

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.554 of 2022

In
Civil Writ Jurisdiction Case No.10729 of 2017

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1. Ram Pukar Yadav S/o Late Babujee Mandal @ Babujee Yadav, Resident of Village and Post Chandaaur, P.S. Saur Bazar, District- Saharsa.
 2. Bijendra Yadav S/o Late Babujee Mandal @ Babujee Yadav, Resident of Village and Post Chandaaur, P.S. Saur Bazar, District- Saharsa.
 3. Surendra Yadav S/o Late Babujee Mandal @ Babujee Yadav, Resident of Village and Post Chandaaur, P.S. Saur Bazar, District- Saharsa.
 4. Kamal Kishore @ Kamal Yadav S/o Late Babujee Mandal @ Babujee Yadav, Resident of Village and Post Chandaaur, P.S. Saur Bazar, District- Saharsa.

... .. Appellant/s

Versus

1. The State of Bihar through its Secretary, Department of Revenue, Bihar, Patna.
2. The Collector-Cum-District Magistrate, Saharsa.
3. The Additional Collector, Saharsa.
4. The Circle Officer, Block Saur Bazar, District- Saharsa.
5. Shiv Kumar @ Shiv Kumar Yadav S/o Late Choota Lal Prasad Yadav, Resident of Village and P.O. Shaban Tola, Chandaaur, Block Saur Bazar, District- Saharsa.

... .. Respondent/s

Appearance :

For the Appellant/s	:	M/s Pushkar Narain Shahi, Sr. Advocate Shashank Shekhar Jha, Advocate
For the State	:	Mr. Md. Khurshid Alam (AAG 12) Mr. Asif Kalim, AC to AAG 12
For the Respondent No.5:		M/s Daronacharya, Sr. Advocate Subesh Sharma, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 31-07-2023

1. Though we are not happy with the manner in which only one writ petition was filed from a common order in two writ petitions, we are inclined to dispose of the matter



considering the facts arising therefrom and the parties being identical.

2. The parties are referred to from the appeal. The appellants are persons who claimed to have an interest in Khata No. 3312, Khesra No. 15405, area 65 decimals which interest was crystalized by Annexure 2 order dated 2.9.1991. The party respondent herein filed an encroachment case before the authorities under the Bihar Public Land Encroachment Act, which was numbered as Encroachment Case No. 36 of 2012-13. In fact the specific contention of the appellants was that they have obtained Jamabandi as early as in 1991. The appellants approached this Court by C.W.J.C. No. 10729 of 2017 wherein there was a stay. The respondent filed another writ petition numbered as C.W.J.C. No. 4302 of 2016, seeking a direction to proceed with the encroachment case.

3. The learned Single Judge heard both the cases and vacated the stay order in C.W.J.C. No. 10729 of 2017 directing the appellants herein to file appropriate show cause replies / objections within a period of four weeks from today in Encroachment Case No. 36 of 2012-13. *Status quo* was also directed to be maintained for a period of 16 weeks and consequential action was directed to be in accordance with the



final order passed under the Bihar Public Land Encroachment Act.

4. The appellants submit that the Additional Collector had disturbed the Jamabandi issued in 1991 by an order dated 6.6.2017 which is produced as Annexure 5 of the writ petition. An appeal filed before the District Collector was rejected and a revision is now pending before the Commissioner.

5. Considering the overall circumstances also considering the fact that the appellants Jamabandi is dated as far back as in 1991 and State having initiated the *suo moto* proceedings by the Additional Collector after 25 years in the year 2011, we are inclined to stay the encroachment case till the question of Jamabandi; its sustainability or validity of cancellation, is considered and finalized. We hence direct the encroachment case to be kept in abeyance till the Commissioner deals with the matter and enters a final finding. If the Commissioner's finding is prejudicial to the appellants, necessarily the appellants would be entitled to take a further remedy in which the appellants would also be entitled to seek for stay of the proceeding of the encroachment case.

5. The appeal stands disposed of.

6. We make it very clear that we have not observed



anything on the merits of the matter or even as to whether the title can be decided in a summary manner.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Spd/-Shiv

AFR/NAFR	
CAV DATE	N/A
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