

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20608 of 2019

Bipin Bihari Singh @ Bipin Singh Son of Late Kapildeo Singh Resident of Village and P.O. Amar Chapra, P.S. Chapra Muffasil, District- Saran at Chapra.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna.
3. The District Magistrate, Saran at Chapra, District- Saran at Chapra.
4. The Additional Collector, Saran at Chapra, District- Saran at Chapra.
5. The Deputy Collector Land Reforms, Sadar Chapra, District- Saran at Chapra.
6. The Circle Officer, Sadar Chapra, District- Saran at Chapra.
7. Sikandar Manjhi Son of Late Bhola Manjhi Resident of Village and P.O. Amar Chapra, P.S. Chapra Muffasil, District- Saran at Chapra.
8. Birendra Manjhi Son of Late Bhola Manjhi Resident of Village and P.O. Amar Chapra, P.S. Chapra Muffasil, District- Saran at Chapra.
9. Saroj Manjhi Son of Bashistha Manjhi Resident of Village and P.O. Amar Chapra, P.S. Chapra Muffasil, District- Saran at Chapra.
10. Dinananth Manjhi Son of Late Bhikshu Manjhi Resident of Village and P.O. Amar Chapra, P.S. Chapra Muffasil, District- Saran at Chapra.
11. Jailal Manjhi Son of Late Anganu Manjhi Resident of Village and P.O. Amar Chapra, P.S. Chapra Muffasil, District- Saran at Chapra.
12. Narayan Manjhi Son of Late Raj Ballabh Manjhi Resident of Village and P.O. Amar Chapra, P.S. Chapra Muffasil, District- Saran at Chapra.
13. Sunil Manjhi Son of Nageshwar Manjhi Resident of Village and P.O. Amar Chapra, P.S. Chapra Muffasil, District- Saran at Chapra.
14. Satyendra Manjhi Son of Bhola Manjhi Resident of Village and P.O. Amar Chapra, P.S. Chapra Muffasil, District- Saran at Chapra.
15. Chhathi Lal Manjhi Son of Prahalad Manjhi Resident of Village and P.O. Amar Chapra, P.S. Chapra Muffasil, District- Saran at Chapra.
16. Dilip Manjhi Son of Bashistha Manjhi Resident of Village and P.O. Amar Chapra, P.S. Chapra Muffasil, District- Saran at Chapra.
17. Sudarshan Manjhi Son of Binda Manjhi Resident of Village and P.O. Amar Chapra, P.S. Chapra Muffasil, District- Saran at Chapra.
18. Durga Manjhi Son of Binda Manjhi Resident of Village and P.O. Amar Chapra, P.S. Chapra Muffasil, District- Saran at Chapra.
19. Pramatra Singh Son of Late Hari Singh Resident of Village and P.O. Amar Chapra, P.S. Chapra Muffasil, District- Saran at Chapra.
20. Mithilesh Singh Son of Late Hari Singh Resident of Village and P.O. Amar Chapra, P.S. Chapra Muffasil, District- Saran at Chapra.

21. Chandan Singh Son of Birbahadur Singh Resident of Village and P.O. Amar Chapra, P.S. Chapra Muffasil, District- Saran at Chapra.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Shashi Bhushan Kumar Manglam, Adv.
For the State/s	:	Mr. Dhurjati Kumar Prasad, GP-14
For the Respondent/s	:	Mr. Shiv Shanker Prasad Yadav, Adv.
	:	Mr. Krishna Kant Singh, Adv.

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 29-08-2023

Heard learned counsel for the petitioner, learned counsel for the State and counsel for the private respondents No. 7 to 18.

2. The present writ petition has been filed for quashing the order dated 19.09.2019 passed by respondent No.4 in Jamabandi Cancellation Case No. 42 of 2019.

3. Counsel for the petitioner submits that the said order dated 19.09.2019 in Jamabandi Case No. 42 of 2019 has been passed behind the back of the petitioner. Counsel further submits that the said case has been filed on 04.09.2019 and, thereafter, on 12.09.2019 the case was admitted and notices were directed to be issued on 13.09.2019 to the petitioner and others. Thereafter, the date was fixed for hearing as on 19.09.2019.

4. Counsel for the petitioner appeared with *Vakalatnama* before the court of Additional Collector, but at

1:00 PM with duly executed *Vakalatnama*, it was informed by the Bench Clerk that the final order in the Jamabandi Cancellation Case No. 42 of 2019 has already been passed, due to which, the *Vakalatnama* which has been duly executed and prepared for filing on 19.09.2019, could not be accepted on behalf of the opposite party in Jamabandi Case No.- 42 of 2019. Counsel submits that the proper opportunities has not been granted to the petitioner. It has also been submitted that the order under challenge has been passed behind the back of the petitioner, and therefore, interference is required and order dated 19.09.2019 may be set aside.

5. Counsel for the State has raised objection that the present order has been passed by the competent quasi judicial authority under Section 9 of the Bihar Land Mutation Act, 2011. He submits that this case was duly filed, notice was duly issued and served as per the pleadings of the petitioner himself. He submits that the order has not been passed on merit of the case. He submits that the Additional Collector has passed an order only on jurisdictional error. He submits that upon calling Register-II and observing the same, it transpires to the Additional Collector that Jamabandi has been opened by the order of the Deputy Collector Land Reforms who is not the

competent authority under the Bihar Land Mutation Act, 2011. According to him, it is the Circle Officer who is competent authority to pass order of land mutation and by following the order of mutation, a *Jamabandi* has to be opened. As such, the order has been passed upon going through Register-II and hence, there is no need of interference in the said order. He further submits that since the Additional Collector found the order passed by the Deputy Collector Land Reforms, is non-jurisdictional, as such, he has immediately cancelled the *Jamabandi* opened by the order of the Deputy Collector Land Reforms. Counsel submits that the order passed by the Additional Collector is well-within his power under Section 9 of the Bihar Land Mutation Act, 2011.

6. Counsel further submits that the remedy lies to the petitioner under the statute, is to challenge the said order passed by the Additional Collector before the Collector in *Jamabandi* Cancellation Appeal under Section 9(6)(A) of the Bihar Land Mutation Act, 2011.

7. Counsel for the private respondent submits that the petitioner has filed this writ petition for cancellation of order dated 19.09.2019 in *Jamabandi* Cancellation Case No. 42 of 2019 for the lands which is also the subject matter of the Title

Suit No. 570 of 2019 according to Schedule I of the plaint, which has been annexed by private respondent in counter-affidavit of respondent No. 7 to 18 to this writ petition.

8. Counsel for the private respondent further submits that in this view of the matter, petitioner may not be permitted to place his case simultaneously before two forum. In response thereof, counsel for the State submits that the proceeding for cancellation of *Jamabandi* under Section 9 of the Bihar Land Mutation Act, 2011 and the proceeding for mutation under Section 6 of Bihar Land Mutation Act, 2011 are two distinct proceedings. He submits that filing suit shall not create bar for hearing under Section 9 of the Bihar Land Mutation Act, 2011, but Section 6(12) the Bihar Land Mutation Act, 2011 creates bar only in case of hearing relating to mutation matters.

9. Upon hearing the arguments and pleadings of the parties, this court is of the opinion that the issue involved in the present case is:-

whether this court has to entertain the petition ignoring the statutory remedy or not; and whether the filing simultaneously two proceedings i.e., writ proceeding and title suit shall create any hurdle upon the petitioner to sue?

10. With a view to answer this question, it is necessary to quote the provision laid down under Section 6(12) of the Bihar Land Mutation Act, 2011 which states as follows:-

6(12). Mutation of a holding or a part thereof shall not be allowed in cases in which Title Suit with regard to that holding or a part thereof is pending in the competent court.

11. From the provision laid down under Section 6(12) of the Bihar Land Mutation Act, 2011, it transpires that the said provision shall apply only when the mutation case is pending.

12. Admittedly, here in the present case, the matters and dispute are not relating to mutation rather it is for cancellation of Jamabandi under Section 9 of the Bihar Land Mutation Act, 2011. Hence, in the opinion of this court, the pending title suit shall not create any bar for the petitioner from filing the writ petition.

13. But on the same time, it also transpires to this court that order under challenge i.e., 19.09.2019 passed in Jamabandi Cancellation No. 42 of 2019 has been passed after sending of notice which the petitioner has received well-within time and then only he has handed over his duly executed *Vakalatnama* to his counsel to appear, but the said *Vakalatnama*

which was ready to be filed, has not been placed before this court and it is a pleading without any support. Secondly, it also transpires from the order sheet that the order has not been passed on merit rather the said order has been passed without considering the case of the petitioner or private respondents. Under Section 9 of the Bihar Land Mutation Act, 2011, the Additional Collector has held that Deputy Collector Land Reforms has no jurisdiction to pass order assuming himself as original court.

14. It also transpires to this court that the statutory remedy lies to the petitioner to file appeal, but here, the question of violation of natural justice has been raised. Therefore, this court entertains this writ petition and found that the order passed by the court is valid and there is no need of any interference.

15. With the observation, the present writ application stands dismissed.

(Dr. Anshuman, J.)

prakashmani/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.09.2023
Transmission Date	NA