

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15379 of 2024

1. M/s Mukesh Raj Re-Rolling Mills Pvt. Ltd. a Company incorporated under the Companies Act, 1956 having its registered office at Thana Chouk Khagaria, represented through its director, namely Mukesh Kumar, male, aged about 55 years, S/o Late Manohar Prasad, R/o Thana Chouk Khagaria, P.S.-Khagaria, District-Khagaria.
2. Mukesh Kumar, S/o Late Manohar Prasad, R/o Thana Chouk Khagaria, P.S.-Khagaria, District-Khagaria.
3. Rajesh Kumar, S/o Late Manohar Prasad, R/o Thana Chouk Khagaria, P.S.-Khagaria, District-Khagaria.
4. Suresh Prasad @ Suresh Kumar, S/o Late Vijay Chand Prasad, R/o Thana Chouk Khagaria, P.S.-Khagaria, District-Khagaria.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Revenue and Land Reforms, Government of Bihar, Patna.
2. The District Collector, Khagaria.
3. The Additional Collector, Khagaria, District-Khagaria.
4. The Deputy Collector of Land Reforms, Khagaria, District-Khagaria.
5. The Circle Officer, Circle Khagaria, District-Khagaria.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Umesh Kumar Gupta- Advocate Mr. Shreyash Goyal- Advocate Mr. Ravi Raj- Advocate Mr. Aryan Yashraj- Advocate
For the State	:	Mr. Standing Counsel (12) Mr. AC to SC-12

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL JUDGMENT

11-02-2025

1. Heard learned counsel for the petitioners and learned AC to SC-12 for the State.

2. The Additional District Magistrate and the Circle Officer, Khagaria in compliance of the order dated 10.02.2025 are present in the Court. The Circle Officer and the Additional



District Magistrate, Khagaria in one voice submitted that a mistake has been committed and such mistake will not be committed in future. The A.D.M. also submitted that the Jamabandi Cancellation Cases, which were registered in her Court, for which I.A. No.01 of 2025 has been filed, presently has been stayed and the same shall be withdrawn.

3. The learned counsel for the petitioners submits that the land measuring 21 Bigha pertaining to Mauza- Chak Bhadaul in the District of Khagaria was settled by the Ex-Landlord in favour of Ali Ahmad Khan in the Year 1941-42. It is submitted that after the land was settled in favour of Ali Ahamad Khan, the said Ali Ahamad came in possession over the land. It is next submitted that in the Year 1968, a Partition Suit No.10 of 1968 was filed by Ali Ahmad Khan, in which Bibi Rafia Khanumin and others were impleaded as party defendants in the Court of the learned Subordinate Judge-II, Munger. It is further submitted that Partition Suit No.10 of 1968, on intervention of well-wishers, was compromised and accordingly, a compromise decree dated 21.11.1968 was prepared as would manifest from Annexure- P/1 to the writ application.

4. It is submitted that the land in question was



allotted in the share of Masood Ahmad Khan, who got the land mutated in his favour. It is next submitted that Masood Ahmad on 17.12.1976 executed a power of attorney in favour of one Saifi Ahmad Khan for the purposes of selling the land in dispute. The said Saifi Ahmad in between 1976-1988 registered seven sale deeds in favour of the petitioners and their ancestors. It is submitted that in pursuance of purchase of the land in dispute by the petitioners and their ancestors in between 1976-1988, they applied for getting their name mutated over the land in question. Accordingly, Jamabandi No.8 was created in favour of Vijay Chand Prasad in the Year 1977, Jamabandi No.9 was created in favour of Manohar Prasad in the Year 1979, similarly Jamabandi No.10 was created in favour of Suresh Kumar in the Year 1979, Jamabandi No.7 was created in the name of Vijay Chand Prasad in the Year 1979 and Jamabandi No.11 was created in the name of the Director Manohar Prasad in the Year 1988. The learned counsel thus submits that the petitioners after purchasing the land in dispute came in possession and aforesaid Jamabandis were created in between 1977-1988.

5. The learned counsel for the petitioners next submits that the petitioners after purchasing the land came in



possession, as such, Jamabandi was also created in their favour as recorded herein above. It is next submitted that the Jamabandis are continuing for the last more than 44 years and rent of the land in question is being accepted by the State Government. It is submitted that the rent of the land in dispute has been paid up-till 2017, but after 2017, all of a sudden, the Government stopped accepting rent on the ground that the land in dispute is a Topo/ unsurveyed land. The learned counsel submits that when rent with respect to land in dispute was not being accepted by the State Government, as such, the petitioners were constrained to move before this Court by filing CWJC No.17572 of 2021 and the same was disposed of by an order dated 24.08.2022 in view of the plea taken by the State in their counter-affidavit at Para-11. The learned counsel submits that CWJC No.17572 of 2021 was filed seeking a direction upon the authorities to accept the rent of the land in question and also to permit the petitioners to deal with their lands as detailed in Paras-8 and 9 of CWJC No.17572 of 2021. It is next submitted that respondents in CWJC No.17572 of 2021 at Para-11 of their counter-affidavit had pleaded:-

“11. That the Answering respondents submit



that they are bound by the law of the land and would ensure that law of the land is followed in its true letter and spirit.

The department has taken following steps in this regard:-

a) A letter no.4088 dated 16.08.2022 is being issued to the District Sub-Registrar, Khagaria to Register the concerned deed mentioned in the petition, if it is presented for registration according to Rules.

b) The letter no.3113 dated 20.07.2017 issued by the Prohibition, Excise & Registration Department regarding instruction to all Collectors-cum-District Registrar/ District Sub Registrar/ Sub Registrar to follow up the instruction of the Principal Secretary, Revenue & Land Reforms Department regarding registration of unsurveyed/ topo land has been withdrawn by the department vide letter no.0487 dated 16.08.2022.”

6. The learned counsel further submits that accordingly the writ application i.e. CWJC No.17572 of 2021



was allowed by an order dated 24.08.2022.

7. The learned counsel for the petitioners next submits that the Circle Officer, Khagaria by his letter dated 04.04.2023 has recommended to the Additional Collector, Khagaria for cancelling of long standing Jamabandis being Jamabandi Nos.7, 8, 9, 10 and 11 of Mauza- Chak Bhadaul running in the name of the petitioners. It is further submitted that it absolutely does not stand to reason that as to why when CWJC No.17572 of 2021 was taken up for hearing wherein a prayer was made for a direction upon the State authorities to accept rent, then why at that stage, the said plea was not raised by the respondent authorities in the said writ application that the Jamabandi created in favour of the petitioners requires to be cancelled. It is submitted that when CWJC No.17572 of 2021 was allowed by an order dated 24.08.2022 in view of the specific pleading made in the counter-affidavit at Para-11, wisdom dawned on the Circle Officer and thus, he initiated proceeding for cancellation of Jamabandi. It is thus submitted that what the State authorities could not have achieved directly are trying to achieve it indirectly.

8. The learned counsel for the petitioners thereafter



draws the attention of the Court to Annexure-13 series to submit that in terms of Section 9 of the Mutation Act, it is the Additional Collector, who is competent to institute Jamabandi Cancellation Case for cancelling a Jamabandi either on an application or *suo motu* based on an information, but from perusal of Annexure-13 series, it would manifest that the Circle Officer without any jurisdiction registered Jamabandi Cancellation Case No.42 of 2023-24, Jamabandi Cancellation Case No.43 of 2023-24, Jamabandi Cancellation Case No.44 of 2023-24, Jamabandi Cancellation Case No.45 of 2023-24, Jamabandi Cancellation Case No.46 of 2023-24 and Jamabandi Cancellation Case No.47 of 2023-24 and thereafter, sent the same to the Additional Collector with a recommendation to cancel the aforesaid long standing Jamabandis. It is submitted that the Circle Officer, Khagaria could have recommended to the Additional Collector for cancelling the Jamabandis, but could not have registered Jamabandi Cancellation Case on his own as it was in the domain of the Additional Collector to initiate the same.

9. The Circle Officer, Khagaria, who is present in the Court, at this stage, submits that a mistake was committed by registering the aforesaid Jamabandi cases.



10. The learned counsel for the petitioners further submits that Annexure-13 series is impugned in the instant writ application.

11. It is further reiterated and submitted that what the authorities cannot achieve directly, they are trying to achieve it indirectly. It is submitted that the land in the Year 1941-42 was settled by the Ex-landlord in favour of Ali Ahmad Khan, as such, the settlement was much prior to 01.01.1946. It is submitted that Section 4(H) of the Bihar Land Reforms Act mandates that the authorities cannot in a summary proceeding inquire with respect to settlement made prior to 01.01.1946, but if the instant Jamabandi Cancellation Cases are entertained, it would have the effect of cancelling the settlement of the land made in the Year 1941-42 in favour of Ali Ahmad Khan on the ground that the petitioners are purchasers from Masood Ahmad Khan, in whose share, the aforesaid lands was allotted in pursuance of Partition Suit No.10 of 1968. It is further submitted that the case was earlier taken up on 21.11.2024, when State was directed to file a counter-affidavit duly sworn by the Additional Collector. It is next submitted that in the order dated 21.11.2024, the Additional Collector was directed to specifically plead in the



counter-affidavit that as to whether the Circle Officer is competent to register Jamabandi Cancellation Case or not. Further, if Jamabandi created in the name of the petitioners is cancelled, whether it will have the effect of questioning the settlement of the land made by the Ex-Landlord in the Year 1941-42 in favour of Ali Ahmad Khan, if yes, then whether the Administrative Authorities are competent to decide such complex issues in a summary proceeding. The counter-affidavit shall also specifically plead whether Topo/unsurveyed land, if *ipso facto* can be held to be a government land without adjudication by a competent forum. It is submitted that the A.D.M. in compliance of the order dated 21.11.2024 filed a counter-affidavit, but very conveniently chose to ignore the queries made by this Court in the order dated 21.11.2024 and none of the queries of the Court was replied.

12. It is also submitted that after hearing the parties, the Court by order dated 21.11.2024 had stayed the operation of Annexure-13 series to the writ application. It is further submitted that since Annexure-13 series to the writ application was stayed that automatically meant that no further proceeding were to be initiated against the petitioners



until the stay is vacated or the writ application is adjudicated, but then, the Additional Collector in haste instituted five Jamabandis Case Number being Jamabandi Cancellation Case No.162 of 2024-25 for cancelling Jamabandi No.7, Jamabandi Cancellation Case No.159 of 2024-25 for cancelling Jamabandi No.8, Jamabandi Cancellation Case No.160 of 2024-25 for cancellation of Jamabandi Case No.9, Jamabandi Cancellation Case No.164 of 2024-25 for cancellation of Jamabandi No.10 and Jamabandi Cancellation Case No.161 of 2024-25 for cancellation of Jamabandi No.11. It is submitted that since Annexure-13 to the writ application was stayed and thereafter, the aforesaid Jamabandi Cancellation Cases have been instituted by the Additional Collector, Khagaria, as such, the same necessitated the petitioners to challenge the same by filing I. A. No.01 of 2025. The I. A. No.01 of 2025 is allowed for consideration.

13. The leaned counsel appearing on behalf of the State is not a position to rebut the submission of the learned counsel appearing on behalf of the petitioners to the extent that the counter-affidavit filed by the Additional Collector though was in compliance of the order dated 21.11.2024, but then, the queries of the Court was not replied.



The learned counsel for the State also submits that no doubt, long standing Jamabandis cannot be cancelled and that is a settled proposition of law, but if the initial settlement itself was forged and fabricated whether the Court would permit such settlement to stand. The learned counsel for the State in sum and substance is questioning the initial settlement of the land made in favour of Ali Ahmad Khan in the Year 1941-42. It is also submitted that the land in dispute has been held to be Topo/ unsurveyed land in the Year 2017, on which the learned counsel appearing on behalf of the petitioners draws the attention of the learned State counsel to the pleadings made at Para-11 in CWJC No.17572 of 2021 wherein at Para-”11(b), it was specifically pleaded that the letter no.3113 dated 20.07.2017 issued by the Prohibition Excise and Registration Department regarding instruction to all Collectors-cum-District Registrars/ District Sub-Registrars/Sub-Registrars to follow up the instruction of the Principal Secretary, Revenue and Land Reforms Department regarding registration of unsurveyed/ topo land has been withdrawn by the Department vide letter no.0487 dated 16.08.2022.”

14. It is thus submitted that it is basic principles of registration that the registering authority is not



competent to examine the title of the property at the time of registration, if the document presented for registration otherwise is in accordance with law and for the said proposition relies on a judgment of this Court in the case of **Bihar Deed Writers Association and others vs. the State of Bihar and others AIR 1989 Patna 144** and relying on the said judgment, this Court in **CWJC No.9937 of 2020 (Satyendra Kumar Singh vs. the State of Bihar and others)** decided on 11.02.2022 also held that once a document which is required to be registered is presented for registration in compliance with the Registration Act, the registering Authority is under obligation to register a document presented before it. The Hon'ble Division Bench in Satyendra Kumar Singh (Supra) had also relied on the judgment of the Hon'ble Supreme Court in the case of **State of Rajasthan vs. Basant Nahata 2005 (12) SCC 77**. It is thus submitted that the authorities in absence of adjudication by a competent forum cannot take the plea that land in dispute is Topo/ unsurveyed land, when long standing Jamabandi is in existence, as by cancelling the Jamabandi of the petitioners, the authorities will indirectly question the settlement of the land in dispute made in favour of Ali Ahmad Khan in the Year 1941-1942 i.e.



prior to 01.01.1946, to which the authorities are not entitled to decide in a summary proceeding

15. The learned counsel appearing on behalf of the petitioners further submits that whether the settlement made with Ali Ahmad Khan in the Year 1941-42 was forged or fabricated cannot be decided by the authorities in a summary proceeding more so, when the purchasers of the land from the legal heirs of Ali Ahmad Khan got the land mutated without any objection by the State authorities and Jamabandis created in favour of the petitioners is standing in their name for more than 40 years. The learned counsel for the petitioners, at this stage, submits that for the proposition, long standing Jamabandis cannot be cancelled in a summary proceeding relies on a judgment in the case of **Vijay Kumar Prasad vs. the State of Bihar and others reported in 2017(1) P.L.J.R. 818, Jagarnath Jha @ Jagannath Jha vs. the State of Bihar and others reported in 2023 (4) P.L.J.R. 565** and also relies on unreported judgment of this Court in **CWJC No.1241 of 2024 (Pravir Krishna vs. the State of Bihar and others)** disposed of on 27.01.2025 and in the case of **Arun Kumar Goenka vs. the State of Bihar reported in 2023(5) B.L.J. 321.**



16. The learned counsel appearing on behalf of the State, at this stage, submits that since A.D.M. and the Circle Officer, Khagaria are present in the Court and the A.D.M. has assured the Court that the Jamabandi Cancellation Cases registered in her Court shall be withdrawn, as such, the lis does not survive for the present, on which the learned counsel appearing on behalf of the petitioners submits that the authorities acted even in breach of the order passed in CWJC No.17572 of 2021 and today, an undertaking is being given, but the authorities, who will succeed them, may again initiate proceeding for cancelling Jamabandis.

17. The learned counsel for the petitioners next submits that the law with respect to long standing Jamabandi has been settled by this Court by a catena of its decision as recorded herein above, but then, the authorities, it appears either they do not understand English or even if they understand English, they choose to ignore the orders of this Court to act in breach of the same.

18. After hearing the learned counsel for the parties, the Court is in complete agreement with the submission of the learned counsel for the petitioners that long standing Jamabandi cannot be cancelled in a summary



proceeding, moreso when it will have the effect of questioning the settlement of land made in favour of Ali Ahmad Khan prior to 01.01.1946 and also takes into consideration the submissions made by the Additional District Magistrate and the Circle Officer, Khagaria, that the lis, for which the instant writ application was filed, does not survive, but then, it is directed that if the State authorities at any point of time intends to get the Jamabandis standing in the name of the petitioners cancelled, they will not be precluded from approaching a Court of competent civil jurisdiction, but till then, the rent receipts in favour of the petitioners shall be issued.

19. The writ application is disposed of.

20. The personal appearance of the Additional District Magistrate and the Circle Officer, Khagaria is dispensed with.

(Satyavrat Verma, J)

vikash/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	11.02.2025
Transmission Date	11.02.2025

