

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8431 of 2018

1. Birendra Ram @ Virendra Ram
2. Rajdeo Ram
3. Bal Sundar Ram All three sons of Late Ramdas Chamar @ Ramdas Ram.
Resident of Village- Darbhanga Teldiha, P.S.- Madanpur, District-
Aurangabad Bihar.

... .. Petitioner/s

Versus

1. The State Of Bihar through Divisional Commissioner, Magadh Division,
Gaya (Bihar)
2. District Magistrate, Aurangabad, District- Aurangabad.
3. Additional Collector, Aurangabad, District- Aurangabad Bihar.
4. Circle Officer, Madanpur Circle, P.S.- Madanpur, District- Aurangabad
Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Bachan Jee Ojha, Advocate
For the Respondent/s	:	Mr.Rishi Raj Sinha- SC 19
	:	Mr. Atul Shanker- AC to SC 19

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
C.A.V. JUDGMENT

Date : 30-08-2022

1. The present writ petition has been filed for quashing the notice dated 06.03.2018, issued by the respondent no. 4 i.e. the Circle Officer, Madanpur, District- Aurangabad in Encroachment case no. 24 of 2017-18, in the name of the father of the petitioners who has already died about 20 years back, for demolition of the residential house of the petitioners on account of the same being an encroachment under the provisions of the ***Bihar Public Land***



Encroachment Act, 1956. The petitioners have also prayed for quashing of the order dated 02.01.2018, passed in Case no. 214 of 2017-18, by the learned Additional Collector Aurangabad i.e. the respondent no. 3, whereby and whereunder the *Jamabandi* of the land appertaining to *Khata* no. 52, Plot no. 263 situated in Circle Madanpur, District- Aurangabad, PS 856 has been cancelled.

2. The brief facts of the case, according to the petitioners, are that the land in question which is situated at *Mauza Darbhanga, Khata* no. 52, Plot no. 263, Area 61 decimal, earlier recorded as *Gairmazarua Mallik* land in Revisional Survey, was settled in the name of the father of the petitioners namely Ram Das Chamar in the year 1970-71 vide Case no. 510 of 1970-71 and *Jamabandi* was created as also the land receipt was issued, whereafter the petitioners have been in continuous possession of the said land in question. It is submitted that one Kaushlendra Kumar Ram had filed a petition before the respondent no. 4 for measurement of his land, whereafter the measurement report was submitted, however being dissatisfied with the same, the said Kaushlendra Kumar Ram had filed a revision application before the Commissioner, Magadh Division, Gaya, who



passed an *ex-parte* order dated 08.07.2017 and directed the authorities to cancel the *Parcha* and take possession of the land in question, however, subsequently, the said Kaushlendra Kumar Ram as also the petitioners had entered into a compromise and settled the dispute, whereafter a compromise petition was also filed before the learned Commissioner, Magadh Division, Gaya but no action was taken thereon. It is the further case of the petitioners that the respondent no. 3 without hearing the petitioners, has cancelled the *Jamabandi* in an arbitrary manner, by an order dated 02.01.2018, whereafter a notice has been issued to the petitioners for removal of the encroachment, after initiating encroachment proceedings vide Encroachment case no. 24 of 2017-18.

3. The respondents have filed a counter affidavit stating therein that the land in question was settled in favour of the deceased father of the petitioners for cultivating the same for his livelihood, however, upon inquiry, it has been found that the father of the petitioners had constructed a house over the land in question, hence the learned Commissioner, Magadh Division, Gaya, by an order dated 08.07.2017, has directed for cancellation of the *Jamabandi* in question, whereafter *Jamabandi* Cancellation Proceeding Case no. 214



of 2017-18 was initiated by the respondent no. 3 and vide order dated 02.01.2018, the *Jamabandi* of both the petitioners and the aforesaid Kaushlendra Kumar Ram pertaining to the land in question, have been cancelled and then Encroachment Proceedings have been initiated for the purposes of removal of the encroachment made by the petitioners on the land in question.

4. I have heard the learned counsel for the parties and gone through the materials on record. A bare perusal of the impugned order dated 02.01.2018, passed by the Additional Collector, Aurangabad in Case no. 214 of 2017-18 would show that no reason whatsoever has been furnished therein for cancelling the *Jamabandi* of the petitioners which was, in fact validly settled in favour of the deceased father of the petitioners by creation of *Jamabandi* vide Settlement case no. 510 of 1970-71, hence the same is arbitrary, illegal and not sustainable in the eyes of law, moreso since the same does not depict any reason for cancellation of the *Jamabandi* of the petitioners/ their deceased father, which is an essential component of a decision making process, hence the said order dated 02.01.2018, passed by the respondent no. 3 is quashed. Consequently, the encroachment proceedings initiated by the



respondent no. 4 bearing Encroachment Case no. 24 of 2017-18, has also got no legs to stand, hence, the same is also set aside.

The writ petition stands allowed.

(Mohit Kumar Shah, J)

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AFR/NAFR	AFR
CAV DATE	08.08.2022
Uploading Date	30.08.2022
Transmission Date	NA

