

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.508 of 2017**

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Gopal Panjiyar @ Pappu Panjiyar s/o Late Laxman Panjiyar R/o Mohalla -  
Bakarganj, P.S. - Laheriasarai, District - Darbhanga.

... .. Petitioner

Versus

1. The State Of Bihar
2. The Collector, Darbhanga, Bihar.
3. The Circle Officer, Darbhanga , Bihar.
4. Pankaj Kumar Panjiar son of Ram Narayan Panjiyar Resident of Mohalla  
Bakarganj, P.S. - Laheriasarai, District - Darbhanga.

... .. Respondents

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**Appearance :**

For the Petitioner/s : Mrs/Ms. Shama Sinha, Advocate  
For the Respondent/s : Mr. Rishi Raj Sinha- Sc19

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**CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR**  
**ORAL ORDER**

- 6      23-01-2024      1.      This application has been filed for quashing the order dated 14.09.2016 passed by the Collector in Land Encroachment Appeal No. 15 of 2016 by which the Collector has rejected the prayer of the petitioner vide Land Encroachment Appeal No. 15 of 2016 and also for quashing the order dated 03.01.2014 passed by Circle Officer, Sadar Darbhanga in Record No. 13 of 2007-08.
2.      Learned counsel for the petitioner submits that Municipal Survey Plot No. 28427 is recorded as *Gair Majarua Khas (Parti Kadim)* in the name of ex-landlord *Mahadhiraj Rameshwar Singh* and the Municipal Khesra No. 28427 was settled by ex-landlord in favour of the ancestors of the



petitioner and which was later mutated in the name of the father of the petitioner. The grand father of the petitioner was in peaceful possession of the land in question and regularly paid rent of the land to the State which was accepted by the State. She further submits that after the death of the father of the petitioner, the petitioner came in possession of the land in question and is regularly paying rent to the State which is being accepted by the State.

3. Learned counsel for the petitioner further submits that the land in question is in peaceful possession of the family of the petitioner from more than 100 years and the same is covered by the boundary walls and forms the part of the house of the petitioner and the land has no concern with any public usage. She further submits that on 03.04.2007, one *Pankaj Panjiyar* filed a petition before the Circle Officer, Sadar, Darbhanga to remove the encroachment from MSP No. 28417, 28427, 28423 and 28424 and on 18.04.2017, Circle Officer registered the case as Encroachment Case No. 13 of 2007-08 and started proceeding over MSP No. 28417 and 28427 (which is recorded as *Gair Majarua Khas (parti Kadim)*). She further submits that on 08.06.2007, *Anchal Amin* went to the spot for measurement and ascertaining the real area of encroachment in course of



which one *Dr. Satish Panjiyar* obstructed to the measurement and rebuked the *Amin*. *Pankaj Panjiyar* filed one Miscellaneous Case No. 33 of 2007 before the Commissioner to cancel the Jamabandi of *Dr. Satish Panjiyar* regarding public land of MSP No. 28417 and 28427.

4. Learned counsel for the petitioner further submits that after *Satish Panjiyar* objected, the Circle Officer stopped the proceeding in Land Encroachment case, on which *Panjak Panjiyar* filed C.W.J.C. No. 17948 of 2008 in which the petitioner was made party as respondent no. 05 and *Dr. Satish Panjiyar* was made respondent no. 4. She further submits that vide order dated 30.10.2013 in C.W.J.C. No. 17948 of 2008, the High Court directed the Circle Officer to complete the proceeding within two months and on 23.11.2013 Circle Officer started the case and got the spot measured. She further submits that against the order dated 30.10.2013, *Dr. Satish Panjiyar* filed L.P.A. No. 47 of 2014 and the same was set aside by the High Court in L.P.A. No. 47 of 2014 and the writ petition was remanded back for fresh hearing.

5. Learned counsel for the petitioner further submits that on 03.01.2014, the Circle Officer completed the whole exercise and gave a report that four different persons (petitioner was



named as one of the encroacher in M.S.P. No. 28427) have encroached the public land of M.S.P. No. 28417 and 28427 [recorded as *Gair Majarua Khas(Parti Kadim)*]. She further submits that C.W.J.C. No. 17948 of 2008 was heard and disposed off with a direction that since final order of Encroachment Case No. 13 of 2007-08 has been passed on 03.01.2004, the encroachers may file appeal before the Collector, Darbhanga and on 25.02.2014, the petitioner file Land Encroachment Appeal No. 15 of 2014 before the Collector and the petitioner placed his claim over the M.S.P. No. 28427 on the basis of the fact that Municipal Khesra No. 28427 was settled by ex-landlord in favour of the ancestors of the petitioner after which the grandfather of the petitioner came in possession of the land.

6. Learned counsel for the petitioner further submits that the Collector has admitted the fact that Municipal Survey Plot No. 28427 is recorded as *Gair Majarua Khas (parti Kadim)* in the name of ex-landlord *Mahadhiraj Rameshwar Singh* and the Collector has also submitted that *Jamabandi* is created in the name of ancestor of the petitioner. She further submits that Collector after admitting the land as *Gair Majarua Khas* and the fact that *Jamabandi* is created in the name of the ancestors



of the petitioner, he has rejected the claim of the petitioner that ex-landlord had not submitted return with respect to such settlement which can prove that the *Jamabandi* was created in the name of the ancestor of the petitioner on the basis of the settlement made by the ex-landlord.

7. Learned counsel for the petitioner further submits that Collector has decided the question of title in a summery proceeding under Bihar Public Land Encroachment Act, 1956 and after deciding the question of title, the Collector has declared the land in question to be public land and has rejected the appeal of the petitioner.

8. Learned counsel for the petitioner has relied upon a judgment of this Court in the case of *Nathuni Singh @ Nathuni Singh Yadav & Ors V/s The State of Bihar & Ors* passed in *C.W.J.C. No. 16985 of 2018* dated 13.09.2022 and has submitted that long standing jamabandi cancelled by the authorities and the petitioner cannot be held to be an encroacher by initiating a summery proceeding.

9. Learned counsel for the State and the respondent no. 4 have jointly supported the orders of the Circle Officer, Sadar, Darbhanga and the Collector, Darbhanga and have jointly submitted that the cases have rightly been decided by the



authorities.

**10.** It is an admitted position that the petitioner's ancestors have been settled the land by *Mahadhiraj Rameshwar Singh* in the year 1963. If the State is doubting the documents and title of the petitioner, it cannot decide the same against the petitioner by restoring to a summary proceeding but the State will have to file a title suit for challenging the Right, Title and Interest of the petitioner.

**11.** This Court vide judgment and order dated 13.09.2022 passed in C.W.J.C. No. 16985 of 2018 (*Nathuni Singh and Others vs. the State of Bihar and Others*) 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:-*

*“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 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 (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."*

**12.** Considering the aforesaid, I am of the view that the Long Standing Jamabandi in the name of the petitioner cannot be doubted in a summary proceeding.

**13.** This Application is allowed and the order dated 14.09.2016 passed by the Collector in Land Encroachment Appeal No. 15 of 2016 and order dated 03.01.2014 passed by Circle Officer, Sadar, Darbhanga in Record No. 13 of 2007-08 are hereby quashed.

**14.** The State is given liberty to prefer a title suit if it so advised.

**15.** This application stands allowed with costs.

**(Sandeep Kumar, J)**

*Shishir/-*

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