

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21769 of 2018

1. Vinay Singh, son of Sadanand Rai.
2. Sadanand Rai, son of late Bangali Rai.
3. Shiv Pujan Rai, son of late Bangali Rai.
4. Ram Chandra Rai, son of late Bangali Rai.
5. Jagdish Rai, son of late Bangali Rai.
6. Balram Rai, son of late Laxmi Prasad Rai.
7. Nitin Bose, son of late Laxmi Prasad Rai.
8. Shekhar, Son of Late Balmiki Rai.

All are resident of Village-Chakiya, P.S.-Barauni, District-Begusarai

... .. Petitioners

Versus

1. The Union of India through the Secretary, Ministry of Road, Transport & Highways, Government of India, New Delhi.
2. The National Highways Authority of India represented through the Project Director, Begusarai.
3. That District Magistrate, Begusarai
4. The District Land Acquisition Officer-cum-Competent Authority, Begusarai
5. The Circle Officer, Barauni, Begusarai

... .. Respondents

with

Civil Writ Jurisdiction Case No. 2085 of 2021

1. Jagdish Mahto @ Jagdish Rai.
2. Shiv Pujan Rai.
3. Sadanand Rai.
4. Ram Chandra Rai.

All are sons of late Bangali Rai @ Bangali Mahto, resident of Village - Chakiya, P.S. Barauni, District- Begusarai.

... .. Petitioners

Versus

1. The State of Bihar through the Principal Secretary, Department of Revenue and Land Reforms, Govt. of Bihar, Patna.
2. The Principal Secretary, Department of Revenue and Land Reforms, Govt. of Bihar, Patna.
3. The Divisional Commissioner, Munger.
4. The Collector, Begusarai.



5. The Additional Collector, Begusarai.
6. The Land Reforms Deputy Collector, Begusarai.
7. The Circle Officer, Begusarai.

... .. Respondents

Appearance :

(In Civil Writ Jurisdiction Case No. 21769 of 2018)

For the Petitioner : Mr. Krishna Chandra, Advocate
Mr. Pratik Kumar Sinha, Advocate

For the Respondents : Mr. Rishi Raj Sinha, S.C.-19

(In Civil Writ Jurisdiction Case No. 2085 of 2021)

For the Petitioner : Mr. Krishna Chandra, Advocate
Mr. Pratik Kumar Sinha, Advocate

For the Respondent/s : Mr. P.K. Shahi, A.G.

**CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
COMMON ORAL JUDGMENT**

Date : 23-02-2024

Re:- C.W.J.C. No.2085 of 2021

By way of this writ petition, the petitioners have
prayed for the following reliefs:-

- “i. To issue a writ of certiorari quashing the very initiation of proceedings of Jamabandi Cancellation Case Nos.24, 25, 26 and 27 of 2019/20, initiated by the respondent no.5, Additional Collector, Begusarai against the petitioners with respect to the land bearing Khata Nos.261, Khesra Nos.890 and 891, Mauza-Malhipur, Tauzi No.4432 (wrongly mentioned as 4432 in place of 4431), Thana No.503, District- Begusarai.*
- ii. To issue a writ of prohibition prohibiting the respondent authorities*



from initiating any proceedings of taking any action in regard to the cancellation of Jamabandi (s) of the petitioners, pursuant to Section 9 of the Bihar Land Mutation Act, 2011 unless a decree is obtained from the Civil Court by the State of Bihar for declaration of title of the State of Bihar in regard to the land in question held and possessed by the petitioners with long standing Jamabandi thereon.”

2. It is the case of the petitioners that the land bearing Khata No.261, Khesra Nos.890 and 891, Mauza-Malhipur, Tauzi No.4431 are in possession of the petitioners and their ancestor since more than 90 years. By virtue of *Hukumnama* dated 25.01.1932, ex-zamindar namely, Chandrachud Deo had settled 43 acres and 71 decimal of land with great grand-father of the petitioners namely, Feru Mahto. After abolition of Zamindari, the grand-father of the petitioners and other other Zamindars including the Zamindars of Mauza-Malhipur submitted their return. The return filed by the father of the petitioners was duly accepted by the competent authority and upon filing of the return, the rent receipts were also issued in favour of the ancestor of the petitioners and his tenants/settlees. According to the petitioners, pursuant to the



submission of the return by the intermediaries, the State Government by its letter dated 08.11.1954 started “Land Bhujarat Abhiyan” and upon spot enquiry, Jamabandi register was prepared and in furtherance thereof, Jamabandi was created in favour of the ancestors of the petitioners.

3. It is also the case of the petitioners that in the year 1959-60 one of the intermediaries namely, Chandrachud Deo, filed a case against the ancestors of the petitioners namely, Bengali Mahto and the Jamabandi was subject matter of consideration in Jamabandi Revision Case No.16 of 1959-60. In the said case, the Circle Inspector passed an order dated 20.04.1966 holding that the Jamabandi filed by Sri Bangali Mahto may be treated as correct, meaning thereby, the ancestor of the petitioner was found in possession of the land and that the return filed by him was duly accepted to be valid. Thereafter, the petitioners and his co-sharers are in continuous possession over the said land and are paying rent to the State Government.

4. It is further the case of the petitioners that in the year 1956-57 for construction of Rajendra Bridge, some part of the land of the petitioners namely, Jagdish Mahto and others was acquired by the State Government vide Case No.02/56, which is evident from the Notification dated 03.02.1958 issued



by the Collector-cum-Special Land Acquisition Officer, Mokama, Patna. In the year 1973-74, altogether eight Land Ceiling Cases were initiated against the ancestor of Bangali Mahto with respect to the land in question. In the year 1996, the Ministry of Petroleum for the purposes of laying Barauni Kanpur Pipeline for crude petroleum from Haldia (West Bengal) to Barauni (Bihar) acquired the land of the petitioners and the compensation was paid to the petitioners for damaging the crops over certain portion of the land i.e. Khesra nos.890 and 891 in course of laying down the pipeline. According to the petitioners, the Indian Oil Corporation Limited was in necessity of 0.617 acres of land of Khesra no.890, Khata no.261 and the petitioner no.1 being the owner of the said land, transferred the said land in favour of the Indian Oil Corporation Limited through a registered sale-deed dated 22.09.2016.

5. According to the petitioners, a notice dated 20.03.2019 was issued to them in connection with Jamabandi Cancellation Case No.61 of 2018-19 and the petitioners filed their objection and thereafter, the said case was dropped but thereafter, another notice was issued to the petitioners in Jamabandi Cancellation Case Nos. 24, 25, 26 and 27 of 2019-20.



6. Learned counsel for the petitioners submits that the notices issued to the petitioners are illegal as there is long-standing Jamabandi in favour of the petitioners. He further submits that on atleast six occasions, the land in question was the subject matter of consideration before the respondent authorities and on every occasion, the land in question have been treated to be the land of the petitioners.

7. 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 ancestor of the petitioners and the petitioners have been paying rent to the Government till date.

8. Learned counsel for the petitioner submits that the land in question has been settled by ex-zamindar namely, Chandrachud Deo through a *Hukumnama* in favour of the ancestor of the petitioners in the year 1932 i.e. before 01.01.1946 and thereafter rent receipts have also been issued in favour of the petitioners, but the respondent authorities, ignoring these facts, have illegally initiated Jamabandi Cancellation proceeding against the petitioners.

9. Learned counsel for the petitioners has



submitted that it is settled law that a long standing Jamabandi cannot be disturbed in a summary proceeding. In support of his submissions, he has relied upon the following decisions:-

- (i) ***Maya Devi vs. State of Bihar & Ors.***
reported as ***2014(3) PLJR 584.***
- (ii) ***State of Bihar & Ors. vs. Harendra Nath Tiwari*** reported as ***2015(1) PLJR 606.***
- (iii) ***Vijay Kr. Prasad vs. The State of Bihar & Ors.*** reported as ***2017(1) PLJR 818***
- (iv) ***Kedar Das vs. State of Bihar & Ors.*** reported as ***2023 (1) PLJR 918***
- (v) ***Jagarnath Jha vs. State of Bihar & Ors.***
reported as ***2023(4) PLJR 565***
- (vii) ***Dhirendra Kumar vs. State of Bihar & Ors.*** reported as ***2023(3) PLJR 733.***

10. Learned counsel for the petitioners has also relied upon a decision dated 18.11.2013 passed by this Court in C.W.J.C. No.4979 of 2005, which has been affirmed till the Hon'ble Supreme Court and submits that the settlement made long ago cannot be deleted from tenant's register by initiating Jamabandi Cancellation proceeding.

11. In this case, counter affidavits have been



filed by the respondents.

12. It has been contended by learned counsel for the State that in the *Khatiyani* the land in question is recorded as “*Gairmajarua Khas land*”. The petitioner has not produced any document relating to the claim over the land in question after vesting of Zamindari. The claim of the petitioners that there is long-standing Jamabandi in their favour is incorrect in view of letter dated 11.11.2014 issued by the Revenue Department wherein it has been mentioned that without the order of the Collector the Bandobast land will not be considered as “Raiyati land”.

13. Further contention of the State is that if the ex-landlord had settled the land in favour of the ancestor of the petitioners even then without return of ex-landlord with regard to the land in the name of the ancestor of the petitioners, the petitioners or his ancestor did not acquire valid right, title and interest over the land in question. The petitioners have not submitted any return which indicates that ex-landlord has executed *Hukumnama* in favour of the ancestor of the petitioners. Further, the land in question is a “*Gairmajarua khas land*” and the petitioners cannot claim right, title and interest over a Government land. It has also been submitted by the State



that the land in question is the subject matter of Title Suit No.461 of 2010, which is still pending.

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

15. From the record, it appears that the *Hukumnama* was executed by the ex-zamindar namely, Chandrachud Deo with regard to the land in question in the name of the ancestor of the petitioners in the years 1932 i.e. prior to 01.01.1946. The petitioners and their ancestors are in possession over the land in question for last 90 years and they have been paying rent to the State Government on regular basis. It also appears that the land of the petitioners have been acquired by the Government agencies and the predecessors of the petitioners have also been paid compensation for their lands. In Jamabandi Revision Case No. 16 of 1959-60, the ancestor of the petitioners were found in possession of the land in question and the return filed by the ancestor of the petitioners was duly accepted. Further, the registered deed dated 22.09.2016 indicates that the petitioner no.1 has transferred certain land in favour of the Indian Oil Corporation Limited. Since, the petitioners are in peaceful possession over the land in question and are paying rent to the Government and after their names are



mutated in the records, the initiation of proceeding of cancellation of Jamabandi is illegal.

16. This Court has consistently held that long standing Jamabandi created in favour of the *Raiyats* cannot be cancelled in a summary proceeding and the title of the petitioners cannot be doubted in a summary proceeding. The long standing Jamabandi can only be cancelled after the State files a Title Suit and is successful in the said Title Suit.

17. This Court in C.W.J.C. No. 16985 of 2018 (Nathuni Singh @ Nathuni Singh Yadav vs. The State of Bihar & Ors.) has held as follows:-

“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 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.”

This Court has consistently held that power of the State for cancellation of Jamabandi cannot be exercised in casual manner and if the State challenges the correctness of the settlements and the entries in relation thereto, onus is entirely upon the State to prove that they are wrong.

*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.

In view of the discussions made above, this writ application succeeds and the order dated 19.05.2017 passed by the Additional Collector in Jamabandi Cancellation Case No.57 of 2016-17/ 109 of 2016-17 and the order dated 30.12.2019 passed by the Collector, Aurangabad in Jamabandi Cancellation Appeal No. 351 of 2017 are hereby set aside. The State will have a liberty to file a title suit if it challenges the settlement in favour of the predecessor-in-interest of the petitioners and Jamabandi in their favour but mere filing of the title suit by the State will not deny the compensation amount which may be payable to the petitioners pursuant to the land having been acquired by the Railway.”

18. In this case also, there is long standing Jamabandi in name of the ancestor of the petitioners, the same cannot be doubted and cancelled in a summary proceeding.

19. Considering the aforesaid facts and also the law laid down by this Court in the case of **(Nathuni Singh @ Nathuni Singh Yadav vs. The State of Bihar & Ors. (supra))**, I am of the view that initiation of proceedings of Jamabandi Cancellation Case is illegal. Therefore, the proceedings of Jamabandi Cancellation Case Nos. 24, 25, 26 and 27 of 2019-20



are quashed. The State will have a liberty to file a title suit in the District Court if it wants to challenge the title of the petitioners of the petitioners and Jamabandi in their favour.

Re:- C.W.J.C No.21769 of 2018

20. By way of this writ petition, the petitioners have prayed for the following reliefs:-

- i. For issuance of appropriate Writ/Writs, direction/directions in the nature of Prohibitory Mandamus restraining the respondents from making any construction including the construction of road over certain portion of the raiyati land of the petitioners having Khata No.-261, Plot No.-890/891 in Mauza-Malhipur, Thana No.503, District-Begusarai and further be pleased to direct the respondent authorities to undertake the procedures as stipulated under constitutional scheme by which the property right of citizen in public interest, can only be taken by the competent authority by following due process of law besides directing the authorities to bring physical condition of the land in question in original shape by paying compensation for the loss caused on account of illegal*



construction destructing the agricultural land which is being utilized by the petitioners for cultivation of land.

ii. For any other relief/reliefs which the Hon'ble court may grant in general interest checking these kinds of harassment to the petitioners by the government officials that may be deemed appropriate and necessary in this case and further to grant interim stay in the matter in order to protect the lis and interest of the petitioners getting further jeopardized.”

21. The facts of this case are same and similar as has been mentioned in C.W.J.C. No.2085 of 2021.

22. This Court considering the long-standing Jamabandi of the petitioners already held that long-standing Jamabandi cannot be cancelled by the State and if the State is doubting the title and Jamabandi of the petitioners then it has only option to move the District Court.

23. This writ petition is disposed of with a direction that the construction of the road cannot be interfered but the State will have to pay compensation to the petitioners for the land on which the road is being constructed by the State. The State may challenge the right and title of the petitioners by filing



a Title Suit in the District Court. If the State files a Title Suit within two months from today then the same shall be disposed of within one year of its filing. The compensation which is to be paid to the petitioners for the land of the petitioners shall be kept on hold for one year so that the Title Suit is decided at the earliest. The petitioners will cooperate in the disposal of the Title Suit. In case, delay is caused on the part of the State then the State will have no option but to release the compensation amount in favour of the petitioners. If no Title Suit is filed by the State within two months from today then the State will have to release the compensation amount under the Right to Fair Compensation & Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 in favour of the petitioners as the petitioners are the owners of the land in question.

(Sandeep Kumar, J)

Pawan/-

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

