

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8303 of 2020

1. Ram Narayan Ram Son of Late Subh Dushad R/o Village Mahavir Ganj, P.S. Barun, District- Aurangabad.
2. Santosh Paswan Son of Late Nanhak Paswan R/o Village Mahavir Ganj, P.S. Barun, District- Aurangabad.
3. Chandrashekhar Kumar Son of Late Ajay Singh R/o Barun Ganj, P.S. Barun, District- Aurangabad.
4. Ranjeet Kumar Son of Late Kameshwar Singh R/o Village Khaira Barun, P.S. Barun, District- Aurangabad.
5. Ganesh Ram Son of Late Bhabhikhan Ram R/o Village Mahavir Ganj, P.S. Barun, District- Aurangabad.
6. Mohan Prasad Gupta Son of Late Sri Prasad Gupta R/o Village Khemda Barun, P.S. Barun, District- Aurangabad.
7. Jai Prakash Jaiswal Son of Sri Snehi Lal R/o Village Barun Ganj, P.S. Barun, District- Aurangabad.
8. Uday Shankar Gupta Son of Late Rameshwar Prasad Gupta R/o Village Barunganj, P.S. Barun, District- Aurangabad.
9. Ram Pravesh Singh Son of Gyanchand Singh R/o Village Khaira Barun, P.S. Barun, District- Aurangabad.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Department of Revenue and Land Reforms, Govt. of Bihar, Patna.
2. The Principal Secretary, Department of Revenue and Land Reforms, Govt. of Bihar, Patna.
3. The District Magistrate Aurangabad.
4. The District Land Acquisition Officer Aurangabad.
5. D.C.L.R., Aurangabad.
6. Circle Officer Barun.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Brij Bihari Tiwary
For the Respondent/s : Mr.Lalit Kishore

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

17 09-11-2022

Heard learned counsel for the parties.

2. The petitioners have moved the Court for the



following reliefs:

(i) For issuance of a writ in the nature of “Mandamus” directing and commanding the respondent authorities not to dispossess the petitioners in terms of taking their land having Khata no. 171, Plot no. 1452 for construction of National Highway without even adhering to or subjecting them to process of acquisition of their land meaning thereby the Raiyati land of the petitioners are being forcibly occupied by the respondent authorities without acquiring their land through due process of law.

(ii) For a declaration that the land of the petitioners cannot be forcibly taken without acquiring the land and further the petitioners cannot be discriminated vis-a-vis other co-sharers whose land have been acquired by the competent authority after paying the required compensation.

3. The dispute between the petitioners and the State is primarily in the nature of the Jamabandi cancellation. The case of the petitioners is that the land in question being their private Raiyati lands which are recorded in the official revenue records either in their ancestors name or in their own names, but the authorities have initiated Raiyatikaran Case No. 19 of 2021.

4. Learned counsel for the petitioner submits that this proceeding is nothing but basically for Jamabandi cancellation



and in view of law laid down by this Court that longstanding Jamabandi cannot be cancelled by the State by resorting to initiating a proceeding for Jamabandi cancellation. The action of the State is illegal. He further submits that nomenclature of the proceeding will not change the nature of the proceeding and in essence, the proceeding is basically for Jamabandi cancellation. He also submits that the predecessor-in-interest had got the land mutated in their names right on 06.06.1948 and therefore, longstanding Jamabandi cannot be cancelled by the State by initiating the Title verification case.

5. In this connection, the learned counsel for the petitioners has relied upon the judgement dated 28.01.2014 passed in C.W.J.C. No. 13958 of 2013 by a co-ordinate Bench of this Court in the case of ***Manoj Kumar Mandal Vs. State of Bihar and others.***

6. 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 vs. the State of Bihar and Others***) 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 sofar as the issue of the right of exintermediary 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 Patna High Court CWJC No.10285 of 2020 dt.22-11-2022 7/9 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.”

7. If the Revenue authorities doubt the Jamabandi or title of a person who is in possession of the land since 1948, the long standing jamabandi in the name of his predecessors in interest or in his name can be cancelled only by a competent Court of Civil Jurisdiction and not in a summary proceeding.

8. In view of the law laid down by this Court in the case of *Nathuni Singh and Others vs. the State of Bihar and Others (supra)*, this writ application is allowed with the following directions:-

(a) As the Jamabandi of the land in question is in the name of the predecessors of the petitioners since 1948, the same can be utilized by the authorities for construction of National Highway only after they initiate a proceeding for land acquisition in accordance with law against the petitioners and the compensation amount admissible to the petitioners shall be kept in a separate account by the District Magistrate, Aurangabad.

(b) The District Magistrate, Aurangabad is given liberty to file a title suit for cancellation of the



long standing jamabandi and claiming title over the land. If such a title suit is filed by the State in the District Court, the same shall be decided within a year of filing of the suit.

(c) The petitioners are given liberty to pray for release of the amount if the title suit is not decided within a year of its filing because of the non-cooperation of the plaintiff State.

(d) The title suit must be filed within one month from the date of communication of this order in the Court below failing which the petitioners shall be entitled to the compensation amount.

(Sandeep Kumar, J)

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