

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17954 of 2018

=====

Jagarnath Jha @ Jagannath Jha Son of Late Jatadhar Jha, Resident of Village-
Tilath, P.O.Anchal- Ghoghardiha, P.S.- Ghoghardiha, District- Madhubani.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The District Magistrate-cum-Collector, Madhubani.
3. The Additional Collector, Madhubani.
4. The Deputy Collector Land Reforms D.C.L.R., Phul Paras, District-
Madhubani.
5. The Sub-Divisional Officer, Phul Paras, District- Madhubani.
6. The Circle Officer, AnchalP.S.- Phul Paras, District- Madhubani.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr.Pramod Mishra
For the Respondent/s : Mr.Sajid Salim Khan -Sc25

=====

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT

Date : 22-09-2023

This application has been filed for setting aside the order dated 09.05.2018 passed by the Additional Collector, Madhubani in Jamabandi Cancellation Case No.06 of 2017-18, by which the Additional Collector has cancelled the Jamabandi No.472 which was running in the name of the father of the petitioner since 1935.

2. The short facts of this case, as stated in the writ petition, are that the land bearing Khata No. 224, Khesra No. 1004 measuring total area 18 Katthas and 8 dhurs was



recorded as Gairmazarua Aam in Cadastral Survey Khatiyani but in the remarks column name of several persons were recorded, who were already in possession of the respective lands. Originally, the land in question belonged to Darbhanga Raj. In the year 1935, about 12 Khatas of land was settled in favour of the father of the petitioner on the basis of his possession over the said land after realizing Rs.58/- as Salami. Thereafter, Jamabandi No.472 was created and the ancestors of the petitioner were in peaceful possession of the said land. After vesting of Zamindari, return of Jamabandi was filed for the said land, rent was paid till the year 2012-13. After creation of jamabandi, the ancestors of the petitioner were in peaceful possession over the land in question but a dispute took place in the year 2004 between the petitioner's family and one Ramdeo Sah, who lodged a complaint against the petitioner and his family members for committing theft of mangoes from the orchard, which was situated on the land in question and the Magistrate took cognizance against the petitioner and his family members. After passing of cognizance order by the Magistrate, the petitioner and his family members approached this Court for quashing of the cognizance order and the same has been quashed by this Court.



3. It is the case of the petitioner that after quashing of the cognizance order, the Circle Officer acting upon an application filed by Ramdeo Sah directed the Amin to measure and demarcate the land and submit a report in this regard. After submission of the report, the petitioner received a notice dated 12.06.2017 issued by the Additional Collector, Madhubani in Jamabandi Cancellation Case No.06/2017-18 by which the petitioner was directed to appear on 21.06.2017 and accordingly the petitioner appeared before the Additional Collector, Madhubani and filed a detailed written statement and requested the Additional Collector to reject the Jamabandi Cancellation Case No.06/2017-18. However, by the impugned order dated 09.05.2018, the Additional Collector cancelled the Jamabandi of the petitioner which was running in the name of the father of the petitioner since 1935. Hence, this writ petition.

4. Learned counsel for the petitioner has submitted that the impugned order of the Additional Collector cancelling the long standing Jamabandi of the petitioner is illegal as he has no jurisdiction to cancel a long standing Jamabandi in a summary proceeding. He further submits that the Additional Collector while cancelling the Jamabandi of the petitioner has not appreciated the fact that the land in question was settled in



the name of the father of the petitioner in the year 1935 and since then the petitioner and his family are in peaceful possession of the aforesaid land.

5. Learned counsel for the petitioner further submits that the Additional Collector has cancelled the Jamabandi of the petitioner on the basis of the recommendation of the Circle Officer and the Sub Divisional Officer without adopting the formalities as prescribed under law and also without considering the fact that a long standing Jamabandi cannot be cancelled in a summary proceeding.

6. In support of his submissions, learned counsel for the petitioner has relied upon the 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.

7. 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.

8. In this case, the State has filed its counter



affidavit stating therein that previously the land in question belonged to ex-landlord and its nature was Gairmazarua Aam and after vesting the said land to the State Government, a School is running but the petitioner and his family members with an intention to grab the said land succeeded in mutating the same in their name fraudulently and also created Jamabandi. It has also been stated that the land in question is of public utility and for common benefit of the local villagers and over the land a School is running in which the children of locality are studying. It has also been stated that upon an application of the Headmaster of the said school, an enquiry was made and thereafter the Circle Officer recommended for cancellation of Jamabandi which is running in the name of the petitioner and his family members and accordingly, the Additional Collector cancelled the Jamabandi.

9. I have heard learned counsel for the petitioner and learned counsel for the State.

10. It is an admitted fact, that the appeal against the order dated 09.05.2018 has not been registered or heard and disposed of by the Collector, Madhubani. Therefore, this Court is deciding this case on its merits. From the record, it appears that the Jamabandi in the name of the father of the petitioner is



of the year 1935 and the same has been cancelled by the impugned order dated 09.05.2018 i.e. after 83 years of creation of Jamabandi. This Court has consistently held that the power of the State for cancellation of longstanding 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.

11. In a similar situation, 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 Musammam 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."

12. In the present case also, the Jamabandi in favour of the father of the petitioner is of the year 1935 and the rent receipts have also been issued in favour of the father of the petitioner by the competent authority. However, acting upon the recommendation of the Circle Officer, the Additional Collector by the impugned order has cancelled the Jamabandi of the petitioner which is of the year 1935 i.e. after 83 years of creation of Jamabandi. In the opinion of this Court, if the State is disputing the longstanding Jamabandi of the petitioner over the land in question then 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.

13. Considering the aforesaid facts, this writ petition succeeds and accordingly, the same is allowed. The impugned order dated 09.05.2018 passed by the Additional Collector, Madhubani in Jamabandi Cancellation Case No. 6 of



2017-18 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/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	22.09.2023.
Transmission Date	N.A.

