

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10285 of 2020

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Md. Khalid Alam Bhutoo Son of Late Sadre Aalm Resident of Mohalla-
Kaghzi, PS- Bihar, District- Nalanda at Biharsharif.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Govt. Department of Revenue and Land Reforms Government of Bihar, Patna.
2. The Additional Collector, Nalanda at Biharsharif.
3. The Circle Officer, Biharshaif, Nalanda.
4. S.K. Verma, The then Circle Officer, Biharsharif, at present posted as Circle Officer, Bihta, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Majid Mahboob Khan
For the Respondent/s	:	Mr. Subash Chandra Yadav (GP15)
		Mr. Dhurjati Kumar Prasad (GP 14)

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT

Date : 22-11-2022

Heard the parties.

This application has been filed for following
reliefs:-

"(a). For quashing the impugned order dated 17.03.2020 passed in Jamabandi Raddikaran Case MP 43/2016 passed by the Additional Collector, Nalanda by which Jamabandi of 1956 has been cancelled. The order is wholly without jurisdiction and contrary to the law laid down by this Court in its several cases.

(b). For direction to the respondent No. 03 to grant rent receipt with regard to the land in question.

(c). For direction the respondent No. 01 to take



appropriate action against respondent No. 02 and 04 who not only violated the settled law but have also passed the impugned order contrary to Section 4C(i) of Bihar Litigation Policy, 2011."

2. The facts of this case in short are that in the year 1941, the land bearing Khata No. 302, Khesra No. 1298 under thana No. 120 Tauzi No. 10976 situated at Mauza Mosadpur (Kaghzi Mohalla) area 1.59 acre was settled by the then Zamindar in favour of petitioner's father namely late Sadre Alam. After vesting of Zamindari, ex-landlord filed return to the State Government by acknowledging the settlement in favour of petitioner's father. Thereafter, the name of the petitioner's father was entered in Register II as Raiyat and Jamabandi No. 263/1956-57 was created in his name and rent receipt was granted in favour of the petitioner's father and during his lifetime, father of the petitioner sold some part of the land to one Nagina Gope and Md. Nazim and their name were also mutated vide Mutation Case No. 203/1977-78 and 1041/1981-82 and rest part of the land was mutated in the name of 5 (five) sons of late Sadre Alam vide mutation case No. 32/10-1978-79 and since then petitioner and his brothers are in continuous peaceful possession over the land under dispute.



3. In the year 2008, the then Circle Officer granted Land Possession Certificate on 16.12.2008 in favour of petitioner. However, in the year 2012-13, a notice under Section 3 of Bihar Public Land Encroachment Act pertaining to the same plot was served upon the petitioner. The petitioner after service of notice had appeared and filed show cause annexing all the documents and the encroachment proceeding was dropped but all of a sudden the second encroachment proceeding bearing Encroachment Case No. 19/2016-17 was initiated against the petitioner. In the second encroachment case, the petitioner had appeared and filed show cause but instead of dropping the proceeding, respondent No. 4 kept the encroachment case pending and recommended the Additional Collector for cancellation of Jamabandi No. 263/1956-57. Pursuant to the aforesaid recommendation, the Additional Collector initiated Jamabandi Cancellation Case No. 43/2016 under Section 9 of the Mutation Act 2011 and issued notice on 15.02.2017. Pursuant to the notice dated 15.02.2017 the petitioner filed show cause on 03.03.2017 and after calling for the records of Encroachment case No. 19/2016-2017 order was reserved and all of a sudden without hearing the petitioner, the impugned order dated 17.03.2020 has been passed by which the



Jamabandi in favour of the petitioner has been cancelled. Hence, this writ petition.

4. Learned counsel for the petitioner submits that the plot in question is a Raiyati land as the name of the father of the petitioner was entered in Register-II as Raiyat after due verification and thereafter Jamabandi was created in favour of father of the petitioner in the year 1956.

5. Learned counsel for the petitioner further submits that out of 1.59 acre of land 17.5 decimal of land was sold by the father of the petitioner by registered sale deed and after due verification name of the buyers were mutated in the records and thereafter, the rest land was mutated in the names of the heirs of late Sadre Alam.

6. Learned counsel for the petitioner further submits that the then Circle Officer had granted land possession certificate in favour of the petitioners and in the land possession certificate also plot No. 1298 was shown to be Raiyati land of the petitioner.

7. Learned counsel for the petitioner submits that the Additional Collector, Nalanda by the impugned order has cancelled the Jamabandi which was running in the name of the petitioner on the recommendation of the Circle Officer



without adopting the formalities as prescribed under the law and also without considering the fact that long standing Jamabandi cannot be cancelled in a summary proceeding.

8. Petitioners have relied upon following judgments of this Court in the case of *Yogendra Prasad Shukla @ Yogendra Vs. State of Bihar* reported in 2008 (3) PLJR 395; *Kamlesh Vs. The State of Bihar* reported in 2008 (2) PLJR 466 and case of *Ramnandan Singh Vs. The State of Bihar* reported in 2015(1) PLJR 606.

9. By making the aforesaid submissions, learned counsel for the petitioner submits that the impugned order by which the long standing Jamabandi of the petitioner has been cancelled is illegal and the same may be quashed.

10. In this case, the State has filed its counter affidavit and stated the claim of the petitioner over the land in question is based on the *Hukumnama* executed by the ex-intermediary, but the fact remains that the land in question is recorded as Gairmazarua Aam Pokhar and till date the nature of the land has not changed. It has also been stated that the principle regarding Gairmazarua land is that the landlord cannot settle the land and he has no control over the land and therefore settlement made by the ex-intermediary cannot be said to be



valid and considering the same, the Additional Collector has cancelled the Jamabandi of the petitioners and others over the land in question.

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

12. This Court has consistently held that the power of the State for cancellation of long-standing Jamabandi cannot be exercised in a casual manner and if the State wishes to challenge the correctness of the Jamabandi or settlement as well as the entries thereto, the onus is entirely upon the State that they are wrong.

13. 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:-

“Insofar 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 (supra)**, 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."

14. In the present case also, the settlement of land in question by the ex-intermediary in favour of the father of the petitioner is prior to 1946 and rent receipts have also been granted by the then Jamindar (ex-landlord) and after vesting the Jamindari the rent receipts have also been issued in favour of the father of the petitioner by the competent authority. In the counter affidavit, the State has not denied the fact that in the year 2012 an encroachment case was initiated for the land in question and the same was dropped after considering the show-cause filed by the petitioner. It is also not disputed that the name of the petitioner has been mentioned in Register-II and Jamabandi is running in the name of the father of the petitioner. However, in the second encroachment case, the Circle Officer recommended for cancellation of Jamabandi of the petitioner and acting upon the recommendation of the Circle Officer, the Additional Collector has cancelled the Jamabandi of the petitioner which is of the year 1956. In the opinion of this Court, if the State is disputing the longstanding Jamabandi of the petitioner over the land in question the the only option left to the



State is to approach the competent Civil Court for appropriate relief but instead of doing so, the State has cancelled the longstanding Jamabandi in a summary proceeding, which is illegal.

15. Considering the aforesaid facts, this writ petition succeeds and accordingly, the same is allowed and the impugned order dated 17.03.2020 passed by the Additional Collector, Nalanda, in Jamabandi Cancellation Case No. 43 of 2016 is hereby set aside. However, the State will have a liberty to file a Title Suit in a Civil Court if it challenges the ownership of the petitioner over the land in question.

(Sandeep Kumar, J)

Vikas/Sunny

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

