

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1916 of 2020

Chandradeo Yadav S/o Late Ragho Yadav Resident of Village- Arariya, P.O.-
Arariya Balha, P.S.-Parbatta (Maraiya) Pargana-Farkiya, Sub-Division-Gogri,
District-Khagaria.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Land Reforms Department, Govt. of Bihar, Patna.
2. The Divisional Commissioner, Munger.
3. The Collector, Dist.-Khagaria.
4. The Additional Collector, Land Reforms Department, Dist.-Khagaria.
5. The Deputy Collector, Parbatta, District-Khagaria.
6. The Circle Officer, Parbatta, District-Khagaria.
7. Upendra Yadav S/o Late Sitaram Yadav Resident of Village-Arariya, P.O.-
Arariya Balha, P.S.-Parbatta (Maraiya), Pargana-Farkiya, Sub-Division-
Gorgi, District-Khagaria.
8. Baleshwar Yadav S/o Late Chattu Yadav Resident of Village-Arariya, P.O.-
Arariya Balha, P.S.-Parbatta (Maraiya), Pargana-Farkiya, Sub-Division-
Gorgi, District-Khagaria.
9. Krishna Murari Yadav S/o Late Botal Yadav Resident of Village-Arariya,
P.O.-Arariya Balha, P.S.-Parbatta (Maraiya), Pargana-Farkiya, Sub-Division-
Gorgi, District-Khagaria.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Rajesh Kumar Advocate
For the Respondent/s : Mr.Rishi Raj Sinha (SC-19)

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

6 01-08-2022 Heard the parties.

The present writ petition has been filed by the petitioner for quashing the order dated 24.08.2019 passed in Jamabandi Appeal Case No. 16 of 2018 by the Additional Collector, Khagaria by which he has approved the order dated 09.12.2017 passed by the D.C.L.R. Khagaria in Jamabandi



Correction Case No. 24 of 2016-17 by which he had recommended for correction of Jamabandi No. 923 of Village-Chandwa after adding the land of the said Jamabandi No. 923 over Jamabandi No. 416/431.

The case of the petitioner is that the petitioner and the private respondents are descendants of common ancestor Madho Mandal.

Madho Mandal died leaving behind three sons namely Bhay Lal Mandal, Budhu Mandal and Ritlal Mandal. Budhu Mandal had a son namely Dhusri Mandal who died issueless and Ritlal Mandal died leaving behind his wife namely Aksi Devi and a minor son Radho Yadav.

The three sons of Madho Mandal namely Bhay Lal, Budhu and Ritlal Lal separated by oral partition in family arrangement amongst themselves before the year 1913 and after cadastral survey by metes and bounds and also separated in mess and business.

Bhay Lal Mandal after partition with his brothers, purchased land through several register deeds from Nasib Mandar and Kanak Lal Mandar and thereafter came in possession over the same.

As per the petitioner the case of the respondents is



that most Aksi Devi wife of late Kitlal Mandal (grand mother of the petitioner) as self and on behalf of her minor son Radho Yadav as Karta and legal guardian and one Dhusri Mandal S/o Budhu Mandal executed a registered deed of Bajidawa dated 21.04.1932 with regard to their share of property in favour of Bhay Lal Mandal S/o late Madho Mandal and the total property of 44 *Bighas* 15 *Katthas* 19 *Dhur* and thereafter Bhay Lal Mandal and his heirs are in actual cultivating possession.

The respondents further submitted that Bhay Lal Mandal got his name mutated in sirista of ex-landlord and for all the concerned Mauza, Jamabandi formed in the name of Bhay Lal Mandal and rent receipt issued in his name.

After vesting of Jamindari in the Bihar Government, in Anchal Sirista of the State of Bihar in register-II the Jamabandi was created with regard to the entire lands according to the return submitted by ex-landlord, the details of those Jamabandi of separate Mauza are either in the name of Bhay Lal Mandal or his son Chhathu Mandal.

The respondents nos. 7 to 9 move to the D.C.L.R. Khagaria challenging the correctness of the order dated 06.04.1970 passed in mutation case no. 386 of 1969-70 and contended that Ragho Yadav S/o late Ritlal Yadav got his name



mutated without any information to the Jamabandi Raiyat namely Bhay Lal Yadav or his son Chhathu Mandal and Jamabandi no. 923 formed created in the name of Ragho Yadav (father of the petitioner) for the entire 7 *Bigha* 8 *Katha* 1 *Dhur* from Jamabandi No. 866 which was standing in the name of Chhattu Yadav and now Jamabandi No. 866 is standing with regard to an area of 3 Bighas 8 Kathas 14 Dhurs.

The Mutation Correction Case No. 24 of 2016-17 was filed before the D.C.L.R. Khagaria for deletion/cancellation of Jamabandi No. 923 of Mauza Chandwa, Anchal Gogri standing in the name of Ragho Mandal S/o Late Ritlal Mandal and it was further prayed that said Jamabandi be added over with Jamabandi No. 416/431 of Mauza Chandwa, Anchal Gogri standing in the name of Chhattu Mandal.

The petitioner filed an objection petition before the D.C.L.R. Khagaria, who after hearing the parties has recommended for cancellation of the Jamabandi in the name of the petitioner, thereafter, the Additional Collector, Khagaria in Jamabandi Correction Appeal Case No. 16 of 2018 after hearing the parties confirm the order dated 9.12.2017 passed by the D.C.L.R. Khagaria.

It has been submitted by the learned counsel for the



petitioner that the order dated 09.12.2017 is without jurisdiction as the D.C.L.R. Khagaria has no power under the Mutation Act to cancel the Jamabandi and the application moved by the private respondents nos. 7 to 9 was misconceived.

He also submits that though the petitioner had pointed out before the D.C.L.R. Khagaria that the order dated 06.04.1970 was passed in Mutation Case No. 386 of 1969-70 while the C.O. Parbatta after hearing the predecessors of the petitioner and the predecessors of the respondents nos. 7 to 9 and in that case the deed in question was discussed and thereafter an order for mutation was passed. This argument of the petitioner has not been considered by the D.C.L.R. Gogri Khagaria in his order.

Learned counsel for the petitioner also submits that the finding of the D.C.L.R. Khagaria, is perverse and cannot be sustained in law.

Learned counsel for the State has also filed his counter affidavit and has supported the orders passed by the D.C.L.R. Khagaria and the Additional Collector, Khagaria.

Learned counsel for the respondents nos. 7 to 9 has appeared and filed his counter affidavit and has argued that the order contained in Annexure Nos. 2 & 3 are legal. The



application was filed before the D.C.L.R., Khagaria for correction and therefore it was maintainable.

He has also submitted that the respondents have right title and interest in the property with regard to the land in question on the basis of the Bajidawa.

Learned counsel for the respondents nos. 7 to 9 has not been able to deny the existence of the order dated 06.04.1970 passed in Mutation Case No. 386 of 1969-70, which was passed after hearing both the sides.

By the impugned orders as contained in Annexure-2 dated 09.12.2017 and Annexure-3 dated 24.08.2019, the Authorities concerned passed an order disturbing the Jamabandi which was created in order dated 06.04.1970. On the contrary, the respondents have not been able to bring any order of any jamabandi having been created in their favour.

The counter affidavit of the case is silent.

In the opinion of this Court, long standing Jamabandi cannot be cancelled on the application of a party and that too by reiterating the same facts which were available at the time of the Jamabandi was created vide order dated 06.04.1970. If the respondents had any dispute with regard to implementation of the Bajidawa of 1932, they should have moved the Civil Court



for cancellation of Jamabandi and not in a summery proceeding of this kind which has been adopted by the DCLR Khagaria and the Additional Collector, Khagaria.

In these circumstances, the order as contained in Annexure-2 dated 09.12.2017 and Annexure-3 dated 24.08.2019 are hereby quashed.

The Respondents nos. 7 to 9 have liberty to move the Civil Court for the declaration of their right and title and interest until and unless any competent Civil Court passes an order in favour of the respondents nos. 7 to 9. Jamabandi shall remain in the name of the petitioners and rent receipt shall be issued in their favour.

With the observations and directions, this application is allowed.

(Sandeep Kumar, J)

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