

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11441 of 2024

Rambali Prasad S/o Late Rajaram Mahto @ Rajaram Kushavaha, Resident of village- Hanumanganj, Koiritola, Ward No. 07, P.S. - Islampur, District - Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar through its Principal Rural Development Department, Government of Bihar, Patna.
2. The District Magistrate, Nalanda.
3. The Commissioner, Patna Division, Patna.
4. The Executive Officer, Nagar Panchayat, Islampur, Nalanda.
5. The Sub-Divisional Officer, Hilsa, Nalanda.
6. The Circle Officer, Islampur, Nalanda.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ganpati Trivedi, Sr. Advocate Mr. Vijay Anand
For the Respondent/s	:	Mr. Sanjay Sharma
For the respondent no. 4	:	Mr. Anjani Kumar

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

- 7 29-04-2025 1. Heard learned Senior counsel for the petitioner, Mr. Ganpati Trivedi, learned AC to SC-6 for the State and the learned Senior counsel appearing on behalf of the respondent no. 4, Mr. Anjani Kumar assisted by Sanjay Kumar.
2. The learned Senior counsel appearing on behalf of the petitioner, Mr. Ganpati Trivedi, submits that land in dispute pertains to Khata No. 730, Plot No. 740, Khewat No. 10072, area 21 decimal (about 5 katha), Mauja-Islampur, District-Nalanda having boundary, North-Noku Lal, South-Chhattu Hajam, East-Haricharan Manjha, West-Part of Plot No. 740.



3. It is submitted that the land in dispute was settled in favour of the father of the petitioner namely Raja Ram Mahto by the landlord, Ram Narayan Prasad Patwari and Babu Dwarika Narayan Prasad by a Sada Hukumnama of March, 1946 for cultivating the same, further rent receipts were issued (Annexure-1). It is next submitted that at the time of vesting of zamindari, the landlord submitted return in the name of Raja Ram Mahto, thereafter, Jamabandi No. 586 was opened in his name. It is next submitted that during revisional survey, the land register was prepared in the name of Raja Ram Mahto. The rent against Jamabandi No. 586 is being paid regularly since the time of the father of the petitioner. The land possession certificate (L.P.C.) was also issued by the Circle Officer and thereafter rent receipts were issued (Annexure-2 series). It is submitted that Plot No. 740 admeasures 1.41 acres over which several persons have been residing on the basis of settlement made by the ex-landlord. It is further submitted that petitioner was taken aback when Executive Officer, Nagar Panchayat, Islampur without any prior notice to the petitioner started measuring the land for construction of community hall over the same, on objection made by the petitioner to the measurement of land, he was threatened with dispossession. The petitioner, thus, filed CWJC



No. 20042 of 2021 before this Court which was disposed of by an order dated 01.09.2023 (Annexure-3 series) with a direction to the petitioner to approach the District Magistrate for redressal of his grievance in view of Government Notification No. 05 of 2012-136 dated 06.02.2013, further the Collector, Nalanda was directed to take a decision on the representation of the petitioner within a period of four weeks. The petitioner, in compliance of the order dated 01.09.2023 in CWJC No. 20042 of 2021, filed an application dated 12.09.2023 (Annexure-4) before the Collector, Nalanda, the application of the petitioner dated 12.09.2023 was rejected by the Collector, Nalanda by an order dated 19.04.2024 (Annexure-5) which is impugned in the instant writ application on the ground that in the Khatiyani, the nature of the land is recorded as *Gair Majarua Aam* land and the land in the present case is being used for public purpose, further directed the DCLR, Hilsa to initiate Jamabandi Cancellation case in accordance with law.

4. The learned Senior counsel for the petitioner next submits that the Collector, Nalanda failed to appreciate certain facts i.e. Hukumnama of the year 1946 executed by the landlord in favour of the father of the petitioner, the landlord filing return in the name of the father at the time of vesting of zamindari,



Jamabandi No. 586 being created in the name of father of the petitioner, further State of Bihar was realizing rent and the same is being paid regularly and that petitioner is in possession over the land for more than 78 years and Khatiyani also reflected the name of their father.

5. The learned Senior counsel appearing on behalf of the petitioner further submits that the District Magistrate was not persuaded to rely on the Sada Hukumnama as it was not legible and Jamabandi No. 2727 recorded in Register-II was in the name of Jai Ram Prasad son of Raja Ram Mahto for an area of 21.66 decimal on the basis of old page no. 586, but then the said page was torn.

6. The learned Senior counsel for the petitioner next submits that the law is well settled that longstanding Jamabandis cannot be cancelled in a summary proceeding. It is next submitted that in pursuance of the order dated 19.04.2024 passed by the Collector, Nalanda impugned in the instant writ application, Jamabandi Cancellation Case Nos. 22 of 2024-2025 and 37 of 2024-2025 have been initiated by the ADM, Nalanda and the petitioner has been noticed vide Notice dated 01.08.2024 (Annexure R/9 to the counter affidavit), as such I.A. No. 01 of 2024 has been filed for quashing the Jamabandi



Cancellation Case Nos. 22 of 2024-2025 and 37 of 2024-2025.

7. The I.A. No. 01 of 2024 is allowed for consideration.

8. The learned Senior counsel for the petitioner next submits that Jamabandi cancellation case has been instituted based on the direction of the Collector, Nalanda to the DCLR, Hilsa for initiating a Jamabandi cancellation case. It is further submitted that Collector is the appellate authority and since the appellate authority himself has directed his subordinate to initiate Jamabandi cancellation case in that event the subordinate authorities will have no option but to cancel the Jamabandi, which makes the order of the Collector, Nalanda vulnerable. It is further submitted that even the impugned notice issued to the petitioner in the aforesaid two Jamabandi cancellation cases has been issued in breach of Section 9 of the Bihar Land Mutation Act, 2011.

9. The learned Senior counsel thereafter draws the attention of the Court to Section 9 of the Bihar Land Mutation Act, 2011 which incorporates:

“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.

10. The learned Senior counsel for the petitioner next submits that from bare perusal of Section 9 of the Bihar Land Mutation Act, 2011, it would manifest that the same records that 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.

11. It is, thus, submitted that if a Jamabandi has to be cancelled in that event the notice must record the law or the executive instruction violated while creating the Jamabandi, but then from perusal of the notices issued in the aforesaid two Jamabandi cancellation cases, it would manifest the same does not incorporate that as to which law or executive instruction was violated when Jamabandi was created in the name of the father of the petitioner.

12. The learned Senior counsel appearing on behalf of the respondent no. 4 vehemently rebuts the submission of the learned Senior counsel appearing on behalf of the petitioner and submits that the writ is not maintainable at the behest of the petitioner for the reason that petitioner does not have locus to challenge the Jamabandi cancellation proceedings initiated against his brothers and not against the petitioner. It is further submitted that from perusal of Jamabandi Cancellation Case Nos. 22 of 2024-2025 and 37 of 2024-2025, it would manifest that the same has been initiated against the brothers of the



petitioner. It is also submitted that even notice has not been issued to the petitioner in the aforesaid two Jamabandi cancellation cases, as such, petitioner does not have any locus to challenge the Jamabandi cancellation proceedings instituted by the Additional Collector, Nalanda. It is next submitted that it is the brothers of the petitioner who are aggrieved and they have also appeared in the aforesaid two Jamabandi cancellation cases which is pending adjudication. It is further submitted that no doubt, Raja Ram Mahto was the father of the petitioner and it appears that he had two other sons namely Jai Ram Prasad and Ram Kuver Prasad and the land in dispute in the present case was mutated in the name of Ram Kuver Prasad and Jai Ram Prasad, the mutation of which is under challenge in the aforesaid two Jamabandi cancellation cases, it is next submitted that since the land in dispute in the present case was never mutated in the name of the petitioner as such the petitioner has no locus to challenge the notice issued in the aforesaid two Jamabandi cancellation cases. The learned Senior counsel further submits that it is not the case of the petitioner that after the death of his father, the land in dispute also devolved on him and he has share in the property. It is next submitted that no doubt in Hindu law, presumption is of jointness, but then if the



lands were mutated in the name of the brothers of the petitioner and they are contesting the Jamabandi cancellation case in that event it cannot be presumed that the property is still in jointness and the petitioner has locus to assail the Jamabandi cancellation cases.

13. The learned Senior counsel appearing on behalf of the petitioner though is not in a position to rebut the submission made on behalf of the learned Senior counsel appearing on behalf of the respondent no. 4, but then submits that what is not disputed rather stands admitted is that petitioner is son of Raja Ram Mahto and the land in dispute was settled by a Hukumnama issued by the ex-landlord in favour of the father of the petitioner and after vesting of zamindari, the returns were also filed in his name and thereafter Jamabandi No. 586 was created in the name of the father of the petitioner, at this stage, the learned Senior counsel appearing on behalf of the respondent no. 4 interjects and submits that Sada Hukumnama has no relevance and even if presuming what has been submitted by the learned Senior counsel appearing on behalf of the petitioner to be true then the Hukumnama was executed in the year 1946, as such, it was not beyond the purview of the Collector to get it inquired, on which the learned Senior counsel for the petitioner submits that the said submission was made only to show that since petitioner is son of



Raja Ram Mahto and he has share in the property as such he was contesting right from the beginning when Executive Officer of the municipality came on his land and started measuring for the purposes of constructing of a community hall.

14. The learned Senior counsel for the petitioner, thus, submits that since petitioner is son of Raja Ram Mahto and Jamabandi was created in the name of his father and thereafter in the name of his mother and further in the name of his brothers, as such, it cannot be said that petitioner does not have any share in the property, nor Jamabandi in any manner signifies title, rather Jamabandi only signifies possession. It is submitted that since petitioner also has share in the property, as such he is contesting along with his brothers. The learned Senior counsel further submits that the issue which arises for consideration in the present writ application is not whether petitioner is entitled to contest the Jamabandi cancellation cases, but the issue is whether the Jamabandi cancellation case initiated by the ADM is in accordance with law or not and whether the Collector could have directed his subordinates to initiate a proceeding for cancellation of Jamabandi with respect to the land in dispute when he is the appellate authority.

15. It is submitted that the Collector being the appellate authority should have refrained from directing his



subordinates to initiate a proceeding for cancellation of Jamabandi since the subordinate authorities after initiating Jamabandi cancellation case will have no option but to cancel the Jamabandi on the ground that Collector already has found no merit in the representation of the petitioner and the said order of the Collector shall adversely affect his brothers. It is also submitted that even the notices issued in the aforesaid two Jamabandi cancellation cases, are in complete breach of Section 9 of the Bihar Land Mutation Act, 2011, which makes the notices vulnerable.

16. The learned Senior counsel appearing on behalf of the respondent no. 4 submits that Collector had no option but to pass that order in view of the order passed by this Court in CWJC No. 20042 of 2021 whereby Collector, Nalanda was directed to dispose of the representation of the petitioner, on which the learned Senior counsel appearing on behalf of the petitioner submits that this Court had only directed the Collector to consider and take a decision on the representation of the petitioner, but then the Collector in garb of the orders of this Court exceeded his jurisdiction by directing his subordinates to initiate a proceeding for cancelling the Jamabandi standing with respect to the land in dispute. It is further submitted that if Collector was not satisfied with the issues raised in the



representation filed by the petitioner in compliance of the orders of this Court in CWJC No. 20042 of 2021, in that event, the Collector ought to have rejected the representation without incorporating in the order that it warrants cancellation of Jamabandi.

17. The Court is in complete agreement with the submissions made by the learned Senior counsel appearing on behalf of the petitioner, as such the order dated 19.04.2024 passed by the District Magistrate, Nalanda (Annexure P/5) and the Notices dated 01.08.2024 and 10.08.2024 both issued by the Additional Collector, Nalanda in Jamabandi Cancellation Case Nos. 22 of 2024-2025 and 37 of 2024-2025 (Annexure-P/A to the I.A. No. 01 of 2024), **are hereby quashed.**

18. It is made clear that the Court has not adjudicated the case on merits and at the same time the authorities would not be precluded from proceeding afresh in accordance with law.

(Satyavrat Verma, J)

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