

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14027 of 2022

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Jalil Mian Son of Late Nabijan Mian, Resident of village Ujjain Tola, New Bus Stand, Bettiah, P.S. - Bettiah, District - West Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Revenue and Land Reforms, Govt. of Bihar, Patna.
2. Principal Secretary, Department of Revenue and Land Reforms, Govt. of Bihar, Patna.
3. The District Magistrate, West Champaran, Bettiah.
4. The Additional Collector, West Champaran, Bettiah.
5. The DCLR, Bettiah, West Champaran,
6. Circle Officer, Bettiah, West Champaran.

... .. Respondent/s

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Appearance :

For the Petitioner	:	Mr. Sumit Shekhar Pandey, Advocate
For the Respondents	:	Mr. Rishi Raj Sinha (SC 19)
		Mr. Saurabh Kumar, AC to SC 19

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT

Date : 22-11-2022

Heard the parties.

2. By this writ petition, the petitioner has prayed for the following reliefs:-

“(i) In the nature of “Certiorari” for setting aside the order dt. 1.08.2022 passed in BLT Case No. 97 of 2022, by Dr. C. Ashokvardhan, learned Member (Administrative), Bihar Land Tribunal, Patna whereby and whereupon the application filed by the petitioner against the order dated 7.02.2019 passed in Jamabandi Correction Case no. 136/2016-17 by Additional Collector, West Champaran (Bettiah) has been dismissed as non-maintainable.

(ii) In the nature of “Certiorari” for setting aside the order dated 07.02.2019 passed in Jamabandi Correction Case No. 136/2016-17 by

the learned Additional Collector, west Champaran, whereby and whereunder the Jamabandi No.280 registered in the name of Jabijan Mian deceased father of the petitioner was cancelled, on the grounds that the said land is a part of Government Sairat which can only be settled through Government Department and thus holding that the Jamabandi No. 280 in favour of Nabijan Mian is wrong.

(iii) For any other relief/reliefs for which the petitioner is entitled in the facts and circumstances of the instant case.”

3. The case of the petitioner is that land pertaining to Khata No.87, Plot No. 234 measuring an area of 2 bighas 5 kathas situated in Mauza Ujjain Tola, P.S. No. 131 in the district of West Champaran, Bettiah was settled in the name of one Nabijan Mian, father of the petitioner in the year 1952 vide settlement order dated 15.10.1952. The petitioner's father was employed as Gardener at the residence of Manager, Bettiah Raj. Bettiah Estate directed the petitioner's father to deposit Rs.225/- with regard to the land which was deposited on 11.10.1952. Jamabandi Register/Khatiyan bearing Jamabandi No.280 was issued by Bettiah Estate on 11.05.1954 in favour of the petitioner's father. Accordingly, the land in question was registered in the Settlement Register II of Bettiah in the name of father of the petitioner. Thereafter after vesting right, petitioner's father had been paying rent to the State of Bihar.

4. It has further been stated that a letter was sent by

the Circle Officer to the Deputy Collector, Land Reforms, Bettiah to cancel Jamabandi No. 280 registered on 11.03.1965. The Deputy Collector, Land Reforms, Bettiah passed an order on 02.06.2000 in favour of the petitioner and therefore, rent receipt was issued in his favour. The Circle Officer vide letter no. 560 dated 22.07.2000 requested the Deputy Collector, Land Reforms, Bettiah to review its order dated 02.06.2000. On the recommendation of the Circle Officer, Bettiah, the Deputy Collector, Land Reforms, Bettiah reviewed its order dated 02.06.2000 and cancelled Jamabandi No.280 created in the name of the petitioner's father on 25.07.2000 after gap of two months.

5. The petitioner challenged the order dated 25.07.2000 before the Additional Collector, West Champaran, Bettiah in Jamabandi Cancellation Appeal No.310 of 2001/16 of 2001. The Additional Collector by its order dated 12.07.2011 dismissed the appeal of the petitioner and affirmed the order dated 25.07.2000 passed by D.C.L.R., Bettiah; and cancelled Jamabandi No. 280 created in the name of petitioner's father.

6. Against the order dated 25.07.2000 passed in Jamabandi Cancellation Appeal No. 310 of 2001/16 of 2001, the petitioner preferred a writ petition bearing CWJC No. 11430 of

2002.

7. By order dated 17.11.2016 passed in CWJC No. 11430 of 2002, this Court quashed both the orders dated 02.06.2000 and 25.07.2000 passed by the D.C.L.R., Bettiah in Jamabandi Cancellation Case No. 18 of 2000-2001/24 of 1999-2000 and the order dated 12.07.2001 passed by the Additional Collector, Bettiah and the matter was remitted to the Additional Collector with a direction to initiate a fresh proceeding strictly in accordance with law and pass appropriate final order.

8. In compliance of the order dated 17.11.2016 passed in CWJC No.11430 of 2002, the petitioner filed Jamabandi Case No.136 of 2016-17 in the court of Additional Collector, Bettiah, West Champaran. The Additional Collector vide order dated 07.02.2019 cancelled the Jamabandi No.280 registered in the name of petitioner's father holding that the land in question is a part of Government Sairat and the same cannot be settled in favour of any person.

9. Petitioner has 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.

10. The State has not filed any counter affidavit controverting the averments made in the writ petition.

11. 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.”

12. This Court has consistently held that power of the State for cancellation of 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.

13. 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 petitioner's father. 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 in most arbitrary way Jamabandi was cancelled and the same order was affirmed by the Collector in the same casual manner.

14. In view of the discussions made above, this writ application succeeds and the order dated 07.02.2019 passed in Jamabandi Correction Case no. 136/2016-17 by Additional Collector, West Champaran (Bettiah) and the order dated 01.08.2022 passed by the Bihar Land Tribunal, Patna in BLT Case No. 2022 are hereby set aside. The State will have a liberty to file a title suit if it challenges the settlement in favour of the father of the petitioner and Jamabandi created in his favour.

This writ application is allowed with cost.

(Sandeep Kumar, J)

BT/ Harsh

AFR/NAFR	NAFR
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