

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4172 of 2023

1. Shrimati Sudha Devi resident of Village Gopdih At and P.O. Chandan District Banka.
2. Jai Prakash Rai son of late Bam Shankar Rai, resident of Village Gopdih At and P.O. Chandan District Banka.
3. Murli Rai, son of Late Jaleshwar Rai, resident of Village Gopdih At and P.O. Chandan District Banka.
4. Arun Prasad Rai, son of Late Santosh Rai, resident of Village Gopdih At and P.O. Chandan District Banka.
5. Gangadhar Rai son of Late Jamuna Rai, resident of Village Gopdih At and P.O. Chandan District Banka.
6. Mahendra Rai son of Late Chandeshwari Rai, resident of Village Gopdih At and P.O. Chandan District Banka.
7. Birendra Kumar son of Late Dasrath Rai, resident of Village Gopdih At and P.O. Chandan District Banka.

... .. Petitioner/s

Versus

1. The State of Bihar through Commissioner, Cum Secretary Department of Forest, Government of Bihar, Patna.
2. The Chief Conservator of Forest, Bihar, Patna.
3. The Divisional Forest Officer, Banka Division At and P.O. Banka.
4. The Forest Officer, Chandan Block At and P.O. Chandan, Banka.
5. The Additional Collector, Banka.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Satyendra Krishna Prasad
For the Respondent/s : Mr.Anant Prasad Singh (Sc 15)

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

4 26-09-2023 Heard learned counsel for the petitioner and learned
counsel for the State.

2.The counsel for petitioner has filed this writ petition
challenging the order dated 12.10.2022 passed by Additional
Collector in Jamabandi Cancellation Case No. 249 of 2019-



20/131 of 2018-19 on the ground that the said order has been passed without following the established procedure of law of Jamabandi which was running since last more than 100 years.

3. Counsel for the petitioner further prayed that the Additional Collector has passed order which is non jurisdictional order and not in accordance with law.

4. Counsel for the petitioner submits that from the impugned order, it is very much clear that no reason at all has been assigned, as such, the said order is absolutely illegal and perverse.

5. Counsel further submits that the similarly situated matter has been decided in case on ***Bam Shankar Ray & Anr. Vs. State of Bihar & Ors.*** vide order dated 17.02.2017 passed in C.W.J.C. No. 3361 of 2014 and subsequently, approved by order dated 10.05.2019 in L.P.A. No. 179 of 2018 by the Hon'ble Division Bench.

6. Counsel for the petitioner submits that said cancellation case has been initiated at the instance of Forest Department, Banka in which plea has been taken that the land in question was already notified under Section 29 of the Indian Forest Act, 1927 and therefore, the said land is protected forest. Counsel further submits that there is no reasoned and speaking



order which has been passed.

7. Counsel for the Forest Department, on the other hand submits that the petitioner is primarily relying on a judgment passed on 17.02.2017 in C.W.J.C. No. 3361/2014. In the said judgment, the authorities of the Forest Department started taking forceful possession over the *Raiyati* land of the petitioner of the said writ petition against which the petitioner has moved this Court. But here in the present case, the Forest Department has moved with complete legal steps and he has taken legal recourse under the Bihar Land Mutation Act, 2011 approaching to the Court of competent jurisdiction i.e. Additional Collector for cancellation of Jamabandi challenging that in the light of the notification when the land has been declared as protected forest and the petitioner has not challenged the same at any level then the forest department is free to take the said land by filing application of cancellation of jamabandi in the name of the petitioner.

8. Counsel submits that the facts and circumstances of CWJC No. 3361 of 2014 and facts and circumstances of the present case is quite different.

9. Counsel for State relying on a judgment of ***Bhuneswar Pandit and Ors Vs. State of Bihar and Ors.***



decided in C.W.J.C. No. 10136, 10140 and 10150 of 1992 on 30.06.1993 reported in **MANU/BH/0139/1993** whose paragraph 13 states as follows.

Further, the petitioners cannot be permitted to question any notification which was published in the Gazette as far back as in the year 1952. If the petitioner's predecessor-in-interest namely the ex-landlord had any raiyati interest in the said land, he could have filed the appropriate claim application, before the authorities concerned in terms of the provisions of the Indian Forest Act itself, Such a claim could have been adjudicated upon by the statutory authorities.

10. Counsel for the State further submits that Annexure R/1 annexed to the Counter Affidavit indicates that the said land i.e. Revenue P.S. 166, Khesra No. 609 for which cancellation of Jamabandi has been recommended has been declared as “Protected Forest” vide Notification C/F-17063/55-3660R Dated-02.12.1995, as per the Indian Forest Act, 1927 under Section-29(3).

11. In the light of the submission made by the parties particularly taken into consideration that the facts and circumstances of the writ petition C.W.J.C. No. 3361 of 2014 in which the Forest Department was trying to take the forceful possession but here in the present case, the forest Department has filed an application under Section 9 of the Bihar Land Mutation Act 2011 for cancellation of Jamabandi.

12. This Court is of the opinion that the factual Matrix



of both the cases are not identical rather different and due to this reason the ratio decided in the aforesaid case shall not apply in the present one.

13. On the other hand, the petitioner has relied on latest Judgment rendered in case of *Arun Kumar Goenka Vs State of Bihar reported in 2023 (5) BLJ 321* wherein it has been held that for the purpose of cancellation of long standing jamabandi, summary proceeding not be available rather such matter has to be decided in competent Civil Court.

14. In the opinion of this Court, this judgment is not applicable in the present case due to the reason that here gazette notification was already made in the year 1956 itself under which the land in question was already declared and notified as the “Protected Forest” area whereas in the case of *Arun Kumar Goenka Vs State of Bihar(Supra)* no such situation is available.

15. In this view of the matter, this Court is of the opinion that the petitioner ought to avail his remedy by way of filing appeal before the appropriate forum available under the Bihar Mutation Act, 2011.

17. With the aforesaid observation and direction, this writ petition is disposed of with liberty to the petitioner to avail the remedy of appeal by way of filing appropriate application



and it is also directed that in case, if there is delay in filing the appeal, the appellate authority shall condone the delay. The petitioner shall be at liberty to take recourse of taking interim relief before the appellate forum on the day it shall be filed.

(Dr. Anshuman, J)

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