

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21061 of 2019

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1. Arun Kumar Goenka, Son of Late Diwan Bahadur Kedarnath Deonka, Resident of Village- Laxmi Bhawan, Chawk Bazar, P.O.- Munger, P.S.- Munger, District- Munger.
 2. Vijay Kumar Goenka, Son of Late Onkarnath Goenka, Resident of Village- Laxmi Bhawan, Chawk Bazar, P.O.- Munger, P.S.- Munger, District- Munger.

... .. Petitioner/s

Versus

1. The State of Bihar through Collector cum District Magistrate, Jamui, District- Jamui.
2. The Principal Secretary, Department of Kaimur and Land Reforms, Govt. of Bihar, Patna.
3. The Director, Land Acquisition and Land Reforms Departments, Govt. of Bihar, Patna.
4. The Managing Director, Bihar State Road Construction Department, Govt. of Bihar, Mechanical Work Shop Campus, Near Airport, Shekhpura, Patna.
5. The Collector cum District Magistrate, Jamui, District- Jamui.
6. The Land Acquisition Officer, Jamui, District- Jamui.
7. The Circle Officer, Khaira, District- Jamui.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Jitendra Kishore Verma, Advocate Mr. Sumeet Kumar Singh, Advocate
For the Respondent/s	:	Mr. Rishi Raj Sinha, SC-19 Mr. Manish Dhari Singh, Advocate

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

Date : 18.08.2023

1. Heard learned counsel for the parties.
2. The instant application has been filed for the following relief(s):-

“1. That the present writ application is being filed in the nature of Certiorari for setting aside the notice bearing memo no. 1359 dated



*05.07.2019 issued under Section 4(h) under the Bihar Land Reforms Act, 1950 bearing case no. 01/2019 with regard to the property situated in Mauja Salaiya, Thana No. 89 Khata No. 52, Plot No. 1156, area 61.85 acre, Khata No. 53, Plot No. 1155, area 100.60 acre, Mauja Suarkol, Thana 88, Khata No. 76, Plot No. 804, area 31.50 acre marked as Gairmajarua (Annexure-P/11); on the ground that the said notice is without making the appropriate enquiry pertaining to the land before claiming to be a public land, without clarifying the actual state of affair, without verifying the nature of the land in question etc., without issuance of public notice, without issuance of notice under Rule-4 Form B-1 of the Bihar Land Reforms Rule, 1951 which itself vitiates the entire proceeding;
For any other relief/ reliefs for which the petitioner is entitled for;”*

3. The case of the petitioners in brief is that Arun Kumar Goenka (petitioner no.1) and Late Onkarnath Goenka, father of petitioner no.2 are full brothers. Onkarnath Goenka died in the year 2016 leaving behind his two sons ie the petitioner no.2 and Vinay Kumar Goenka.

4. It is the case of the petitioners that in the *Khatiyan* prepared on 13.12.1908, the land in question was recorded as *gairmazarua*. The petitioners got *Bandobasti* from



the actual landlord ie *Khaira* estate and *Parwana Bandobasti* dated 19.6.1949 was issued in favour of their family members. They have right, title and possession on the property. The *Khaira* estate also gave list and details of the land and the land in question was shown to be *gair mazarua malik*. Subsequently, the nature of the land changed completely and on the basis of the *Parwana Bandobasti*, the petitioners started to pay rent to the State Government and were granted rent receipts.

5. As per the petitioners, the description of the land is as follows:-

i. In *Mauza-Suarkol*, *khata* no.76, plot no. 804/5, area 6.50 acres and *khata* no.77, plot no.711 and 818, area 22.05 acres and 22.55 acres.

ii. In *Mauza-Salaiya*, in *khata* no. 53, plot no.1152/4, area 17.35 acres; in *khata* no.53, plot no.1153, area 2.38 acres; in *khata* no.52, plot no. 1151, area 1.41 acres; in *khata* no.52, plot no.1152, area 1.84 acres; in *khata* no.52, plot no.1156, area 2.47 acres and 24.45 acres. Total area being 44.25 acres.

6. It is the case of the petitioners that the petitioner no.1 has been paying rent and rent receipt has been issued for 24.45 acres of land in *khata* no.53. Further his full brother, father of the petitioner no.2 has also been paying rent for *khata*



nos.76 and 77 measuring a total area of 28.45 acres and rent receipt is being issued to him. The Circle Officer has also issued land possession certificate with respect to different properties.

7. Sri Jitendra Kishore Verma, learned counsel for the petitioners submits that pursuant to the respondent authorities having proceeded to construct a road in *Mauza-Salaiya* as also in *Mauza-Suarkol* in the property existing in the name of the petitioners, a representation was filed by the petitioners. On getting no response, the petitioners filed C.W.J.C no. 10851 of 2018 in the Patna High Court wherein by order dated 23.7.2018, the respondents were granted time to file counter affidavit specifically stating as to whether the road is being constructed over the land of the petitioners or not. Learned counsel submits that although the Register-II for *Mauza-Suarkol* is missing, he has brought on record the copy of Register-II for *Mauza-Salaiya* to show that the land in question was mutated in favour of the petitioner no.1 on the basis of return. The copies of the Register-II, rent receipts and the application filed in the year 2006 together with the report given by the Circle Officer clearly demonstrates the fact that the land in question was in possession of the petitioners. It is in response to the direction of this Court to file counter affidavit in the



above mentioned writ application that the respondents sent a notice contained in Memo no.1359 dated 5.7.2019 under the signature of the Collector, Jamui, in Case no.1 of 2019, under section 4(h) of the Bihar Land Reforms Act, 1950 ('BLR Act' in short). The petitioner was informed that he has been made a respondent in the said case and that he should appear and file his response.

8. Learned counsel for the petitioners further submits that the petitioners challenge the issuance of the notice on the grounds that the notice shows an absolute non-application of mind, the same could not have been issued in the facts of the present case wherein undisputedly there is a long standing *Jamabandi* in the name of the family of the petitioners and none of the requirements for issuance of notice under section 4(h) of the BLR Act is satisfied. Learned counsel in support of his contentions relies on the judgment in the case of **Richesh Anand vs. The State of Bihar & Ors. [2019 (3) PLJR 624]**, **Maya Devi & Ors. vs. The State of Bihar & Ors. [2014 (3) PLJR 584]** and the **State of Bihar & Ors. vs. Harendra Nath Tiwari [2015 (1) PLJR 606]**. He further relies on the judgment in the case of **Nityanand Sharma & Ors. vs. State of Bihar & Ors. [2020 (5) BLJ 529]**, **Ramnandan Singh vs. The State of**



**Bihar & Ors. [2014 (2) PLJR 636] and Vijay Kumar Prasad
vs. The State of Bihar & Ors. [2017 (1) PLJR 818].**

9. Learned counsel appearing for the respondents referring to and relying upon the averments made in the counter affidavit filed on behalf of the respondent nos.5, 6 and 7 submits that although the ex-landlord had issued *Bandobasti Parwana* in favour of the family of the petitioners with regard to different plots, but neither the petitioners nor their ancestors had right title or came in possession over the land in question. The land belongs to the State of Bihar. The Collector has the power to enquire whether any transfer was made after 1.1.1946 with the object of defeating any provision of the Act. It was further submitted that the land in question is a Government land of which *khata* no.52, plot no.1156 is *gair mazarua* land *Kism parti kadim* and *khata* no.53, plot no.1155 is *gair mazarua* land *Kism Jungle*. It is stated that the Cadastral Survey khatian of *Mauza-Salaiya* and *Mauza-Suarkol* are not available in the Circle office. The petitioners anyhow got the *Bandobasti Parwana* mutated and on that basis claimed right, title and possession over the land. The plots in question were never in possession of the petitioners or their ancestors because these plots are un-irrigated and jungle land. The petitioners never



having come in possession are not entitled to the relief(s) being prayed for in the instant application.

10. Learned counsel for the respondents further submitted that so far as the judgment in the case of **Maya Devi** (*supra*) is concerned, the same is not applicable in the instant case as in the facts of the said case, the petitioners were in possession and the land was residential. In the instant case, the Circle Officer examined and found the land to be *gair mazarua*, *Parti kadim* and forest land. It is submitted that the *Jamabandi* was opened around the year 1968 as the oldest rent receipt produced is of the said year. With respect to non-interference in case of a long standing *Jamabandi*, it was submitted that the same is only done in those cases when the petitioners were in possession.

11. In reply, learned counsel for the petitioners submitted that at such a belated stage, the respondents could not question the right to make settlement, which was done in the year 1949 but what could be questioned is only as to whether a notice under section 4(h) of the BLR Act could be issued in the facts and circumstances of the case. Learned counsel for the petitioners further placed reliance on the judgment in the case **Khiru Gope and others vs. Land Reforms Deputy Collector,**



Jamui and others [AIR 1983 Patna 121].

12. Having heard learned counsel for the parties, the facts of the case are that as a result of *Parwana Bandobasti* dated 19.6.1949 issued by *Khaira* estate in favour of the family members of the petitioners, *Jamabandi* was created in the name of the petitioners' family. They started to pay rent and rent receipts have been issued in their favour by the revenue authorities. It further transpires that Land Possession Certificate (L.P.C.) has also been issued by the Circle Officer with respect to different properties.

13. In the first counter affidavit (affidavit dated 23.12.2021) filed on behalf of respondent nos. 5, 6 and 7, the stand of the respondents was that the ex-landlord had issued '*Bandobasti Parwana*' in favour of the family of the petitioners with regard to different plots and *khata* numbers on 19.6.1949, but as the petitioners and their ancestors never came in possession over the land in question, the land belongs to the State of Bihar. The respondents accept in the said affidavit that the petitioners got the *Bandobasti Parwana* mutated and on this basis they claim their right, title and possession over the land. It is also accepted that they got possession certificate. In the supplementary counter affidavit (affidavit dated 13.3.2023) filed



by the same set of respondents, the respondents have come out with a new case that the ex-landlord never issued *Bandobasti Parwana* in favour of the ancestor of the petitioners rather the petitioners have shown forged and fabricated documents with respect to the land in question. It may only be observed here that in view of the two contradictory stand taken by the respondents in their two counter affidavits, serious disputed questions of fact arise and this issue cannot be decided in a summary proceeding, as is being attempted to by the respondents.

14. The impugned notice has been issued by the Collector, Jamui in purported exercise of his powers under section 4(h) of the BLR Act. Section 4(h) of the BLR Act is quoted herein below for ready reference:-

“4. Consequences of the vesting of an estate or tenure in the State. [(h) The Collector shall have power to make inquiries in respect of any transfer including the settlement or lease of any land comprised in such estate or tenure or the transfer of any kind of interest in any building used primarily as office or cutchery for the collection of rent of such estate or tenure or part thereof, [* * *] and if he is satisfied that such transfer was made [at any time after the first day of January, 1946, with the object of defeating any provisions of this Act or causing loss to the State or obtaining higher compensation thereunder the Collector may, after giving



reasonable notice to the parties concerned to appear and be heard [* *] annul such transfer, dispossess the person claiming under it and take possession of such property on such terms as may appear to the Collector to be fair and equitable:]*

[Provided that an appeal against an order of the Collector under this clause if preferred within sixty days of such order, shall lie to the prescribed authority not below the rank of the Collector of a district who shall dispose of the same according to the prescribed procedure:]

Provided further that no order annulling a transfer shall take effect nor shall possession be taken in pursuance of it unless such an order has been confirmed by the State Government.]”

15. The question of issuance of notice under section 4(h) of the BLR Act was under consideration by this Court in the case of **Ramnandan Singh** (*supra*) wherein, this Court took note of the three contingencies under which section 4(h) of the BLR Act could be invoked. It also held that powers under section 4(h) of the BLR Act cannot be exercised in a casual manner and onus lay on the State to prove that the settlements and the entries in relation thereto are wrong. If the State wants to challenge the title of any person based on such settlement, the only option left to the State is to approach the Civil Court.

16. Relevant paragraphs of the judgment in the case



of **Ramnandan Singh** (*supra*) are being quoted herein below:-

“4. It is submitted that the whole proceedings are not only without jurisdiction but mala fide as well. With reference to Section 4(h) of the Act, it is submitted that there are only three contingencies, under which Section 4(h) of the Act could have been invoked. One where soon after vesting it is found that any settlement had been made by the ex-landlord after first day of January, 1946, the genuineness of those settlements could be examined for the reason of avoidance of consequences of zamindari abolition. Second, where settlements were made to enhance the claim of compensation on zamindari abolition and third such settlements were made to cheat the Government. An enquiry could be initiated under Section 4(h) of the Act and Jamabandi created could be cancelled. Section 4(h) of the Act permits no other contingencies.

5. As noted above, all the four cases arise out of the same proceedings and all the petitioners are relatives with exception as noted earlier. In the first case, a counter affidavit has been filed by the State, wherein it is stated that the lands were originally Gair mazarua malik lands and as such a doubt had now, after 50 years, arisen about settlements. I am afraid, that cannot be a ground because it is now well-settled by series of judgments of this Court that if it is Gair mazarua malik land, the Zamindar had full authority to make settlement thereof. There appears to be some misconception with the authorities that Gair mazarua malik and



could not be settled. Apart from attempting to create a vague doubt, there is no substance in the counter affidavit.

6. It is equally well-settled by several decisions, of this Court, firstly that power under-Section 4(h) of the Act cannot be exercised in a casual manner. Secondly, if the State challenges the correctness of the settlements and the entries in relation thereto, onus is entirely upon the State to prove that they, are wrong. The onus cannot be fastened on the person, who has been in possession and that too since long.

8. A reference to the aforesaid judgments would clearly show that the power of the Collector under Section 4(h) of the Act is not an unbridled power. He cannot examine all or any settlement made by the ex-landlord. There are only three contingencies under which he can enquire into the validity of settlement as made thereunder. Then it has been held that if the State, for any reason, wants to challenge the authority or the title of any person based on such settlement then the only option left to the State is to approach the civil court for cancellation of the Jamabandi. In the present case, none of the situations stipulated above are at all even referred to as being applicable and yet without concluding the proceedings for cancellation of Jamabandi, petitioners have been deprived of compensation. As noticed above, the proceeding for cancellation of Jamabandi itself is without jurisdiction.

9. Thus, in my view, the very initiation



of proceedings, which have now been pending for over 12 years and for which the report (Annexure-10) completely in favour of the petitioner is there, was itself without jurisdiction and was mala fide in law. It was only to deny just compensation to the petitioners. Not only that it was in effect an effort by the State to make unjust enrichment by taking and digesting the entire compensation, which was meant for persons like the petitioners.”

(emphasis supplied)

17. As in the case of **Ramnandan Singh** (*supra*) this Court, also in the case of **Vijay Kumar Prasad** (*supra*), held that after 30-40 years there was a possibility that the nature of land might have changed from *Gair Mazarua* and could have been settled. If the State had reason to question the manner in which the *Jamabandi* was created in 1950, then the onus lay upon the State to prove that the same was created wrongly and the only option before the State of Bihar would be to file a suit before the competent Court for getting such a declaration.

18. Relevant portion of the judgment in the case of **Vijay Kumar Prasad** (*supra*) is being quoted herein below:-

“5. I completely fail to understand as to how such plea could be decided by the Collector in a summary proceeding. The information given to the petitioner under Right to Information Act, a copy of which has been appended as Annexure 3, indicates



in clear terms that the concerned part of the constructed road was never entered in any survey map as road or lane rather the entry is as Gair Mazarua Malik which could have well been settled as a Raiyati land by the Jamindar. That apart the Hon'ble Supreme Court in Gauri Shanker v. Ram Singhasan (AIR 1952 Patna 472) has held that the entry in the record of rights though has a presumptive value but it weakens or wanes through passage of time. The Collector must be indicating towards entry of Gair Mazarua in cadastral survey of right which must have been prepared between the year 1906 to 1911. After 30-40 years, there was a possibility that the nature of land might have changed from Gair Mazarua and could have been settled. However, it was unfair on part of the Collector to direct the petitioner to produce that Sadda Pattta which was executed in the year 1940 to the ancestor of his vendor without explaining as to why the Jamabandi was created in the name of Kamli Devi, Kunti Devi and Sheo Dulari Devi and was never questioned. If a person or even State has some reason to question the manner in which Jamabandi was created in 1950 after several decades then onus would be upon it or such person to prove that such Jamabandi was created wrongly. That apart, after such a long time after creation of Jamabandi and, thereafter, further mutation after purchase in the year 1977 by the petitioner; it cannot be held in the year 2013 by the Collector that Jamabandi was created fraudulently as the fraud would have to be proved before a Court of



competent jurisdiction. Thus, the option before the State of Bihar would be to file a suit before the competent court for getting such declaration.....”

(emphasis supplied)

19. Similarly, in the case of **Maya Devi** (*supra*) this Court proceeded to hold that long standing *Jamabandi* cannot be cancelled in a summary proceeding by any revenue officer but the only forum available to the State is the Civil Court. Relevant paragraph of the judgment is quoted herein below:-

“8. The result of these three progressive stages is that if the State wants the petitioners’ lands or the lands on which the petitioners have been residing for last 50 years, they must pay due compensation and take action in accordance with the provisions of the new Land Acquisition Act. If they intend to cancel the Jamabandi then it is for them to move the Civil Court for a declaration that the alleged settlement and/or Jamabandi is illegal and cannot be accepted and let the title of the State be so declared but till such time the dispute is resolved, the petitioners cannot be evicted by the State in any manner nor can just compensation for acquisition be denied.”

(emphasis supplied)

20. So far as the facts of the instant case is concerned, against the claim of the petitioners of the *Jamabandi*



having been created on the basis of *Parwana Bandobasti* dated 19.6.1949, as stated above, the respondents in their counter affidavit accept creation of the same. The only dispute raised by them is that the petitioners never came in possession over the land in question, however, at the same time they do not dispute the fact that the petitioners have been paying rent, rent receipts have been granted in their favour, thus, in effect the revenue authorities accepting their being in possession over the land in question. The respondents also accept issuance of Land Possession Certificates (LPC) in favour of the petitioners. This being the position and the respondents accepting the mutation of the petitioners, at least since the year 1968, cannot turn around and issue notice under section 4(h) of the BLR Act after more than 50 years. As held in the judgments relied upon and referred to herein above, the only option available to the respondents is to get their title declared with respect to the land in question from a Civil Court of competent jurisdiction.

21. It may be pointed out that even accepting the powers of the Collector under section 4(h) of the BLR Act to conduct enquiries in respect of any transfer including settlement made after 1.1.1946, the said powers have to be exercised within a reasonable period and not after more than 50 years, and



that too after demand of compensation by the petitioners. Further, even the exercise of the said power, as has been done by issuance of the notice impugned in the instant case, should show the application of mind by the Collector and mention the reasons for his satisfaction showing that all the contingencies as contemplated under section 4(h) of the BLR Act have been satisfied.

22. Having heard learned counsel for the parties and having perused the material on record, the Court finds that pursuant to the land in question being mutated, the petitioners started to pay rent and were being granted rent receipts. They had also been issued Land Possession Certificate (LPC) by the Circle Officer. It was on the construction of road by the respondents on the land of the petitioners that led to the petitioners' filing a representation and on not getting any response CWJC no. 10851 of 2018 was filed wherein by order dated 23.7.2018 the respondents were directed to file counter affidavit whether the road was being constructed on the land of the petitioner or not. It is at this stage that the notice impugned dated 5.7.2019 has been issued by the respondents after more than 50 years of the creation of the *Jamabandi*.

23. For the reasons stated herein above including the



long delay in issuance of the notice, the same not containing reasons to show the satisfaction of the contingencies required for a notice under section 4(h) of the BLR Act, this Court finds that the notice impugned contained in Memo no.1359 dated 5.7.2019 is illegal, arbitrary and without jurisdiction and as such the same is quashed.

24. The writ application is allowed.

(Partha Sarthy, J)

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CAV DATE	04.05.2023
Uploading Date	18.08.2023
Transmission Date	N/A

