

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.933 of 2019

In
Civil Writ Jurisdiction Case No.11712 of 2019

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Sanjay Kumar S/o Late Uma Shankar Prasad Resident of Village- Bishunpura
Bazar, P.O.- Sidhwalia, District- Gopalganj.

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna.
2. The Collector-cum-District Magistrate, Gopalganj.
3. The Land Reforms Deputy Collector, Gopalganj.
4. The Sub-Divisional Officer, Gopalganj.
5. The Circle Officer, Barauli, Gopalganj.
6. Nathuni Gosai Son of Bishwanath Gosai Resident of Village- Bishunpura Bazar, P.S.- Sidhwalia, District- Gopalganj.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Shambhu Sharan Singh, Advocate
For the Respondent/s : Mr. Md.Khurshid Alam, AAG12

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE PARTHA SARTHY)

Date : 7-01-2025

Heard learned counsel for the petitioner and learned
counsel for the State of Bihar.

Re: I.A. no.1 of 2024

2. The instant application has been filed praying for
condonation of delay of 4 days in filing of the instant appeal.

3. Having heard learned counsel for the parties and



having perused the contents of the application, the Court is satisfied that the appellant has made out a case for condonation of delay. Accordingly, the delay in filing of the instant appeal is condoned.

4. I.A. no.1 of 2024 stands allowed.

Re: LPA no. 933 of 2019

5. The instant appeal has been preferred against the order dated 3.7.2019 whereby the learned Single Judge was pleased to dismiss CWJC no.11712 of 2019 filed by the appellant.

6. The case of the appellant, in brief, is that the land bearing Khata no. 358, Plot no.364 having an area of 12 decimals and situated in village Bishunpura, Thana no. 264 was recorded in the *khatian* as *gaurmajarua parti kadim*. Since the time of *zamindari* it was in possession of the father of the appellant, however, the ex-landlord failed to file return in the name of his ancestor at the time of vesting of *zamindari*. A portion of the land fell under the 'Gandak River, Yojana' and about 7 decimals out of the 12 decimals land remained in possession of the father of the appellant. The father of the appellant being landless filed a petition on 29.3.1993 before the Circle Officer, Barauli, which was numbered as Settlement Case no. 31/1993-94 for settlement of the said land in his favour. The prayer of the father of the appellant was rejected by the Circle



Officer, Barauli. On an appeal having been preferred against the said rejection, the same was allowed by the DCLR, Gopalganj by his order dated 3.9.2012 passed in Bandobasti Appeal no. 157/93-94/24/94-95/9/2001-02. The respondent no.6 filed BLT Case no. 256 of 2017 which was allowed by order dated 7.3.2019 passed by the Chairman, Bihar Land Tribunal. The appellant preferred CWJC no.11712 of 2019 against the order passed by the Tribunal which was dismissed by the learned Single Judge by order dated 3.7.2019, against which the instant appeal has been preferred.

7. A counter affidavit was filed on behalf of the Circle Officer, Barauli. As per the contents thereof the case of the private respondent no. 6 is that his ancestors have been coming in possession of the land in question by virtue of settlement by the ex-landlord and presently the land of Jamabandi no.1072 is in their possession and that of Jamabandi no.317 is in possession of Ambika Gosai. It is further case of the respondents that on rejection of the claim of the appellant by the Circle Officer vide order dated 16.11.1993 in Settlement Case No.31/1993-94, they preferred Bandobasti Appeal no.157/93-94 and 24/94-95, which was allowed by the DCLR, Gopalganj. The mother of the respondent no.6 moved this Court in CWJC no.5181/1994 and by order dated 21.2.2013, the matter was



remitted back to the Collector Gopalganj to pass a fresh order in accordance with law after hearing the parties. The Collector remitted the matter to the DCLR who passed order dated 3.9.2012, the effect of which was cancellation of the long standing *Jamabandi* in the name of the ancestors of respondent no.6. The responding no.6 preferred BLT Case no. 256 of 2017 in the Bihar Land Tribunal which was allowed by order dated 7.3.2019. CWJC no. 11712 of 2019 preferred by the appellant in this Court was dismissed by the learned Single Judge by his order dated 3.7.2019.

8. Learned counsel appearing for the appellant submitted that the nature of land having been recorded as *gairmajarua parti kadim, Jamabandi* created in the name of the ancestor of respondent no.6, is per se illegal and not sustainable. As such, it is submitted that the DCLR and the Collector had rightly held in favour of the appellant and the learned Tribunal has erred in setting aside the said orders passed in favour of the appellant.

9. Having heard learned counsel for the parties and having perused the material on record, so far as the case of the appellant is concerned, he filed a petition only on 29.3.1993 for settlement of 7 decimals of land before the Circle Officer which was numbered as Settlement Case Number 31/1993-94. On the other hand, the case of the respondent no.6 is that his ancestors



have been coming in possession of the land in question by virtue of settlement by the ex-landlord on vesting of *zamindari* and the land of Jamabandi no.1072 is in their possession while the land of Jamabandi no.317 is in possession of Ambika Gosai.

10. In view of the facts of the case that pursuant to a petition having been filed in the year 1993, the long standing *Jamabandi* in favour of the ancestors of respondent no. 6 was cancelled by the order of the DCLR passed in the year 2012, this Court on the point of cancellation of long standing *Jamabandi*, in the case of **Vijay Kumar Prasad versus State of Bihar [2017(1) PLJR 818]** has held as follows:-

“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. It cannot be done even under Section 9 of the



Bihar Mutation Act in the facts and circumstances of the case. He cannot become a factotum i.e. a party and the judge and would decide the matter and annul such Jamabandi which is standing for several decades. A reference in this regard is made to a decision of a Coordinate Bench of this Court rendered in C.W.J.C. No. 22052 of 2013 & analogous cases (Shyam Mohan Shahi & Anr. vs. The State of Bihar and Ors.) holding that only option open in such matters to the State would be to file a suit and get a decree from the Civil Court of Competent Jurisdiction. The aforesaid judgment was upheld by a Division Bench of this Court in State of Bihar vs. Harendra Nath Tiwary reported in 2015(1) PLJR 606.”

11. In the opinion of the Court, the *Jamabandi* with respect to the land in question having stood in the name of the ancestor of respondent no.6 since the year 1969, ie: for several decades should not have been interfered with in such a proceeding and in view of the judgment in the case of **Vijay Kumar Prasad** (supra), the only option open for the State was to file a suit and get a decree from the Civil Court of competent jurisdiction. If the State, thus is deprived of any right in the property, there is no question of settlement in favour of a landless person.

12. In view of the facts and circumstances of the case, the



orders passed by the DCLR and affirmed by the Collector was rightly interfered with by the learned Tribunal and the application preferred against the same dismissed by the learned Single Judge.

13. The Court finds no merit in the instant appeal and the same is dismissed.

(Partha Sarthy, J)

K. Vinod Chandran, CJ: I agree

(K. Vinod Chandran, CJ)

Bibhash/-

AFR/NAFR	
CAV DATE	20.11.2024
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