

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13077 of 2016

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Shyam Babu Son of Late Yogendra Prasad, resident of Khajekalan, P.S.-
Khajekalan, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Revenue and Land Reforms, Government of Bihar, Patna.
2. The Principal Secretary, Department of Revenue and Land Reforms, Government of Bihar, Patna.
3. The Principal Secretary, Department of Road Construction, Government of Bihar, Patna.
4. The District Magistrate, Saran at Chapra.
5. The Land Acquisition Officer, District Saran at Chapra.
6. The Deputy Collector, Land and Reforms, Saran at Chapra.
7. The Additional Collector, Saran at Chapra.
8. The Circle Officer, Sonapur, District- Saran.
9. The Circle Inspector, Sonapur, District- Saran.
10. Navyuga Engineering Company Ltd. through its Managing Director, Corporate Office at Plot No. 379, Road No. 10, Jubilee Hills, Hyderabad-500 033, State Andhra Pradesh.
11. The Managing Director, Navyuga Engineering Company Ltd. Corporate Office at Plot No. 379, Road No. 10, Jubilee Hills, Hyderabad-500 033, State Andhra Pradesh.
12. Assistant General Manager, Projects, Navyuga Engineering Company Ltd. At office- Chand Hospital, House No. 171, Patliputra Colony, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Arun Kumar, Adv.
For the Respondent/s : Mr.Subhash Chandra Mishra- SC16

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CORAM: HONOURABLE MR. JUSTICE RUDRA PRAKASH MISHRA
ORAL JUDGMENT

Date : 05-08-2024

Heard learned counsel for the parties. The present case has been heard side-by-side C.W.J.C. No. 13189 of 2016 involving identical issue in which exhaustive counter affidavit has been filed by the State. Thus, this Court, for the



convenience, while disposing of the present writ application, has taken into consideration the facts mentioned in the counter affidavit filed in the aforesaid C.W.J.C. No. 13189 of 2016.

2. In this writ application, the petitioner has prayed for following relief/s:-

“i. For issuance of a Writ in the nature of certiorari for quashing the order dated 05.05.2016, passed in Misc. Case No. 4 of 2015 arising out of Jamabandi Cancellation Case No. 9/14-15 as contained in memo No. 828 dated 17.05.2016 passed by the Collector-cum-District Magistrate, Saran, Chapra by which the Jamabandi as already created in the name of Dakhalkar Raiyat (Petitioner) has been cancelled and further the petitioner has been asked to move the competent authority on the point of validity of the sale deeds.

ii. For issuance of an appropriate Writ for a declaration that the initiation of Jamabandi cancellation Proceeding and the order dated 21.03.2015 passed by the Additional Collector, Saran Chapra in Jamabandi cancellation Case No. 9/14-15 as well as all the subsequential orders are in teeth of the provisions of Bihar Land Mutation Act and the same has been arbitrarily and malafidely done only to deprive the petitioner from getting the benefit of the amount of compensation, as his Raiyati land is being acquired for the purposes of construction of Ganga Highway (from Digha to Didarganj).

iii. For issuance of an appropriate Writ holding and declaring that the Raiyati land of the petitioner has to



be acquired for the purpose of making Ganga Highway (from Digha to Didarganj) only after proper acquisition as per the Land Acquisition Act and only after giving due compensation to the petitioner in the Acquisition Proceeding, the lands of the could be acquired for the aforesaid purpose for making Ganga Highway (from Digha to Didarganj).

iv. For issuance of an appropriate writ restraining the respondents to acquire the land of the petitioner for the aforesaid purpose of construction till the matter is finally adjudicated by this Hon'ble Court or in alternative till the compensation at the rate of market value of the land is paid by the Respondents for the land for which the Jamabandi has been arbitrarily cancelled by the Respondents and which is to be acquired for making Ganga Highway (from Digha to Didarganj)."

3. The brief fact, according to the petitioner, is that for construction of Ganga Driveway from Digha to Didarganj, the district authorities of Saran were directed to made available 129.93 acres of land situated under the Sonapur Circle, Village Sabalpur, Thana No. 110 to the Road Construction Department. Following the aforesaid direction, the Road Construction Department together with Circle Officer, Sonapur, marked the land and out of 129.93 acre required land, 88.99 acres of Government land of Thana No. 110 was transferred to the Road Construction Department after obtaining due approval from the Revenue Department, Bihar. For the remaining 40.24 acres of



land of Thana No. 110, which were unsurveyed, 99 Raiyats claimed their right and title over it. Thereafter, the office of the District Land Acquisition, Saran directed the Deputy Collector Land Reforms, Sonapur, Saran to submit a report with regard to the claims over the 40.24 acres of unsurveyed land. After receipt of the letter, the Deputy Collector Land reforms, Sonapur, Saran issued notices to all the 99 raiyats, asking them to prove their claim over the land, in question. After notice, 131 applicants appeared and submitted their documents to prove their claim. The Deputy Collector Land Reforms, Sonapur compared the documents from the Revenue records and also made spot enquiry and found that out of 131 claimants, 48 claimants, in whose favour Zamabandi was created, was without order of competent authority and their claims in this respect appeared to be forged and suspicious. As far as 19 claimants in whose favour Zamabandi existed is concerned, actually, no such land was existing on the ground upon which they laid their claim. In case of rest 64 claimants, no Zamabandi was existing. Accordingly, the Deputy Collector Land Reforms, Sonapur vide letter dated 02.03.2015 recommended for starting process of cancellation of all such suspicious Zamabandi which appeared to be created by forgery. Thereafter, process of cancellation of



Zamabandi was started and report from Halka Karamchari through Circle Inspector was called for in respect of Zamabandi No. 282/1. The Halaka Karamchari reported that the land of village Sabalpur, Thana No.110 is unsurveyed and, thus, it is difficult to identify the correct land without Khata and Khesra. It was also found that the Jamabandi was created without order of the competent authority and without any case number. The Circle Officer submitted the record to the Deputy Collector Land Reforms along with enquiry report following which recommendation was made for cancellation of Zamabandi and forwarded the record to the Additional Collector, Saran. The Additional Collector, Saran vide order dated 21.03.2015 cancelled the Zamabandi of the petitioner.

4. Thereafter, the Deputy Secretary, Department of Revenue and Land Reforms, Bihar vide letter dated 07.09.2015, sought clarification from the Collector, Saran. The Collector, Saran found that the Additional Collector, Saran had passed the order without giving an opportunity of hearing the concerned parties, violating the principles of natural justice. Accordingly, the Collector, Saran set aside the aforesaid order dated 21.03.2015 passed by the Additional Collector, Saran and started fresh hearing in the matter and notice dated 31.12.2015



was issued to the petitioner. Thereafter, the petitioner appeared before the Collector in Misc. Case No. 4/2015 arising out of Zamabandi Cancellation Case No. 9/14-15. The Collector, after hearing the parties, passed the impugned order dated 05.05.2016, cancelling the Zamabandi of the petitioner.

5. At the first instance, learned counsel for the petitioner submits that the petitioner has his land in the proposed area of construction of the aforesaid Highway in village Sabalpur, Thana No. 110 and his land is being acquired for the said purpose after having obtained the measurement from the Anchal Amin and recommendation as made by the Circle Officer. He further submits that the District Magistrate is not authorized under the law to cancel the Jamabandi of the petitioner and that too on a *suo motu* proceeding and, as such, it is in teeth of Section 9(6) of the Bihar Land Mutation Act, 2011. He further submits that the Jamabandi of the petitioner's land has been cancelled only due to the reason that the respondents are bent upon not to give the benefit of compensation of the said land, which is to be acquired for the purposes of construction of Ganga Highway. He submits that the land, in question, belongs to the petitioner and the same can only be transferred for the aforesaid construction only after due process of land acquisition



and compensation but, only to debar the petitioner, the impugned order has been passed.

6. Learned counsel for the petitioner submits that when the land of the petitioner was acquired by the respondents without acquiring the same and without acquisition proceeding as well as the petitioner was being prohibited from going to his respective land, the petitioner along with other writ petitioners moved before this Court in CWJC No. 21520 of 2013 challenging the arbitrary action of the respondents which was disposed of on 03.07.2014, directing the respondents to make proper enquiry and, at the same time, it was directed that if it is found that the petitioner is the owners of the land, he should not be stopped from going over the same. It was further directed that if the land belong to the petitioner, he should be suitably compensated in accordance with law. Learned counsel for the petitioner thus submits that after the aforesaid order was passed by the Hon'ble Court, the respondents without making any enquiry and without physical verification of the land as also without notice to the petitioner and without complying the order passed by this Court, *suo motu* proceeding was initiated for cancellation of the Jamabandi of the petitioner.

7. Learned counsel for the petitioner referring Section



9 of the Bihar Land Mutation Act, submits that the the cancellation proceeding has neither been initiated *suo motu* by the Additional Collector nor on any application rather on the basis of recommendation of the Circle Officer as well as the DCLR, the order of cancellation of Jamabandi has been passed by the Additional Collector. He further submits that the order of cancellation of Jamabandi has been passed *ex-parte* and without providing any opportunity of hearing to the petitioner and, as such, the order passed by the Additional Collector, Saran is illegal and arbitrary and violative of principle of natural justice.

8. Learned counsel for the petitioner referring to Section 9(6) of the Bihar Land Mutation Act, submits that the Collector has not been vested with *suo motu* power to look into the decision of the Additional Collector passed in Jamabandi Cancellation Proceeding and only on appeal preferred within 30 days, the District Collector can hear the appeal but, in the present case, in order to show the bonafide that the Additional Collector has passed the order without providing opportunity of hearing to the petitioner and as such, has set aside the order passed by the Additional Collector, and on the same report of the Circle Officer and the DCLR, the District Collector cancelled the Jamabandi of the petitioner.



9. *Per contra*, learned counsel for the State submits that on the clarification being sought from the Collector by the Deputy Secretary, Department Revenue and Land Reforms, Bihar vide letter no. 395 dated 07.09.2015, the Collector, Saran sought records of the case from the office of the Additional Collector, Saran and, after going through the same, he found that the Additional Collector, Saran had passed the order without hearing the concerned parties, which was in violation of principles of natural justice. Accordingly, the Collector, Saran set aside the order dated 21.03.2015 passed by the Additional Collector, Saran, Chapra and started fresh hearing in the matter. Notices were issued to the petitioner and, pursuant thereto, the petitioner appeared before the Collector in Misc. Case No. 4/2015 arising out of Zamabandi Cancellation Case No. 9/14-15 and submitted his defence. Thereafter, the learned Collector, after hearing the parties and perusing the documents, passed a detailed and reasoned order dated 05.05.2016, cancelling the Zamabandi of the petitioner. Thus, learned counsel for the State submits that the learned Collector has rightly cancelled the Zamabandi after adopting due process of law as Zamabandi has been created without initiating any proceeding of Zamabandi.

10. There is a statutory provision made under Section



9 of the Bihar Mutation Act, 2011 which confers power upon the Additional Collector to dispossess a person from such land, on cancellation of Zamabandi, so as to put in possession the person found legitimately entitled. Section 9 of the Bihar Land Mutation Act, 2011 reads as follows:-

"9. Cancellation of Jamabandi. - (1) *The Additional Collector, either suo motu or on an application, shall have the power to make inquiries in respect of any Jamabandi, which has been created in violation of any law for the time being in force or in contravention of any executive instruction issued in this behalf. The Additional Collector, in whose jurisdiction the land is situated, may, after giving reasonable opportunity to the parties concerned to appear, adduce evidence and be heard, cancel such Jamabandi, dispossess the person claiming under it and deliver the possession to the legitimate owner/custodian, on such terms as may appear to the Additional Collector to be fair and equitable.*

(2) The jamabandi shall not be cancelled under sub-section (1) without giving reasonable opportunity to the parties, having interest in that jamabandi, of being heard.

(3) Any person, having interest in a land or a part thereof, of any jamabandi may file a petition in the prescribed manner for the cancellation of the jamabandi before the Additional Collector in whose jurisdiction the land or a part thereof is situated.



(4) The Additional Collector, in whose jurisdiction the land or a part thereof of the jamabandi is situated, on a petition filed for the cancellation of the jamabandi or on reference from a Government Department which has an interest in the land or a part thereof or suo motu, may initiate proceedings for cancellation of the jamabandi by issuing notice to persons having interest in the jamabandi.

(5) The Additional Collector in whose jurisdiction the land or a part thereof in the jamabandi is situated, after enquiry either by himself or by an officer authorized by him in this behalf, shall pass such order as he deems fit.”

11. Thus, from plain reading of the provisions of Section 9 of the Act, 2011 read with Rule 13 of the Bihar Land Mutation Rules, 2012, it is abundantly clear that only the Additional Collector, either *suo motu* or on an application for cancellation of Jamabandi, can cancel the Jamabandi of a person.

12. Having considered the rival submissions of the learned counsel for the parties and after going through the entire records of the case, this Court finds that the impugned order 05.05.2016 passed by the Collector-cum-District Magistrate, Saran, Chapra is without jurisdiction as under Section 9 of the Bihar Land Mutation Act, 2011, the competent authority to



cancel the Jamabanadi of a person lies with the Additional Collector. Accordingly, in the interest of justice, both the orders dated 21.03.2015 passed by the Additional Collector, Saran, Chapra in Jamabandi Cancellation Case No. 9/14-15 and the order dated 05.05.2016 passed by the Collector-cum-District Magistrate, Saran, Chapra in Misc. Case No. 4 of 2015 arising out of Jamabandi Cancellation Case No. 9/14-15 contained in Memo No. 828 dated 17.05.2016 are hereby quashed and the matter is remanded back to the Additional Collector, Saran, Chapra/Respondent no.7, who after affording an opportunity of hearing to all the parties concerned and after going through the documents, will take a decision in accordance with law by passing a detailed and reasoned order within a period of three months from the date of receipt/production of a copy of this order.

13. With the aforementioned observation/direction, the writ petition is allowed to the extent indicated above.

(Rudra Prakash Mishra, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	31.08.2024
Transmission Date	

