

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6222 of 2017

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1. Balmiki Prasad S/o Late Bhatu Mahto,
 2. Awadesh Prasad @ Bachchu Prasad, S/o Late Bhatu Mahto, Both R/o Village- Tilaiyan, P.O.- Pathora, P.S.- Chhabilapur, Rajgir, District- Nalanda.
- Petitioners

Versus

1. The State Of Bihar
2. The Principal Secretary, Road Construction Department, Bihar, Patna.
3. The District Magistrate, Nalanda.
4. The District Land Acquisition Officer, Nalanda.
5. The Sub-Divisional Officer, Rajgir, Nalanda.
6. Circle Officer, Rajgir, Nalanda.

... .. Respondents

Appearance :

For the Petitioners	:	Mr.Mrigank Mauli (Sr. Advocate) with
	:	Mr.Prince Kumar Mishra (Advocate)
	:	Mr.Sanjay Kumar (Advocate)
For the Respondents	:	Mr.Sajid Salim Khan (SC 25)

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 27-10-2021

Whether a High Court exercising power of judicial review under Article 226 of the Constitution of India can enter into the question of ownership or title in respect of any immovable property and whether the entries in revenue records confer a title on a person(s) are the two main issues which require to be addressed by this Court in the present proceeding. Both the issues are no more *res integra* and have been conclusively decided by the Supreme Court in negative in a series of decisions.



2. Reference shall be made to the law laid down by the Supreme Court on these issues later after taking note of the nature of relief sought for by the petitioners and rival pleadings and materials brought on record by the contesting parties in that regard.

3. I have heard Mr. Mrigank Mauli, learned Senior counsel appearing on behalf of the petitioners assisted by Mr. Prince Kumar Mishra and Mr. Sanjay Kumar, learned Advocates. Mr. Sajid Salim Khan, learned SC 25 has assisted this Court on behalf of the State of Bihar.

4. The land, which is subject matter of dispute, has been described as Khata No. 74, Khesra No. 53 falling in Mauza-Barhari, Thana No. 481 in the District of Nalanda admeasuring 1.95 acres. The said land has been transferred by the Divisional Commissioner, Patna by way of inter departmental transfer to Road Construction Department, Government of Bihar, among other lands (3.325 acres) for construction of Rajgir-Bypass Road, treating the same to be *Gair-Mazarua Thikedar Parti Kadim* Government land. The petitioners want, on the basis of the pleadings and photo-stat copies of the documents annexed with the writ petition and supplementary affidavits, a declaration from this Court that they have title and possession over the said land. After



such declaration, the petitioners are seeking from this Court a direction for publication of notification in terms of Section 11 and Section 19 of the Right to Fair Compensation and Transparency in Land Acquisition/Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the New Act); preparation of award in terms of Section 23 of the New Act and; for payment of compensation in lieu of acquisition of the land. The petitioners have been informed, vide Letter No. 1528 dated 26.09.2016, issued by the Land Acquisition Officer, Nalanda that the land in question was in the nature of *Gair-Mazarua Thikedar* and, therefore, a Government land. The said communication dated 26.09.2016 is sought to be challenged by seeking amendment through I.A. No. 01 of 2021. This is to be noted that during the pendency of this application, the Circle Officer, Rajgir has recommended to the Additional Collector, Nalanda for cancellation of *jamabandi* created in favour of these petitioners. The said communication dated 31.12.2020 is also sought to be challenged in the present proceeding by seeking amendment through the said I.A. No. 01 of 2021 on the ground that it is impermissible for the Additional Collector, Nalanda to cancel long standing *jamabandi* in favour of the petitioners in a summary proceeding.

5. It is the petitioners' case as pleaded in the writ application and other pleadings on record that by virtue of a



Hukumnama executed by the then *Zamindar* Saiyad Shah Masud Ahmad on 24.03.1945 in favour of the petitioners' father Bhatu Mahto, he was considered as one of the *Raiyats*. The land was originally recorded as *Gair-Mazarua Thikedar* and when the intermediaries interest vested in the State of Bihar, the ex-intermediaries filed return and declared the grandfather of the petitioners' Bulak Mahto as one of the *Raiyats* and *Jamabandi* was created in his favour. Subsequently, his name was included in register of payment under the State of Bihar and rent was realized from him. A copy of the said *Hukumnama* has been brought on record by filing second supplementary affidavit on 31.10.2018. It is the petitioners' case that rent was being realized from their father, who was put in possession for a total area of 9.5 acres. The petitioners have brought on record photo-stat copies of the rent receipts. Through Mutation Case No. 58/7 (27) 1965-66 name of father of the petitioners namely Bhatu Mahto was entered into the *Khatian* and the land was mutated in his favour. Further, through Mutation Case No. 1/7 (27) 1973-74, the land was mutated in favour of the petitioners. *Jamabandi* No. 122/B and *Jamabandi* No. 123/B were created in favour of the petitioners pursuant thereto. The rent receipts were issued in the name of the petitioners and they continuously paid rent to State. The petitioners have



asserted that it is evident from the order sheet of the Mutation Case No. 1/7 (27) 1973-74 that prior to mutation in favour of the petitioners, the land of Khata No. 74, Khesra No. 53 stood in the name of petitioners' father. A copy of the communication dated 03.04.1995 made by the Circle Officer, Rajgir addressed to the Sub-Divisional Officer, Rajgir is also being relied upon in support of the petitioners' case that the Circle Officer had found *jamabandi* created in the names of these petitioners on the basis of *jamabandi* register.

These are the foundational facts which the petitioners assert, while seeking a declaration from this Court that they have the title and possession over the land in question.

6. Indisputably, the Revenue and Land Reforms Department, Government of Bihar came out with a notification dated 30.12.2013 for acquisition of certain lands under Section 4 of the Land Acquisition Act, 1894 (for short Old Act) for the purpose of construction of Rajgir-Bypass Road. The land in question did not figure in the said notification, though the concerned Khesra No. 53 has been described to be on the boundaries of the land proposed to be acquired under the Act. The land was not included apparently because the respondents were of the view that the same was Government land, which was required



to be transferred by way of inter departmental transfer for construction of the said Rajgir-Bypass Road.

7. It is the case of the State of Bihar on the other hand that though part of the land appertaining to Khata No. 74, Khesra No. 53 was acquired in the said project but the disputed land was excluded from notification, as during the enquiry, the land was found as *Gair-Mazarua Thikedar* recorded in cadastral *Khatian* and the lands of such nature were acquired for the said project by inter departmental transfer under a well established process. Neither *jamabandi* of the said land was running nor the same was declared *Raiyati* by a competent authority. Altogether, acquirable 9 plots admeasuring area 9.338 acres recorded as *Gair-Mazarua Thikedar* in cadastral *Khatian* were reported to the Requisitioning Officer to take proper steps for transfer of the land, for the project vide Letter No. 971 dated 18.09.2019 issued under the signature of the District Land Acquisition Officer, Nalanda (Respondent No. 4). Thereafter a proposal was prepared on the basis of enquiry report of the concerned revenue *karmachari* clearly mentioning therein that all acquirable 9 plots including plot no. 53 are *Gair-Mazarua Thikedar* and as per records, no *jamabandi* stood in the name of anyone else and that the same was fit to be transferred for the said project. On the basis of the aforesaid proposal and



subsequent recommendation made by the Sub-Divisional Officer, the Divisional Commissioner ordered transfer of the said land for construction of Rajgir-Bypass Road. Controverting petitioners' claim of title on the basis of *Hukumnama* issued by the erstwhile *Zamindar* it has been asserted that the same is not registered and names of the landlords do not tally with the names of the landlords as appearing in the cadastral *Khatian*.

8. In the supplementary counter affidavit filed on behalf of the State of Bihar in response to the second supplementary affidavit filed on behalf of the petitioners, it has been reiterated that as the *Hukumnama* in favour of Bhatu Mahto is not registered and is not supported by the *jamabandi* return, no reliance can be placed upon the said documents. It has further been asserted that the report of the concerned Revenue Authority clearly indicates that no *jamabandi* with respect to plot no. 53 in the name of any person had ever been entered in Register II. In respect of the rent receipts of *fasli* year 1355, 1360 and 1360, it has been stated that the same appear to be fabricated. In response to a statement made in the supplementary affidavit, it has been asserted that the extracts of Register II do not contain the detail of plots rather only Khata No. 74 is mentioned in the *jamabandi* of petitioner no. 2. Further, the report of *Chirkut* No. 163 (R) dated 26.03.2019 goes to show



that no *jamabandi* regarding lands in question is available in the office of Circle Officer, Rajgir.

9. The pleadings of the rival parties on record have been mentioned hereinabove to notice the nature of dispute in respect of the title over the land being claimed by the petitioners and disputed by the respondent State of Bihar.

10. Mr. Mrigank Mauli, learned Senior counsel appearing on behalf of the petitioners has submitted that the respondents cannot dispute the rights vested by the *Hukumnama* as it amounts to unsettling a settlement made by the ex-zamindar nearly hundred years ago, in favour of the predecessor in interest of the petitioners. He contends that the petitioners and his predecessors in interest have remained in possession of the land and have been enjoying the usufructs and have been duly paying their rent to the respondent State for nearly eighty years. In respect of the entry in the survey showing the nature of the land '*Gair-Mazarua Thikedar*' made nearly eighty years back, he has submitted that such entry cannot be treated to be static which changes with time. According to him, presumption of continuity and correctness of entries in *Khatiyas* weakens with the passage of time. Relying on a coordinate Bench decision of this Court dated 28.03.2014 in C.W.J.C. No. 16123 of 2013 (*Maya Devi and Ors.*



v. The State of Bihar and Ors.) he has submitted that validity of long standing *jamabandi* cannot be questioned. Relying on the said decision, he has submitted that when long standing possession of a person is not disputed, the only forum available to the State for cancellation of *jamabandi* is to resort to Civil Court and not in a summary proceeding by a revenue officer of the State. Reliance has also been placed on another coordinate Bench decision rendered in S.A. No. 330 of 1995 (*Kedar Prasad and Ors. v. Sita Ram Yadav and Ors.*) in support of his contention that on the basis of earlier entry in cadastral survey, the correctness of present entry cannot be refuted. In case of conflict between an earlier and a later entry, the record of rights of later entry shall prevail, he has submitted. He has then placed reliance on a Division Bench decision in case of *Khuru Gope and Ors. v. Land Reforms Deputy Collector, Jamui and Ors.* (AIR 1983 PAT 121) to contend that the authorities cannot go behind the settlement made by the ex-landlord in favour of the father of the petitioners and that the revenue authorities do not have the jurisdiction to cancel *jamabandi* and remove the name of the tenants from the tenant register, having the effect of cancelling the settlement made by the ex-intermediaries. Relying on a Division Bench decision in case of *State of Bihar and Ors. v. Harendra Nath Tiwary*, he has



submitted that it is now impermissible for the respondents to cancel *jamabandi* which was originally created in 1945. Reliance has also been placed on coordinate Bench decision reported in **2017 (1) PLJR 818 (*Vijay Kumar Prasad v. The State of Bihar and Ors.*)**. He has placed reliance on another decision rendered on 22.06.2015 in C.W.J.C. No. 4325 of 1993 (***Dinanath Singh and Ors. v. The State of Bihar and Ors.***) (authored by me) in support of his contention that *jamabandi* cannot be cancelled at this stage.

11. Mr. Sajid Salim Khan, learned SC 25 appearing on behalf of the State of Bihar has taken a preliminary objection over maintainability of the writ application mainly on the ground that as it involves the disputed questions of fact in relation to title over land, this Court exercising power of judicial review under Article 226 of the Constitution of India should not entertain the petitioners' claim. He has submitted that the genuineness of the documents on which the petitioners are placing reliance in support of their claim of title in respect of the land itself is under cloud and, therefore, the claim of the petitioners' cannot be entertained on the basis of the statements on affidavits and copies of the documents annexed with the writ application and other affidavits. According to him, in order to establish their title, the petitioners need to establish their case by adducing evidence before a



competent Civil Court. He has relied on a Division Bench decision of this Court rendered on 15.12.2015 in L.P.A. No. 34 of 2015 (*State of Bihar and Ors. v. Chandrabanshi Singh and another analogous case*) wherein it has been laid down that proceeding under Article 226 of the Constitution of India is not an appropriate proceeding for adjudication of disputes relating to title. He has further contended that the acquisition proceeding for acquisition of land for the purpose of construction of road had begun in 2013. The petitioners' land was apparently not notified for acquisition under Section 4 of the Old Act, for the apparent reason that the land was treated to be Government land from the very beginning. The petitioners did not raise any objection at that stage claiming acquisition or payment of compensation for acquisition of the land in question. He has placed reliance on a Supreme Court's decision in case of *A.P. Industrial Infrastructure Corpn. Ltd. v. Chinthamaneni Narasimha Rao & Ors.* dated 15.09.2011 rendered in Civil Appeal Nos. 304-305 of 2005 in support of his contention.

12. On the basis of the pleadings on record and submissions advanced on behalf of the petitioners, it is apparent that their claim is founded on a *Hukumnama* said to have been executed by ex-landlord and subsequent mutation in favour of



their father Bhatu Mahto in Mutation Case No. 58/7 (27) 1965-66. Copy of the said *Hukumnama* has been brought on record by way of Annexure P/18 to the second supplementary affidavit filed on behalf of the petitioners in this case. A photo-stat copy of the certified copy of the order sheet of Mutation Case No. 58/7 (27) 1965-66 has been brought on record by way of Annexure P/2 to the writ application. In the present writ proceeding under Article 226 of the Constitution of India, this Court did not have the occasion to duly appreciate and discern the contents of the said *Hukumnama*, considering the language used therein. Further, the respondents have seriously doubted the correctness of the document in their pleadings.

13. On perusal of the order sheet of Mutation Case No. 58/7 (27) 1965-66, I notice that the first order is of 15.12.1966 which required issuance of notice to the general public for filing objection by a pre-date i.e. '12.01.1966', which was certainly an impossibility. I would have treated mentioning a pre-date in the order sheet to be a clerical error. But even the next date mentioned in the order sheet i.e. '14.02.1966' on which final order was passed makes genuineness of the document suspicious.

14. Further, in the said order dated 14.02.1966, it has been mentioned that the land in question was in the name of father



and mother of the applicant for mutation. In the absence of any objection, the Circle Officer is said to have allowed the application for mutation. It is peculiar to note that, on the one hand, the petitioners have stated in the writ petition that the *Zamindar* had executed *Hukumnama* in favour of petitioners' father Bhatu Mahto and according to them, *Zamindar* had filed his return and declared father of said Bhatu Mahto viz. Bulak Mahto as one of the *Raiyat* under him and it was Bulak Mahto who was recognized as settled *Raiyat* and the rent receipts were issued in his favour and his successors-in-interest.

15. Be that as it may, the dates mentioned in the order sheet of Mutation Case No. 58/7 (27) 1965-66, as noted above, makes the whole document doubtful. The very basis of the petitioners' claim that the mutation was created under order of the Circle Officer in the name of petitioners' father has become suspicious inasmuch as the first order is of 15.12.1956 whereas the subsequent orders are of 14.02.1966 and 16.02.1966. This is one aspect of the matter.

16. Further, from the rival pleadings of the parties which have been noted hereinabove, it can be easily discerned that the respondent State of Bihar has seriously disputed the petitioners' claim of title over the land. I have no hesitation, thus, in reaching a



definite conclusion that this writ application involves disputed questions of fact as regards title.

17. Mr. Sajid Salim Khan has rightly placed reliance on Division Bench decision in case of ***Chandrabanshi Singh*** (supra) wherein it has been clearly laid down in paragraph 27 that a proceeding under Article 226 of the Constitution of India is not an appropriate proceeding for adjudication of disputes relating to title. Whether the petitioner has title and possession over the land in question is a question of fact, on which, great deal of dispute has been raised.

18. In case of ***State of Rajasthan v. Bhawani Singh and Ors.*** reported in (1993) Supp. (1) SCC 306 the Supreme Court has specifically laid down in paragraph 7 as under:-

“7. Having heard the counsel for the parties, we are of the opinion, that the writ petition was misconceived insofar as it asked for, in effect, a declaration of writ petitioner's title to the said plot. It is evident from the facts stated hereinabove that the title of the writ petitioner is very much in dispute. Disputed question relating to title cannot be satisfactorily gone into or adjudicated in a writ petition.”



19. In case of ***M/s Real Estate Agencies v. State of Goa and Ors.*** reported in (2012) 12 SCC 170 the Supreme Court has held in paragraph 16 as under:-

“16. The writ court exercising jurisdiction under Article 226 of the Constitution is fully empowered to interdict the State or its instrumentalities from embarking upon a course of action to the detriment of the rights of the citizens, though, in the exercise of jurisdiction in the domain of public law such a restraint order may not be issued against a private individual. This, of course, is not due to any inherent lack of jurisdiction but on the basis that the public law remedy should not be readily extended to settlement of private disputes between individuals. Even where such an order is sought against a public body the writ court may refuse to interfere, if in the process of determination disputed questions of fact or title would require to be adjudicated.”

(Underlined for emphasis)

20. Similar view has been taken in case of ***D.L.F. Housing Construction (P) Ltd. v. Delhi Municipal Corporation and Ors.*** (AIR 1976 SC 386).

21. In case of ***Suraj Bhan and Ors. v. Financial Commissioner and Ors.*** reported in (2007) 6 SCC 186 the Supreme Court has categorically laid down in paragraph 9;



“.....So far as title to the property is concerned, it can only be decided by a competent Civil Court.....”

22. In case of ***Municipal Corporation Aurangabad v. State of Maharashtra*** reported in (2015) 16 SCC 689, the Supreme Court has laid down in paragraph 14 as under:-

“14. In the present case, we find that a disputed question of fact was raised by the parties with regard to the title over the land in question. The appellant-Corporation on the one hand based its claim of title on payment of amount by depositing it in the court and possession of the land taken pursuant to the agreement reached between the appellant-Corporation and the father of the respondent no.2. On the other hand, the case of the second respondent is that the amount was not deposited by the appellant-Corporation with regard to the land in question. In view of the fact that there is a disputed question of fact, we are of the view that it was not a fit case for the High Court to decide the question of mutation doubting the title in a petition under Article 226 of the Constitution and thereby reversing the concurrent finding of fact by the competent authorities.”

(Underlined for emphasis)



23. For the aforesaid reasons, this writ application as it seeks declaration of title on the basis of facts which are disputed deserves to be dismissed on this ground alone.

24. Further, as has been noted above, the petitioners' claim for this Court to hold title in their favour is based on the entries in the revenue records, particularly creation of *jamabandi* in their favour. It has been consistent view of the Supreme Court that entries in the revenue records do not confer a title. Such entries serve only fiscal purpose i.e. payment of land revenue. No ownership is conferred on the basis of such entries. The title can only be decided by a competent Civil Court. Illustratively, reference in this regard may be made to the Supreme Court's decision in case of ***Smt. Sawarni v. Smt. Inder Kaur and Ors.*** reported in (1996) 6 SCC 223 which had arisen out of a title suit. Setting aside the decision of the first Appellate Court and that of the Second Appeal the Supreme Court has observed that the first Appellate Court was swayed away by the so-called mutation in the revenue record and has held that mutation of a property in the revenue record does not create or extinguish title nor has it any presumptive value on title. It only enables the person in whose favour the mutation is ordered, to pay the land revenue in question.



The Supreme Court reversed the findings of the first Appellate Court and the High Court in the Second Appeal for having not examined the oral evidence adduced in that case at the trial. It is easily culled out from the said decision in case of ***Smt. Sawarni*** (supra) that mutation in the revenue record cannot be conclusive evidence to determine title of a person nor the mutation can have presumptive value on title, even in a suit.

25. In case of ***Suraj Bhan*** (supra) also the Supreme Court has clearly laid down that an entry in revenue records does not confer title on a person whose name appears in record of rights. The Supreme Court reiterated its view, which was expressed in case of ***Suraj Bhan*** (supra) subsequently in case of ***Rajinder Singh v. State of Jammu & Kashmir*** reported in (2008) 9 SCC 368 to the effect that entries in the revenue records are relevant only for fiscal purpose and title and ownership of contesting claimants can be decided by a competent Civil Court in appropriate proceedings. In case of ***Municipal Corporation Aurangabad*** (supra) the Supreme Court has again reiterated the legal position that mutation does not confer any right and title in favour of anyone or other nor cancellation of mutation extinguishes the right and title of the rightful owner.



26. In case of ***Smt. Bhimabai Mahadeo Kambekar (D) Th. LR v. Arthur Import and Export Company and Ors.*** reported in **(2019) 3 SCC 191**, the Supreme Court again reiterated its earlier view that mutation of a land in revenue records does not create or extinguish the title over such land nor has it any presumptive value on the title. It merely enables the person in whose favour mutation is ordered, to pay the land revenue in question. The aforesaid view has been reiterated in a recent Supreme Court's decision in case of ***Jitendra Singh v. State of Madhya Pradesh (2021 SCC OnLine SC 802)***, wherein the Supreme Court taking note of previous decisions has emphasized that entries in the revenue records or *jamabandi* have only "fiscal purpose", i.e., payment of land revenue, and no ownership is conferred on the basis of such entries. The Court has further laid down that so far as title of the property is concerned, it can only be decided by a competent Civil Court.

27. In view of the aforesaid discussions, claim of the petitioners raised before this Court to declare them owners in respect of the land in question on the basis of mutation/*jamabandi* cannot be sustained.

28. Reliance placed by Mr. Mrigank Mauli on the decision of this Court in case of ***Maya Devi*** (supra) is of no help in



view of series of decisions of Supreme Court including the latest one in case of ***Jitendra Singh*** (supra). Further, this case is distinguishable on facts also as genuineness of the order sheet, a copy of which has been brought on record by way of Annexure P/2 of the writ petition, albeit *prima facie*, appears to be doubtful, considering the mentioning of dates of different orders purported to have been passed, as mentioned therein. This goes to the root of the matter as regards petitioners' claim of long standing mutation and *jamabandi*. The decision rendered in case of ***Dinanath Singh*** (supra) on which reliance has been placed by Mr. Mrigank Mauli was entirely in different context. Further, the order which was under challenge in the said proceeding was passed before enactment of the Bihar Land Mutation Act, 2011, which now contains provision for cancellation of a *jamabandi* wrongly created.

29. I am not inclined to entertain any challenge to the proposed action for cancellation of *jamabandi* in question at this stage. It goes without saying that the petitioners shall be at liberty to raise their plea before appropriate forum in accordance with law, if any action is taken or has been initiated.

30. The decisions rendered by this Court dated 23.03.2010 in S.A. No. 330 of 1995 (***Most. Kusum Bala Devi and***



Ors. V. Sita Ram Yadav and Ors), 06.02.2014 rendered in S.A. No. 392 of 2009 in case of **Byasdeo Mandal and Ors. v. Smt. Longi Devi** and 16.11.1951 in A.F.A.D. No. 1342 of 1948 (**Shaikh Banka v. Shaikh Bartul and Ors.**) reliance on which has been placed by Mr. Mrigank Mauli, have no application in the present proceeding under Article 226 of the Constitution of India as all those proceedings arose out of suits presented before a Civil Court of competent jurisdiction. This writ petition involves disputed questions of facts as regards the petitioners' claim of title over the land in question which primarily rests on *Hukumnama*, mutation and *jamabandi*. Further, this case is distinguishable from the cases, on which, the petitioners are placing reliance for the reason that they themselves assert that the land is in possession of the State of Bihar and that the State respondents have taken possession without duly acquiring the petitioners' land. The question of *jamabandi* for the purpose of title as on date has lost its significance. The question, as to whether the petitioners derived title on the basis of *Hukumnama* executed by the *ex-zamindar* in favour of their father is a question of fact which can be decided by a Civil Court in a duly framed suit. Mutation or *jamabandi* cannot confer title even if their case of existence of such mutation/*jamabandi* is accepted for the sake of argument.



31. For the reasons aforesaid, I do not find any merit in this application, which is accordingly dismissed.

32. It goes without saying the parties shall be at liberty to seek declaration of title before a competent Court of civil jurisdiction. On the point of cancellation of *jamabandi*, if any proceeding is initiated, the petitioners shall be at liberty to raise all such plea which, are available to them in accordance with law at appropriate stage.

33. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

AKASH/-

AFR/NAFR	NAFR
CAV DATE	09.09.2021
Uploading Date	27.10.2021
Transmission Date	N/A

