IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P (C) No. 7770 of 2011

Tapeshwar Nath Mishra, S/o Banshidhar Nath Mishra, resident of Bijuilia, P.O + P.S. Ratu, District – Ranchi --- --- Petitioner (s)

Versus

1. The State of Jharkhand through Deputy Commissioner, Khunti, District-Khunti
2. The Circle Officer, Khunti, having his office of Khunti, P.O + P.S. Khunti, District-Khunti --- Respondent (s)

CORAM: **Hon'ble Mr. Justice Ambuj Nath**

For the Petitioner (s): M/s. Indrajit Sinha, Ankit Vishal, Amaresh Kumar, Namita Sahay, Advocates

For the Respondents: Mr. Manoj Kumar, G.A-III

Reserved on: 16.05.2024 **Pronounced on: 20.12.2024**

Ambuj Nath, J: The original petitioner Bimla Devi had filed this writ application for quashing of the notice issued by the Respondent No. 2-Circle Officer, Khunti in Sandigdh Jamabandi Case No. 2 of 2011-12 (Annexure-6) issued to the original petitioner who is mother of the present petitioner and the present petitioner as to why their Jamabandi with regard to the land appertaining to Mouza Fuddi, Thana No. 221, Khata No. 142, area 26.71 acres be not cancelled as the entire Jamabandi appears to be suspicious in nature. The petitioner had further prayed for directing the Respondents not to interfere with the peaceful possession of the petitioner over the land appertaining to Plot Nos. 679, 900, 1666, 974, 112, 625, 826, 213, 526 and 1064, total area 26.71 acres under Mouza Fuddi, Thana No. 221, Khata No. 142. It has been further prayed to quash the order dated 02.06.2011 passed by the Respondent No. 2, whereby and wherein, on the basis of the inquiry report of Circle Inspector and Revenue Karmachari, the Respondent No. 2-Circle Officer, Khunti has made recommendation to the Deputy Collector, Land Reforms for cancellation of Jamabandi of the petitioner appertaining to the aforesaid land.

During the pendency of this writ application, original writ petitioner Bimla Devi died and her son Tapeshwar Nath Mishra was substituted in her place.

2. The case of the petitioner is that the land appertaining to Khewat No. 3, Khata No. 142 of village Fuddi, Thana No. 221 was recorded in the Survey Khata in the name of one Satyendra Kumar Roy as Khewatdar. Shri Satyendra Kumar Roy sold the Khewat to Shri N.K. Roy, son of N. Prasad by a registered

deed of sale dated 19.01.1940. Shri N.K. Roy, during his lifetime, settled the aforesaid land vide Registered Deed No. 2391 dated 05.04.1943 to his sons Ranbir Roy, Pradip Roy, Rustam Roy, Sunil Roy and Pradeep Roy. Shri N.K. Roy died in the year 1947 and after his death, all his five sons inherited the aforesaid property. The sons of N.K. Roy executed a power of attorney and appointed Pradeep Roy as their legal power of attorney holder and converted the aforesaid land as Bakasat land of Jamindari. Pradeep Roy and his other brothers sold the properties of Khewat No. 3 along with other properties by registered patta no. 5295 dated 25.07.1951 in favour of Shri Banshidhar Nath Mishra and Laxman Nath Mishra of village Bijulia, Ratu, Ranchi. Subsequently, Banshidhar Nath Mishra and his brother Laxman Nath Mishra as a Khewatdar, made the Raiyati Settlement to various Raiyats by executing a sada Hukumnama dated 23.04.1953 coupled with issuance of rent receipts and delivery of possession settlement in favour of Smt. Bimla Devi (original petitioner). After enactment of Land Reforms Act, 1950, the erstwhile Jamindar submitted a return on the vesting of Jamindari in Form-M and in the said return, name of the petitioner has been shown as Raiyat in relation to an area of 26.71 acres of land. The name of the mother of the petitioner Bimla Devi was entered into the revenue records and the State Government started realizing rent from her. It is further case of the petitioner that without any rhyme and reason, the Respondent No. 2 – Circle Officer, Khunti has issued notice in Sandigdh Jamabandi Case No. 02 of 2011-12 as to why their mutation be not cancelled and ultimately, it was cancelled.

3. Respondents have filed their counter affidavit, stating that the land in question was Gairmajarua Khas land and the name of the mother of the petitioner Bimla Devi was entered into the revenue records on the basis of Form-M which was submitted by the erstwhile Jamindar at the time of vesting of Jamindari. It has been stated that mutation of the petitioner was found to be questionable as the claim of the petitioner that the erstwhile Jamindar who had submitted Form-M showing the petitioner to be the Raiyat, could not be verified. It has further been stated that portion of the land consists of forest area and the petitioner cannot be said to be in possession of the same.

4. Mr. Indrajit Sinha, learned counsel appearing on behalf of the petitioner, submitted that title of the petitioner vis-à-vis the State Government cannot be adjudicated by the Respondent No. 2- Circle Officer, Khunti. It was further

submitted that the petitioner had a long standing Jamabandi and the State Government cannot cancel his Jamabandi in a quasi-judicial proceeding. It was further submitted that the only option left with the State Government was to institute a Civil Suit, if the State Government is claiming propriety over the aforesaid land. Reliance has been placed upon the decision of Division Bench of this Court rendered in the case of **State of Jharkhand and others versus Chancla Devi** passed in L.P.A. No. 142 of 2010 with L.P.A. No. 307 of 2009, para-9 thereof reads as under:

> "9. It appears from the facts of the case that the presumption on the part of the Halka Karamchari that the land in question is a Gair Majaruwa Malik Land is not permissible in the eyes of law. If the State Government is claiming the ownership upon the property in question, which is in possession of the original petitioners and which is in possession of the predecessor-in-title from 09.06.1942, the Civil Suit is the only remedy available with the State of Jharkhand. They cannot drag the citizens to be the plaintiff. The burden of proof lies upon the plaintiff. Burden of proof that the State is owner of the property in question lies upon the State Government. The defendant has to deny the allegations and nothing beyond that. There is vast difference between burden of proof for the plaintiff and for the defendant. The purchasers of the property by the registered sale deeds in the year 1992 from their predecessor-in-title Rang Nath Sahu, who is owner of the property from 09.06.1942, cannot be upset by a report of Halka Karamchari that the land in question is a Gair Majaruwa Malik Land. Prima-facie, no fraud has been played by the purchasers of the property who are the petitioners in the writ petitions. Likewise, prima-facie, Rang Nath Sahu is the owner of the property, looking to the revenue entry from 1956-1995. Thus, more than 30 years old entries and documents cannot be upset by or cannot be brushed aside by one line report of the Halka Karamchari that the land in question is a Gair Majaruwa Malik Land."

Reliance has also been placed upon a judgment rendered by the Division Bench of this Court rendered in the case of **The State of Jharkhand and others versus Izhar Hussain** in **L.P.A. No. 786 of 2018 and analogous cases** dated 05.11.2020, in which Division Bench has held as under:

> "It is further settled position of law that Jamabandi once created cannot be annulled. Herein it is admitted fact that Jamabandi can be created under the provisions of Bihar Tenants Holdings (Maintenance of Records) Act, 1973. We have gone across the provisions thereof, as contained in the Act, 1973 and have found that no provision confer upon any authority of the State to cancel the Jamabandi.
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> The question would be that in absence of any power conferred by Statute upon any of the revenue authority can Jamabandi be cancelled. The answer of this question would be in negative as statute confers power upon the authority and the authority can purportedly exercise the power conferred upon it under the statutory power and if any decision is taken in absence of

> any provision the same would be said to be nullity in the eye of law when found to be without jurisdiction.
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> It is further settled that long running Jamabandi cannot be cancelled, save and except by filing a suit before the competent Court of Civil Jurisdiction, as has been held by Hon'ble Apex Court in Ramayan Yadav & Ors Vs. State of Bihar & Ors reported in (2013) 3 PLJR 533.
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> 20. This Court, after having gone into the details as above as also travelling across the impugned order wherefrom it is evident that the learned Single Judge has relied upon the judgment in The State of Jharkhand & Ors vs. Chancla Devi passed in L.P.A. No. 142 of 2010 with L.P.A. No. 307 of 2009, wherein it has been held by the Co-ordinate Bench of this Court that if the State Government is claiming ownership upon the property in question which is in possession of the tenant/raiyat and his/her predecessors-in-title since 09.06.1942, Civil Suit is the only remedy available with the State Government.
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> 25. We, on appreciation of the findings recorded by the learned Single Judge and on the basis of discussions made herein above, are of the view that there is no reason to differ with the view/opinion of the learned Single Judge, by coming to the conclusion that the order dated 09.09.2016 passed by the revenue authorities is illegal and not sustainable in the eyes of law, as they have exercised power conferred under section 4(h) of the Act, 1950 which as per the discussions made herein above has been found to be not applicable in the facts and circumstances of the case as the case of the writ petitioner is that he is claiming title over the land in question on the basis of settlement made prior to 1st January, 1946 and further the additional Collector by way of order passed in Misc. Case No. 56/2015-16 has already passed order on 17.03.2016 holding therein that the present raiyats i.e Izhar Hussain and Akhtar Hussain are the recorded raiyats of Register-II in Thoka (Lot) No. 1665 which is absolutely correct and proper. But without questioning and without reversal of that order, a fresh proceeding was initiated under Section 4(h) of the Act, 1950 and further long running Jamabandi cannot be cancelled, save and except by instituting a litigation before the Civil Court of competent jurisdiction. Hence, the order passed by the learned Single Judge cannot be faulted with."

5. The petitioner has filed certified copy of the Sale Deed No. 5295 dated 25.07.1951, whereby sons of N.K. Roy had transferred the land in question in favour of Banshidhar Nath Mishra and Laxman Nath Mishra. Petitioner has also filed certified copy of Sada Hukumnama by virtue of which, Banshidhar Nath Mishra and Laxman Nath Mishra as Khewatdar, had settled the land in question in the name of the mother of the petitioner Smt. Bimla Devi who was the original petitioner in this writ application, but died during pendency of this writ application.

6. After coming into force of Land Reforms Act, 1950, the tenure holder submitted Form-M showing the original petitioner to be the Raiyat over the aforesaid land and on the basis of the documents by virtue of which land in

question was settled in favour of the mother of the petitioner, her name was entered into the revenue records and the State Government started realizing rent from her. However, in the year 2011, Suspicious Case No. 02 of 2011-12 was initiated against the petitioner for cancelling his Jamabandi over the aforesaid land. Notice was issued to the petitioner and subsequently, his Jamabandi was cancelled on the ground that the entries made in the revenue records could not be verified with the photocopy of Form-M which was submitted in case no. 37R8/55-56, by virtue of which, name of the mother of the petitioner was entered into the revenue records.

7. It is the admitted case of the Respondents that the name of the mother of the petitioner was entered into the revenue records in the year 1955-56 and the State Government was realizing rent from her for more than 55 years.

8. Suddenly, out of a blue, the State cannot claim that the land in question was Gair Majarua Malik land and the entry made in the revenue records was on the basis of documents which cannot be verified. If the State Government is claiming ownership of the land in question which the petitioner is claiming to be in his possession since long, the only remedy available to the State of Jharkhand is to bring a Civil Suit for declaration of their right, title, interest and possession over the said land. As the name of the petitioner and his predecessor-in-interest has been recorded in the revenue records, the burden of proof will lie on the State Government to show that the entry was wrongly made on the basis of documents which cannot be verified. After coming into force the Land Reforms Act, 1950, the erstwhile tenure holders had filed Form-M showing the name of the persons to whom they had settled the land which was in the nature of Gair Majurua Malik land. It is the case of the petitioner that erstwhile landlord has submitted Form-M showing that the land in question was settled to them by the Jamindar and as such, it has became raiayati land. The Form-M submitted by the erstwhile tenure holders is in the possession of the State Government. The State Government has not brought Form-M on the record to show that there was no entry in Form-M with regard to the name of the mother of the petitioner over the aforesaid land. Merely by stating that Form-M which was produced by the original petitioner at the time when application was made for entering her name in the revenue records cannot be verified, cannot be a ground for cancelling the Jamabandi of the petitioner. In fact, the Respondent No. 2 – Circle Officer, Khunti has got no such power as

has been decided by way of numerous judicial pronouncements that jurisdiction of the Circle Officer is ex-facie lacking and the only option left to the State Government is to bring a Civil Suit for declaration of right, title, interest and possession over the land in question.

9. It is undisputed facts that the petitioner has a long standing Jamabandi in his name and in the name of his mother since vesting of Jamindari. It is also undisputed facts that rent receipts were issued by the State Government. The petitioner has been able to show that the land in question was settled to his predecessor-in-interest by the Jamindar who was having intermediary right prior to 01.01.1946.

10. In view of the aforesaid facts, the only remedy open to the State is to approach the competent Civil Court for declaration that Jamabandi of the petitioner was obtained by fraudulent means and he has not perfected his right, title and interest over the land in question by virtue of settlement by ex-landlord or otherwise.

11. Accordingly, the Notice issued by the Respondent No. 2-Circle Officer, Khunti in Sandigdh Jamabandi Case No. 2 of 2011-12 (Annexure-6) cancelling the Jamabandi of the petitioner over the aforesaid land and the order dated 02.06.2011 passed by the Respondent No. 2, whereby and wherein, on the basis of the inquiry report of Circle Inspector and Revenue Karmachari, the Respondent No. 2-Circle Officer, Khunti has made recommendation to the Deputy Collector, Land Reforms for cancellation of Jamabandi of the petitioner appertaining to the aforesaid land, are quashed.

This writ application is allowed. Pending I.A., if any, also stands disposed of.

(Ambuj Nath, J)

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