

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10862 of 2024

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1. Jyoti Singh @ Jyoti Kumari, W/o Ashok Kumar, R/o Mohalla- College More, Near Yadav Chhatrawas, P.S.- Bihar, District- Nalanda.
 2. Sharmila Kumari, W/o Ajay Kumar, Mohalla - College More, Near Yadav Chhatrawas, P.S. - Bihar, District - Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Revenue and Land Reform Government of Bihar, Patna.
2. The Additional Chief Secretary, Revenue and Land Reform Govt. of Bihar, Patna.
3. The Joint Secretary, Revenue and Land Reform Govt. of Bihar, Patna.
4. The Collector, Nalanda, Biharsharif.
5. The Additional Collector, Nalanda.
6. The Land Reforms Deputy Collector, Biharsharif, Nalanda.
7. The Circle Officer, Biharsharif, Nalanda.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Sanjay Kumar Sharma, Advocate
For the Respondent/s : Mr. Madhukar Mishra, AC to SC-16

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

2 25-07-2024 Heard learned Advocate for the petitioners and the learned Advocate for the State.

2. The petitioners by invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India seeking quashing of the order dated 24.06.2024 in Jamabandi Cancellation Case No. 75/2023-24 passed by the learned Additional Collector, Nalanda, the copy of which is marked as Annexure p/14.

3. By the impugned order the Additional Collector,



Nalanda cancelled the Jamabandi standing at Page 42 of present Part 15 which was created vide Mutation Case No 6586/2019-20 with respect to the land of Khata no. 73, Khesra No. 342, Areas 25 Decimals.

4. The learned Advocate for the petitioner contended that the afore-noted Jamabandi was previously standing as Jamabandi No. 1061 vide Mutation Case No. 43/3-1971-72 in the name of petitioners' father and for the last five decades rent receipts were being issued from the Circle Office, Biharsharif. The land possession certificate also found in the name of the petitioner's father. The cancellation of Jamabandi in the submission of the petitioner is apart from illegal, arbitrary and against the law settled in this regard that a long continuous Jamabandi shall not be cancelled in a summary proceeding by an executive order. The Additional Collector lacks inherent jurisdiction to issue any order for cancellation of Jamabandi in the facts of the present case.

5. It is the case of the petitioner that after the death of their father, the name of the petitioners were mutated with respect to the holding bearing no. 681 constructed over the land of plot no. 342 vide Mutation Case No. 285/219/A in Biharsharif Municipal Corporation and accordingly Municipal Property Tax Receipt issued in their name. In the year 2023 all



of a sudden the petitioners alongwith others were served with a notice vide memo no. 3072 dated 16.09.2023 under Section 3 of the Bihar Public Land Encroachment Act, 1956 in Encroachment Case No. 13/23-24.

6. During pendency of the Encroachment case, noted hereinabove, the Circle Officer, Biharsharif approached before the Additional Collector, Nalanda for cancellation of Jamabandi. Pursuant to the letter issued by the Land Reforms Deputy Collector, Biharsharif, a Jamabandi Cancellation Case No. 75/2023-24 was initiated before the Additional Collector, Nalanda. Notices have been issued and the petitioners secured their appearance and filed a detailed reply alongwith all the relevant documents as well as the judgments of this Court, and the Hon'ble Supreme Court.

7. The afore-noted Jamabandi Cancellation case came to be disposed of vide order dated 20.01.2024 with a finding that the Jamabandi in the name of the petitioners cannot be cancelled; and the application under Section 9 of Bihar Land Mutation Act, 2011 by the Circle Officer, with respect to cancellation of Jamabandi standing in the name of the petitioners as well as others, is not legal.

8. Aggrieved, the Circle Officer, Biharsharif preferred Jamabandi Cancellation Appeal No. 6 of 2024 before the



Collector, Nalanda. The learned Collector, Nalanda after hearing the parties set aside the order dated 20.01.2024, passed in Jamabandi Cancellation Case No. 75/2023-24 and remanded the matter back to the Additional Collector, Nalanda with a direction to pass fresh order.

9. On remand being made, the Jamabandi Cancellation Case No. 75/2023-24 revived and after hearing the parties, the learned Additional Collector, Nalanda reversed his earlier order. Being aggrieved, the petitioner invoked the extraordinary jurisdiction of this Court by filing the present writ petition.

10. The learned Advocate, advertng to aforesaid facts urged various submissions while assailing the impugned order, however after some arguments, it is fairly submitted that since they were facing threat of demolition, apart from filing the writ petition they have also filed Jamabandi Cancellation Appeal No. 26 of 2024 before the Collector, Nalanda.

11. At this juncture, learned Advocate for the State submitted that the petitioner cannot be allowed to pursue two parallel remedy in respect of same matter at the same time. In view of his contention, reliance has also been placed on a judgment of Apex Court in the case of *Jai Singh vs. Union of India, AIR 1977 SC 898*.



12. Refuting the contention for the learned Advocate for the State, the petitioner contended that the impugned order passed by the Additional Collector is apart from illegal, arbitrary, is in the teeth of the mandate of the Hon'ble High Court, as well as Apex Court; and thus has no legal sanctity.

13. Having heard the learned Advocate for the respective parties and taking note of the fact that the petitioner has already preferred appeal before the Collector, Nalanda, this Court at this stage deems it apt and proper for the ends of justice to direct the Collector, Nalanda, Bihar Sharif to dispose of the afore-noted appeal, after taking into consideration all the relevant documents, as well as the judgments which govern the issue and dispose of the same within a reasonable period.

14. Considering the facts that the Jamabandi was created in the name of the father of the petitioners since long, in the mean time the possession of the petitioners shall not be disturbed till the final disposal of the appeal.

15. The writ petition stands disposed of with the aforesaid observation.

(Harish Kumar, J)

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