

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5595 of 2017

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Bashir Khan, son of late Mohammad Khan, resident of Village - Paithan Kabai, P.O.-Sakari, P.S. - Manigachhi, District- Darbhanga.

... .. Petitioner

Versus

1. The State of Bihar through Principal Secretary, Department of Revenue & Land Reforms, Government of Bihar, Patna.
2. The Divisional Commissioner, Darbhanga Division.
3. The District Collector, Darbhanga.
4. The Additional Collector, Darbhanga.
5. The Deputy Collector Land Reforms, Darbhanga.
6. The Circle Officer, Manigachi.

... .. Respondents

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Appearance :

For the Petitioner : Mr. Amit Kumar, Advocate
For the Respondents : Mr. Md. Khurshid Alam, AAG-12

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT
Date : 19-01-2024

By way of this writ petition, the petitioner has
prayed for the following reliefs:-

- “(i) For issuance of an appropriate writ/order/direction including a writ in the nature of certiorari quashing the Order dated 14.02.2015 passed by the Additional Collector, Darbhanga in Misc. Appeal Case No. 44/2013-14 by which he dismissed the petition of the petitioner against the public notice issued by the Circle Officer, Manigachi, as contained in Circular No. 837 dated 30.11.2013 for auction of Pokhara situated in Mauja Paithan Kabai, Khata no. 468, Khesra no. 4074 measuring an area of 17 katha 8 dhur;
- (ii) For issuance of an appropriate



writ/order/direction including a writ in the nature of Mandamus commanding respondent Circle Officer, Manigachi, Darbhanga to delist the land of the petitioner situated in Mauja Paithan Kabai, bearing Khata no. 468, Khesra no. 4074, measuring 17 katha 8 dhur; from Sairat register;

- (iii) *For issuance of an appropriate writ/order/direction including a writ in the nature of Mandamus commanding respondent Circle Officer, Manigachi, Darbhanga not to settle the Sairat for the pokhara on the land of the petitioner situated in Mauja Paithan Kabai, bearing Khata no. 468, Khesra no. 4074, measuring 17 katha 8 dhur;*
- (iv) *For issuance of an appropriate writ/order/direction including a writ in the nature of mandamus commanding respondent Circle Officer, Manigachi to delist the land of the petitioner from Sairat register. situated in Mauja Paithan Kabai, bearing Khata no. 468, Khesra no. 4074;*
- (v) *For issuance of an appropriate writ/order/direction including a writ in the nature of mandamus commanding respondent authorities not to interfere with the right title and interest of the petitioner over land situated in Mauja Paithan Kabai, bearing Khata no, 468, Khesra no. 4074 in Darbhanga district;*

2. The facts of this case, as stated in the petition, are that the land situated in Mauja- Paithan Kabai,



khata no. 468, Khesra No. 4074 area 17 katha 8 dhur belongs to the petitioner. The aforesaid land was settled by the ex-landlord namely, Kaladhari Singh of Raghopur Estate in the year 1935 in favour of the mother of the petitioner namely, Biwi Safidan, wife of Mohammad Khan. After the settlement, the aforesaid land came in her possession and necessary Jamabandi was created in the name of the mother of the petitioner. Thereafter, the mother of the petitioner constructed a house over the said land.

3. It is the case of the petitioner that after the death of his mother, the petitioner constructed a mud house over the land by excavating clay, which resulted into ditch also. The said ditch has wrongly been mentioned as '*Anabad Survey Sadharan*' in the revisional survey Khatian. Against the aforesaid entries, the petitioner preferred a case under Section 106 of the Bihar Tenancy Act, which was registered as Survey Case No. 2740 of 1991 before the Settlement Officer, Darbhanga, who vide order dated 14.11.1994 decided the case in favour of the petitioner. According to the petitioner the provisions of the Bihar Land Reforms Act will not apply in the present case as the settlement of land is made prior to 01.01.1946.



4. It is also the case of the petitioner that earlier some of the villagers filed Settlement Case No.10 of 1988-89 before the Circle Officer, Manigachi, Darbhanga to bring the land in question under '*Sarkari Sairat*'. The Circle Officer vide order dated 25.01.1989 rejected the claims of the villagers. Against the aforesaid order dated 25.01.1989, a Misc. Appeal No. 01 of 1988-89 was filed before the D.C.L.R., Darbhanga, who vide order dated 24.10.1989 dismissed the appeal and affirmed the order of the Circle Officer. The order of the D.C.L.R. also came to be challenged before the Collector, Darbhanga unsuccessfully.

5. It is also the case of the petitioner that some villagers filed another application before the Circle Officer, Manigachi, which resulted in Misc. Case No. 1 of 2005-06, in which it was prayed to bring the aforementioned land under '*Sairat*'. The Circle Officer, Manigachi forwarded it to the D.C.L.R, Darbhanga to permit him to take the land under Government *Sairat* despite the fact that the Circle Inspector in his report dated 11.08.2006 reported that the newly constituted *Sairat* does not seem lawful as the settlement of the land has already been done in the favour of the petitioner, but the said report was ignored and the pond was taken under '*Government*



Sairat’ which is nothing but unlawful on the part of Circle Officer as the matter under consideration was already settled in the year 1990 but the people of the village are not allowing the petitioner to enjoy his pond peacefully, as a result of which, a proceeding under Section 145 of the Cr.P.C. was initiated vide M.R No. 413/90/T.R No. 12/2011. The Sub-Divisional Officer, Darbhanga vide order dated 18.02.2013 held that the petitioner and others are in peaceful possession of the land in question.

6. It is also the case of the petitioner neither the Circle Officer nor the D.C.L.R. had issued any notice to the petitioner or his relative and without hearing the petitioner the pond in question entered in ‘*Government Sairat*’ register and the petitioner came to know about this fact only after the publication of notice dated 30.11.2013 inviting public in general to participate in auction of the *sairat* settlement of the land in question. The aforesaid notice dated 30.11.2013 came to be challenged by the petitioner by filing Misc. Case No. 44 of 2014 before the Additional Collector, Darbhanga, who vide order dated 14.02.2015, rejected the same on the ground that in the Cadestral Survey Khatiyon, the land in question has been recorded as ‘*Gairmajarua Aam Pokhra*’ and in the revisional Survey Khatiyon the pond in question has been recorded as



‘Pokhra Anabad Sarva Sadharan’. The petitioner challenged the order 14.02.2015 before the Commissioner, Darbhanga, which came to be dismissed as not maintainable.

7. Learned Counsel for the petitioner submits that the petitioner has been in possession of the land in question since its settlement i.e. from the year 1935 and he has been paying rent to the State Government till the year 2016 but some local villagers in connivance with authorities are bent upon grabbing the land of the petitioner. He further submits that due process of law has not been followed in the present case as the Circle Officer, Manigachi while enlisting the land in question as “Government *Sairat* did not give any opportunity of hearing to the petitioner even once which is a clear violation of principles of natural justice.

8. Learned counsel for the State has denied the claim of the petitioner and has submitted that the land in question has never been settled by the ex-landlord in favour of the ancestors of the petitioner and no return has been filed by the ex-landlord for the same. He has further submitted that the land in quesiton has been recorded in Cadastral survey as ‘Gair Mazarua Aam’ and in R.S. Khatiyani the land has been recorded as ‘Anabad Sarva Sadharan’.



9. Learned counsel for the State further submits that there was no need to hear the petitioner as the land in question is a public land and so petitioner has no right of hearing before the authorities.

10. I have considered the submissions of the parties. It is an admitted position that earlier order dated 14.11.1994 passed in Survey Case No.2740 of 1991, order dated 25.01.1989 passed in Settlement Case No.10 of 1988-89 and the order dated 24.10.1989 passed in Miscellaneous Appeal No.01 of 1988-89 are in favour of the petitioner. In Misc. Case No. 01 of 2005-06 a report has come that Bandobasti/ settlement of land has already been made in favour of the petitioner. The petitioner has succeeded in a proceeding initiated under Section 145 of the Cr.P.C. and an order dated 18.02.2013 has been passed by the Sub-Divisional Officer, Darbhanga in this aforesaid proceeding. Though the Circle Officer has filed his counter affidavit but the statement of the petitioner with regard to various orders passed by the Government Authorities in favour of the petitioner have not been denied by him in his counter affidavit. In paragraph no.23 of the counter affidavit, the Circle Officer says that he does not have any knowledge about passing of any order under Section 106 of the Bihar Tenancy



Act. In the opinion of this Court, this kind of stand will not improve the case of the State. The petitioner has succeeded in a number of proceedings and the same cannot be doubted by the Circle Officer or the respondent authorities. Once the petitioner is held to be the owner and the settllee of the land in question, the only option left to the State is that they could have approached the Civil Court for a declaration that the pond in question does not belong to the petitioner and the same is “*gair majarua Aam*” land. In case, the respondent authorities have doubted the long standing Jamabandi of the petitioner, they cannot take possession of the property of the petitioner. If the State want to take possession of the pond in question, they have to first establish their right, title and interest in a civil proceeding in the District Court and then only they can treat the pond in question as Government pond and thereafter auction the same.

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 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, 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. In the present case also, there is a longstanding Jamabandi in favour of the petitioner and he continued in peaceful possession over the land in question and his name has already been mutated in the Government records.



13. In view of the aforesaid discussions, the order dated 14.02.2015 passed by the Additional Collector, Darbhanga, in Misc. Appeal Case No. 44 of 2013-14 is quashed. The Circle Officer, Manigachi, directed to de-list the pond in question from Government Sairat register. However, the State will have a liberty to file a title suit for declaration that the pond in question is as Government pond. If the State succeeds in the title suit then only they can take possession of the pond in question and auction the same. Unless and until the State succeeds in title suit, it cannot interfere in the possession of the petitioner over the pond 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	25.01.2024.
Transmission Date	

