

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13941 of 2017

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M/s Hanuman Sugar and Industries Limited, Motihari, East Champaran,
through its Chairman and Managing Director Bimal Kumar Nopanny, Son of
Late Mohan Lal Nopany, Resident of- 14 Rowland Road, P.O.- A.J.C. Bose
Road, Kolkatta, 700020, P.S.- Ballyganje Place, District- Kolkata.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department Revenue and Land Reforms, Government of Bihar, Patna
2. The Commissioner, Tirhut Division, Muzaffarpur.
3. The Collector, East Champaran, Motihari.
4. The Additional Collector, East Champaran, Motihari.
5. The Senior Deputy Collector, District Legal Cell, East Champaran, Motihari.
6. The Circle Officer, East Champaran, Motihari.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Lalit Kishore, Sr. Advocate Mr. Ranjeet Kumar, Advocate Mr. Yogesh Kumar, Advocate Mr. Ayush Kumar, Advocate Mr. Shikhar Mani, Advocate Mr. Kanishk Kaustubh, Advocate
For the State	:	Mr. Khurshid Alam, AAG-12 Mr. Asif Kalim, AC to AAG-12

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CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
C.A.V. JUDGMENT

Date : 08.08.2023

1. Heard Mr. Lalit Kishore, learned Senior counsel assisted by Mr. Ranjeet Kumar, learned counsel appearing for the petitioner and Mr. Khurshid Alam, learned Additional Advocate General no.12 (AAG) appearing for the respondents.

2. The petitioner has filed the instant application for the following reliefs:

*“i) For setting aside the Notice contained in
Letter No. 1925 dated 19-07- 2017 issued by*



the Collector, East Champaran, Motihari whereby a show cause has been issued to the petitioner as to why not the order dated 28-06-1999 passed in Ceiling Case No. 1/1996-97 be quashed and afresh Ceiling Proceeding be initiated in exercise of the power conferred under Section 30(4)(i) of the Bihar Land Reforms (fixation of ceiling area and acquisition of surplus land) Act, 1961 (hereinafter referred as The Ceiling Act, 1961).

A true photo/type copy of the Notice contained in Letter No. 1925 Dated 19.07 2017 is annexed as Annexure I to this application

ii) For any other relief/reliefs for which petitioner may be deemed entitled too.” (sic)

3. The case of the petitioner is that a ceiling proceeding bearing Ceiling Case no.3/1983-84 was initiated against the petitioner company and concluded by order dated 15.1.1983 passed by the Additional Collector (Ceiling), East Champaran, Motihari. The petitioner preferred an appeal before the Collector, East Champaran, Motihari which was dismissed on 17.6.1985. Thereafter, revision was preferred before the Board of Revenue and the same was also dismissed vide order dated 6.7.1985. The petitioner preferred CWJC no.2976 of 1985 which was allowed by order dated 29.1.1997 and by the said



order, the order dated 15.1.1983 passed by the Additional Collector, the order dated 17.6.1985 passed in Appeal by the Collector and the order dated 6.7.1985 passed in Revision by the Additional Member, Board of Revenue as also the findings of the Additional Collector under section 5(1)(iii) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (herein after referred to as 'the Act') were all set aside. The Additional Collector (Ceiling) was directed to conduct a fresh enquiry under section 5(1)(iii) and publish a fresh draft statement as required under section 10(1) of the Act. Further, till final disposal of the matter all the parties to the proceedings were restrained from transferring or disposing of any land which was declared surplus by virtue of the impugned orders.

4. Further case of the petitioner is that the respondents were required to proceed afresh to prepare draft statement under section 10, carry out final publication of the draft statement under section 11 and issue notification under section 15 of the Act for acquisition of the surplus land. However, no further steps have been taken by the respondents.

5. It is case of the petitioner that in compliance of the direction of this Court in order dated 29.1.1997, the Additional



Collector (Ceiling) proceeded to make an enquiry and passed the final order on 28.6.1999 wherein he did not find any illegality in transfer of the land in the name of the purchasers. On the purchasers presenting the sale deeds for registration, the registration was not carried out. On the purchasers approaching the District Sub-Registrar, they were communicated that restriction had been imposed on transfer of land in view of the restraining order passed in the order dated 29.1.1997. As such, one of the purchasers filed Civil Review no.410 of 2016 (Ramacast Limited vs The State of Bihar & Ors.) praying for review of the order dated 29.1.1997 passed in CWJC no.1436 of 1986. The review application was allowed holding that the pendency of the ceiling proceeding against the land holder would not be an impediment in registering the land transferred by the petitioner. The State of Bihar preferred an appeal (SLP Civil no. 4160 of 2017) in the Hon'ble Supreme Court against the order dated 27.10.2016 allowing the review application, however, the same was dismissed by the Hon'ble Supreme Court by order dated 23.2.2017.

6. The petitioner was served with a notice contained in Letter no.1925 dated 19.7.2017, issued under the signature of the Collector, East Champaran, Motihari, in exercise of his



powers under section 30(4)(i) of the Act. It is this notice dated 19.7.2017 which has been challenged in the instant writ application.

7. The case of the respondents is that section 46 of the Act empowers the State Government to do anything for the purpose of removing difficulty. The same is in consonance with section 30(3) and (4) of the Act. It is stated that the present case ie Ceiling Case no.1/1996-97 has not been finally concluded and the same is pending for draft publication under section 10 of the Act.

8. So far as the proceeding with respect to the land in question of the petitioner is concerned, the same was started sometime in the year 1973-74. Returns were filed by the land holder before the authorities on 13.3.1974. As the verification carried out was without notice to the land holder, on the land holder moving the Patna High Court in CWJC no.1312 of 1985, by order dated 13.9.1976 the recommendation of the Additional Collector as also the consequential order was quashed with a direction to the authorities to carry out fresh verification in presence of the petitioners as also after giving them opportunity of hearing and adducing evidence in support of their claim for exemption etc. as required under section 9 of the Act.



9. Further case of the respondents is that the Additional Collector conducted an enquiry under section 5(1)(iii) of the Act and declared the different sale deeds executed by the original land holder to be illegal and *farzi*. The original land holder as also the different transferees filed appeal against the order under section 30 before the District Collector. In the meantime, in view of section 32A and 32B of the Act having been introduced, the Collector held all appeals to have abated and sent back the records to the original Court for fresh enquiry and disposal in accordance with law.

10. It is further case of the respondents that draft statement as required under section 10(2) of the Act was published on 20.10.1984. Objection was filed on behalf of the petitioner under section 10(3) to the effect that no verification of the land nor due enquiry as required under section 5(1)(iii) of the Act was ever made after abatement of their appeals. On the basis of the order passed in CWJC no.1312 of 1985, the case (Case no. 3/83-84) proceeded and draft statement was published on the basis of findings recorded under section 5(1)(iii) of the old Act. The enquiry was concluded and the matter decided up to the Board of Revenue. Against this, the petitioner moved before the High Court by filing CWJC no.2976 of 1985 which



along with a number of writ applications was disposed of by a common order dated 29.1.1997, setting aside the order of the Additional Collector, the orders passed in appeal and revision as also the order passed on the old verification report. The Additional Collector was directed to proceed in the matter to conduct a fresh enquiry under section 5(1)(iii) of the amended Act and to publish a fresh draft statement as required under section 10.

11. It is the case of the respondents that the Additional Collector in collusion with the land holder registered Ceiling Case no.1/1996-97 and without calling for any verification report or conducting any spot verification concluded the enquiry vide order dated 28.6.1999. He deviated the matter by sending the case record to the Government on the point of approval of exemption under section 29 of the Act. It is the contention of the respondents that there is no ambiguity under section 30(4)(i) of the Act and the matter has rightly been proceeded by issuing notice to the petitioner. There being no merit in the writ application, the same be dismissed.

12. Mr. Lalit Kishore, learned Senior counsel appearing for the petitioner submits that inspite of the purchaser/review applicant having succeeded in the review



application wherein by order dated 27.10.2016 the Division Bench of this Court held that the pendency of the ceiling proceeding against the land holder would not be an impediment in registering the land transferred by the petitioner and even the appeal preferred by the State of Bihar having been dismissed by the Hon'ble Supreme Court by order dated 23.2.2017, still the purchaser was not allowed to sell the land and which led to filing of a contempt application. It was, thereafter, that the Collector issued the impugned notice dated 19.7.2017 in purported exercise of powers under section 30(4)(i) of the Act.

13. Learned Senior counsel for the petitioner further submitted that by the amending Act 18 of 2016 dated 2.9.2016, while section 45B which gave powers to the State Government to call for and examine records was repealed, by the same amending Act sub-sections (3) and (4) were added in section 30 of the Act. It was submitted that section 30 dealt with appeals and sub-section (4) which gives power to the Collector of a District to initiate a fresh proceeding under the Act having been inserted in section 30, the Collector was to exercise the powers under section 30(4) only and only when an appeal was pending before him and not otherwise. Section 30(4)(i) of the Act provides that the Collector may initiate a fresh proceeding. The



meaning of the term 'fresh proceeding' would be that the earlier proceeding under the Act has come to an end and the appeal under section 30 having been preferred, he may initiate a 'fresh proceeding' on the grounds mentioned therein. It was thus submitted that it being not in dispute that the earlier proceeding ie Ceiling Case no.1 of 1996-97 is still pending and there was no appeal under section 30 of the Act before the Collector, for this reason also the notice impugned dated 19.7.2017 could not have been issued and is fit to be set aside. Learned Senior counsel finally submitted that proviso to section 30(1)(b) provides that no appeal shall lie against the orders passed under section 5 and section 29 before the final publication of the draft statement under section 11(1) of the Act. It was thus, submitted that in the facts of the instant case, as directed by order dated 29.1.1997 passed by this Court, the Additional Collector conducted an enquiry under section 5(1)(iii) of the Act and passed the order dated 28.6.1999. No appeal could have been preferred by the State against the order dated 28.6.1999 passed in an enquiry under section 5(1)(iii) of the Act, in view of the bar as contained in proviso to section 30(1)(b). Learned Senior counsel submitted that the respondents, in view of the specific bar have adopted this procedure of initiating a fresh proceeding under section



30(4)(i) of the Act which they could not have done and thus the impugned order is fit to be quashed and the writ application allowed.

14. Mr. Khurshid Alam, learned AAG, appearing for the respondents submitted that the challenge to the notice impugned under section 30(4)(i) of the Act was mainly on the ground that the Collector had no authority to initiate a fresh proceeding and issue the said notice; the notice had been issued after a long period and that the power could be exercised by the Collector only when the appeal was pending. Learned AAG submitted that it was by the same Act 18 of 2016 dated 2.9.2016 that while the provision of section 45B of the Act was repealed, sub-sections (3) and (4) was added in section 30 of the Act. From perusal of the contents of the notice impugned it would transpire that it clearly spells out the reason for issuance of the same. Section 30(4)(i) of the Act provides that the Collector of a District may initiate a fresh proceeding under the Act, if he is satisfied that the land holder fraudulently or by misrepresentation has managed to obtain an order from any of his subordinate authority with a view to defeat the object of the Act. The notice clearly mentions that on perusal of the order dated 28.6.1999 passed in Case no.1 of 1996-97, it appears that



the said order had been obtained by the petitioner under his influence from the then Additional Collector (Ceiling) to defeat the object of the Act. Hence, it was submitted that there was no illegality whatsoever in issuance of the said notice in view of the fact that the Collector had the power to issue the same under section 30(4)(i) of the Act. It was further submitted that the filing of the writ application on issuance of the notice itself was premature and the petitioner would have the opportunity to challenge the same on passing of the final orders.

15. Learned AAG further submitted that by order dated 29.1.1997, this Court while quashing the orders passed by the Additional Collector, the Collector, the Additional Member, Board of Revenue as also the findings of the Additional Collector under section 5(1)(iii) of the Act as also the consequential notification under section 11(1) had categorically directed the Additional Collector (Ceiling), to conduct a fresh enquiry under section 5(1)(iii) of the amended Act and publish a fresh draft statement as required under section 10(1) of the Act. It was submitted that neither the Additional Collector (Ceiling) conducted a fresh enquiry as directed nor did he publish a fresh draft statement as directed and in fact, being in collusion with the land holder concluded a managed enquiry vide order dated



28.6.1999 and sent the records to the Government on the point of approval of exemption under section 29. Thus, it was submitted that from perusal of the contents of the order dated 28.6.1999, the ingredients being available, the Collector rightly issued notice to the petitioner in exercise of his powers under section 30(4)(i) of the Act.

16. Heard learned counsel for the parties and perused the materials on record. The relevant facts in brief are that a ceiling proceeding being Ceiling Case no. 3/1983-84 was initiated against the petitioner Company and concluded by the Additional Collector (Ceiling) by order dated 15.1.1983. The appeal preferred by the petitioner was dismissed by the Collector on 17.6.1985 and in the revision application the order of the Collector was affirmed by order dated 6.7.1985, passed by the Board of Revenue. The writ application (CWJC no. 2976 of 1985) preferred by the petitioner was allowed by order dated 29.1.1997; all the orders passed in the ceiling proceeding as also the appeal and the revision were set aside and the Additional Collector was directed to conduct a fresh enquiry under section 5(1)(iii) of the Act and publish a fresh draft statement under section 10.

17. It further transpires that a Civil Review no. 410 of



2016 was filed for modification of the order dated 29.1.1997 passed in CWJC no.2976 of 1985. The review application was disposed of by order dated 27.10.2016. Relevant portion of the order is quoted herein below:-

“Thus, in our opinion, it has to be held that Division Bench, while passing the restraintment order and choosing the expression 'till the disposal of the matter', had in its mind the disposal of the enquiry and a decision by the Additional Collector (Ceiling).

.....
Thus, in view of the aforesaid discussion and also the admitted fact that about sixteen other similarly situated persons have been allowed registration, it is held that the pendency of ceiling proceeding against the land-holder would not be an impediment in registering the land transferred by the petitioner as he cannot be allowed to wait till eternity. However, at the same time, it is also held that, even such registration is made, the State Government would be at liberty to assail such order passed by the Additional Collector (Ceiling) before the competent authority and take other remedial steps if it finally succeeds.”

18. It may be mentioned here itself that the State of Bihar preferred SLA (Civil) no. 4160/2017 against the judgment dated 27.10.2016 passed in Civil Review however the same was dismissed by the Hon’ble Supreme Court by order dated 23.2.2017. Consequent to the orders passed in the civil review



application and the Special Leave Petition (SLP) from the same having been dismissed by the Hon'ble Supreme Court, the respondents were left with no option but to allow the registration of the sale deed.

19. It may be mentioned here that the respondents in the meantime came out with the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) (Amendment) Act, 2016, published in the Bihar Gazette extraordinary on 2.9.2016. By the said amending Act, section 45B of the Act was repealed while sub-sections (3) and (4) were added to section 30 of the Act.

20. From the records of the writ application it would transpire that after passing of the order dated 29.1.1997 in CWJC no.2976 of 1985, while setting aside the orders in the ceiling case, the appeal as also the revision, this Court had directed the Additional Collector (Ceiling) to conduct a fresh enquiry under section 5(1)(iii) of the amended Act and to publish a fresh draft statement as required under section 10(1) of the Act. From the contents of the counter affidavit, more particularly pages 29-30 thereof, it transpires that the Additional Collector concluded the enquiry on 28.6.1999 and sent the records to the Government on the point of approval of



exemption under section 29. It has categorically been stated in paragraph no.7 of the counter affidavit that the ceiling case has not concluded finally rather the same is pending for draft publication under section 10.

21. At this stage ie during pendency of the ceiling proceeding that the impugned notice contained in Letter no. 1925 dated 19.7.2017 has been issued by the Collector, East Champaran, Motihari to the petitioner asking him to show-cause within 21 days as to why in view of the petitioner having incorrectly obtained the order dated 28.6.1999 in Ceiling Case no. 1/1996-97, a fresh proceeding under the Act be not started against him in exercise of powers under section 30(4)(i) of the Act.

22. It would be relevant to note that so far as the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 is concerned, the object of the same was for fixation of ceiling, restriction on sub-letting and resumption by certain *raiyats*, for personal cultivation of land. The scheme of the Act would show that it was divided into 13 chapters and it broadly provide for fixation of ceiling area of land, no person to hold land in excess of the ceiling area, public notice upon certain land holders to submit returns, option of the



family to select its ceiling area, preparation of draft statement, final publication of draft statement and acquisition of surplus land by publishing a notification to that effect in the official gazette of the District. Chapter XII of the Act which contains sections 30 to 47 dealt with the miscellaneous provisions, which included Appeals (section 30), Revision to the Board of Revenue (section 32) and Power of State Government to make Rules (section 45).

23. It was by amending Act 7 of 1978 that section 45B was added in the Act which gave powers to the State Government to call for and examine the records of any proceeding disposed of by a Collector under the Act and it could direct that the case be reopened and disposed of afresh in accordance with the provisions of the Act. Section 45B (since deleted by Act 18 of 2016) is being quoted herein below for ready reference:-

“45B. State Government to call for and examine records.-The State Government may, at any time, call for and examine any record of any proceeding disposed of by a Collector under the Act and may, if it thinks fit, direct that the case be re-opened and disposed of afresh in accordance with the provisions of the Act.”



24. The amending Act 18 of 2016 which repealed section 45B at the same time added sub-sections (2) and (3) to section 30. Relevant part of section 30 is being reproduced herein below for ready reference:-

“30. Appeals.-[(1) (a) An appeal shall lie from any final order passed by any officer vested with the power of the Collector under this Act other than the Collector of the district to the Collector of the district or any other officer specially authorised in this behalf by the State Government within thirty days, of such an order.

(b) An appeal shall lie from any final order passed by the Collector of the district to the Commissioner of the Division within thirty days of such an order:

Provided that no appeal shall lie against orders passed under Section 5 and Section 29 before the final publication of the draft statement under sub-section (1) of Section 11:

Provided further that appeal against orders passed under Section 5 and Section 29 shall be filed within thirty days from the date of final publication under sub-section (1) of Section 11.]

[(2) An appeal under this Section shall be heard and disposed of in the prescribed manner.



[(3) An appeal shall be disposed of within the period of six months:]

Provided that if for any reason it is not disposed of within the period of six months, the reasons shall be recorded in writing by the Appellate Authority.

(4)(i) The Collector of a district may initiate a fresh proceeding under the Act, upon his own knowledge or information, he is satisfied that a land holder, in a proceeding under the Act, by fraudulently or by misrepresentation of facts or law, has managed to obtain an order from any of his subordinate authority with a view to defeat the objects of the Act or any provision thereof and retains land in excess of the ceiling area.

(ii) The Commissioner of a division shall exercise the similar power & authority as the collector of a district where a land holder has obtained similar order from the Collector of a district falling within his Jurisdiction under similar circumstances:

Provided that before initiating such proceeding under the Act, the Collector of a district or the Commissioner of a division, as the case may be, shall issue a notice to the land holder to show cause as to why land ceiling proceeding may not be initiated on the ground mentioned in the notice:

Provided further that no such proceedings shall be initiated in the cases



decided by Board of Revenue or other Higher Courts.]”

(emphasis supplied)

25. Section 30 (as was with section 45B before its repeal) also comes under the miscellaneous provisions under Chapter XII of the Act and the section is given the title/heading ‘Appeals’. The question as to what weight should be assigned to the heading or title of a section was dealt with by the Hon’ble Supreme Court in the case of **Raichurmatham Prabhakar & Anr. vs Rawatmal Dugar [(2004) 4 SCC 766]**, wherein in paragraph no.14, it was held as follows:-

“14. The view is now settled that the headings or titles prefixed to sections or group of sections can be referred to in construing an Act of the legislature. But conflicting opinions have been expressed on the question as to what weight should be attached to the headings or titles. According to one view, the headings might be treated as preambles to the provisions following them so as to be regarded as giving the key to opening the mind of the draftsman of the clauses arranged thereunder. According to the other view, resort to heading can only be taken when the enacting words are ambiguous. They cannot control the meaning of plain words but they may explain ambiguities. (See Principles of Statutory Interpretation by Justice G.P. Singh, 9th Edn., 2004, pp. 152 and 155.) In our opinion, it is permissible to assign the heading or title of a section a limited role



to play in the construction of statutes. They may be taken as very broad and general indicators of the nature of the subject-matter dealt with thereunder. The heading or title may also be taken as a condensed name assigned to indicate collectively the characteristics of the subject-matter dealt with by the enactment underneath; though the name would always be brief having its own limitations.....”
(emphasis supplied)

26. On perusal of the amended section 30, one finds that sub-section 1(a) thereof provides for an appeal from any final order. At the same time proviso to section 30(1)(b) specifically provides that no appeal shall lie against orders passed under section 5 and section 29 before final publication of draft statement under section 11(1) of the Act. Section 30(4)(i) gives power to the Collector of a district or Commissioner of a division to initiate a fresh proceeding on satisfaction of the conditions mentioned therein. At the same time the second proviso to section 30(4)(ii) places a restraint or an embargo to the effect that no such proceedings shall be initiated in the cases decided by the Board of Revenue or other Higher Courts.

27. Thus the powers under section 45B (since repealed) of the Act which gave powers to the State Government to call for and examine any record of any proceeding disposed of by a



Collector was taken away by repeal and in its place was added section 30(4) which gives power to the Collector of a district or Commissioner of a division that he may initiate a fresh proceeding. While section 45B was an independent section, sub-section (4) was added under section 30 which deals with 'Appeals'. The only conclusion one can deduce from the said amendment (both by amending Act 18 of 2016) is that the State Government's power of reopening a proceeding disposed of by a Collector at any stage no longer exists, instead now the power to initiate a fresh proceeding lay with the Collector or the Commissioner and which was to be exercised only during pendency of the appeal under section 30 subject to second proviso to section 30(4)(ii) of the Act.

28. Thus from reading of section 30 of the Act, in the opinion of this Court the conditions required to be fulfilled for exercise of powers under section 30(4)(i) of the Act can be summarized as follows:-

- (i) Final order has been passed by any officer vested with the power of the Collector under this Act;
- (ii) Final publication of draft statement under section 11(1) of the Act has been done;
- (iii) An appeal under section 30 has been preferred



against any final order passed by any officer vested with the power of the Collector under the Act or by the Collector of the district;

(iv) The case has not been decided either by the Board of Revenue or other Higher Courts.

29. So far as the facts of the instant case are concerned pursuant to the order dated 29.1.1997 allowing CWJC no. 2976/1985, a division bench of this Court while quashing the orders of the Additional Collector, the Collector, the Additional Member, Board of Revenue as also under sec 5(1)(iii) of the Act regarding transfer of the land and consequential notification under section 11(1) or 15 of the Act directed the Additional Collector to conduct a fresh enquiry under section 5(1)(iii) of the Amended Act and publish a fresh draft statement as required under section 10(1) of the Act. As per the categorical statement made in paragraph no.7 of the counter affidavit filed on behalf of the Collector, East Champaran, Motihari (respondent no.3) and the Senior Deputy Collector, District Legal Cell, East Champaran, Motihari (respondent no.5) the case has not been finally concluded rather the same is pending for draft publication under section 10 of the Act.

30. Thus in view of the provision of sec 30 of the Act,



as dealt with hereinabove, there being no final publication of draft statement under section 11, the final order not having been passed and there being no appeal pending, in the opinion of this Court, the notice impugned does not satisfy the conditions for exercise of powers under sec 30(4)(i) of the Act and thus the same cannot be sustained.

31. In view of the facts and circumstances stated herein above, the notice impugned as contained in Letter no. 1925 dated 19.07.2017 (Annexure-1), issued under the signature of the Collector, East Champaran, Motihari in purported exercise of powers under section 30(4)(i) of the Act being illegal, arbitrary and not sustainable, the same is hereby quashed.

32. The writ application is allowed.

(Partha Sarthy, J)

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AFR/NAFR	A.F.R
CAV DATE	25.04.2023
Uploading Date	08.08.2023
Transmission Date	N/A

