

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19075 of 2019

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Girindra Mohan Mishra, Son of Late Upendra Prasad Mishra, Resident of
Village-Bidhipur, P.O.-Karota, P.S.-Salimpur, District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Collector, Patna.
2. The Collector, Patna.
3. The Anchal Adhikari (C.O.), Bakhtiarpur, District-Patna.
4. The Executive Engineer, Public Health Engineering Department-cum-Zila
Pariyojna Prabandhak, Zila Pariyojna Prabandhan Ekai, Patna.
5. The Junior Engineer, Public Health Engineering Department-cum-Zila
Pariyojna Prabandhak, Zila Pariyojna Prabandhan Ekai, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Nand Gopal Mishra
For the Respondent/s : Mr.Subhash Chandra Yadav (Gp15)

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

4 21-12-2022 Heard the parties.

2. Initially the writ petition was filed for the following
reliefs:-

*(i) To quash the 'No objection Certificate' issued
by the Anchal Adhikari, (C.O) Bakhtiarpur, vide his letter
no. 1663 dated 28.12.2018 (Annexure-3) to the extent it
relates to the land of petitioner, allowing the respondent
no.4 to start Boring and construction of water tank in
petitioner's raiyati land, in furtherance of 'Gramin Jalapurti
Yojna' under Nir Nirmal Pariyojna initiated by the
Government.*

*(ii) Issuance of a writ in the nature of
Mandamus or any appropriate writ/order or direction,
commanding the respondents, particularly the respondents
no.4 and 5, to stop forthwith, the Boring work. being done*



through a contractor; in Plot no. 55 and Part of Plot no.56 of the petitioner's land which pertains to Khata no. 104 and 512, Area 17 and 52 decimals respectively in Mouja Bidhipur. Anchal Bakhtiarapur, District-Patna.

3. After further developments, amendment applications No. 1 of 2021 , I.A. No. 2 and 3 of 2022 were filed which have been allowed and the following prayers have been added in the writ petition:-

***"I.A. No.01 of 2021 :-** This interlocutory application has been filed for amendment of the prayer of the writ petition as mentioned in paragraph 1(v) thereof.*

***I.A. No. 02 of 2022:** This interlocutory application has been filed for adding the Additional Collector, Patna as respondent no. 6 in the writ petition.*

***I.A. No. 03 of 2022 :-** This interlocutory application has been filed for amendment of the prayer of the writ petition as mentioned in paragraph 1(vi) thereof."*

4. Learned counsel appearing on behalf of the petitioner submits that the petitioner's Raiyati Land pertaining to Khata no. 104, Khesra Nos. 55 and 56 (Part), Area- 17 decimals and 52 decimals respectively (Total Area-69 decimals) in Mouja- Bidhipur, of which Jamabandi no. 207 is existing in the name of his mother Shanti Devi which is the subject matter of this writ petition.

5. It has been submitted that Vide letter no. 1663- dated 28.12.2018, the Anchal Adhikari, Bakhtiyarpur issued "No



objection” Certificate to the respondent no. 4 to start boring work and construction of water tank on the land (Plot no. 55) of the petitioner under Gramin Jalapurti Yojna.

6. It is further submitted that the land was initially recorded in khatian as Gairmajarua Malik land in the name of the then Zamindar, who before the abolition of Zamindari, settled the land in the name of father of petitioner, namely, Upendra Prasad Mishra and his uncle as belagan (rent true land) in the year 1941. The father of the petitioner filed a petition for rent fixation before Circle Officer, Bakhtiyarpur. Thereafter the Circle Inspector made spot enquiry and submitted his report. The report showed that the then Zamindar had submitted the Jamabandi for the land in favour of petitioner's father and his uncle dated 21.01.57. On 27.05.57, the then S.D.O. acting on the report of Circle Inspector asked the Circle Officer, Bakhtiyarpur to fix fair rent and the rent fixed by the Circle Officer was approved by the S.D.O. on 01.08.1957.

7. It is submitted on behalf of the petitioner that in the year 1994, after partition between petitioner's father and his father's uncle, the said land came in the share of his father who in turn got the Jamabandi of land transferred in the name of his wife Shanti Devi. On plot no. 55 i.e., there is dwelling house of



petitioner. When boring work started on plot no. 55 of petitioner, no information was given to the petitioner, before issuing the NOC by Circle Officer, Bakhtiyarpur. The petitioner was even warned by the Circle Officer that if he creates obstruction in government work i.e., boring, his Jamabandi will be cancelled.

8. There is a gairmajarua Aam land in the vicinity of petitioner's land which could have been utilized for Jal Nal yojna and no notice for acquisition of land at any point of time was given to the petitioner and without acquiring the land, government work was started by the Circle Officer, Bakhtiyarpur.

9. The petitioner submits that against the illegal and arbitrary act of Circle Officer, Bakhtiyarpur, the petitioner filed the instant writ petition for quashing the NOC issued by Circle Officer and for stoppage of the Boring work.

10. It is also submitted that this Court gave indulgence in the case and stayed the work of boring and directed the respondents to file counter affidavit vide order dated 16.09.2019. Even after indulgence of this Court in the matter, the Circle Officer, Bakhtiyarpur issued notice dated 19.09.2019 to the petitioner initiating a parallel proceeding by instituting Misc. Case no. 3/2019-20. The petitioner appeared in the case,



submitted all the relevant documents. The Circle Officer insisted that the petitioner would spare two (2) Kathas of land for the said work and on denial by the petitioner, he threatened to cancel his jamabandi. Report was prepared by him (Circle Officer) and sent to the Additional Collector to initiate cancellation of Jamabandi-case.

11. On 01.11.2021, notice was issued to the petitioner from the court of Additional Collector, Patna, in Jamabandi cancellation Case No. 146/2021-22 instituted on the report of Circle Officer, Bakhtiyarpur.

12. On 22.12.2021, the petitioner brought the notice on record of the writ petition by filing I.A. no. 01/2021. Praying for quashing of the notice. On 21.12.2021, 1.A. No. 2/2021 was filed to allow the ADM, Patna be impleaded as Respondent in the writ petition and on 19.04.2022, the Additional Collector, Patna, passed order in Jamabandi Cancellation Case no. 146/2021-22 and cancelled the Jamabandi no. 207 created in the name of mother of the petitioner. On 20.05.2022, the petitioner filed I.A. No. 3/20 to bring on record the impugned order dated 19.04.2022 for quashing of the same. The petitioner also brought on record Page of Register-D in the I.A. No. 3/21.

13. Vide order 18.08.2022, this Court allowed all the



three I.A.s and stayed the order dated 19.04.2022 passed by the Additional Collector, Patna.

14. The Respondents have filed their counter affidavit and supplementary counter affidavit stating therein that as per Khatian, the land is Gairmajarva Malik land "Kachahari-mai Sahan" which is the property of Revenue Department and cannot be settled. Further, it has been stated that in respect of Jamabandi no. 207, the name of Shanti Devi has been mentioned after cutting the name of Upendra Prasad Mishra (husband of Shanti Devi) and it does not contain any signature of any authority. The petitioner has filed rejoinder- controverting these facts.

15. It has been stated that out of 69 decimals of land of plot no. 56, only 52 decimals have been settled with petitioner, remaining 17 decimal of plot no. 56 in the past existed "Kachahari-mai Sahan" and at present in place of Kachahari-government middle school is there.

16. It is also submitted the petitioner that it is totally wrong and false statement that on plot no. 55 and 56 there exist "Kachahari-mai Sahan". It is stated that in view of the submission made by the petitioner, this Court may allow the writ petition.



17. I have considered the submissions of the parties.

18. From the case made out by the petitioner, it appears that a long standing jamabandi is created in the name of the mother of the petitioner in the year 1957 and rent was also fixed. Now, the same has been cancelled by the Additional Collector, Patna in Jamabandi Cancellation Case No. 146 of 2021-2022.

19. It has been submitted by the learned counsel for the petitioner that the Jamabandi in the name of the mother of the petitioner Shanti Devi has been cancelled without application of mind, without considering the documents produced before the petitioner and without considering the law laid down by this Court including the various judgments of this Court including the recent judgment of this Court dated 13.09.2022 passed in ***C.W.J.C. No. 16985 of 2018*** in the case of ***Nathuni Singh @ Nathuni Singh Yadav Vs. The State of Bihar & Ors.***

20. The State cannot cancel the Jamabandi of a citizen in a casual manner and if the correctness of the Jamabandi of a citizen is challenged by the State, the onus lies only upon the State to prove that their Jamabandi is wrong. The only option available to the State for challenging the long standing



Jamabandi is that the State can file a civil suit in the District Court for cancellation of Jamabandi and the Jamabandi cannot be cancelled in a summary proceeding by the Circle Officer or superior authorities.

21. In the present case, the Jamabandi is of year 1957 and same has been cancelled by the Respondent authorities though they should have approached the Civil Court for cancellation of Jamabandi.

22. In view of the above, this writ application is allowed.

23. Accordingly, the 'No Objection Certificate' issued by the Circle Officer, Bakhtiyarpur vide Letter No. 1663 dated 28.12.2018 allowing the Respondent No. 4 to start boring and construction of water tank in petitioner's raiyati land, under 'Gramin Jalapurti Yojna' and 'Nir Nirmal Pariyojna' is hereby quashed.

24. The respondents are restrained from making any further work on the land in question.

(Sandeep Kumar, J)

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