

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10408 of 2021

1. Dr. Manoj Kumar, S/o Late Ram Narayan Pandey.
2. Dr. Punam Kumari, W/o Dr. Manoj Kumar.
Both are resident of Mohalla-Sanjivani Hospital, Pali Road, Bastipur,
P.S. Dehri-on-sone, District- Rohtash, Bihar.

... .. Petitioners

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Old Secretariat, Patna.
2. The Principal Secretary Department of Finance, Government of Bihar, Patna.
3. The Principal Secretary, Land and Revenue Department, Government of Bihar, Patna.
4. The District Magistrate-cum-Collector Aurangabad, District- Aurangabad, Bihar.
5. The Competent Officer- cum- District Land Acquisition Officer, Aurangabad, Bihar.
6. The Additional Collector Land Reforms, Aurangabad, Bihar.
7. Sub Divisional Officer, Aurangabad, Bihar.
8. Deputy Collector, Land Reforms, Aurangabad, Bihar.
9. The Circle Officer Barun, P.S.- Barun, District- Aurangabad, Bihar.
10. The Secretary Ministry of Road Transport and Highway, Union of India, New Delhi.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Bhairaw Nand Sharma, Advocate
For the Respondent/s	:	Mr. Md. Khurshid Alam, AAG-12

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

ORAL JUDGMENT

Date : 22-11-2022

By way of this writ petition, the petitioners have challenged the order dated 03.03.2021 passed by the Additional Collector, Land Reforms, Aurangabad (respondent no 6) as well as connected orders dated 01.07.2020 and 03.07.2020 jointly



passed by the Sub Divisional Officer, Aurangabad and the Deputy Collector, Land Reforms, Aurangabad (respondent nos. 7 and 8) and also orders dated 15.11.2017 and 24.01.2020 passed by the Circle Officer, Barun (respondent no.9) by which the award/compensation to the petitioners for their land, which has been acquired, has been rejected.

2. It is the case of the petitioners that they had purchased a piece of Raiyati/Khatyani land bearing Khata no.55 plot no.37, Thana no.146, an area measuring 66 decimals situated at Mauza-Dayalpur, P.S and Circle-Barun, District-Aurangabad, through a registered sale deed dated 26.09.2012 and thereafter, the petitioners came in peaceful possession over the said land. Thereafter, the said land was mutated in the name of the petitioners. According to the petitioners, the land in question was in peaceful possession of the ancestors of sellers/vendors through an unregistered *Hukumnama* before abolition of *Zamindari* and were paying *Malguzari* regularly. The mutation of the said land was made in the names of the vendors/their ancestors in the year 1945 and such mutation was never cancelled even in light of Resolution dated 11.04.2014 and its clarification dated 10.05.2016. The said resolution relates to disposal of the grievance with respect to Government land



including Gair Majarua Malik.

3. The petitioners claim that they had purchased the land in question through registered sale deed dated 26.09.2012, which is annexed as Annexure-16 in the second supplementary affidavit and thereafter, they came in peaceful possession over the land in question. In the year 2017, the said land was mutated in the name of the petitioners and thereafter the names of the petitioners have been recorded in Register II and accordingly, the rent receipts have been issued in the names of the petitioners. Thereafter, the petitioner no.1 filed an application for measurement and demarcation of the land in question before the respondent no.9 and paid the required fee and accordingly, the land in question was measured and demarcated by the Anchal Amin under the supervision of the Circle Officer and in this regard, a measurement report has been submitted by the Anchal Amin, which is annexed as Annexure-4 to this writ petition.

4. It is the further case of the petitioners that in the year 2017, the Government decided to acquire the adjacent lands for the purpose of widening of NH-2. On 28.09.2017, the petitioners received a notice issued by the Circle Officer, Barun, regarding the acquisition of their land. In compliance of the said



notice, the petitioners have submitted their documents regarding title and possession over the land in question. Thereafter, the Circle Officer passed an order directing the Revenue Karamchari to submit an enquiry report regarding the land in question. However, when the petitioners came to know that several similarly situated persons have received their compensation/award for their acquired lands, they filed several representations before the concerned authorities but no action was taken in the matter. Ultimately, the petitioners moved before this Court by way of filing C.W.J.C. No.20885 of 2018 but during pendency of the case the grievances of the petitioners have been rejected by the respondent authorities and hence the said writ petition was withdrawn.

5. It is the case of the petitioners that on 12.09.2020 they received a notice issued by the Additional Collector, Land Reforms, Aurangabad, by which the petitioners were directed to appear before the authority on 21.09.2020 and file reply along with evidences in support of their right and title over the land in question. In light of the said notice dated 12-09-2020, the petitioners appeared before respondent no.6 along with their advocate and when they perused the Court file, the petitioners became stunned that without giving any opportunity



for hearing, the Circle Officer, Barun vide order dated 15.11.2017 did not recommend the ownership of the petitioners for the acquired land in question on the ground that the petitioners have not produced any evidence to establish their right in connection with previous Zamindar and thus it cannot be said that the petitioners have title over the land in question. It is also the case of the petitioners that the petitioners appeared in Court and submitted all the relevant documents regarding the title and possession over their land in question, but without considering the same, the respondent no.4 i.e the District Magistrate and respondent no.6 i.e the Additional Collector, Land reforms. Aurangabad, Bihar, has passed the joint order on 3.3.2021 and rejected the grievances of the petitioners for compensation/award for the acquired land in question and upheld the previous orders passed by the concerned authorities.

6. Learned counsel for the petitioners submits that while passing the joint order dated 03.03.2021 the respondents i.e. District Magistrate and the Additional Collector, Land Reforms, Aurangabad, have not gone through the report and the opinions submitted by the concerned Revenue Karamchari and Circle Inspector. He further submits that the respondent authorities while passing the orders have also not



considered the fact that the petitioners had purchased the land in question through sale deed dated 26.09.2012 and thereafter they came in peaceful possession over the land in question and land in question has been mutated in favour of the petitioners and the same got entered in the Register II and rent receipts have also been issued in their favour.

7. Learned counsel for the petitioners further submits that before purchase of the said land, the vendor was in peaceful possession through the unregistered *Hukumnama* and was paying rent to the State regularly. He further submits that the petitioners had produced some documents i.e. records of Compensation Case No.18188 of 1954-55, registered sale deed dated 26.09.2012 and Malguzari receipt of the year 2018-2019 as evidences to establish their peaceful possession and title over the land in question but the same were not considered by the respondent authorities.

8. The Learned counsel for the respondents submits that during the course of onsite inspection of the land under acquisition for NH-2 six-lane project, notice was issued by the Circle Officer, Barun to the claimants with respect to the land in question who were found present during onsite verification while initiating Ownership Verification Case No. 79



of 2017-18. It has been submitted that the Circle Officer after receiving the report from the Revenue Karamchari and after perusal of the documents attached therewith, did not recommend to grant ownership in favour of the petitioners in absence of cogent evidence to establish the initial jamabandi in terms of the provisions contained in the departmental resolution dated 11.11.2014.

9. The learned counsel for the respondents submitted that a report was called from the Revenue Karamchari with respect to the land in question wherein the reply was submitted that the Jamabandi has been created in the name of the vendor since 1994-95 and further in 2012-13 the same has been established in the name of the petitioners (vendee). It is further stated that as per the rent receipt of the vendor enclosed by the petitioners, though the period of 30 years has passed but the land in question is still mentioned as Gairmajura Malik, therefore, the petitioner has failed to bring any cogent document on record with respect to its legal substitution from Ex-landlord. It has been submitted that pursuant to the report received from the Revenue Karamchari, the ownership for the land in question was not granted in favour of the petitioners. Hence, after due consideration of the recommendation made by



the Circle Officer, Barun (respondent no 9), Sub- Divisional Officer Aurangabad and the Deputy Collector, Land Reforms rejected the raiyati claim of the petitioners with respect to the land in question.

10. I have heard the counsel for the parties and also perused the materials available on record.

11. This Court has consistently held that power of the State for cancellation of longstanding Jamabandi cannot be exercised in casual manner and if the State challenges the correctness of the settlements and the entries in relation thereto, onus is entirely upon the State to prove that they are wrong.

12. In a similar case, this Court vide judgment and order dated 13.09.2022 passed in C.W.J.C. No. 16985 of 2018 (Nathuni Singh and others versus the State of Bihar) has held as under:-

This Court in the case of Nawal Kishori Devi & others Vs. The State of Bihar & others vide order dated 18.11.2013 passed in CWJC No. 4979 has held as follows:-

"In so far as the issue of the right of ex-intermediary to settle the public land is concerned, the issue stands answered in the judgment of this Court rendered in the case of Musammat Husanbano (supra).

This brings this Court to the main issue raised by the petitioners questioning the



action taken by the authorities in initiating proceeding for the cancellation of Jamabandi bearing Case No. 1 of 2004-05 and impugned at Annexure-1 to the writ proceedings. There cannot be a contest on the legal position that neither under the Bihar Tenants' Holdings (Maintenance of Records) Act, 1973 nor under the Bihar Land Reforms Act, 1950, there is any provision for cancellation of Jamabandi. Although the Bihar Land Reforms Act in its Section 4 does provide for cancellation of settlement but that is distinct to a cancellation of Jamabandi and the manner is prescribed for such exercise. This issue came up for consideration as back as in the year 1978 when this Court in the case of Harihar Singh reported in 1978 BBCJ 323 held that the authorities have no jurisdiction to cancel the Jamabandi and remove the names of the settlee from the tenants register. A Division Bench of this Court in the case of Khiru Gope (supra) while taking note of the two earlier judgments of this Court reported 1978 BBCJ 323 (Harihar Singh vs The Additional Collector) and 1979 BBCJ 605 (Jamaluddin Ahmad vs. S. D. O.) held that where the settlee claims settlement under a Hukumnama, there was no authority vested to the Collector to cancel the Jamabandi made in favour of a settlee from an ex-



intermediary, the effect whereof would be to cancel the settlement by the ex-intermediary. The Jamabandi in the present case having been created pursuant to a registered settlement, certainly the action of the Collector in directing cancellation of the Jamabandi is in the teeth of the Division Bench pronouncements of this Court. The remedy for the State authorities, if any, certainly was not by way of executive action under the statutory powers rather rested before the civil court of competent jurisdiction for a proper declaration."

In the case of Ramnandan Singh Vs. The State of Bihar, this Court while dealing with the provisions of Section 4(h) of the Bihar Land Reforms Act, 1950, has held that if the State, for any reason, wants to challenge the authority or the title of any person based on settlement made by the ex- landlord then the only option left to the State is to approach the civil court for cancellation of Jamabandi whereas in the present case it is an admitted position that the land was settled by the ex-landlord in favour of the predecessor-in-interest of the petitioners. The ex-landlord after vesting Zamindari, return of Jamabandi was filed and thereafter rent was accepted by the State and the State issued rent receipt and only when land was acquired for compensation, the Jamabandi was enquired into by an illegal order and in most arbitrary way Jamabandi was cancelled and the same order



was affirmed by the Collector in the same casual manner.”

13. In the present case, since there is a longstanding Jamabandi in favour of the vendor-petitioners and they continued in peaceful possession over the land in question after purchase and their names have already been mutated in the records, the same cannot be cancelled in a summary proceeding. If the State is disputing the ownership of the petitioners over the land in question then the only option left to the State is to approach the competent civil court for appropriate relief.

14. Considering the aforesaid facts and also considering the judgment of this Court rendered in the case of Nathuni Singh & Ors. vs. The State of Bihar and Ors.(supra), this application is allowed. Accordingly, the order dated 03.03.2021 passed by the Additional Collector, Land Reforms, Aurangabad (respondent no 6) as well as connected orders dated 01.07.2020 and 03.07.2020 jointly passed by the Sub Divisional Officer, Aurangabad and the Deputy Collector, Land Reforms, Aurangabad (respondent nos. 7 and 8) and also orders dated 15.11.2017 and 24.01.2020 passed by the Circle Officer, Barun (respondent no.9) are hereby quashed.

15. The respondents are directed to pay the compensation to the petitioners for their acquired land within a



period of three months from the date of receipt/production of a
copy of this order.

(Sandeep Kumar, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	12.09.2023.
Transmission Date	N/A.

