

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22001 of 2013

1. Jaggu Prasad Singh S/O Of Late Aklu Singh Resident Of Village- Mobarakpur Tola- Damaria Bigha, P.S. and P.O. Islampur, District Nalanda Bihar
2. Jasmati Devi W/O Sri Jaggu Prasad Singh Resident Of Village- Mobarakpur Tola- Damaria Bigha, P.S. and P.O. Islampur, District Nalanda Bihar

... .. Petitioner/s

Versus

1. The State of Bihar through the District Magistrate cum Collector Nalanda, Bihar Sharif Nalanda
2. The District Magistrate Cum Collector Nalanda At Bihar Sharif Null P.O. and P.S.- Bihar Sharif Dist.- Nalanda
3. The Additional Collector Nalanda, Bihar Sharif Nalanda P.O. and P.S.- Bihar Sharif, Dist.- Nalanda
4. The S.D.O. Hilsa P.O. and P.S.- Hilsa Nalanda
5. The Circle Officer Islampur Anchal P.O. and P.S.- Islampur District- Nalanda

... .. Respondent/s

with

Miscellaneous Jurisdiction Case No. 2901 of 2018

In

Civil Writ Jurisdiction Case No.22001 of 2013

1. Jaggu Prasad Singh S/o Late Aklu Singh
2. Jasmati Devi W/o Sri Jaggu Prasad Singh Resident of Village - Mubarakpur Tola, Dhamaria Bigha, P.S. - Islampur, District Nalanda, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Dr. Tayag Rajan S. Mohan Ram, the District Magistrate, Bihar Sharif, Nalanda.
3. Rakesh Kumar, the District Development Commissioner, P.O. and P.S. Bihar Sharif, District - Nalanda.
4. Sri Naushad Ahmad, A.D.M. Nalanda, P.O. P.S. Bihar Sharif, District - Nalanda.
5. Sri Shristi Raj Sinha, the S.D.O. Hilsa, Nalanda, P.O. P.S. - Hilsa, District - Nalanda.
6. Sri Anil Kumar Sinha, D.C.L.R., Hilsa Nalanda, P.O. and P.S. - Hilsa, District - Nalanda.
7. Sri Vijay Kumar, the Circle Officer-cum-Block Development Officer, Islampur Anchal, P.O. P.S. Isla



8. Sri Subodh Kumar, Officer-in-Charge, Islampur, Police Station , P.O. and P.S. - Islampur, District
9. Sri Amarjit Kumar, B.M.P. Islampur, P.O. and P.S. Islampur, District Nalanda.
10. Neelam Kumari, Jivika Agent W/o Bablu Kumar Resident of Village - Muwarakpur, P.O. Sanda, P.S. Islampur, District - Nalanda.

... .. Opposite Party/s

Appearance :

(In Civil Writ Jurisdiction Case No. 22001 of 2013)

For the Petitioner/s : Mr. Raj Kishore Prasad Singh, Advocate

For the Respondent/s : Mr. K.P. Gupta

(In Miscellaneous Jurisdiction Case No. 2901 of 2018)

For the Petitioner/s : Mr. Bal Bhushan Choudhary, Advocate

For the Opposite Party/s : Md. Khurshid Alam - Aag 12

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

11 08-01-2024 Heard learned counsel for the parties.

2. This writ petition has been filed for quashing order dated 06.09.2012 passed by the District Magistrate-cum-Collector, Nalanda (Respondent No. 2) in Misc. Case No. 136/12 (Annexure No.- 29) and notices dated 21.01.2013 (Annexure Nos.- 30 & 30/A) issued by the Additional Collector, Nalanda (Respondent No. 3) in Jamabandi Cancellation Case No. 10/2012-13.

3. The brief facts of the case are that the land in question was purchased by the petitioners through the registered sale deed in the year 1989 and after purchase, the petitioners filed their application on the basis of three sale deeds for opening of Khata in the Chakbandi Register in their names under Section 10 of the said Act before the Consolidation



Officer, Hilsa for recording their names in the Land Register which was allowed and names of their vendors were removed from the Register. On the basis of the aforesaid three sale deeds, petitioners filed three separate applications before the Anchal Adhikari for mutation of their names in respect of purchased area of land of Plot No. 1 of Khata No. 126 situated in Village Mobarakpur Saranda which was referred to local Karamchari for inquiry who accordingly reported recommending the mutation in favour of the petitioners. The Anchal Adhikari after considering the report of Karamchari and C.O. allowed the mutation on 31.05.1994 in favour of these petitioners. On the basis of the mutation order dated 31.05.1994 a correction slip was issued to the Karamchari who prepared Register-II in the name of petitioners by creating *Jamabandi* Nos. 129/1 and 132/1 respectively and as mutated, they began to pay rent to the State of Bihar in token of which State Rent Receipts were granted to the petitioners. After some time, in the year 2011, petitioner No. 1 was threatened with dispossession by bad elements of the society as such, he approached this Court by filing writ application against the State of Bihar, its officials and 23 persons who were active in disturbing the possession of the petitioner. Then the Court, by order dated 22.12.2011, disposed



off the writ application with direction to the District Magistrate, Nalanda to issue notices to the respondent Nos. 5 to 27, examine the record and decide the matter. Pursuant to the order passed by this Court, petitioner No. 1 submitted the said order as well as the documents of title and possession of the petitioners on the said plot along with an application dated 20.01.2012 on the basis of which the District Magistrate-cum-Collector, Nalanda registered Misc. Case No. 136 of 2012, disposed of the case *vide* order dated 06.09.2012 and notices were issued to the persons concerned including these petitioners. Aggrieved by the order dated 06.09.2012, petitioners have filed the instant writ petition.

4. It is submitted on behalf of the petitioners that the order dated 06.09.2012 passed by the District Magistrate-cum-Collector, Nalanda in Misc. Case No. 136/12 (Annexure No.-29) is erroneous and perverse. It is settled law that long standing *Jamabandi* cannot be declared to be forged and fabricated in a summary proceeding. The findings recorded by the District Magistrate-cum-Collector, Nalanda is based on no evidence and as such, is fit to be quashed.

4.1. Learned counsel next submits that the notices issued by the Additional Collector, Nalanda *vide*



Annexure Nos.- 30 & 30/A are without jurisdiction since the notices do not disclose the mandatory requirement, as contemplated under Section 9 of the Bihar Land Mutation Act, 2011 for initiation of an action for cancellation of *Jamabandi*. It is further contended that the said notices have been issued at the behest of District Magistrate-cum-Collector, Nalanda which is nothing but usurpation of the jurisdiction or an attempt to influence an inferior officer. When the statutory power is conferred upon a particular authority, it is for him to decide whether or not to exercise that power. Lastly, he submits that the notices in question do not indicate that the *Jamabandi* which was created in favour of the petitioners was in violation of any law for the time being in force or the same were in contravention of any executive instruction issued in this behalf.

5. On the other hand, learned counsel representing the State submits that order dated 06.09.2012 passed by the District Magistrate-cum-Collector, Nalanda in Misc. Case No. 136/12 (Annexure No.- 29) is a well reasoned order and does not require any interference. He next submits that the Additional Collector, Nalanda has initiated proceeding for cancellation of *Jamabandi* after receiving the report of the Circle Officer, Islampur. According to the him, the report of the Circle Officer,



Islampur in this regard is specific and therefore, petitioners instead of approaching this Court against the show cause notice ought to have responded the show cause notices by appearing before the Additional Collector, Nalanda. He further submits that the petitioners ought not to have approach this Court against the issuance of notice itself, which cannot be said to be lacking in jurisdiction. Lastly, he submits that since petitioners have statutory alternative remedy, this writ application under Article 226 of the Constitution of India should not be entertained.

6. Section 9 of the Bihar Land Mutation Act, 2011 contemplates that the Additional Collector, either *suo moto* 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’. In the present case, Annexure Nos.- 30 and 30/A to the writ application are the show cause notices issued to the petitioners.

7. I have carefully perused the impugned show cause notice (Annexure No.- 30) issued by the Additional Collector, Nalanda, which is reproduced hereinbelow:

"न्यायालय अपर समाहर्ता, नालन्दा।

जमाबंदी रद्दीकरण बाद संख्या **10/2012-13**

साका बनाम अणु प्रसाद सिंह वगैरह



नोटिस बनाम,

जगगु प्रसाद सिंह
पिता- स्व० अकलु सिंह
ग्राम - मोबारकपुर टोला धमडिया बिगहा थाना इस्लामपुर

वज्रिय नोटिस बिहार भूमि दाखिल खारिज अधिनियम, 2011 की धारा-9 के अन्तर्गत सूचित किया जाता है कि थाना न० 102 खाता न० 126 रकबा 2.90 एकड़. भूमि ----- प्रकार की है। जिसे आंचल अधिकारी इस्लामपुर के द्वारा जमाबंदी रद्दीकरण हेतु प्राप्त है, जिसने उक्त अधिनियम के अन्तर्गत सुनवाई दिनांक 25/2/2013 को निर्धारित है।

अतः निर्धारित तिथि पर अपना पक्ष स्वयं अधिवक्ता के माध्यम से रखना सुनिश्चित करे।

इसे ताकिद जाने।

ह /-
अपर समाहर्ता,
नालन्दा।"

8. In the show cause notices, he has simply recorded that he has received a recommendation from the Circle Officer, Islampur for cancellation of *Jamabandi*. The notices further indicate that a date has been fixed for hearing in this regard. On the said ground, the petitioners have been directed to appear before him along with the relevant records/evidence.

9. The purpose of show cause notice is primarily to enable the noticee to meet the ground on which the action is proposed against him. In other words, in order to fulfill the requirement of principle of nature justice, a show cause notice should meet the following two requirements:

(i) The material/grounds to be stated which according



to the department necessitates an action;

(ii) Particular penalty/action which is proposed to be taken.

10. Existence of an alternative remedy is a rule of policy, practice and discretion rather than a rule of law. It is a self-imposed limitation and cannot oust jurisdiction of the Court. In exceptional circumstances, the High Court may grant relief under Article 226 of the Constitution of India even if an alternative remedy is available to the person. In this case, reference can be made to a Supreme Court decision reported in **(1998) 8 SCC 1 (*Whirlpool Corporation Vs. Registrar of Trade Marks Mumbai and others*)**.

11. In the opinion of this Court, learned counsel for the petitioners is right in his submission that the long standing *Jamabandi* could not have been declared to be forged and fabricated by the District Magistrate-cum-Collector, Nalanda in a summary proceeding. If the State is disputing the long standing *Jamabandi* of the petitioners over the land in question, the only option left to the State is to approach the competent civil court for appropriate relief, but instead of doing so, the State has declared the long standing *Jamabandi* as forged and fabricate in a summary proceeding, which is illegal.



12. In view of the sub section (1) of Section 9 of the Bihar Land Mutation Act, 2011, power of initiation of a proceeding for cancellation of Jamabandi apparently vests in the Additional Collector, but such power can be exercised only if he is satisfied that a Jamabandi 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. In the present case, no such ground has been mentioned. The said notices, in my opinion, cannot be said to have been issued in conformity with the provisions of law and suffer from violation of principle of natural justice as they do not disclose the ground on which the notices have been issued.

13. In the result, order dated 06.09.2012 passed by the District Magistrate-cum-Collector, Nalanda (Respondent No. 2) in Misc. Case No. 136/12 (Annexure No.- 29) and the notices dated 21.01.2013 (Annexure Nos.- 30 & 30/A) issued by the Additional Collector, Nalanda (Respondent No. 3) in Jamabandi Cancellation Case No. 10/2012-13 are hereby set aside.

14. Writ petition is allowed with liberty to the respondent authorities to move afresh in accordance with law.

15. With the aforesaid observations, this writ petition is allowed.



MJC No. 2901 of 2018

16. As CWJC No. 22001 of 2013 has already been allowed, the MJC No. 2901 of 2018 which has been filed for compliance of interim order passed in the instant writ petition CWJC No. 22001 of 2013, has become infructuous and is, accordingly, dismissed.

(Prabhat Kumar Singh, J)

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