

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3548 of 2018

- 1.1. Sri Shubham Kumar Negi Son of Late Radha Mohan Singh Resident of Village- Nasirna, P.O.- Manikpur, P.S.- Kurtha, District- Arwal (Bihar).
2. Shankar Prasad Singh (Wrongly mentioned in the order as Shiv Shankar Prasad Singh), S/o Late Ramanugrah Narayan Singh, Resident of Village- Nasirna, P.S.- Kurtha, District- Arwal (Bihar).
3. Murari Prasad Singh, S/o Late Ramanugrah Narayan Singh, Resident of Village- Nasirna, P.S.- Kurtha, District- Arwal (Bihar).
4. Krishna Mohan Kumar Singh, S/o Late Raghunath Prasad Singh, Resident of Village- Nasirna, P.S.- Kurtha, District- Arwal (Bihar).
5. Saket Kumar, S/o Late Shyam Kumar Singh, Resident of Village- Nasirna, P.S.- Kurtha, District- Arwal (Bihar).

... .. Petitioners

Versus

1. The State of Bihar through the Principal Secretary, Department of Revenue and Land Reforms, Govt. of Bihar, Patna.
2. The Principal Secretary, Department of Revenue and Land Reforms, Govt. of Bihar, Patna.
3. The Divisional Commissioner, Gaya.
4. The District Magistrate- cum- Collector, District- Arwal.
5. The Additional Collector, Arwal District- Arwal.
6. The Circle Officer, Kurtha Block, Kurtha, District- Arwal.

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Raj Kishore Prasad, Advocate
For the Respondent/s : Mr. Md. Khurshid Alam, AAG-12

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

ORAL JUDGMENT

Date : 25-01-2024

By way of this writ petition, the petitioners have
prayed for the following reliefs:-

*“(i) To issue an appropriate
writ(s)/order(s)/ direction(s) in the
nature of writ of certiorari for*



quashing the orders all dated 28.08.2017 passed by the respondent Additional Collector in Jamabandi Cancellation Case Nos. 15/AC/2013 to 18/AC/2013 and 25/AC/2013 (as contained in Annexure-9(series) to this writ application), whereby and where under the Jamabandi created in the name of either the petitioners or their ancestors with respect to the land appertaining to Thana No. 140, Khata No.191, Plot No.746 situated at Mouza - Manikpur in Kurtha Block of Arwal District, have been cancelled even though the right, title and interest in the said lands have already been declared in favour of the petitioners or their ancestors by a competent civil court of original jurisdiction vide judgment dated 16.01.2008 and decree dated 28.01.2008 passed in Title Suit No.03/1998/33/1999.

- (ii) *To issue an appropriate writ(s)/order(s)/direction(s) in the nature of writ of mandamus, directing the respondent authorities not to disturb the peaceful possession of the petitioner over the land in question as the petitioners have got their raiyati*



right and are holding 'Cattle Fair' (Pashu Mela) over the said land since the time immemorial and are collecting fees from the intending sellers and on several occasions, the State authorities have been restrained from interfering with the rights of the petitioners both by this Hon'ble Court vide order/judgment dated 27.08.1999 in CWJC No. 4491 of 1999 as well as by the competent Civil Court vide judgment & decree dated 22.01.1959 & 02.02.1959 respectively, in Title Suit No.54 of 1958.

(iii) To issue an appropriate writ(s)/order(s)/direction(s) in the nature of writ of mandamus, directing the respondent authorities to accept the rent of the lands in question and issue rent receipts in lieu thereof in favour of the petitioners, as the petitioners or their ancestors have been paying rent for the lands in question since vesting of Zamindari itself and the same has also been approved in the title suits as aforesaid."

2. The facts of this case, as stated in the writ petition, is that the land appertaining to thana no.140, khata no.



191, plot no.746 situated at Mouza – Manikpur, Kurtha Block, District-Arwal belongs to the petitioners as they have inherited the property from their ancestors and over the said land the petitioners used to organize the cattle fair after obtaining license from the competent authority and also used to collect fee/tolls from the intending sellers/buyers, who used to participate in the said cattle fair. After vesting of Zamindari, some dispute arose between the ancestors of the petitioners and the State Government as to who will collect fee/tolls from the said cattle fair. Ultimately, the then Additional Collector, Jehanabad vide his letter dated 11.05.1967 directed the S.D.O., Jehanabad to take possession of several plots including the land in question. Therefore, the ancestors of the petitioners and some other persons filed Title Suit No. 54 1958 before the Additional Munsif- III, Gaya, challenging the order passed by the then Additional Collector, Jehanabad and for grant of permanent injunction. The said suit was allowed vide judgment dated 22.01.1958 and decree dated 02.02.1959. However, the State Government did not file any appeal against the said judgment and decree. Thereafter, the ancestors of the petitioners started holding cattle fair over the said land including the land in question.



3. According to the petitioners in the year 1998, the local Karamchari and the officers of the Market Committee threatened the ancestors of the petitioners that the land in question will be settled with public for holding cattle fair and therefore, the ancestors of the petitioners and others filed Title Suit No. 03 of 1998/33 of 1999 before the Additional Munsif-I, Jehanabad praying therein that the defendants i.e. the State Government and Market Committee be permanently restrained from settling the suit land with anybody for the purpose of holding cattle fair. As the respondents did not grant license for holding the cattle fair over the land in question, the ancestors of the petitioners filed a writ petition being C.W.J.C. No.4491 of 1999. The order dated 27.08.1999 passed in C.W.J.C. No.4491 of 1999 reads as under:-

“The claim of the petitioners is that they have raiyati interest in plots no. 718, 719, 750, 751, 752, 753 and 83 decimals out of 3.1 acres in plot no.746. According to the petitioners, Market Committee, Jehanabad used to grant licence in favour of the petitioners with respect to raiyati land but no licence has been granted to the petitioners by the Market Committee for the year 1999-2000. Thus, this writ petition has been filed for issue of direction to the



respondents no.2 to 4 a to grant licence in favour of the petitioners. It has also been stated that licence has been granted with respect to the lands mentioned in annexure 3 in favour of one Jhal Singh, the intervenor and the petitioners have no grievance with respect to those lands. It appears that a Bench of this Court on 20.5.1999 issued a direction to the Market Committee to grant licence to the petitioners with respect to their raiyati lands. A petition was filed on behalf of the Secretary, Market Committee, respondent no.4 wherein it has been stated that licence was granted to the petitioners with respect to the land in question but the same has been cancelled by the Sub Divisional Officer-cum-Special Officer Market Committee, Jehanabad, respondent no.3. The Secretary and the Sub. Divisional Officer-cum-Special officer of the Market Committee, Jehanabad are present. A petition has been filed on their behalf giving undertaking that they shall grant licence in favour of the petitioners with respect to the raiyati land. It is well established that in case of raiyati land licence is to be granted to the raiyat of the land and not to any other person. An intervention petition has been filed on behalf of Jhal Singh in which it has been stated that settlement has been made



with respect to the land mentioned in annexure 3 in his favour Learned counsel for the intervenor also stated during the course of argument that the petitioners have no raiyati interest over the land in quesiton.

It is evident from the submissions made by the learned counsel for the petitioners that the petitioners have no grievance with respect to the land mentioned in annexure 3. The settlee cannot have any grievance with respect to the raiyati land of the petitioners. Moreover the Market Committee and its authorities accepted that the petitioners have interest over the land in question and those are raiyati land of the petitioners. They have also given undertaking hat licence shall be granted in their fovour.

Thus, this application is disposed of directing the respondents including the Secretary and the Sub. Divisional Officer-cum-Special Officer of the Market Committee to honour the undertaking and grant licence to the petitioners making unnecessary delay.”

4. In view of the undertaking given before this Court and also in view of the aforesaid judgment and order dated 27.08.1999 passed by this Court, the petitioners continued



to hold cattle fair over the land in question on the basis of the license granted by the competent authority. Thereafter, the Title Suit No. 03 of 1998/33 of 1999 was finally decreed vide Judgment dated 16.01.2008. The relevant portion of the judgment dated 16.01.2008 passed by the Additional Munsif-I, Jehanabad, in title Suit No.03 of 1998/33 of 1999 read as under:-

“For the aforesaid ramification, I am of the view that the plaintiffs have valid right, title, interest over the suit land.

Accordingly, these issues decided in favour of Plaintiffs.

Issue no.xi.

The specific case of the plaintiffs in the plaint is that the guys, of Bihar and Bazer Samiti are adamant to settle the suit land for holding mela with the public and to prevent interference in peaceful possession of the plaintiffs over the suit land. The defendant no.3 in W.S. has not denied this fact. The plaintiffs had also served notice u/s 80 C.P.C, (Ext.2) and sent the notice through Registered post (Ext.9 series) before filing this suit. The state of the or the Bazar Samiti has not adduced any documentary evidence in order to show that any reply of the legal notice was given to the plaintiffs. Since, the



right, title, interest with possession of the plaintiffs over the suit land has been proved and the suit land is raiyati land of the plaintiffs, and since the state of Bihar or the Bazar Samiti have not acquired the suit land for the purpose of holding mela, they have no right to disturb in peaceful possession of the plaintiffs over the suit land.

This issue decided, accordingly in favour of plaintiffs.

Issue nos. i, ii, iii, iv, v, vi and vii.

On the basis of the aforesaid ramifications, I am of the view that the suit as framed is maintainable, bearing valid cause of action, the suit is not barred by principle of estoppel, waiver acquiescence, not barred sec. 34 of the specific Relief Act as well as not barred by law of limitation and the suit is not defective of non-joinder of the members of the Marketing Committee.

It is therefore,

ORDERED

that the suit be and same is decreed on contest with cost.”

5. It is the case of the petitioners that in the month of March, 2013, when the petitioners approached the Halka Karamchari for payment rent for the land in question, the petitioners were informed that the respondent Circle Officer has



already made a recommendation to cancel the respective Jamabandi of the land appertaining to khata no. 191, plot no. 746. The petitioners thereafter enquired about the matter and they came to know that the Circle Officer vide five different letters recommended that the Jamabandi created in the name of the petitioners may be cancelled as their Jamabandi has been wrongly created. Thereafter, the petitioners received notices for cancellation of Jamabandi from the office of the respondent Additional Collector under Section 9(1) of the Bihar Land Mutation Act, 2011. After receiving the notices, the petitioners appeared before the respondent Additional Collector and filed a detailed objection stating therein that the Circle Officer has got no right to make recommendations of cancellation of Jamabandi, when the right, title and interest of the petitioners or their ancestors have been declared by a competent Civil Court and such action on the part of the Circle Officer may be treated to be in complete violation of the judgment dated 16.01.2008 passed in Title Suit No. 03 of 1998/33 of 1999.

6. After filing of the objections by the petitioners before the Additional Collector, the respondents filed a Title Appeal No.20 of 2013 before the District Judge, Jehanabad on 30.05.2013 i.e. after lapse of more than 5 years.



Thereafter, the respondents have kept the matter of cancellation of Jamabandi in abeyance waiting for the decision of the Title Appeal. Ultimately, the said title appeal was dismissed for default in non-prosecution vide order dated 20.09.2014. Thereafter, the case of cancellation of Jamabandi of the petitioners was again reopened and the Additional Collector asked the respondent Circle Officer about the current position of the title appeal filed by the respondents. The respondent Circle Officer vide his letters dated 25.08.2017 communicated to the Additional Collector that the Title Appeal No. 20/2013 filed by the State of Bihar has been dismissed for default on account of non-prosecution. It has also been communicated that as per the direction, necessary papers are being collected for re-admission of the said appeal. In spite of the said information given by the Circle Officer, the respondent Additional Collector vide impugned order dated 28.08.2017 cancelled the Jamabandi of the petitioners.

7. Learned counsel for the petitioners submits that the Additional Collector has accepted the report of the Circle Officer as gospel truth and thereby has come to the conclusion that the land in question is “Malik Vakast Belagan” whereas the fact is that the land in question has been mentioned



in the khatiyā as “Vakast” which has been accepted in the title suit and the names of the petitioners have been entered through a correction slip vide Mutation Case No.387 of 2008-09. He further submits that after the correction slip was prepared, the petitioners went on paying rent to the State Government and the respondents have been issuing rent receipts for the same. Even before the preparation of the correction slip, the petitioners have been paying rent to the Government and rent receipts were being issued by the respondents and therefore, the impugned order passed by the Additional Collector is wholly illegal.

8. Learned counsel for the petitioners further submits that the petitioners have got *ratyati* right over the land in question. The petitioners or their ancestors have been declared raiyats of the land in question by a competent Civil Court and the judgment and decree passed by the Civil Court have become final and binding upon the respondent authorities, particularly, when they were party in the said title suit. He further submits that the recommendation made by the respondent Circle Officer is without application of mind as the recommendation has been made in cyclostyled format and only some blanks have been filled up but, the Additional Collector without examining the veracity of the recommendations has



cancelled all the Jamabandis of the petitioners without appreciating the judgment passed in the title suit by a competent civil court.

9. In this case, the State has filed its counter affidavit. In the counter affidavit, the State has accepted the dismissal of Title Appeal No.20 of 2013 filed against the judgment dated 16.01.2008 passed in Title Suit No.03 of 1998 / 33 of 1999. It has also been stated that Miscellaneous Case No. 51 of 2019 for restoration of Title Appeal No.20 of 2013 is still pending.

10. Learned counsel for the State has supported the impugned order but has not been able to advance any submission on the fact that during the existence of the judgment dated 16.01.2008 passed in Title Suit No.03 of 1998 / 33 of 1999 whether the respondent authorities can initiate Jamabandi Cancellation Case Nos. 15/A/2013 to 18/AC/2013 and pass final order in the said cancellation cases.

11. I have considered the submissions of the parties and perused the materials on record. From the records, it appears that earlier the predecessors of the petitioners had approached this Court by filing C.W.J.C. No.4491 of 1999 which had been decided in their favour. In the aforesaid



proceeding, the respondent Market Committee and its authorities had accepted that the petitioners have interest over the land in question and those are the *raiyati* lands of the petitioners. They have also given undertaking that license for fair shall be granted in their favour. The predecessors of the petitioners had also approached the District Court by filing Title Suit Nos. 03 of 1998/33 of 1999, in which also they have succeeded. The authorities after a gap of around five years, have filed Title Appeal No.20 of 2013, which too stood dismissed for default vide order dated 20.09.2014. Miscellaneous Case No.51 of 2019 for restoration of Title Appeal No. 20 of 2013 has been filed by the State after a gap of another five years. Before filing the Miscellaneous Case No.51 of 2019, the impugned order dated 28.08.2018 canceling the Jamabandi of the petitioners has been passed by the Additional Collector in Jamabandi Cancellation Case No. 15/AC/2013 to 18/AC/2013 and 25/AC/2013. In the opinion of this Court, the Jamabandi of the petitioners could not have been and cannot have been cancelled in view of the fact that Jamabandi of the petitioners is a long standing Jamabandi and the Title Suit No.03 of 1998 / 33 of 1999 filed by the predecessors of the petitioners against the State of Bihar has been decreed in their favour. Once the title of



the petitioners has been declared by a competent civil court, the initiation of the very proceeding for cancellation of Jamabandi of the petitioners is illegal and therefore, the impugned order is fit to be set aside.

12. In view of the aforesaid discussions, the order dated 28.08.2017 passed by the respondent Additional Collector, Arwal, in Jamabandi Cancellation Case Nos. 15/AC/2013 to 18/AC/2013 and 25/AC/2013 is hereby quashed. The respondent authorities shall restore the earlier Jamabandi of the petitioners and issue rent receipts in favour of the petitioners. The respondent authorities are restrained from interfering in the peaceful possession of the petitioners over the land in question.

13. With the aforesaid observations and directions, this writ petition is allowed with costs.

(Sandeep Kumar, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	25.01.2024
Transmission Date	

