

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13579 of 2017

Achyuta Nand Yadav @ Achyuta Nand Singh Son of Late Baldeo Mahto,
Resident of Village and P.O.-Kumarpur. P.S.-Phulli Dumar, District-Banka

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Divisional Commissioner, Bhagalpur Division, Bhagalpur.
3. The Deputy Collector Land Reforms, Banka, District-Banka,
4. The Circle Officer, Phulli Dumar, District-Banka,
5. Pankaj Kumar Singh, Son of Late Ugramohan Singh, Resident of Village and P.O.-Kumarpur. P.S.-Phulli Dumar, District-Banka

... .. Respondent/s

with
CIVIL REVIEW No. 165 of 2021
In
Civil Writ Jurisdiction Case No.9607 of 1996

Achyuta Nand Yadav @ Karu Mahto @ Achyuta Nand Singh Son of Late Baldeo Yadav @ Baldeo Mahto Resident of Village- Kumar Pur, Police Station- Phullidumar, District- Banka.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Anchal Adhikari, Sambhuganj, District- Banka.
3. The Land Reforms Deputy Collector, Banka.
4. The District Magistrate, Banka.
5. The Additional Collector, Banka.
6. The Commissioner, Bhagalpur Division, Bhagalpur.
7. Most. Shanti Devi Wife of Late Ram Bilash Singh Resident of Village- Kumarpur, Police Station- Fullidumar, District- Banka.
8. Tripurari Singh Son of Late Ram Bilash Singh Resident of Village- Kumarpur, Police Station- Fullidumar, District- Banka.
9. Sujit Singh Son of Late Ram Bilash Singh Resident of Village- Kumarpur, Police Station- Fullidumar, District- Banka.
10. Sadanand Yadav S/o Late Baldeo yadav @ Baldeo Mahto, Resident of Village Kumarpur, P.S. Fulli Dumar, District- Banka.
11. Mostt. Chitrlekha Devi d/o late baldeo Mahto Deceased, Wife of Late Vishun Prasad Yadav, Resident of Village Khurd Kola, P.S. Jagdishpur, District- Bhagalpur.



... .. Opposite Party/s

Appearance :

(In Civil Writ Jurisdiction Case No. 13579 of 2017)

For the Petitioner/s : Mr. Rajesh Mohan, Advocate

For the Respondent/s : Mr. Raj Kishore Roy-GP-18

Mr. Vivekanand Singh, AC to GP-18

For the Private Respondent: Mr. Kumar Malendu, Advocate

Mr. Mritunjay Prasad Singh, Advocate

(In CIVIL REVIEW No. 165 of 2021)

For the Petitioner/s : Mr. Rajesh Mohan, Advocate

For the Opposite Party/s : Mr. Md. Khurshid Alam (AAG 12)

Mrs. Nutan Sahay, AC to AAG-12

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

Date : 23-06-2025

Heard Mr. Rajesh Mohan, learned counsel for the petitioner, Mr. Raj Kishore Roy, learned GP-18 as also Mr. Kumar Malendu representing respondent no. 5 beside Mrs. Nutan Sahay, learned AC to AAG-12.

2. The present writ petition has been preferred for the following relief(s):

“for issuance of writ in the nature of a writ of certiorari for quashing of order and judgment dated 28.08.2017 passed in BLT Case No. 1189 of 2015 (Achyuta Nand Yadav @ Achyuta Nand Singh Versus The State of Bihar and Others) by Mr. K.P. Ramaiah, Member Administrative, Bihar Land Tribunal, Patna by which and whereunder the BLT Case no. 1189 of



2015 filed by the petitioner was dismissed with the observation that I do not find any illegality/irregularity in the impugned order passed by the authorities below as mentioned in Annexure-1 I therefore directed the authorities below to ensure the compliance of the order passed by the authority below not only with respect to 0.3 decimals land but also 2.52 acres of land over which the present petitioner and others are such to be encroached', and for further direction/directions, Relief/Reliefs in the facts and circumstances of the case the petitioner may entitled to.”

3. The story of the present case dates back to the year 1959 (more than 65 years ago) when one Kapoori Mandal alongwith other villagers preferred **Title Suit No. 34 of 1959** against the grandfather of the petitioner before the Court of Munsif, Banka praying therein that the villagers of Kumarpur have customary and easementary rights to use 2.52 acres of land covered by survey plot nos. 534 and 604 (Khata no. 72) situated in the village Kumarpur in the district of Banka.

4. The suit was contested and decided in favour of



the villagers and against the defendants (family of the petitioner). The relevant paragraph read as follows:

“Ordered

that the suit be decreed on contest in part with costs against defendants 1st party and ex parte without costs against the rest. Pleader’s fee Rs. 30/-. It is hereby declared that the plaintiffs and the others inhabitants of village Kumarpur have got right to use the disputed land specified in Schedule A of the plaint for those public purposes and they are entitled to recover possession of the same for those public purpose. Plaintiffs are entitled to recover Rs. 20/- as damages. The defendants are permanently restrained from interfering with the use of the disputed land by the plaintiffs and other villagers of the village Kumarpur.”

5. The aforesaid order **22.12.1961** by the learned Munsif (A.Hayat) is part of the counter-affidavit on behalf of the respondent no. 5 as the petitioner has not annexed the same in the main writ petition.

6. Aggrieved by the said order, the grandfather of the



petitioner, Gaibi Mahton preferred **Title Appeal No. 09 of 1962/13 of 1965**. It came to be dismissed on **02.04.1965** by the learned 1st Additional Sub-Judge (Md. Yusuf Hasan) restraining them permanently from interfering with the rights of the original plaintiff (Annexure-B to the counter-affidavit of the respondent no. 5).

7. As the story unfolds, a **Second Appeal No. 458 of 1965** was preferred against the said order which came to be dismissed by the Patna High Court on **16.07.1980**.

8. Still aggrieved, **Special Leave to Appeal (Civil) No. 9063 of 1981** was preferred (**Baldeo Mahto & Ors. Vs Kapoori Mandal & Ors.**). It is to be noted that Baldeo Mahto is the father of the petitioner. The said appeal was dismissed as not pressed by the Hon'ble Apex Court on **28.01.1985** (Annexure-C to the counter-affidavit of respondent no. 5). It is further to be noted that the petitioner's family chose not to file any review pursuant to the said Apex Court order.

9. The short order dated 28.01.1985 of the Hon'ble Apex Court read as follows:

“The Special Leave Petition is dismissed as not pressed with liberty to file review before the High Court, if he



desires.”

10. In that background, dust should have been settled relating to the 2.52 acres of land, details of which has/have been recorded above as the grandfather/father of the petitioner lost the battle right from the Title Court up to the Hon’ble Supreme Court starting in the year 1959 and ending in the year 1985.

11. Instead, the family tried to start the matter afresh and in the process, after having lost another round of battle before the Deputy Collector, Land Reforms, Banka in **Case no. 38/90-91** vide on order dated **08.08.1990**, an appeal was preferred before the Additional Collector, Banka [(**Appeal no. 38 of 1990-91**) **Baldeo Mahto vs. Ram Vilas Singh**]. The appeal was dismissed on **27.04.1994** (Annexure-L to the counter-affidavit of the respondent no. 5).

12. Aggrieved, the petitioner’s father moved before the Collector, Banka in **Revision Case No. 17/94-95** which too came to be dismissed vide an order dated **15.12.1994** (Annexure-M to the counter-affidavit of the respondent no. 5). This followed Banka Revision Case no. **17/1994-95** which was dismissed on **12.08.1996**.

13. It seems that by that time, father of the petitioner



died and as such his mother, Most. Taro Devi preferred **CWJC No. 9607 of 1996 (Most. Taro Devi vs. State of Bihar & Ors.)** in which though earlier, the family of the petitioner managed to get a stay, ultimately and two decades later, it was dismissed by a Bench of this Court [Hon'ble Mr. Justice Prabhat Kumar Jha (as his lordship then was)] and the order dated **11.05.2018** records as follows:

“Heard both sides.

The petitioner has filed this writ petition to quash the order dated 27.04.1994 passed by Additional Collector in Misc. Appeal No.38/1990-91, order dated 15.12.1994 passed by S.D.M., Banka, in Correction of Jamabandi Case No.17/94-95, and the order dated 12.08.1996 passed by the Commissioner, Bhagalpur, passed in Banka Revision Case No.17/94-95, by which the prayer of the petitioner to mutate the name of the petitioner with regard to Khata No.72, Khesra No.534 and 604, measuring area 2.52 decimals have been rejected.

The petitioner claimed the land on the basis of registered kabuliyat and the Circle



Officer also mutated the name of the petitioner and issued rent receipts.

Learned counsel for the petitioner submits that in the year 1982-83, rent receipts in favour of the petitioner was stopped and the petitioner filed petition before the Circle Officer bearing Misc. Case No.3/86-87. The Circle Officer recommended for issuance of rent receipts in favour of the petitioner and sent the record to the D.C.L.R. but the D.C.L.R. dismissed the petition for non-prosecution on 08.08.1990 (Annexure-4). Thereafter the Additional Collector, Sub Divisional Officer and the Commissioner vide order as contained in Annexures-5, 6 and 7 dismissed the petition of the petitioner.

Learned counsel for the petitioner submits that the petitioner claimed the land on the basis of registered kabuliyat but it appears that when the name of the petitioner was mutated, the villagers filed Title Suit No.34/1959 in the court of Munsif and the Munsif found that the nature of land is gair majarua aam and the land of Khata



No.72, Khesra No.534 and 604 measuring area 2.52 decimals is in the use of common villagers. The petitioner filed appeal against the judgment and decree passed by Munsif in T.S. No.34/1959 and the same was dismissed. The petitioner again filed Second appeal before the High Court and S.L.P. before the Apex Court, which were also dismissed. In pursuance thereof, during the Consolidation proceeding, the nature of the land was mentioned as Gair Majarua Aam.

Learned counsel for the respondents also submits that the petitioner has lost the case in all the courts. Very recently, the petitioner lost the case in B.L.T.

Considering the fact that the dispute has been settled by the Civil Court with regard to nature of land and the Jamabandi standing in the name of the petitioner has already been cancelled, I find no merit in this writ petition.

Accordingly, this writ petition is dismissed.”

14. In the meantime, the petitioner came into the



shoes of his mother after her death and preferred **LPA No. 856 of 2018** against the Writ Court's order which was dismissed by a Division Bench headed by the then Hon'ble Chief Justice on **09.12.2019**.

15. Still aggrieved, **SLA (C) No. 8907 of 2020** was preferred in which the petitioner after some argument sought permission to withdraw the said petition with liberty to prefer review. It was withdrawn on 17.11.2020 with liberty to follow Review.

16. This followed **Civil Review No. 165 of 2021** which is presently tagged with the writ petition.

17. Having recorded the facts of the case and the two attempts of the petitioner's family/petitioner to get hold of the 2.52 acres of land, though unsuccessful; the Court now takes into account the present prayer in the writ petition which is against the order and judgment dated **28.08.2017** passed in **BLT Case No. 1189 of 2015 (Achyuta Nand Yadav vs. The State of Bihar & Ors.)** in which the Bihar Land Tribunal, Bihar, Patna (henceforth for short 'the Tribunal') vide a reasoned order dated **28.08.2017** dismissed the petition of the petitioner.

18. Paragraph-5 of the order is relevant which read



as follows:

“5. The present dispute is regarding correction of Jamabandi with respect to the land of C.S. Khat No. 72, C.S. Plot no. 534 and 604 area 1.99 acres and 53 decimals total area 2.52 acres situated in village Kumarpur, Thanka No. 175, District- Banka formally Bhagalpur as well land of Khata No.326, Plot no. 326 area 3 decimals in the record of old C.S. C.S. Survey the land is recorded as Gairamajaru Malik Parti Kadim and the Revisional Survey same has been recorded as Anabad Bihar Sarkar. The originally the father of the present petitioner Baldeo Mahto was claiming for correction of Jamabadni and to issue rent receipt thereof in his name of the basis of a illegal of Kabuliat alleged to have been executed on 15.12.1950 by Late Baldeo Mahto the land under dispute is for the use of public in general of the village Kumarpur where the land is situated since the time of immemorial and villagers have acquired their prescriptive right as well as customary and easementary right with



greedy eye to grab the land and to deprive the villagers, petitioner father Late Baldoe Mahto got a collusive deed of Kabuliat which is allege to have executed on 15.12.1950 by the Late Baldoe Mahto himself in favour of Kamleshwari Choudhary the shebait of the Ex-landlord in collusion with each other and the same is alleged to have duly registered on 18.12.1950 both the parties were agreed to do Panchayati and they have given written consent agreement for Panchayati and accordingly on 30.07.1953 punches decided that only 17 khatas will be given to the Baldoe Mahto from the land of plot no.534 and remaining land will be for the purpose of the use of public in general of the village as they are using form time immemorial the punches communicated third consented decision of Panchayati dated 30.7.1953 to then Ex landlord and accordingly at the time vesting Zamindari in the name of the father of petitioner with respect to the lands of 17 katha only. On 14.09.1957 the father of the petitioner reopened closed chapter of



this dispute and field a petition before the circle officer for correction of Jamabandi in his name on the basis of alleged Kabuliat and it was numbered as case no. 6 of 1957-58. Thereafter villager Kapuri Mandal along with others have filed the Title Suit no.34/1959 for declaration of the alleged deed of Kabuliat dated 18.12.1950 is collusive, fraudulent, null and void and also for declaration that the villagers have got their right by prescription and easementary right to use the entire land of khata no.72 plot no.534 and 604 total area 2.52 Acres that the petitioner and others are encroachers over the said 2.52 acres of land and their Zamabandis relating to the said 2.52 Acres of land has already been cancelled by the competent authorities under the Act. The Judgment Civil Court passed in Title Suit No.34/1954 (Kapuri Mandal and others v/s Gaibi Mahton and others) passed on 22.12.1961. In the said Title Suit, No.34/1959 (Kapuri Mandal and others v/s Gaibi Mahton and others) passed on 22.12.1961. In the said Title Suit, suit of the



plaintiffs-villagers of concerned village was allowed and the ancestor of the present petition lost that Title Suit. The Decree of the said Title Suit was affirmed in Title Appeal No.9/1962/13/1965 and Second Appeal No.458/1965 and up to Supreme Court vide S.L.A No.9063/1981. In that suit not only the right, title interest and possession of the ancestor of the present petitioner was disbelieved but also their claim on the basis of alleged Hukumnama was also found false and fabricated. The petitioner has not brought any material before this court to controvert the finding made by the authorities below relating to the aforesaid 2.52 Acres of land over which he along with other villagers have encroached upon the same. The counsel for the opposite parties submitted a judgment of the Patna High Court reported in 1999(3)PLIR 812 (Manoj Kumar) holding that no piece of land of Garmajaru Aam / khas land can be settled by the Zamindar in derogation of the right of the general public. In view of the above, I do not find any



illegality/irregularity in the impugned order passed by the authorities below as mentioned Annexure-1 therefore directed the authorities below to ensure the compliance of the order passed by the authorities below not only with respect to 0.3 decimals land but also 2.52 Acres of land over which the present petitioner and others are such to be encroached. Since it is continuing wrong and the petitioner has not obeyed the orders of the authority below, hence it is directed to Circle Officer, Fullidumar/ D.C.L.R., Banka to ensure the compliance. These applications are accordingly dismissed.”

19. For the record, this Court incorporates that the respondent no. 5 preferred a petition vide **BLDR Case No. 30 of 2014-15** before the Deputy Collector Land Reforms, Banka against the petitioner when he tried to disturb 0.03 decimal of his land in Khata no. 326 Khesra no. 326. It was then that the entire story came to light that the petitioner's family/petitioner have lost the battle twice upto the Hon'ble Apex Court but are still holding 2.52 Acres of land. It accordingly directed the Circle Office, Fullidumar to take into account the entire facts



of the case and get the lands measured.

20. Aggrieved, the petitioner preferred **Miscellaneous (Land Dispute) Appeal No. 98 of 2014-15 (Achyuta Nand Yadav vs State of Bihar & Ors.)** before the Court of Commissioner, Bhagalpur Division, Bhagalpur which took into account the entire facts and dismissed the appeal on **05.08.2015** (Annexure-9 to the writ petition).

21. Still aggrieved, the petitioner moved before 'the Tribunal' in **BLT Case No. 1189 of 2015 (Achyuta Nand Yadav & Ors.)** which, as recorded above came to be dismissed on **28.08.2017**.

22. This followed **CWJC No. 13579 of 2017** which was heard by a Bench of this Court on **21.09.2017** and while issuing notice to the respondent no. 5 and directing the State to file counter-affidavit within six weeks, the operation of the order dated **28.08.2017** passed by the **Member (Administrative), Bihar Land Tribunal, Patna** in **BLT case no. 1189 of 2015** was stayed.

23. Number of years have passed since then and if the first Title Suit of 1959 is taken into account, sixty six long years (six decades) have passed with the original order having come in to existence in the year of **1961** and the same has not



still been implemented and the petitioner's family/petitioner by hook or by crook are enjoying the fruits of the said land.

24. Learned counsel for the petitioner submits that there is a 2014 resolution of the Government of Bihar that if the receipts are being granted in favour of any person, the same has to be validated.

25. Though learned counsel for the petitioner tried to impress upon this Court that he being in possession of the land for so many decades, now has accrued the right to continue with the aforesaid land. In support of his case, learned counsel for the petitioner relies on the judgment of **LPA No. 1696 of 2014 (The State of Bihar & Ors vs. Harendra Nath Tiwari)** reported in **(2015) 1 PLJR 606** and relevant part read as follows:

Sri Mritunjay Kumar, learned A.C. to S.C.-23, for the appellants, submits that the suo motu power conferred under [Section 9](#) of the Act can be exercised at any point of time, if the circumstances permit and that the view taken by the learned Single Judge cannot be sustained in law.

The Jamabandi in question has taken place way back in 1946. The District Collector initiated



proceedings in relation to that and passed an order dated 26.02.2013/23.07.2013 cancelling the same. At the outset, we fail to understand as to how there can be two dates for one order. Assuming, one of the dates becomes relevant for the proceeding, it is clear that the first appellant passed the said order in exercise of power under [Section 9](#) of the Act.

The illegality on the part of the first appellant, i.e. Collector, Siwan, was so patent that, once the writ petition was filed challenging his order, he realised the mistake committed by him and has passed another order dated 30th December, 2013 withdrawing his earlier order. However, his determination to tinker with the matter did not stop at that. He virtually exhorted the Additional Collector, i.e. the second appellant, to initiate proceedings for cancellation of the Jamabandi. The learned Single Judge took note of the fact that even suo motu proceedings albeit by the competent authority cannot be initiated at this length of time and the only remedy available to



the Government, if at all, is to file a suit. We are totally in agreement with the view expressed by the learned Single Judge.

We also take serious exception to the manner in which the District Collector dealt with the matter. Firstly, he passed an order without verifying whether he has jurisdiction. Once, he realised that he did not have jurisdiction, he virtually exhorted the Additional Collector, i.e. the second appellant, to initiate a proceeding for cancellation of the Jamabandi. This is nothing but usurpation of the jurisdiction or an attempt to influence an inferior officer. When statutory power is conferred upon a particular authority, it is for him to decide whether or not exercise that power. Merely because an officer happens to be the superior in the hierarchy, he cannot issue direction to another for initiation of proceedings.

Further, the suo motu powers, whenever conferred, are required to be exercised within a reasonable time. Such a power cannot be taken recourse to, unsettle the things which have



assumed finality over the decades, in the instant case, more seven decades. Another important aspect is that the Act came into force in the year 2011; whereas the Jamabandi was of the year 1946. Valuable rights accrued to the parties and they cannot be unsettled nearly after three generations. There was no allegation of fraud, at any point of time. Viewed from that angle, we are not inclined to interfere with the order of the learned Single Judge. Accordingly, we dismiss this Letters Patent Appeal.

Interlocutory applications, if any, shall stand disposed of. There shall be no order as to costs.”

26. Mr. Vivekanand Singh, learned State counsel on the other hand, refutes the said claim and submits that the respondents were taking all the steps for cancellation of the ‘Jamabandi’ but with the help of different litigations, the petitioner/his family kept on taking stay after suppressing the facts of the case which continued in the present case also untill the respondent no.5 arrived at the scene and presented another side of the story.

27. The respondent no. 5 has put in his appearance



through Mr. Kumar Malendu and in continuation of the submissions of the learned State counsel, he has narrated the entire story which has further clarified the position. He submits that the said resolution of the State of Bihar and/or the case law nowhere comes to the rescue of the petitioner inasmuch as it is not the case of the petitioner that he continued with the 'Jamabandi' rather the petitioner/his family deliberately and suppressing the facts repeatedly took stay in matter, earlier in the first writ petition which ultimately was dismissed and later in the present writ petition and as such, he cannot hide in the garb of said resolution.

28. Learned counsel further submits that the facts of this case is entirely different from the judgment rendered in the State of Bihar (supra) case inasmuch as it has already been recorded that in both the writ petitions, they managed stay by suppressing the facts and thus it cannot be in any way come to rescue of the petitioner.

29. This Court having recorded the entire facts in earlier paragraphs observes that the case is that the Title suit was decided way back in the year 1961 (22.12.1961) in Title Suit No. 34 of 1959 against the petitioner's family members. They went in appeal, Second Appeal and ultimately before the



Hon'ble Apex Court losing battles everywhere. Though, they withdrew the petition before the Hon'ble Apex Court taking liberty to file review in the earlier occasion, it was never filed and went for another round of litigation and after losing everywhere filed CWJC No. 9607 of 1996 which came to be dismissed on 11.05.2018. LPA preferred against the order was dismissed on 09.13.2019 and the SLA(C) No. 8907 of 2020 too was dismissed on 17.11.2020 though granting liberty to prefer review petition which followed the Civil Review No. 165 of 2024.

30. So far as the order of (**The State of Bihar & Ors vs. Harendra Nath Tiwari**) (supra) cited by the petitioner is concerned, as rightly pointed by the learned State counsel, it in no way comes to his rescue as in this case, the petitioner/family member, by suppressing the entire facts, filed writ petitions, took stay and thus they cannot now take the plea that with the passage of so much time, rights have accrued upon them. In the case of State of Bihar (supra), the Hon'ble Court noted that there is no allegation of fraud. Here the story is quite different. The petitioner's family/petitioner continuously suppressed the material facts and in the process managed to take stay repeatedly and thereafter deliberately allowed the



case to linger. The said contention is accordingly rejected.

31. Having heard the parties and perusing the records and further after incorporating the entire facts, this Court is of the opinion that the time has now come to consign the files with the dismissal of both the **CWJC No. 13579 of 2017** and **C. Rev. No. 165 of 2021**.

32. Accordingly ordered. The writ petition bearing **CWJC No. 13579 of 2017 (Achyuta Nand Yadav @ Achyuta Nand Singh vs. the State of Bihar & Ors.)** as also **C. Rev. No. 165 of 2021 (Achyuta Nand Yadav @ Achyuta Nand Singh vs. the State of Bihar)** are hereby dismissed. No cost.

33. The stay order dated 21.09.2017 granted by the Coordinate Bench stands vacated.

(Rajiv Roy, J)

Adnan/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	26.06.2025
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