

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12446 of 2024

1. Md. Sajid S/o Late S.M. Shamsul Hoda and Anwari Khatoon, resident of Charu Babu Chaouk, Purani Gudari, P.O. and P.S.- Bettiah, District- West-Champaran.
2. Md. Abid, S/o Late S.M. Shamsul Hoda and Anwari Khatoon, resident of Charu Babu Chaouk, Purani Gudari, P.O. and P.S.- Bettiah, District- West-Champaran.
3. Ishrat Ara, D/o Late S.M. Shamsul Hoda and Anwari Khatoon and W/o Nesar Ahmad, Resident of Village- Ahwah Sheikh, P.O.- Majhauriya, P.S.- Majhauriya, District- West Champaran.
4. Md. Majid @ Majid Shamsul, S/o Late S.M. Shamsul Hoda and Anwari Khatoon, resident of Charu Babu Chaouk, Purani Gudari, P.O. and P.S.- Bettiah, District- West- Champaran.
5. Mohammad Khalid, S/o Late S.M. Shamsul Hoda and Anwari Khatoon, resident of Purani Gudari, P.S.- Bettiah Town, West Champaran, Presently Resident At- Flat No. 507, Anand Greens Apartment, Palm Block, Phulwari, Khagaul Main Road, Prakash Nagar, Near Biscuit Factory, Patna- 801505.
6. Md. Hamid, S/o Late S.M. Shamsul Hoda and Anwari Khatoon, Resident of c/o Shamshul Hodda, Celebrity Garden, Shushant Gulf City, K 1203, Sector B, Ansal A P I Ahmamau, Lucknow, U.P., Pin Code- 226002.
7. Md. Rashid, S/o Late S.M. Shamsul Hoda and Anwari Khatoon, Resident of Q.N.- 111/26, Sainik School Tilaiya, P.S.- Jainagar, Kanti, Tilaiya Dam, Kodarma, Jharkhand, Pin Code- 825413.
8. Nazhat Ara, D/o Late S.M. Shamsul Hoda and Anwari Khatoon W/o Khatim Reza, resident of 402, Platinum Residency, Road No.- 3/A, Alinagar Caloney, Anisabad, P.S.- Gardanibagh, District- Patna.
9. Nikhat Ara, D/o Late S.M. Shamsul Hoda and Anwari Khatoon and W/o late Sahzad Anwar, resident of Charu Babu Chaouk, Purani Gudari, P.O. and P.S.- Bettiah, District- West-Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna.
2. The Additional Chief Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna.
3. The Collector, West Champaran at Bettiah.
4. The Addclonal Collector, West Champaran at Bettiah.
5. The DCLR, Bettiah Sadar, West Champaran.
6. The Circle Officer, Bettiah Sadar, Bettiah, West Champaran.



... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ranjan Kumar Dubey
Mr. Kumar Gaurav
For the Respondent/s : Mr. Pratik Kr. Sinha, AC to GA-5
Mr. Ajay

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

3 06-02-2025 1. Heard learned counsel for the petitioners and
learned AC to GA-5 for the State.

2. The learned counsel appearing on behalf of the
petitioners submits that dispute in the case relates to land
pertaining to *Tauzi* No. 951, *Khata* No. 19, Plot No. 222, Area 8
Katha 4 *dhurs* at *Mouza-Chawni, Anchal-* Bettiah, District-
West Champaran. It is submitted that the land pertaining to Plot
No. 1462, Area 1 *Katha* 17 *dhurs*, *Khata* No. 154 Plot No. 221,
Area 8 *Katha* 14 *dhurs* and *Khata* No. 19 Plot No. 222, Area 8
Katha 14 *dhurs* belonged to one Syed Md. Ishaque son of
Saiyed Shah Mohammad.

3. It is submitted that Syed Md. Ishaque (hereinafter
referred as Md. Ishaque) executed a registered *Hiba-Bil-Awaz*
dated 30.01.1971 (Annexure-1) in favour of his son namely
Saiyad Md. Shamsul Hoda (father of the instant petitioners)
with respect to the lands mentioned hereinabove including the
land in dispute. It is next submitted that Md. Ishaque had three



sons and five daughters, one of the sons of Md. Ishaque namely Saiyed Md. Shamsul Zoha was not happy with the execution of *Hiba-Bill-Awaz* dated 30.01.1971 in favour of Md. Shamsul Hoda, thus, started disturbing the peaceful possession of Shamsul Hoda, hence at the instance of Md. Ishaque and Shamsul Hoda, a proceeding under Section 144 Cr.P.C. was initiated vide Case No. 182M of 1971 before the S.D.M, Bettiah, in which Shamsul Zoha appeared and filed his show cause, but the SDM, Bettiah after hearing the parties and perusing the documents on record gave a clear finding in his order dated 26.05.1971 (Annexure-2) that property in dispute i.e. Plot Nos. 221 and 222 are in possession of Md. Ishaque and Saiyed Md. Shamsul Hoda. The learned counsel submits that the SDM, Bettiah, while deciding the proceeding under Section 144 Cr.P.C, clearly held that possession of the land in dispute was with Shamsul Hoda i.e. father of the petitioners and it was also recorded in the order that the land in dispute was settled with the ancestors of Shamsul Hoda.

4. The learned counsel appearing on behalf of the State, at this stage, submits that mere recording in the order of the SDM, Bettiah that land was settled with ancestors of the father of the petitioners and that petitioners were in possession



of the land in dispute does not give any right and title to the petitioners over the land pertaining to *Khata* No. 19.

5. The learned counsel for the petitioners next submits that since Md. Ishaque had instituted *Hiba-Bil-Awaz* dated 30.01.1971, in favour of Shamsul Hoda, hence, Shamsul Zoha filed Partition Suit No. 35 of 1971 (Annexure-3) in the Court of learned Sub-Judge, Champaran, Motihari, in which defendants were Md. Ishaque, Shamsul Hoda and other family members. It is next submitted that Partition Suit No. 35 of 1971 was compromised and a joint compromise petition dated 16.06.1972 (Annexure-7) was filed giving specific share to respective parties. The land in dispute was allotted in the share of Shamsul Hoda i.e. father of the present petitioners, as such, the registered *Hiba-Bil-Awaz* dated 30.01.1971 was accepted by all the parties and in terms of the compromise, Partition Suit No. 35 of 1971 was decreed vide order dated 25.09.1972 (Annexure-8).

6. At this stage, the learned counsel appearing on behalf of the State submits that the partition suit was filed in between the family members and State was not a party to that proceeding, as such, the judgment and decree in the partition suit would not bind the State. It is next submitted by the learned counsel for the petitioners that Shamsul Hoda gave land



pertaining to *Khata* No. 19, Plot No. 222 along with some other properties to his wife Anwari Khatoon (mother of the present petitioners) through oral *Hiba* on 15.08.1978 (Annexure-9) and *Yadasht* was prepared on the same day.

7. The learned counsel for the petitioners submits that after the land in dispute along with other properties was gifted by Shamsul Hoda to Anwari Khatoon at that point of time, consolidation proceeding was started in the area where the land in question was situated as such an application was filed by Anwari Khatoon before the Consolidation Officer, Bettiah West Champaran for creating *Chak* with respect to the land in dispute by filing Case No. 43 of 1991-92 under Section 10(a) of the Consolidation Act, it is submitted that in the said proceeding, the State of Bihar was also a party and it was brought to the notice of the Assistant Consolidation Officer that RS *Khatiyani* with respect to *Khata* No. 289 has been recorded in the name of State of Bihar, it is submitted that *Khata* No. 289 in RS *Khatiyani* corresponded to *Khata* No. 19 in CS survey i.e. *Khata* No. 289 in revisional survey was an offshoot of *Khata* No. 19 of CS survey. It is submitted that since before the Assistant Consolidation Officer, the authorities of the State of Bihar stated that *Khata* No. 289 has been recorded in the name of State of



Bihar, as such, the Assistant Consolidation Officer passed an order under Section 10(4) of the Consolidation Act to place the case before the Consolidation Officer. It is submitted that the Consolidation Officer after examining all the documentary evidence on record ordered to record the name of Anwari Khatoon in *Chakbandi* record as would manifest from the records Consolidation Case No. 43 of 1991-1992 (Annexure-10).

8. The learned counsel appearing on behalf of the petitioners, at this stage, submits that a submission has been made by the learned State counsel that merely because the SDM, Bettiah had recorded in his order that possession over the land in dispute is with respect to Shamsul Hoda and that partition suit was compromised and decree was prepared, but then the same does not bind the respondent authorities for the reason that mere recording in the order of the SDM about possession of the land does not give any right and title to the petitioners over the land in question and that the State of Bihar was not a party in the partition case, but then it is submitted that State of Bihar was a party before the Consolidation Officer and the Consolidation Officer after examining the records directed for recording the name of Anwari Khatoon in *Chakbandi*



records.

9. The learned counsel for the petitioners next submits that Anwari Khatoon based on *Hiba* and *Yadasht* dated 15.08.1978 filed an application before the Circle Officer, Bettiah, West Champaran, to mutate the land in her name, based on the ground that Jamabandi Nos. 257, 258 and 262 was standing in the name of the ancestors of Md. Shamshul Hoda namely Shah Mohammad and Bibi Ravaiya. It is submitted that this amply demonstrates that Anwari Khatoon was not seeking to get Jamabandi created in her name afresh rather the application was filed for mutating her name in place of the aforesaid Jamabandis which were created much earlier. It is also submitted that it is a settled principle of law that longstanding Jamabandis cannot be cancelled in a summary proceeding and for the said proposition, the learned counsel for the petitioners relies on a judgment of this Court reported in 2019 2 PLJR 1077 Uma Shanker Prasad Singh Vs. The State of Bihar. It is next submitted that based on the application of Anwari Khatoon, Mutation Case No. 171 of 1995 was instituted for mutating her name with regard to land pertaining to Khata No. 19, Plot No. 222 along with some other lands, but it appears that in the report of the *Karmchari*, *Khata* No. 19 was inadvertently recorded as



Khata No. 119, it is next submitted that there is no Plot No. 222 in *Khata* No. 119, which amply demonstrates that the same was inadvertently recorded by the *Karmchari* in his report.

10. The learned counsel for the petitioners further submits that the Circle Officer based on the report of *Halka Karmchari* and Circle Inspector, being satisfied that the mother of the petitioners is in possession of the land in dispute along with other lands, allowed Mutation Case No. 171 of 1995 vide his order dated 13.07.1995 (Annexure-11). The learned counsel submits that after Mutation Case No. 171 of 1995 was allowed, the mother of the petitioners was under the impression that *Jamabandi* has been created and as such did not proceed any further. It is submitted that the mother of the petitioners died on 28.02.2017 leaving behind the petitioners who came in possession over the land in dispute along with other lands.

11. The petitioners after the death of their mother approached the Circle Officer, Bettiah for paying the rent with regard to the land in dispute along with some other lands, when they were informed that no *Jamabandi* is running in their name, accordingly, the petitioners examined the documents relating to Mutation Case No. 171 of 1995, when they found that already order dated 13.07.1995 has been passed allowing the mutation



case for opening *Jamabandi* and also came to know about the mistake committed by the *Karmchari* in his report wherein *Khata* No. 119 was recorded instead of *Khata* No. 19. The petitioners accordingly based on order dated 13.07.1995 in Mutation Case No. 171 of 1995, requested the Circle Officer, Bettiah by filing an application dated 12.02.2022 (Annexure-12) to open *Jamabandi* in their name, but then no action was taken, as such, petitioners again filed representation dated 02.03.2022 (Annexure-13) through registered post with the same prayer, but the said representation also met the same fate that nothing was done.

12. It is submitted that since office of the Circle Officer had informed that no *Jamabandi* was running in the name of Anwari Khatoon with respect to the land in dispute and other lands, as such an information under the RTI Act was sought from the Circle Officer regarding Register 7/27, the Circle Officer vide his Letter No. 975 dated 12.10.2022 (Annexure-14 series) gave an information that in Register 7 of 27 Mutation Case No. 171 of 1995 along with land pertaining to *Khata* No. 154, Plot No. 221, Plot No. 1462 as well as *Khata* No. 19 (wrongly mentioned as *Khata* No. 119) Plot No. 222 are mentioned along with its area, it is submitted that the



information provided by the Circle Officer under the RTI Act makes it clear that mutation case was filed and the order dated 13.07.1995 was passed.

13. It is next submitted that the order dated 13.07.1995 in Mutation Case No. 171 of 1995 in absence of challenge attained finality, as such, the petitioners have legal right to pay rent and get receipt for the entire land mutated by order dated 13.07.1995 in Mutation Case No. 171 of 1995 in place of their mother.

14. The learned counsel for the petitioners next submits that the Circle Officer, Bettiah, issued Letter dated 28.11.2022 asking the stakeholders to appear on 06.12.2022 along with relevant papers relating to land of *Khata* No. 19, Plot No. 222 which has been recorded in revenue record as *Gairmajarua Malik*. The learned counsel submits that the Circle Officer by issuing notice dated 28.11.2022 whereby petitioners were asked to submit relevant documents with regard to the land in dispute amounts to questioning the order dated 13.07.1995 in Mutation Case No. 171 of 1995, which is impermissible as Circle Officer does not have the power to review its own order when the order dated 13.07.1995 in absence of challenge had attained finality.



15. It is submitted that since mutation case was allowed, it amounts to opening *Jamabandi* in favour of the mother of the petitioners and if *Jamabandi* was not opened despite specific order dated 13.07.1995, the present Circle Office is duty bound to open the same either in the name of the petitioners or their mother, as the order dated 13.07.1995 in Mutation Case No. 171 of 1995 in absence of challenge had attained finality.

16. The learned counsel for the petitioners further submits that when no action was being taken, the petitioners approached In-charge Officer, District Revenue Office, West Champaran, who issued Letter No. 2492 dated 26.07.2022 addressed to the DCLR, Bettiah Sadar directing him to hold an inquiry and submit a report. The DCLR held an inquiry in which petitioners and the Circle Officer appeared and both parties submitted documents in their support, thereafter the DCLR submitted his report dated 14.10.2022 before the In-charge, District Revenue Officer based on which *Jamabandi* No. 5137 and 3186 were created with regard to the land pertaining to *Thana* No. 127 *Khata* No. 154, Plot No. 221 at *Mouza-Chawni* and land pertaining to Plot No. 1462 *Thana* No. 128 at *Mouza-Purani Gudri* on the ground that the land is Raiyati, but with



respect to land pertaining to *Thana* No. 127 *Khata* No. 19 Plot No. 222 at Mouza Chawni, *Jamabandi* was not opened on the ground that land is recorded as *Gairmajarua Malik*. The learned counsel appearing on behalf of the petitioners submits that land pertaining to *Khata* No. 19, Plot No. 222 at *Mouza-Chawni* ought to have been included in the *Jamabandi* No. 5137 which was created in compliance of the order dated 13.07.1995 in Mutation Case No. 171 of 1995. It is submitted that it absolutely does not stand to reason that when order dated 13.07.1995 in Mutation Case No. 171 of 1995 has been given effect to, why land pertaining to *Khata* No. 19, Plot No. 222 has been excluded on the ground that the land in question is *Gairmajarua Malik* land. The learned counsel submits that petitioners are sons of Shamsul Hoda and Anwari Khatoon and they do not have all the requisite documents relating to the land to establish their claim, but then they have documents on record to substantiate that the land remained in possession of the petitioners and their ancestors, the documents are, *Jamabandi* No. 257, 258 and 262 created in the name of the ancestors of the petitioners, the order passed by the SDM, Bettiah in a proceeding under Section 144 Cr.P.C., judgment and decree in partition suit, order passed by the Consolidation Officer dated 08.10.1991 and the order dated



13.07.1995 in Mutation Case No. 171 of 1995. The learned counsel for the petitioners, thus, submits that there are several orders and documents to substantiate the possession of the petitioners over the land in dispute. It is next submitted that the land in dispute was in possession of the father of the petitioners since 1971 as such, the land has remained in possession of the petitioners for more than 55 years and for creating *Jamabandi* the only requirement is possession and that prima facie title is to be seen. It is also submitted, at the cost of repetition, that once order dated 13.07.1995 in Mutation Case No. 171 of 1995 was passed by the Circle Officer mutating the name of the mother of the petitioners over the land in dispute, the authorities as of date have no option but to include the land in dispute pertaining to *Khata* No. 19 Plot No. 222 at *Mouza*- Chawni in *Jamabandi* No. 5137.

17. The learned counsel for the petitioners next submits that it is a settled principle of law merely because *Jamabandi* has been created that does not in any manner give right of title, but then the same definitely is a pointer towards possession and the petitioners and their ancestors have remained in possession of the land for more than 55 years. It is also submitted that if the authorities are hammering on the issue that



the land is *Gairmajarua Malik* land, then why the authorities did not resort to any proceeding before a Court of competent civil jurisdiction for recovering the possession of the land in dispute from the petitioners which amply demonstrates that authorities were aware that the land belongs to the petitioners.

18. The learned counsel appearing on behalf of the State is not in a position to rebut the factual submissions made by the learned counsel appearing on behalf of the petitioners nor is in a position to reply the submissions of the learned counsel for the petitioners with respect to order dated 13.07.1995 in Mutation Case No. 171 of 1995 that it has attained finality in absence of challenge, as such the order has to be given effect to until and unless the same is set aside by an authority competent. The learned State counsel next submits that no doubt the Consolidation Officer has passed an order dated 08.10.1991 but then the said order was never finally published, as such, it cannot be said that the order passed by the Consolidation Officer was given effect to, on which the learned counsel appearing on behalf of the petitioners submits that the final publication of the *Chak* in compliance of the order dated 08.10.1991 may not have been published, but then the essence of the order dated 08.10.1991 recording the name of Anwari



Khatoon in the *Chak Khatiyān* based on documentary evidence cannot in any manner come to the rescue of the State authorities. It is also submitted that since the Consolidation Officer had recorded the order dated 08.10.1991 in favour of Anwari Khatoon and the same also remained unchallenged by the State despite State being a party to the said consolidation proceeding that also enures to the benefit of petitioners.

19. After hearing the learned counsel for the parties, the Court concurs with the submissions made by the learned counsel appearing on behalf of the petitioners for the reason that there are documentary evidence on record to *prima facie* suggest about possession of the petitioners over the land in dispute i.e. *Jamabandi* Nos. 257, 258 and 262 were created in the name of the ancestors of the petitioners much before 1995, as such, the *Jamabandis* were standing in the name of the ancestors of the petitioners for a pretty long time i.e. more than 50 years, further order passed by the SDM, Bettiah holding possession of the father of the petitioners over the land in dispute in a proceeding under Section 144 Cr.P.C., judgment and decree in partition suit whereby the land in dispute based on a compromise came in the share of the father of the petitioners, the order dated 08.10.1991 passed by the Consolidation Officer



based on documentary evidence ordering to create *Chak Khatiyan* in the name of Anwari Khatoon and the order dated 13.07.1995 in Mutation Case No. 171 of 1995. Since *Jamabandi* Nos. 257, 258 and 262 were created in the name of the ancestors of the petitioners and their father that amply demonstrates that the land in dispute was in possession of their ancestors which continued after their death in possession of the petitioners and is still continuing and for creating *Jamabandi* the authorities only have to see possession over the land in question and *prima facie* title, but if the petitioners were not in a position to produce any document relating to the land in dispute that in itself would not denude the petitioners of their right for getting the *Jamabandi* created based on possession, more so, when the Consolidation Officer in the consolidation proceeding had passed order dated 08.10.1991 with a direction to create Chak Khatiyan in which the State of Bihar was also a party, but then the State of Bihar did not challenge the order dated 08.10.1991 in the consolidation case before any superior forum and thus the same attained finality in absence of challenge. The Hon'ble Supreme Court in the case of Ram Balak Singh Vs. State of Bihar & Anr. AIR 2024 SC 2231 has held held at Paragraphs 16, 17, 20 and 21 which read as under:-

“16. Under the scheme of the Consolidation Act, the



consolidation authorities are fully competent to deal with the issue of title over the land under consolidation except under certain contingencies. Thus, the consolidation authorities have the powers of the Civil Court to decide the question of the title subject to the judicial review by the High Court under Articles 32, 226 and 227 of the Constitution of India. In other words, the consolidation authorities have the status of the deemed courts and have the powers akin to the Civil Courts to decide the rights and title of the parties over the land under consolidation and, at the same time, oust the jurisdiction of the Civil Court.

17. We are conscious of the fact that revenue entries are not documents of title and do not ordinarily confer or extinguish title in the land but, nonetheless, where the revenue authorities or the consolidation authorities are competent to determine the rights of the parties by exercising powers akin to the Civil Courts, any order or entry made by such authorities which attains finality has to be respected and given effect to.

20. In view of the aforesaid facts and circumstances, the rights of the parties over the suit land stood crystalised with the passing of the order dated 12.11.1979 by the Consolidation Officer which became final and conclusive. The State of Bihar never challenged the said order. It is not its case that the aforesaid order has been obtained by concealment of facts or by playing fraud upon the consolidation authorities. The State of Bihar at no point of time came forward to claim the right, title or interest of disputed land before any forum either the consolidation authorities or the Civil Court, rather forced the plaintiff-appellant to institute the civil suit despite recognition of his rights by the consolidation authorities.

21. In view of the above, when the rights of the plaintiff-appellant have been determined and recognised by the consolidation authorities, the order of the Consolidation Officer to that effect in favour of the plaintiff-appellant could not have been ignored by the Civil Court. The jurisdiction of the Civil Court in respect of the rights determined by the Consolidation Officer stands impliedly excluded by the very scheme of the Consolidation Act. The appellate courts below completely fell in error in holding otherwise discarding the order of the Consolidation Officer which was sacrosanct as to the rights in respect to the suit land.”



Hence, in view of the order of the Hon'ble Supreme Court also it becomes clear that the order of the Consolidation Officer in the instant case also attained finality in absence of challenge by State authorities. It absolutely defies all logic, wisdom and reasonable administrative behaviour that if the authorities are aggrieved by the order dated 13.07.1995 in Mutation Case No. 171 of 1995 in that event the State was not remediless, but then the State authorities allowed the order dated 13.07.1995 in Mutation Case No. 171 of 1995 to attain finality in absence of challenge as such they now cannot resile from the said order and as such the Circle Officer is bound by the orders of his predecessor and has no option but to implement it as the Circle Officer being a quasi judicial authority does not have the power to review as held by this Court in the case of Sri Kedar Singh Vs. State of Bihar, 2001 (3) PLJR 723, in the said case, the Special Officer, Bihar Municipality in Mutation Case No. 12/1990-91 had recalled the earlier order dated 07.01.1969 passed by his predecessor in Case No. 416/220 of 1967-68 and accordingly this Court at Para-7 had held:- *this Court is unable to appreciate that as to how the Special Officer by the impugned order has gone into the question regarding mutation of the holdings in question afresh despite the fact that he has noticed*



about the earlier order passed in Mutation Case No. 416/220 of 1967-68. Bare perusal of the impugned order shows that he was aware of the earlier order against which no appeal was preferred and the same became final. However, he has tried to defend respondent no. 3 by stating that he had no knowledge about the earlier Mutation Case No. 416/220 of 1967-68. It is well settled that power to review of an order of a judicial or quasi judicial nature is not an inherent power. It must be conferred by law either specifically or by necessary implications. Further, in the case of Tetar Mandal and Ors. Vs. Executive Officer and Ors. 1978 BBCJ 530, the Division Bench of this Court relying upon the Hon'ble Supreme Court decision in the case of State of Bihar Vs. Ram Dayal Missir and Patel Narshi Thakershi Vs. Pradyuman Singhjo Arjun Singhji AIR 1970 SC 1273 held that Executive Officer could not sit in the judgment over the order of a quasi judicial nature passed by his predecessor-in-office, the Special Officer and thus, the impugned order was held to be without jurisdiction

20. After considering the submissions made by the learned counsel appearing on behalf of the petitioners and the State and also taking into account the case laws on the issue, **the writ application is allowed** with a direction to the Circle



Officer, Bettiah to add *Khata* No. 19, Plot No. 222, Area 8
Katha 14 *dhurs* *Mouza*- Chawni District- West Champaran,
Bettiah in *Jamabandi* Nos. 5137 within a period of eight weeks
from the date of receipt/production of a copy of this order.

(Satyavrat Verma, J)

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