

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.7869 of 2022**

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Rekha Devi Sultania W/o Shushil Kumar Sultania, R/o Village Purani Bazar,  
Jhajha, Giddhaur, P.S. Jhajha, District Jamui.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Revenue and Land Reforms, Government of Bihar, Patna.
2. The Inspector General of Registration, Prohibition, Excise and Registration Department, Government of Bihar, Patna.
3. The Registrar-cum-Collector, Jamui.
4. The Sub Registrar, Chakai, Jamui.
5. The Circle Officer, Chakai, Jamui.

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Manoj Kumar, Advocate  
For the Respondent/s : Mr. Vikash Kumar (Sc11)

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**CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR**  
**ORAL ORDER**

4      03-01-2024      Heard the learned counsel for the parties.

2.      The present application is being preferred on behalf of the petitioner for the following reliefs:-

(i) For commanding the respondent authorities to register the sale deed presented before them on 04.04.2022 with requisite stamp-duty and fee, which has been returned on 05.04.2022 with endorsement that the land proposed to be sold has been classified as Gairmajarua Khas by the office of the Circle Officer.

(ii) Also for quashing the part of the uploaded report



prepared by the office of the Circle Officer, Sono, Jamui, whereby the land of the petitioner has wrongly been classified as Gairmajarua Khas.

3. It has been submitted by the learned counsel for the petitioner that the land appertaining to *Mauza Dumari Tola Penjawan* bearing plot-156 in *Khata* No. 69 originally belonged to Ex-landlord known as *Giddhaur* Estate managed by General Manager *Saheb Bahadur*. Subsequently, the management and affairs of the said land along with other estate of the said land lord went under the control of the court of wards, *Munger*. The Ex-landlord with the permission of the court of ward, settled 5 acres of the land in favour of one *Kusho Mian*, S/o *Manjar Mian*, after taking *nazrana* from him in the year 1944-45. Since after the said settlement, the said settlee started making payment of rent to the said estate and in lieu thereof rent receipt were also granted. After vesting of *Jamindari*, the said settlee started making payment of rent to the State of Bihar. After vesting of *Jamindari*, name of *Kusho Mian* was mutated and he started making payment of rent to the State of Bihar and in lieu thereof rent-receipts were also granted in his favour.

4. Learned counsel for the petitioner further submits that *Kusho Mian* in course of time sold the different portion of the



settled land to different persons through several registered deeds of sale including one Sunil Kumar Sultania, in whose favour land of Khata No. 69, Khesra No. 156 having an area of 56 decimal was transferred by the said settlee through registered sale deed dated 15.02.1990 which are being brought on record and the State authorities never challenged either the deeds of settlement or subsequent transfer of the same by registered deeds of sale.

5. Learned counsel for the petitioner further submits that on the basis of those registered deeds of sale, the name of respective purchasers were mutated and they started making payment of rent to the State of Bihar and in lieu thereof, rent receipts were also granted in their favour. Even the land possession certificates were also issued in their favour. He further submits that said Sunil Kumar Sultania subsequently transferred 47 ½ Decimal of land out of his purchased land in favour of the petitioner through registered deed of sale dated 12.09.2013. The name of the petitioner was duly mutated with regard to her purchased land and the petitioner started making payment of rent, in lieu through rent receipt were also issued in her favour, even the land possession certificate was also issued in her favour.



6. Learned counsel for the petitioner further submits that the petitioner being in need of money intended to sell out a portion of Purchased land and accordingly after negotiations, sale deed was executed in favour of one Prasoon Ranjan Dubey. The sale deed along with requisite stamp duty was presented before the office of respondent no. 4 on 04.04.2022, but the same was returned on 05.04.2022 on the ground that in the Revenue records, the same has been classified as Gairmazarua Khas land. He further submits that when the petitioner inquired from the official portal of the Department of Revenue and land Reform, Govt. of Bihar, Patna, then it could be revealed that the land of the petitioner has wrongly been classified as Gair Mazarua khas. The said classification has been done without any public notice, so that person interested may object to that.

7. Learned counsel for the petitioner further submits that the petitioner and her husband jointly sold part of their respective purchased land to one Smt. Dipti Kumari @ Deepti Devi through registered deed of sale dated 07.03.2018 and no objection was ever raised in regard to the registration of the said deed. He further submits that till the year 2018, the land of the said plot has been sold through different registered deeds, since the date of settlement, and neither the said settlement nor the



subsequent transfer of the land of the said plot no. 156 was ever challenged by State authorities in last eight decades then all of sudden there was no reason and occasion to classify the said land as Gaimazarua Khas.

8. Learned counsel for the petitioner further submits that as per Section 17 of the Indian Registration Act, 1908, whenever a deed is presented for its registration, then as per the provision of the Registration Act, the registering authority has to see only as to whether it has duly been executed in terms of the transfer of property Act, and whether sufficient stamp duty as per the valuation of the property has been paid or not. The registering authorities is not empowered under the provisions of the Registration Act to look in to the title of the vendor.

9. Learned counsel for the petitioner has relied upon the judgment of Hon'ble Supreme Court in the case of *Satya Pal Anand V/s State of Madhya Pradesh and Ors.*: 2016 10 SCC 767.

10. Learned counsel for the petitioner has also relied upon the judgments of this Court in the case of **Bihar Deed Writers Association and Ors V/s State.**: (AIR) 1989 Patna 144, *Madhu Sinha V/s the State of Bihar and Ors.*: (2015) SCC OnLine Pat 1090, *Uma Shankar Prasad Singh and Ors V/s*



***The State of Bihar & Ors.: 2019 (2) PLJR 1077, Rakesh Gupta vs The State of Bihar and Ors.: 2022 (3) PLJR 876, Kumar Gaurav Vs The State of Bihar.: 2022 (4) PLJR 674.***

11. The State has filed its counter affidavit and it has been submitted by the State that the nature of *Gairmazarua khas* can't be changed after Settlement.

12. It has further been submitted by the State that the relevant authority can interfere in discharge of statutory duty of Registering Authority under the Registration Act, 1908 and as such the submission is unsustainable in the eyes of law. The competent authority has to decide whether any piece of land may or may not be treated as *Gairmazarua Khas* after spot verification and compare with *Khatian*, Cadastral survey etc. It has further been stated that Registering Authority has to compare the plot before accepting the document for registration with the "Plot Classification Register" duly sent to his office.

13. The State has further submitted that by perusal of records available in Circle Office, Sonu, the said plot is *Gairmazarua* and it is also covered under Forest Department. For cancellation of *Jamabandi*, necessary action is being taken by competent authority and the *Jamabandi* will be cancelled by Competent Authority.



14. I have considered the submissions of the parties.

15. From the facts of the case, it is clear that the land which the petitioner wants to transfer has been in the possession of the petitioner and his predecessors since last more than 40-50 years. The land was mutated in the name of the predecessors of the petitioner and the petitioner. Sale deed/s have already been executed by the petitioner.

16. This Court in a number of cases has held that Long Standing Jamabandi and Mutation cannot be cancelled by the State and if the State doubts the title of the petitioner, it has to file a title suit for declaring the long Standing *Jamabandi* as illegal. The State by merely initiating a proceeding for cancellation of *Jamabandi* and Mutation cannot dispute the Right, Title and Interest of the petitioner over a piece of land which is admittedly been transferred since long.

17. In the present case, the stand of the state is that the State is moving for cancellation of *Jamabandi* as the plot in question is *Gairmajarua* and is also covered under Forest Department.

18. In a similar case, this Court vide judgment and order dated 13.09.2022 passed in C.W.J.C. No. 16985 of 2018 (*Nathuni Singh and Others vs. the State of Bihar and Others*) has held as under:-

*This Court in the case of Nawal Kishori Devi & others*



*Vs. The State of Bihar & others vide order dated 18.11.2013 passed in CWJC No. 4979 has held as follows:-*

*“Insofar as the issue of the right of ex-intermediary to settle the public land is concerned, the issue stands answered in the judgment of this Court rendered in the case of Musammam Husanbano (supra).*

*This brings this Court to the main issue raised by the petitioners questioning the action taken by the authorities in initiating proceeding for the cancellation of Jamabandi bearing Case No. 1 of 2004-05 and impugned at Annexure-1 to the writ proceedings. There cannot be a contest on the legal position that neither under the Bihar Tenants' Holdings (Maintenance of Records) Act, 1973 nor under the Bihar Land Reforms Act, 1950, there is any provision for cancellation of Jamabandi. Although the Bihar Land Reforms Act in its Section 4 does provide for cancellation of settlement but that is distinct to a cancellation of Jamabandi and the manner is prescribed for such exercise. This issue came up for consideration as back as in the year 1978 when this Court in the case of Harihar Singh reported in 1978 BBCJ 323 held that the authorities have no jurisdiction to cancel the Jamabandi and remove the names of the settlee from the tenants register. A Division Bench of this Court in the case of Khiru Gope (supra) while taking note of the two earlier judgments of this Court reported 1978 BBCJ 323 (Harihar Singh vs The Additional Collector) and 1979 BBCJ 605 (Jamaluddin Ahmad vs. S. D. O.) held that where the settlee claims settlement under a Hukumnama, there was no authority vested to the Collector to cancel the Jamabandi made in favour of a settlee from an ex-intermediary, the effect whereof would be to cancel the settlement by the ex-intermediary. The Jamabandi in the present case having been created pursuant to a registered settlement, certainly the action of the Collector in directing cancellation of the Jamabandi is in the teeth of the Division Bench pronouncements of this Court. The remedy for*



*the State authorities, if any, certainly was not by way of executive action under the statutory powers rather rested before the civil court of competent jurisdiction for a proper declaration.”.*

*In the case of **Ramnandan Singh Vs. The State of Bihar (supra)**, this Court, while dealing with the provisions of Section 4(h) of the Bihar Land Reforms Act, 1950, has held that if the State, for any reason, wants to challenge the authority or the title of any person based on settlement made by the ex-landlord then the only option left to the State is to approach the civil court for cancellation of Jamabandi whereas in the present case it is an admitted position that the land was settled by the ex-landlord in favour of the predecessor-in-interest of the petitioners. The ex-landlord after vesting Zamindari, return of Jamabandi was filed and thereafter rent was accepted by the State and the State issued rent receipt and only when land was acquired for compensation, the Jamabandi was enquired into by an illegal order and in most arbitrary way Jamabandi was cancelled and the same order was affirmed by the Collector in the same casual manner.”*

19. In view of the law laid down by this Court, I am of the view that merely doubting the Long Standing Jamabandi of the petitioner by the State will not result into cancellation of the *Jamabandi* and the State will not have the title of the land in question. So far as the refusal of the Registration by the authorities is concerned, the law is well settled by a *catena* of judgments passed by the Hon’ble Supreme Court and this Court.

20. The Hon’ble Supreme Court in the case of **Satya Pal Anand** (Supra) in paragraph 41 has held as follows:-

*41. [Section 35](#) of the Act does not confer a quasi-judicial power on the Registering Authority. The Registering Officer is expected to reassure that the document to be registered is accompanied by supporting documents. He is not expected to evaluate the title or irregularity in the document as such.*



*The examination to be done by him is incidental, to ascertain that there is no violation of provisions of the Act of 1908 Act . In Park View Enterprises it has been observed that the function of the Registering Officer is purely administrative and not quasi-judicial. He cannot decide as to whether a document presented for registration is executed by person having title, as mentioned in the instrument. We agree with that exposition.*

**21.** This Court in the case of ***Deed Writers Association and Ors*** (Supra) in paragraph no. 3 and 5 has held as follows:-

*3. It appears to us that this application can be disposed of at the stage of admission inasmuch as the point in issue is limited. In our view, if a document otherwise complying with the statutory requirements and formalities is presented for registration, the registering authority is bound to register it. It is not for the registering authority to enquire and ascertain the title to its own satisfaction. Under the provisions of the [T.P. Act](#), 1888, if the transferor does not have any title or has an imperfect title to the property, the transferee on transfer will either get no title or he will get an imperfect title. This will be to the prejudice of the transferee and is not of any concern to the registering authority.*

*5. Learned Advocate for the respondents also referred to [Section 68](#) of the Registration Act, which empowers the Registrar to superintend and control Sub-Registrars. This power, in our view, is an administrative power conferred on the Registrar to exercise superintendence and control over the Sub-Registrars. The Registrar, in our view, cannot, in exercise of the power under the section, direct the Sub-Registrars not to register a document presented for registration if the document complies with the statutory requirements and formalities.*

**22.** This Court in the case of ***Madhu Sinha (Supra)*** in paragraph no. 6, 7 and 9 has held as follows:-

*6. In the instant case, it is, no doubt, true that the Government leased its property in the year 1936. However, in the year 1999, the legal representatives of the original lessee effected sale of the property and the sale deed was*



*also admitted for registration. The question as to whether a transferee under the document derives any title, can be decided if only the Government asserts its rights in the capacity of a lessor. That eventuality has not taken place. When there was no objection for registration of a document in the year 1999, there could not have been any plausible objection for a subsequent transaction of a similar nature. In a way, the subsequent transaction stands on a higher footing. The reason is that the first transaction was the one between lessee through legal representatives, and a transferee, whereas the second transaction is between a vendor, who is a non-lessee, and another person.*

*7. More than all, a Sub-Registrar can refuse registration only on the grounds that are mentioned under the Act and the Rules, for such refusal. He must refer to the relevant provisions so that the concerned party can take steps to ensure compliance. He cannot just sit over the matter or orally state that he does not want to accept the document. In a way, such a step amounts to abdication of powers conferred upon him.*

*9. In Bihar Deed Writer's Association (Supra), this Court held that a Sub-Registrar does not have the power to verify and examine the adequacy or otherwise of the title of the vendor, in a transaction which is subject matter of a document presented before him, for registration. Viewed from any angle, we do not find any basis for refusal on the part of the 4<sup>th</sup> respondent, to register the document.*

**23.** This Court in the case of ***Uma Shankar Prasad Singh (Supra)*** in paragraph no. 20 has held as follows:-

*20. As discussed hereinabove, the Court does not find justification behind inclusion of the land of the petitioners in Annexure-3. The same is, accordingly, quashed. Refusal to register the document by the registering authority is also illegal as the Registering authority cannot refuse transfer if the deed presented for registration is otherwise in order. In the facts of the case, the Court does not approve the action of the respondents in directing enquiry vide Annexure-7 and the enquiry report which has come on record by way of Annexure-B to the counter affidavit, which has been challenged by filing I.A. No. 1/2019. Annexure-7 as well as Annexure-B cannot sustain.*



24. This Court in the case of **Rakesh Gupta (Supra)** in paragraph no. 9 has held as follows:-

*9. Having considered the entire facts and circumstances, as stated herein above, at length as also in view of the law laid down by the Hon'ble Apex Court, the Privy council as also this Court in the case of Basant Nahata(supra), Haradas Acharjee Choudhury (supra), Taraldas Acharjee (supra), Bihar Deed Writers Association & Ors. (supra) and in the case of Satyendra Kumar Singh (Supra), this Court is of the firm opinion that once a conveyance/ sale deed is presented for registration, the registering authority is duty bound to register the same, if the said document is otherwise complying with the statutory requirement and formalities. Consequently, the present writ petition is allowed and the Respondent No. 5, i.e. the sub-Registrar/ District Sub-Registrar, Saran (Chapra) is directed to register the conveyance/sale deed in question within a period of 48 hours of its presentation and payment of the requisite stamp duty, if not already paid, as also compliance of the statutory requirements.*

25. This Court in the case of **Kumar Gaurav (Supra)** has held as follows:-

*Mr. Arora, learned Senior Advocate has tried to assail the aforesaid orders on the ground that both the reasons do not meet the main plank of the argument of the appellants/writ petitioners that right to property is a constitutional right, which could not have been diluted by any administrative fiat under any circumstance. No reason or logic would obviate the necessity of compliance of statutes and if the registering authority is beset with the power to register on the basis of rightful/unimpeachable documents showing the transfer of the land, no reason would prevent such officers from registering the document. The effect of registration is only qua the parties.*

*If a vendor alienates his property without any right or title, the principle of "caveat emptor" would apply on the buyer and he would not get a title even though it is registered. This was the line of reasoning of a Division Bench judgment of this Court in Bihar Deed Writers*



*Association and Others Vs. the State of Bihar & Ors., reported in AIR 1989 Patna 144. Though a short judgment but the issue was very pithily put by the Hon'ble Judges, who found that the power to register was an administrative power, which could not be exercised to direct the Sub-Registrars not to register a document presented for registration, if the document complied with the statutory requirements and other formalities. Any document which is otherwise complies with the statutory requirements and the formalities, if presented for registration, the registering authority is bound to register it. It is not for the registering authority to inquire and ascertain the title to its satisfaction.*

*Under the provisions of Transfer of Property Act, 1888, if the transferor does not have any title or has imperfect title to the property, the transferee on transfer will either get no title or will get an imperfect title, which will be to the prejudice of the transferee and which shall be of no concern to the registering authority.*

*We reiterate that an authority cannot abdicate its functions and similarly a superior authority cannot direct the statutory authority to cease to operate and decide in accordance with the well-laid principles of the statute.*

26. The Hon'ble Supreme Court and this Court have repeatedly held that the Registering Authority cannot refuse registration of a sale deed. The Registering Authority cannot enquire and ascertain the title to its own satisfaction as under the provisions of the Transfer of Property Act, 1888, If the transferor does not have any title or has imperfect title to the property, the transferee will either get no title or will get an imperfect title.

27. Once a sale deed is presented for registration, the Registering Authority is duty bound to register the same. If the document is other wise complying with the other requirements



as per the statute, the registration cannot be denied merely because the State wants to cancel the mutation in favour of the petitioner. Moreover, the order of refusal by the Registering Authority cannot override the provisions of the Indian Registration Act, 1908 and the provisions of the Transfer of Property Act, 1988.

**28.** For the reasons mentioned above and in view of the law laid down by the Supreme Court and this Court, ***this application is allowed.***

**29.** It is directed that the Registration of the document/s presented by the petitioner shall be done by the respondents at the earliest preferably within 15 days from the date of communication/production of a copy of this order, if the other requirements as provided under law are met by the petitioner.

**(Sandeep Kumar, J)**

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