

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15169 of 2021

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1. Dev Kumar Prasad Son of Late Ram Janam Sah Resident of Village-Garhani, Post Office and P.S.-Garhani, District-Bhojpur.
 2. Shivji Sah Son of Late Ram Janam Sah Resident of Village-Garhani, Post Office and P.S.-Garhani, District-Bhojpur.
 3. Dwarika Sah Son of Late Ram Janam Sah Resident of Village-Garhani, Post Office and P.S.-Garhani, District-Bhojpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna.
2. The Collector, Bhojpur at Ara.
3. The Additional Colector, Bhojpur at Ara.
4. The Sub-Divisional Officer, Sadar Ara, District-Bhojpur.
5. The Anchaladhikari, Garhani, District-Bhojpur.
6. Smt. Lakhmano devi Wife of Krishna Kumar Chaubey, Resident of Village-Dhamaniya, Post office- Garhani, P.S.-Garhani, District-Bhojpur at Ara.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Rajani Kant Singh
For the Respondent/s : Mr. Raj Kishore Roy (Gp18)

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

3 25-08-2025 The petitioners the successors of one Ram Janam Sah.

The piece of land recorded in C.S. Khata No. 155, C.S. Plot No. 297 corresponding to R.S. Khata No. 196, R. S. Plot No. 209 measuring an area approximately 22 Decimals of land situated in Mauza-Dhamaniya, P.S. Garhani, District- Bhojpur was recorded in the revisional Khatyan in the name of Ram Janam Sah, the father of the petitioners. On recording of such land, land rent receipt was issued in the name of the predecessors in the interest of the petitioners and he used to possess the said land on payment of rent receipt. The said Ram Janam Sah died



in the year 1987 leaving behind the petitioners as his legal heirs and successors. Petitioner No. 1 Dev Kumar Prasad filed an application before the respondent no. 5, Anchaladhikari, Garhani, alleging *inter alia* that one Mantu Choubey being the grandson of private respondent no. 6 had been creating obstruction in peaceful possession of petitioners over the disputed land. The petitioners were also obstructed from raising construction over the disputed land. The dispute was decided by the Anchaladhikari, Garhani in Shanivariya meeting in favour of the petitioners and requested the SDO, Sadar Ara, Bhojpur passed a letter on 26th February, 2020 to pass appropriate order. The Special Divisional Officer, Sadar Ara, Bhojpur passed an order on 28th February 2020 adducing the Anchaladhikari, Garhani, SHO, Garhani and Charpokhri Police Station permitting them to comply with the decision taken in Shanivariya meeting. Subsequent, date was fixed on 17th March 2020 for rendering police help to the petitioners while constructing boundary wall around the disputed land. However, on 17.3.2020 police authority failed to render police assistance due to certain other administrative work and the Sub-Divisional Officer fixed 02.06.2020 as the next date for rendering police help for compliance of the decision taken in Shanivariya



meeting, however, the newly Anchaladhikari did not take any account over the direction made by the Sub-Divisional Officer. It is alleged by the petitioners that the present Anchaladhikari (respondent no. 5) in collusion with the above-named Mantu Choubey, grandson of respondent no. 6 sent a letter dated 05th October 2020 to the Additional Collector, Ara, Bhojpur to cancel the Jamabandi of Khatiyani Raiyat Ram Janam Sah bearing the Jamabandi Number 157/9 on certain grounds. On the basis of the said letter dated 05th October, 2020, the learned Additional Collector initiated a Miscellaneous Case on 22nd December 2020 *vide* Misc. Case No. 10/2020. Notice was issued against Ram Janam Sah who died in the year 1987. The petitioners duly appeared in the said proceeding and submitted their written statement stating entire fact as to how Jamabandi was created in the name of their father. However, the learned Additional Collector by his order dated 02nd July 2021 rejected Jamabandi No. 157/9 for the year 2016/2017 in respect of the disputed land in the name of the father of the petitioners. The said order is under challenge in the instant writ petition. It is submitted by the learned Advocate for the petitioners that the Additional Collector cannot cancel Jamabandi upon a Miscellaneous application. When at a Jamabandi is required to be cancelled,



the Additional Collector, ought to have proceeded with Section 9 of Bihar Land Mutation Act, 2011.

2. Section 9 deals with the cancellation of Jamabandi.

The provision runs thus:

“9. Cancellation of Jamabandi — (1) The Additional Collector, either suo motu or on an application, shall have the power to make inquiries in respect of any Jamabandi, which has been created in violation of any law for the time being in force or in contravention of any executive instruction issued in this behalf. The Additional Collector, in whose jurisdiction the land is situated, may, after giving reasonable opportunity to the parties concerned to appear, adduce evidence and be heard, cancel such Jamabandi, dispossess the person claiming under it and deliver the possession to the legitimate owner/custodian, on such terms as may appear to the Additional Collector to be fair and equitable.

(2) The jamabandi shall not be cancelled under sub-section (1) without giving reasonable opportunity to the parties, having interest in that



jamabandi, of being heard.

(3) Any person, having interest in a land or a part thereof, of any jamabandi may file a petition in the prescribed manner for the cancellation of the jamabandi before the Additional Collector in whose jurisdiction the land or a part thereof is situated.

(4) The Additional Collector, in whose jurisdiction the land or a part thereof of the jamabandi is situated, on a petition filed for the cancellation of the jamabandi or on reference from a Government Department which has an interest in the land or a part thereof or suo motu, may initiate proceedings for cancellation of the jamabandi by issuing notice to persons having interest in the jamabandi.

(5) The Additional Collector in whose jurisdiction the land or a part thereof in the jamabandi is situated, after enquiry either by himself or by an officer authorized by him in this behalf, shall pass such order as he deems fit.

(6) (a) An Appeal against the order of the Additional Collector



shall lie with the Collector of the district within thirty (30) days of the order appealed against.

(b) The Collector of the district may condone the delay in filing appeals provided he is satisfied that there are sufficient reasons for the delay.

(c) The Collector of the district shall not pass any order modifying, altering or setting aside the order appealed against unless the concerned parties have been given a reasonable opportunity of being heard.

(7) (a) An application for revision may be filed before the Commissioner of the Division by any person aggrieved by an order of the Collector of the district within 30 days from the date of such order.

(b) The Divisional Commissioner may condone the delay in filing of application for revision provided he is satisfied that there are sufficient reasons for the delay.

(c) The Divisional Commissioner may on an application made to him on this behalf or for the purposes of satisfying himself as to the



legality or propriety of any order made under this Act or the rules made thereunder by an officer or authority, call for and examine the records of any case pending before or disposed of by such officer or authority and pass such order as he deems fit.

(d) The Divisional Commissioner shall not pass any order modifying, altering or setting aside an order of any authority or officer unless the concerned parties have been given reasonable opportunity of being heard.”

3. A plain reading of Section 9(1) shows that a proceeding for cancellation of Jamabandi can be initiated by the Additional Collector, either *suo moto* or on an application. In the said proceeding, the Additional Collector enjoys the power to make inquiries in respect of any Jamabandi which has been created in violation of any law for the time being in force or in contravention of any executive instruction issued in this behalf. The Additional Collector, in whose jurisdiction the land is situated, may, after giving reasonable opportunity to the parties concerned to appear, adduce evidence and be heard.

4. It is also directed that before passing any order the Additional Collector is under obligation to issue notice upon the



concerned parties in whose name Jamabandi was created and the person who has raised the dispute. Annexure-10 is the impugned order. The first objection raised by the learned Advocate for the petitioners is that a jamabandi cannot be cancelled in a Misc. Case by the Additional Collector. The case ought to be registered as Jamabandi cancellation case. In support of his contention, he refers to a decision of Single Judge of this Court in the case of **Arun Kumar Goenka v. State of Bihar, 2023 SCC OnLine Pat 2572**. The aforesaid reported decision discusses the provision of Section 4(h) of Bihar Land Reforms Act, 1950, Bihar Land Reforms Rule 1951. Section 4(h) and Rule 4 of the said Act and Rules respectively and the notice under Form B-1 issued under Section 4(h) on the ground that the said notice was issued without proper inquiry pertaining to the land before claiming to be a public land, *without verifying the nature of the land in question etc., without issuance of public notice and without issuance of notice under Rule-4 Form B-1 of the Bihar Land Reforms Rule, 1951*. In paragraph 18 of the said Report, the Co-ordinate Bench quoted paragraph no. 5 of the **Vijay Kumar Prasad v. The State of Bihar** reported in **(2017) 1 PLJR 818**. Similarly, in paragraph no. 19 of the said judgment, the Co-ordinate Bench quoted the decision of **Maya Devi v.**



State of Bihar reported in (2014) 3 PLJR 584. Paragraphs no. 18 and 19 of the said judgment are quoted below:

“18. Relevant portion of the judgment in the case of Vijay Kumar Prasad (supra) is being quoted herein below:—

“5. I completely fail to understand as to how such plea could be decided by the Collector in a summary proceeding. The information given to the petitioner under Right to Information Act, a copy of which has been appended as Annexure 3, indicates in clear terms that the concerned part of the constructed road was never entered in any survey map as road or lane rather the entry is as Gair Mazarua Malik which could have well been settled as a Raiyati land by the Jamindar. That apart the Hon'ble Supreme Court in Gauri Shanker v. Ram Singhasan (AIR 1952 Pat 472) has held that the entry in the record of rights though has a presumptive value but it weakens or wanes through passage of time. The Collector must be indicating towards entry of Gair Mazarua in cadastral survey of right which must have been prepared between the year 1906 to 1911. After 30-40 years, there was a possibility that the nature of land might have changed from Gair Mazarua and could have been settled. However, it was unfair on part of the Collector to direct the petitioner to produce that Sadda Pattta which was executed in the year 1940 to the ancestor of his vendor without explaining as to why the Jamabandi was created in



the name of Kamli Devi, Kunti Devi and Sheo Dulari Devi and was never questioned. If a person or even State has some reason to question the manner in which Jamabandi was created in 1950 after several decades then onus would be upon it or such person to prove that such Jamabandi was created wrongly. That apart, after such a long time after creation of Jamabandi and, thereafter, further mutation after purchase in the year 1977 by the petitioner, it cannot be held in the year 2013 by the Collector that Jamabandi was created fraudulently as the fraud would have to be proved before a Court of competent jurisdiction. Thus, the option before the State of Bihar would be to file a suit before the competent court for getting such declaration....."

(emphasis supplied)

19. Similarly, in the case of Maya Devi (supra) this Court proceeded to hold that long standing Jamabandi cannot be cancelled in a summary proceeding by any revenue officer but the only forum available to the State is the Civil Court. Relevant paragraph of the judgment is quoted herein below:—

"8. The result of these three progressive stages is that if the State wants the petitioners' lands or the lands on which the petitioners have been residing for last 50 years, they must pay due compensation and take action in accordance with the provisions



of the new Land Acquisition Act. If they intend to cancel the Jamabandi then it is for them to move the Civil Court for a declaration that the alleged settlement and/or Jamabandi is illegal and cannot be accepted and let the title of the State be so declared but till such time the dispute is resolved, the petitioners cannot be evicted by the State in any manner nor can just compensation for acquisition be denied.

(emphasis supplied)"

5. In Vijay Kumar Prasad (supra), it was held that the piece of land recorded as *Gair Mazarua Malik* can very well be settled in favour of other persons as *Raiyats*. On the basis of such settlement, *Jamabandi* was created and such *Jamabandi* cannot be cancelled by the competent authority. Similarly, in *Maya Devi (supra)*, this Court held that longstanding *Jamabandi* cannot be cancelled in a summary proceeding by any Revenue Officer. Such *Jamabandi* can only be cancelled by the competent Civil Court.

6. Similarly, the learned Advocate on behalf of the petitioners refers to a Division Bench Judgment in *Ramowtar Lakhotia v. State of Bihar, reported in 2024 SCC OnLine Pat 800*. In the said appeal *vires* of Section 9(1) of the Bihar Land Mutation Act, 2011 and Rules 13(11) and 13(12) of Bihar Land Mutation Rules, 2012 were challenged. The Division Bench of



this Court held that proceeding under 2011 Act is a summary proceeding and Section 9(1) of the Act, 2011 only empowers Additional Collector to make inquiries in respect of any Jamabandi which has been created in violation of any law for the time being in force or in contravention of any executive instruction issued in this behalf, clearly confining the power of the Additional Collector. The power conferred to carry out the summary enquiry adopting the same procedure as a Civil Court would do; is not a conferment of the powers of the Civil Court as such. Such exercise is only confined to decide the issue of mutation and *Jamabandi* or its cancellation but for dispossession, the applicant will have to approach the Civil Court, in which event *Jamabandi* or its cancellation will be a strong evidence. Also, the Court on finding title could set aside the order of cancellation of *Jamabandi*. It is the requirement under the law that even after cancellation of *Jamabandi* and affirmed by the appellate and revisional authority, the legitimate owner/custodian is obligated to get his right, title and interest adjudicated and get an order of decree of eviction for dispossession of the person, who has been successful to get the *Jamabandi* in his favour. Thus, the question of title cannot be decided from mutation.



7. Plain reading of the above-mentioned judgments conclusively suggests that a Jamabandi is not a document of title; at best, it may be a document of possession, in favour of which the competent Civil Court can take a rebuttable presumption. In other words, the presumption in respect of *Jamabandi* can be rebutted before the Civil Court by adducing satisfactory evidence.

8. Now the question that arises before this Court is as to whether the *Exhibit-10* is an order for cancellation of Jamabandi or the Additional Collector does not have the power to pass any such order in Miscellaneous Case No. 10 of 2020. This Court is not unmindful to note that registration of a case under some wrong caption does not create a right to the petitioner challenging the nature of the proceeding and the order thereof. Miscellaneous Case No. 10 of 2020 was registered on the basis of an application filed by the Anchaladhikari alleging, *inter alia* that Jamabandi in the name of the father of the petitioners was created in violation and in contravention of any executive instructions. The Additional Collector accepted the plea of the Anchaladhikari after issuance of notice to both the parties and on due consideration of the written statement and the documents submitted by the petitioners, therefore, for all



practices, though the case was registered as Miscellaneous Case No. 10/2020, it is actually a proceeding under Section 9 of the Bihar Land Mutation Act, 2011.

9. Section 9(6)(a) of the Bihar Land Mutation Act, 2011 states that an Appeal against the order of the Additional Collector shall lie with the Collector of the District within thirty (30) days of the order appealed against. Sub-Section B states that the Collector of the District may condone the delay in filing appeals provided he is satisfied that there are sufficient reasons for the delay. Clause (c) of Section 9(6) states that the Collector of the District shall not pass any order modifying, altering or setting aside the order appealed against unless the concerned parties have been given a reasonable opportunity of being heard.

10. Thus, I find that against the order dated 02nd July 2021(Annexure-10) appropriate remedy of the petitioners lies in preferring an appeal before the Collector under Section 9(6)(a) of the Bihar Land Mutation Act, 2011.

11. It is pertinent to note here that such appeal is to be filed within 30 days from the date of the impugned order, but the Collector has the power to condone the delay on sufficient ground. If such appeal is filed by the petitioners, the Collector shall decide the case for condonation of delay on the ground that



the petitioners, on *bona fide* belief, have been pursuing the instant writ petition since 2021. Therefore, the said period of delay is liable to be condoned under Section 14 of the Limitation Act, 1963.

12. It is hereby clarified that this Court is not issuing any direction with respect to the condonation of delay. However, the Court merely refers to the relevant statutory provision, which may be taken into consideration by the Collector at the time of deciding the issue of delay, prior to the admission of such appeal.

13. The private parties shall be at liberty to submit their respective cases and supporting documents before the Collector. The Collector is requested to dispose of the matter expeditiously, and preferably within a period of eight weeks from the date of receipt of a copy of this order.

14. With the aforesaid order, the instant writ petition is disposed of.

(Bibek Chaudhuri, J)

Suraj Dubey/-

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