

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1597 of 2020

=====

Dhirendra Kumar Singh Son of Late Deoki Nandan Prasad Singh@Deoki Nandan Prasad Sinha, Resident of Village-Brahmsthan, P.S.-Bariarpur, District-Munger.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Divisional Commissioner, Munger Division, Munger.
3. The District Magistrate-cum-Collector, Munger, District-Munger.
4. The D.C.L.R., Munger, District-Munger.
5. District Public Complaint Redressal Forum, Munger, District-Munger through the Officer, District Public Complaint Redressal Forum, Munger.
6. The Circle Officer, Bariarpur, District-Munger
7. The Officer-in-charge, Bariarpur, P.S.-Bariarpur, District-Munger

... .. Respondent/s

=====

with
Civil Writ Jurisdiction Case No. 13688 of 2019

=====

Yogendra Kumar Singh Son of Late Deoki Nandan Prasad Singh Resident of Village-Brahmsthan, P.S.-Bariarpur, District-Munger

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Divisional Commissioner Munger Division, Munger
3. The D.C.L.R. Munger, District-Munger
4. District Public Complaint Redressal Forum Munger, District-Munger through the Officer, District Public Complaint Redressal Forum, Munger
5. The Circle Officer Bariarpur, District-Munger

... .. Respondent/s

=====

with
Civil Writ Jurisdiction Case No. 2245 of 2020

=====

Kumari Dewhuti @ Prativa Sinha, daughter of - Deoki Nandan Prasad Singh, wife of - Dr. Amrendra Kumar Singh, resident of - K.K. Nursing Home, Raja S.N. College Road, P.S. Kotwali, District- Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar



2. The Divisional Commissioner, Munger Division, Munger.
3. The District Magistrate-cum-Collector, Munger, District Munger.
4. The D.C.L.R., Munger, District- Munger.
5. District Public Complaint Redressal Forum, Munger, District Munger through the Officer, District Public Complaint Redressal Forum, Munger.
6. The Circle Officer, Bariarpur, District- Munger.
7. The Officer-in-charge, Bariarpur, P.s.- Bariarpur, District- Munger.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 1597 of 2020)

For the Petitioner/s : Mr. P.N. Shahi, Senior Advocate
Mr.Sumeet Kumar Singh
Mr. Nikhil Singh
Mrs. Shatakshi Sahay

For the Respondent/s : Mr.Rishi Raj Sinha (Sc19)

(In Civil Writ Jurisdiction Case No. 13688 of 2019)

For the Petitioner/s : Mr. P.N. Shahi, Senior Advocate
Mr.Sumeet Kumar Singh
Mr. Nikhil Singh
Mrs. Shatakshi Sahay

For the Respondent/s : Mr.Raj Kishore Roy (Gp18)

(In Civil Writ Jurisdiction Case No. 2245 of 2020)

For the Petitioner/s : Mr. P.N. Shahi, Senior Advocate
Mr.Sumeet Kumar Singh
Mr. Nikhil Singh
Mrs. Shatakshi Sahay

For the Respondent/s : Mr.Md.Khurshid Alam (Aag12)

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

8 07-11-2022 Heard Mr. P.N. Shahi, learned Senior Counsel for the petitioners assisted by Mr. Sumeet Kumar Singh, Advocate and learned counsel appearing on behalf of the State.

Re: C.W.J.C. No. -1597 of 2020

2. This case has been preferred by the present petitioner challenging the order dated 30.01.2018 passed by the Public Officer, District Public Grievances Redressal Forum, Munger, by which cancellation of Jamabandi existing in the name of the



present petitioner has been ordered with regard to Mauza – Binda Diyara, Tola – Mirza Bahiyar, Thana No. 386, Tauzi No. 1351, Khata No. 519.

3. The said application has been challenged stating that the entire cancellation has been done in a summary proceeding based on the directions passed by the Commissioner, Munger Division, Munger in BLDR Appeal No. 165 of 2012 dated 30.10.2013.

4. It is the case of the present petitioner that the land is situated in Mauza – Binda Diyara, Mirza Bahiyar, Thana No. 386, Tauzi No. 1531, Khata No. 519 and Jamabandi No. 19 of area 31 Acre and 87 decimal of land. In the records, the name of Late Deoki Nandan Prasad Singh has been recorded and the nature of land has been recorded as Gairmajarua Malguzar. It has been submitted that after the partition took place in the family of Late Babu Deoki Nandan Prasad Singh and the present petitioner got share somewhere between before 1955 and rents are being paid since long.

5. The petitioner further relied on the Khatiyani entry of Case No. 1 of 1934 – 35 and so far plot no. 521, 518 and 519 are concerned (Annexure– 1,1/A,1/B,) and submitted that the Khatiyani has been prepared on the basis of possession and



collection of Malguzari and the Khatiyani itself would show that the name of Late Deoki Nandan Prasad Singh has been recorded as Khewat No. 1 and description of the land as Gairmajarua but in the same, it has been recorded as Malguzari, meaning thereby that the land is in possession of Late Deoki Nandan Prasad Singh and Malguzari was being paid by the Jamindar, who was shown himself in possession and Jamabandi is existing since long.

6. A counter affidavit has been filed on behalf of the State stating therein that the nature of the land in question is Gairmajarua Kaishar-e-Hind land and there is finding given in BLDR Case No. 45 of 2011–12 (Amrendra Kumar Singh & Ors. Vs. Amerika Singh & Ors.) in which the DCLR relied on the letter of Land Reforms Department, Patna bearing No. 808/Khas Mahal Policy/14/97-9087/R dated 21.07.1988 that land of Kaishar-e-Hind reveals that in Article 294-A of the Constitution of India, the land of Kaishar-e-Hind prior to implementation of the Constitution of India was of her majesty and after implementation of Constitution of India vested in Union of India or in the State and as per Kandika – 2 of the said letter, there is specific direction that any settlement by the ex-landlord relating to Kaishar-e-Hind land should not be accepted.



7. It has also been urged/stated by the learned counsel for the respondents that the appeal preferred by the Amrendra Kumar Singh & Ors. in BLDR Case No. 165 of 2012 has been dismissed on 30.10.2013 and one case bearing BLT case No. 240 of 2014 has been preferred, which was also dismissed on 14.03.2018.

8. It has also been submitted by the State that thus the claim of the petitioner that in the name will not change the status of the land and the order dated 30.01.2018 passed by the District Public Grievances Redressal Forum is justified in the eye of law.

Re- C.W.J.C. No. -13688 of 2019

9. This case has been preferred by the present petitioner challenging the order dated 30.01.2018 passed by the Public Officer, District Public Grievances Redressal Forum, Munger, by which cancellation of Jamabandi existing in the name of the present petitioner has been ordered with regard to Jamabandi No. 20, existing in Mauza – Binda Diyara, Tola – Jhaua Bahiyar, Thana No. 386, Tauzi No. 1351, Jamabandi No. 20, Plot No. 345, 378, 394, 387, 388, Jamabandi No. 20 (Old) , Area- 7 Acre and 97 Decimal of land. The said application has been challenged stating that the entire cancellation has been done in a summary proceeding based on the directions passed by the



Commissioner, Munger Division, Munger in BLDR Appeal No. 165 of 2012 dated 30.10.2013.

10. It is the case of the present petitioner that Jamabandi No. 20, Plot No. 345, 378, 394, 387, 388, Jamabandi No. 20 (Old), Area- 7 Acre and 97 Decimal of land has been recorded and the nature of land has been recorded as Gairmajarua Malguzar. It has been submitted that after the partition took place in the family of Late Babu Deoki Nandan Prasad Singh and the present petitioner got share somewhere between 1955 and after the partition was acted upon and the present petitioner got the name mutated at the time of vesting of the Jamaindari and rents are being paid thereafter since long.

11. Similar matter has been taken upon merits along with other cases, which are identical in nature.

12. Learned counsel for the State submitted that the order dated 30.01.2018 has been passed by the Public Grievances Reseal Officer, Munger (Annexure-7) is in accordance with law and does not require interference by this Court.

Re- C.W.J.C. No. -2245 of 2020

13. The present case has been preferred for setting aside the order dated 30.01.2018 passed by the Public Officer, District Public Grievances Redressal Forum, Munger, by which



cancellation of Jamabandi existing in the name of the present petitioner has been ordered with regard to Jamabandi No. 22, existing in the name of the present petitioner, situated in Mauza – Binda Diyara, Tola – Mirza Bahiyar, Thana No. 386, Tauzi No. 1351, Khata No. 519, area 31 Acre and 87 Decimal. The said application has been challenged stating that the entire cancellation has been done in a summary proceeding based on the directions passed by the Commissioner, Munger Division, Munger in BLDR Appeal No. 165 of 2012 dated 30.10.2013.

14. It is the case of the present petitioner that the land is recorded initially in the name of Late Deoki Nandan Prasad Singh as Gairmajarua Malguzar. It has been submitted that after the partition took place in the family of Late Babu Deoki Nandan Prasad Singh, the present petitioner got share somewhere in the year 1955 and the present petitioner got the name mutated and rents are being paid since long.

15. In the counter affidavit, the State has submitted the nature of the land in question is Gairmajarua Kaishar-e-Hind land and there is finding given in BLDR Case No. 45 of 2011 – 12 (Amrendra Kumar Singh & Ors. Vs. Amerika Singh & Ors.) in which the DCLR relied on the letter of Land Reforms Department, Patna bearing No. 808/Khas Mahal Policy/14/97-



9087/R dated 21.07.1988 that land of Kaishar-e-Hind reveals that in Article 294A of the Constitution of India, the land of Kaishar-e-Hind prior to implementation of the Constitution of India was of her majesty and after implementation of Constitution of India vested in Union of India or in the State and as per Kandika-2 of the said letter, there is specific direction that any settlement by the ex-landlord relating to Kaishar-e-Hind land should not be accepted. It has also been urged/stated by the counsel for the respondent that the appeal preferred by the Amrendra Kumar Singh & Ors. in BLDR Case No. 165 of 2012 has been dismissed on 30.10.2013 and one case bearing BLT case No. 240 of 2014 has been preferred, which was also dismissed on 14.03.2018. Thus, the claim of the petitioner that in the name will not change the status of the land and any land relating to Kaishar-e-Hind is defined in 294-A of the Constitution of India and accordingly the order dated 30.01.2018 passed by the District Public Grievances Redressal Forum, Munger is justified in the eye of law.

16. A question has been raised by the learned Senior Counsel Mr. P.N. Shahi assisted by Mr. Sumeet Kumar Singh in the present cases as to whether a long standing Jamabandi can be cancelled in a summary proceeding. The action of the



authority is without jurisdiction, it has been urged by the petitioners that cancellation has been done based on the recommendation of the Divisional Commissioner, Munger Division, Munger in the light of the order passed in LDR No. 165 of 2012 without deciding the merits of the case and without giving opportunity of hearing to the petitioners. Also, no provision of Mutation Act, 2011 read with the Mutation Rules, 2012 has not been complied with.

17. It has been submitted by the learned Senior Counsel for the petitioners that the District Public Grievances Redressal, Munger being an Additional Collector, itself took up the matter and without proper notice to the petitioners and other co-sharers has proceeded to cancel the Jamabandi, which is in violation of the Principle of Natural Justice. At one go, the Jamabandi No. 18, 19, 20, 21, 22, 23 have been set aside including the Jamabandi of the present petitioners. It has been urged that due to political vengeance some one filed petition before the Public Grievances Redressal Forum, Munger and the Jamabandi existing in the name of the petitioners along with co-sharers has been cancelled.

18. Before coming to the issue, the law involved in the present case is The Bihar Right to Public Grievances Redressal



Act, 2015 (herein referred to as 'Act') which addresses the grievances of the people covered under the various enactment and the said Act recognizes the right of redressal of grievances of a citizen on a complaint within stipulated time limit and right to get information on the decision made on the complaint as statutory right. Complaint has been defined under Section 2(a) of the Act, 2015 herein below:-

"2 (a) - Complaint means any application made by a citizen or a group of citizens to a Public Grievance Redressal Officer for seeking any benefit or relief relating to any schemes, programme or services run in the State by the State Government or in respect of failure or delay in providing such benefit or relief, or regarding any matter arising out of failure in the functioning of, or violation of any law, policy, service, programme or scheme in force in the State by a public authority but does not include grievance relating to the service matters of a public servant, whether serving or retired, or relating to any matter in which any Court or Tribunal has jurisdiction or relating to any matter under Right to Information Act, 2005 (Central Act no. 22 of 2005) or services notified under the Bihar Right to Public Services Act, 2011."

19. A co-ordinate Bench of this Court in the case of **Amit Kumar Gupta vs. State of Bihar and Ors. reported in 2020(6) BLJ 614**, has held that authorities/Appellate Authority under the Bihar Right to Public Grievance Redressal, Act, 2015 are not empowered to entertain any complaint pertaining to encroachment made over the public/Government land, inasmuch as the same is governed by the provisions of the Bihar Public Land Encroachment Act, 1956.



20. Similarly, a bare perusal of the aforesaid definition of "complaint" would show that the Authority under the Bihar Right to Public Grievance Redressal, Act, 2015 are not empowered to entertain any complaint pertaining to cancellation of Jamabandi inasmuch as the same is governed by the provisions of Mutation Act, 2011, hence, Public Grievances Redressal Authority though being an Additional Collector has passed an order but in the capacity of Public grievances Redressal Forum which appears to be without jurisdiction.

21. There is no procedure followed as per Mutation Act, 2011. The relevant provision of Section 9 of the Bihar Mutation Act, 2011 is reproduced hereunder:-

“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).....

(4).....

(5).....

(6).....

(7).....”

22. Rules 13 of the Bihar Mutation Rules, 2012 is reproduced hereinbelow:-

“13. Cancellation of Jamabandi. - (1) Any person having interest in a land or a part thereof may file a petition for the cancellation of jamabandi before the Additional Collector of the district in whose jurisdiction the land or a part thereof is situated, in Form-XV.

(2) Authorised representative of any Department of the Government having its interest in a land or a part thereof may, for the cancellation of a jamabandi, make a reference to the Additional Collector under whose jurisdiction the land or a part thereof is situated.

(3) The Additional Collector on receipt of a petition in Form-XV for the cancellation of jamabandi or on reference from an authorised representative of the Government Department having an interest in the land or a part thereof or suo motu, if he is satisfied that there is sufficient evidence that the jamabandi has been created in violation of any law or in contravention of an executive instruction, shall initiate proceeding for the cancellation of the jamabandi by issuing general notice in Form-XVI inviting objections from the public of the locality and specific notices in Form-XVII to persons having interest in the land and the part thereof including inter alia the persons having jamabandi of the land in question.

(4) The general and the specific notices shall clearly



mention the date, time and place of hearing.

(5) The period of the notice shall be of 14 days.

(6) The general notice and specific notices shall be served in the same manner as mentioned in the foregoing rule-5 (3), (4) and (5).

(7) The Additional Collector may conduct inquiry about the matter either himself or through any other revenue officer under his jurisdiction and shall record the findings of the inquiry in the order sheet of the case record.

(8) The Additional Collector after giving reasonable opportunity to the parties concerned, of being heard and adduce evidence, if any, shall pass such order as he deems fit.

(9) The order shall be reasoned and the grounds, on which it is based, shall be recorded in the order sheet.

(10) After the order for the cancellation of jamabandi, the Additional Collector, subject to Appeal /Revision shall direct the Circle Officer in whose jurisdiction the land or a part thereof is situated to cancel the jamabandi in the Continuous Khatian, Tenants' Ledger Register and Khesra Register.

(11) The Additional Collector, after passing an order under foregoing rule 11(10), subject to Appeal/Revision, shall dispossess the person claiming land under the said jamabandi and restore the possession to the legitimate owner/custodian on such terms which may appear to be fair and equitable.

(12) Cases in which dispossession of the person claiming the land on the basis of the cancelled jamabandi and restoration of the land to the legitimate owner/custodian is not possible without the use of force, the Additional Collector either himself restore possession or shall depute a



Civil Officer under his jurisdiction and direct the Deputy Superintendent of Police in whose jurisdiction the land is situated to depute a police officer not below the rank of Assistant Sub Inspector with adequate force and shall dispossess the person claiming under the cancelled jamabandi and restore the possession to legitimate owner/custodian of the land by using such force as is necessary.”

23. The authority has committed a grave error by assuming the role of an authority under the provisions of the Mutation Act, 2011 although having no jurisdiction or power to either entertain any complaint pertaining to cancellation or pass order of cancellation of long standing Jamabandi in a summary proceeding under Bihar Right to Public Grievance Redressal, Act, 2015.

24. Section-4 of the Act of 2015 provides that the State Government may notify from time to time department wise schemes, programmes and services on which complaint can be filed and also the public authority and department on which level the complaint will be redressed. Schedule-1 of the Act of 2015 contains the notification of the State Government whereby department wise schemes, programmes and services on which complaint can be filed has been notified. Schedule-1 also specifies the schemes, programmes and services on which complaint cannot be entertained under the Act of 2015 by the Public Grievance Redressal Officer or the Appellate Authorities. The action of the authority does not fall within the meaning of scheme, programmes and services too.



25. It appears that no provision of Section 9 of Bihar Mutation Act, 2011 read with Rule 13 of Bihar Mutation Rules, 2012 has been followed.

26. The present writ petitioners were not allowed to contest the matter which is in violation of the principles of natural justice as well.

27. In the present case, the cancellation has been done by the Additional Collector in the capacity of Public Officer–cum–District Public Grievances Redressal Officer, Munger. The authority cannot cancel the Jamabandi in such summary proceeding and long standing Jamabandi can only be cancelled by filing a case before a competent civil court, such action is in teeth of the law laid down by this Hon’ble High Court in the case of *Vijay Kumar Prasad Vs. State of Bihar [2017 (1) PLJR 818]*, *(The State of Bihar Vs. Harendra Nath Tiwari, [2015 (1) PLJR 606]*.

28. Thus, under this background, the order passed by the Public Officer, District Public Grievances Redressal, Munger, dated 30.01.2018 i.e Annexure–7 to the writ applications (C.W.J.C. No. 1597 of 2020, C.W.J.C. No. 13688 of 2019 and C.W.J.C. No. 2245 of 2020) as mentioned above are set aside.

29. It is also made clear that the consequence of this order shall follow and the authorities are directed to act in accordance with law for restoration of the Jamabandi which has been



cancelled.

Saif/-

(Sandeep Kumar, J)

AFR/NAFR	AFR
----------	-----

