

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.720 of 2017

1. Mobina Khatoon, wife of Late Nazaruddin.
2. Sabiha Faridi, wife of Aftab Alam, D/o Late Nazaruddin.
3. Sabina Faridi, wife of Zafar Hasmi, D/o Late Nazaruddin.
4. Mojahidul Islam, Son of Late Nazaruddin.
5. Khalid Faridi, Son of Late Nazaruddin,
6. Rahat Jaridi, Son of Late Nazaruddin.

All Are Resident of village P.O. + P.S.- Alinagar, District -
Darbhanga

... .. Petitioners

Versus

1. The State Of Bihar through the Principal Secretary, Revenue and Land Reforms Department, Old Secretariat, Patna.
2. The Collector - Cum - District Magistrate, Darbhanga, District Darbhanga
3. The Sub - Divisional Officer, Bannipur, District Darbhanga
4. The Deputy Collector Land Reforms, Darbhanga, District Darbhanga
5. The Circle Officer, Alinagar, District Darbhanga
6. The Officer - in - Charge, Alinagar, District Darbhanga

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Shankar Kumar, Advocate
For the Respondent/s	:	Mr. Subhash Chandra Yadav, G.P.-5

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

ORAL JUDGMENT

Date : 23-02-2024

In this case, the petitioners are challenging the order dated 23.11.2016 passed by the Collector-cum-District Magistrate, Darbhanga, in Public Land Encroachment Appeal Case No.122/2012, whereby the Collector has dismissed the aforesaid appeal filed by the husband of the petitioner no.1 and affirmed the order dated 16.01.2007 passed by the Circle



Officer, Alinagar in Land Encroachment Case No.01/2006-07, by which the petitioners have been declared as encroachers over the land pertaining to Plot no.3659(New) 2537 (Old) area measuring 34 decimals situated in village - Alinagar in the district of Darbhanga.

2. It is the case of the petitioners that the land in question was settled with the ancestors of the petitioners by the ex-landlord in the year 1935 and they were regularly paying the rent to the then Jamindar and after independence, the Ex-Jamindar had submitted the return and on that basis, the Jamabandi was created in favour of the father-in-law of the petitioner no.1 and thereafter he started paying rent and after his death, the husband of the petitioner paid rent to the State of Bihar and since then they have been in peaceful possession of the land in question. In the revisional survey, no objection was raised by anybody over the land in question and accordingly the name of the father-in-law of the petitioner was entered into the Khatian and final publication was made in the year 1993 in which he has been shown as the owner of the land showing “Makan Mai Sahan” “(मकान मय सहन)”.

3. It is also the case of the petitioners that in the aforesaid land, the father-in-law of the petitioner had



constructed a residential house and the same was also recorded in the Khatiyān. In front of the house, he had also constructed some shops which are the livelihood of the petitioner. After the death of the father-in-law of the petitioner no.1, two persons claimed their share over a part of the land in question and therefore, the husband of the petitioner no.1 filed Title Suit No.12 of 1995 for declaring his right, title and possession over the land in question. The said suit was decreed in favour of the husband of the petitioner no.1. However, on 29.11.2006 a notice was issued to the husband of the petitioner asking him to submit his reply regarding encroachment over the land in question, to which the husband of the petitioner no.1 filed his reply annexing all the relevant documents but, the Circle officer without considering the said reply passed the order stating therein that the land in question is a Government *sairat* land and has issued another notice dated 06.02.2007 to vacate the encroachment. Against the said order of the Circle Officer, the husband of the petitioner filed C.W.J.C No.2048/2007 which was disposed of with a liberty to the petitioner to file an appeal against the order of the Circle Officer. Accordingly, the husband of the petitioner no.1 filed a Public Land Encroachment Appeal No.122 of 2012 in the Court of the Collector-cum-District Magistrate,



Darbhanga. During the pendency of case, the husband of the petitioner no.1 passed away and therefore, these petitioners were substituted in his place. The Collector, Darbhanga vide order dated 23.11.2016 dismissed the appeal and affirmed the order of the Circle Officer. Hence, this writ petition.

4. Learned counsel for the petitioners submits that while passing the impugned order 23.11.2016 the Collector has neither considered the case of the petitioners nor considered the decision of the Title Suit, which was passed in favour of the husband of the petitioner no.1. He further submits that the respondent authorities are trying to override the order passed by the competent civil court in a title suit.

5. Learned counsel for the petitioners further submits that the land in question was settled with the ancestors of the petitioners by ex-landlord and consequently, the Jamabandi was also created in the name of the ancestors of the petitioners and the petitioners have been paying rent to the Government till date. He further submits that though in the Title Suit No.12 of 1995, the State of Bihar was not a party but in the said suit, the title and possession of the petitioners was confirmed by the competent civil Court and in spite of bringing this fact to the notice of the Circle Officer as well as the



appellate authority, the orders have been passed for getting the land in question vacated.

6. Learned counsel for the State, at very outset, has objected the prayers of the petitioners stating that the petitioners have no right over the land in question and the particular land was never settled in favour of the ancestors of the petitioners. He further submits that the land in question belonged to one Ghulam Haider of Tauzi No.11996 at the time of vesting of zamindari and after vesting of zamindari, the status and character of the land never changed and it remained in the cultivating possession of the Malik. After the Bihar Land Reforms Act, 1950 came into force, the land in question vested in the State of Bihar and on a part of the land a Circle Office and other Government Buildings have been constructed and settled the rest land as '*Revenue Hat*' and subsequently late husband of the petitioner no.1 encroached upon the 7 ½ Kathas of land on the basis of forged and fabricated document and the land in question is public land and has never changed its character.

7. Learned counsel for the State further submits that the documents which have been used by the petitioners for establishing their right, title and interest over the land in question are forged and fabricated documents and are against



the provision of Section 59 of Bihar Tenancy Act and therefore, the question of submitting return by the ex-landlord in favour of ancestors of the petitioners does not survive and is fit to be rejected.

8. Learned counsel for the State further submits that in the Title Suit No. 12 of 1995 the State was not a party and therefore, the same is collusive and not binding upon the State. He further submits that as per the Cadastral Survey record, the land in question is *Gairmajarua Aam* Land settled as “*Haat*” for public purpose and any wrong entry made in the Revisional Survey record by manipulation does not entitle the petitioners to claim as “Raiyati land”. He lastly submits that the order passed by the Collector-cum-District Magistrate, Darbhanga is a speaking order and has been passed after considering all the materials available on records of the case.

9. I have considered the submissions of the parties and perused the materials on record.

10. From the record of the case, it appears that there is long-standing Jamabandi for more than 90 years on the land in question and in the Khatian the predecessors of the petitioners are shown as the owners of the land with an entry as “Makan Mai Sahan” “(मकान मय सहन)”. There is judgment of



the competent Civil Court in favour of the petitioners. Though the State was not a party in that suit but, the rent is being paid to the State of Bihar. By merely doubting the documents and levelling them as forged and fabricated, the State cannot hold that the petitioners are encroachers and that too in a summary proceeding under the Bihar Public Land Encroachment Act.

11. 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 versus the State of Bihar)*** 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:-

"In so far 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 Musammat 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**, 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."*

12. Considering the aforesaid facts and the



judgment rendered in the case of *Nathuni Singh and Ors. Vs. State of Bihar and Ors. (supra)*, I am of the considered view that the State cannot evict the petitioners from the land in question by merely terming the documents of the petitioners as forged and fabricated and that too in a summary proceeding. If the State doubts the documents of the petitioners then only option left to the State is to file a Title Suit in the District Court and get the documents declared as forged and fabricated. Until and unless this is done by the State, the petitioners cannot be evicted from the land in question on the ground that they are encroachers.

13. In view of the aforesaid discussions, the order dated 23.11.2016 passed by the Collector-cum-District Magistrate, Darbhanga, in Public Land Encroachment Appeal Case No. 122 of 2012 and the order dated 16.01.2007 passed by the Circle Officer, Alinagar in Land Encroachment Case No. 01 of 2006-07 are quashed with a liberty to the State to move the competent Civil Court by way of filing a title suit for declaration of their right, title and interest over the land in question. If the State succeeds in the title suit then only they can take possession of the land in question. Unless and until the State succeeds in title suit, it cannot interfere in the possession



of the petitioner over the land in question.

14. With the aforesaid observations and directions, this writ petition is allowed.

(Sandeep Kumar, J)

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AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	26.02.2024.
Transmission Date	

