construction or destruction, till submission of show cause by the defendants and final hearing upon that. It was submitted that the said interim order is continuing and the case is pending due to non cooperation by the authorities.

4. Learned counsel for the State submitted that in terms of the statutory provisions, the petitioner has remedy under Section 14 of the Bihar Land Mutation Rules, 2012, which provides for appeal to the Collector of the District within 30 days.

5. Learned counsel for the State submitted that as the District Magistrate, Siwan is a defendant in the title suit, the Court may protect the petitioner's interest subject to the final outcome of the title suit, as ultimately it is only the Civil Court which can go into matters of right, title and interest.

6. Having regard to the aforesaid, the Court finds that the stand taken by learned counsel for the petitioner, to the extent that ultimately it is only the Civil Court of competent jurisdiction which can adjudicate matters relating to right, title and interest, and when the petitioner has already filed Title Suit No. 201 of 2016 (CIS Registration No. 255 of 2016), which is pending and in



which the State authorities, including the Collector, Siwan is a defendant, with regard to the property in question, is correct.

7. Accordingly, the writ petition stands disposed off with the observation that in terms of the final judgment passed in the title suit, the issue of *Jamabandi* shall be considered by the authorities concerned.

8. In the meantime, if the petitioner finds that there is violation of the interim protection given to him in the suit on 01.10.2016, it is always open to him to move the Court concerned for taking appropriate action against the party which violates such order.

9. The Court would only observe that the official respondents are required to cooperate in the title suit to ensure that the same is disposed off expeditiously without any undue delay.

(Ahsanuddin Amanullah, J.)

P. Kumar

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