

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.21556 of 2019**

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Rajni Kant Mishra S/o Late Murlidhar Mishra resident of Village- Sono Modi  
Tola, P.s.- Sono, Distt.- Jamui

... .. Petitioners

Versus

1. The State of Bihar through the Principal Land Revenue and Land Reforms,  
Bihar, Patna
2. The Principal Secretary Department of Land Revenue and Land Reforms,  
Bihar, Patna
3. The District Magistrate Jamui
4. The Registrar Registration, Distt.- Jamui
5. The Registration Office Registration Office, Chakai
6. The Circle Officer Anchal- Sono, Distt.- Jamui

... .. Respondents

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**Appearance :**

For the Petitioner/s : Mr. Binod Kumar, Advocate  
For the Respondent/s : Mr. Raj Kishore Roy, GP18

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

**Date : 25-01-2024**

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

*“(i) For release of petitioner's land from the  
classification report of Khesra prepared  
by the respondent Circle Officer, Sono  
District - Jamui consequently marked  
the land prohibited for transfer and  
registration.*

*(ii) For allow sale and registration of the  
petitioner's land bearing Khata No. 94  
Khesra No. 530, total area 5 acres  
situated in Mauza- Ghotari, District  
Jamui.*

2. The petitioner is also challenging the  
proceeding of Jamabandi Cancellation Case No. 59 of 2019



through an Interlocutory Application No. 1 of 2022, which has been allowed vide order dated 27.07.2022.

3. It is the case of the petitioner that on 25.06.1949 the land appertaining to khata no.94, khesra no. 530, total area 5 acres of land came in favour of the father of the petitioner and one Kishun Tamaria by virtual of *Hukumnama* of the then Maharaja of the Gidhaur Estate. After vesting of Zamindari, the then Jamindar submitted return on 19.07.1958 to Government of Bihar and in the said return the name of the father of the petitioner and Kishun Tamaria were recorded. It is also the case of the petitioner that he has been in peaceful possession over the aforesaid land and he has also got the certified copy of Register-II which indicates that khata no. 94 khesra no. 530, total area 5 acres of land, recorded in the name of his father and Kishun Tamaria as *Raiyats*. In the writ petition, the petitioner has annexed rent receipts upto the year 2019-20 for the land in question.

4. It is the case of the petitioner that the Circle Officer, Sono in his report dated 13.05.2016 regarding Classification of Khesra under Mauza Ghotari, Anchal-Sono, Thana No.13/4 declared the land in question as *Gairmazura Khas* without any notice and hearing the petitioner to place his



defence, which is clear violation of principle of natural Justice and when the petitioner wanted to transfer his raiyati land i.e. the land in question, he came to know that his raiyati land has been declared as *Gairmazarua* khas land in the classification of Khesra.

5. It is also the case of the petitioner that because of classification of the land in question, the petitioner became unable to sale and transfer the land in question. The petitioner has also filed an application before the Sub Registrar, Chakai under whose jurisdiction the present Mauza and area is situated, who by letter dated 04.09.2019 directed the Circle Officer, Sono for taking necessary action and for sending action taken report but till date no step has been taken by the Circle Officer.

6. In this case, the respondent-State has filed its counter affidavit wherein it has been stated that the Circle Officer has rightly classified the land in question as "Gair Mazarua Khas" land since all the lands under Sono Anchal, Mauza-Ghotari, Thana No.13/05, Khata No. 94, Khesra No. 530, area 158.70 acres is recorded in the Cadastral Survey Khatian as "Gair Mazarua Mokirdar" land and type of land is recorded as "Jungle". Out of the total land, the petitioner claims



5 acres of land on the basis of forged and fabricated *Hukumnama*. It has also been stated that the petitioner got his Jamabandi created in collusion with Anchal Amlas and for cancelling the same, the Circle Officer, Sono has already filed Cancellation Case No.59 of 2019. After the vesting of Zamindari, the land vested in the State but the petitioner wanted to alienate the said land by selling it through registered deed on the basis of forged and fabricated document.

7. It has also been stated in the counter affidavit that it is factually incorrect that the land in question came in favour of the father of the petitioner and Kisun Tamaria by virtue of *Hukumnama* from the then Maharaja of the 'Gidhour Estate' on 15.06.1949 as the Maharaja was then a minor and therefore "Gidhour Estate" came under the Court of Wards. However, the petitioner claims the said land to be his own raiyati land on the basis of a fabricated document purported to have been issued on 09.07.1958 by some Muneshwar Prasad, Patwari. Even the Manager of Estate under Court of Wards had no jurisdiction to alienate its land without the consent of the Court. Section 38 of the Court of Wards Act provides that the Manager appointed by the Court was only entitled to Collect rent.



8. The State also contends that after vesting of Zamindari, the return was submitted on 19.07.1958 as at that time, the Maharaja of the Gidhour Estate was a minor and the 'Gidhour Estate' was already under Court of wards, so the question of filing of return by the then Maharaja of "Gidhour Estate" does not arise.

9. The State further contends that it is factually incorrect to contend that the petitioner has been in peaceful possession of the said land as from perusal of Register-II, it appears that the holding (Jamabandi) No. 41 was created in the name of Kishun Tamaria & Murlidhar Mishra recording that Jamabandi no. 41 was shown but there is no mention about the order number, date and the authority, who had passed such order and therefore, it is clear that the Jamabandi was created in collusion of the then Anchal Amlas without any order from the competent authority with a view to usurp the Government land which happened to be the land of jungle. Thus, the very claim of the petitioner that the land in question is his own raiyati land is based on the forged document and fabricated Jamabandi which cannot be accepted. The issuance of rent receipt on the basis of a fabricated Jamabandi of Government land created in collusion with Anchal Amlas does not give any right to the petitioner.



Therefore, the then Circle Officer, Sono has rightly classified the said land as “Gair Mazarua Khas” land.

**10.** I have considered the submissions of learned counsel for the petitioner and learned counsel for the State. From the materials on record, it appears that there is a long standing Jamabandi in the name of the predecessors of the petitioner from the year 1958 and the petitioner has been issued rent receipts regularly till the recent past. Now, the State authorities have doubted the Jamabandi created in the name of the petitioner and for cancelling the same they have initiated Jamabandi Cancellation Case No.59 of 2019 which is still pending. This Court has repeatedly held that long standing Jamabandi cannot be cancelled in a summary proceeding by the State authorities. In the present case, it is an admitted position that Jamabandi in favour of the petitioner is a long standing jamabandi and rent receipts have been issued in favour of the petitioner and his predecessors till recent past.

**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 and the petitioner has been issued rent receipts regularly till the recent past 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."*

*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 view of the aforesaid discussions, I am of the considered view that the action of the State in initiating Jamabandi cancellation case for such a long standing Jamabandi is illegal. For canceling a longstanding Jamabandi, the only option left to the State is to approach the District Court for declaration of their right, title and interest over the land in question. The State may also move an injunction application for restraining the petitioner from selling the land in question but they cannot stop the sale just by putting the land in the restriction list.

**13.** For the foregoing reasons, the proceedings of



Jamabandi Cancellation Case No. 59 of 2019 is hereby quashed. However, the State is at liberty to file a title suit and injunction application in the District Court within one month from the date of communication of a copy of this order. If the State files title suit and injunction application within a month of communication of this order then the Court below will pass an order on the injunction application of the State on the date of admission of the title suit itself. For the next three months, the registration of the document shall be kept in abeyance. If no injunction order is passed in favour of the State within next three months then the Sub Registrar will register the sale deed as the Sub Registrar cannot enquire into the title of the transferor as has been held in the case of *Bihar Deed Writers' Association & Ors. vs. State of Bihar & Ors. reported in 1988 PLJR 671* that it is not for the registering authority to enquire and ascertain the title to its own satisfaction.

14. With the aforesaid observations and directions, this writ petition is allowed.

(Sandeep Kumar, J)

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