

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18028 of 2023

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1. Kumar Harsbardhan,
 2. Kumar Jaybardhan,
 3. Deepti Vardhan,

All three are sons of Late Surendra Nath Singh, Resident of Laxmi Chandra Niwas, South of Post Office, Post Office and Police Station Gopalganj, District Gopalganj.

... .. Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Bihar, Patna.
2. The District Magistrate, Gopalganj.
3. The Additional Collector, Gopalganj.
4. The Superintendent of Police, Gopalganj.
5. The Deputy Collector Land Reforms, Banka.
6. The Circle Officer, Block Sadar Gopalganj, District Gopalganj.
7. The Commandant, Headquarter, Bihar Home Guard Police, Patna.
8. The District Commandant, Bihar Home Guard Police, Gopalganj.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Sanjeev Kumar Singh
For the Respondent/s	:	Mr.Jitendra Kumar Roy 1 (SC 13)
		Mr. B.B. Prasad, AC to SC-13

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

2 16-01-2025 1. Heard learned counsel for the petitioners and
learned AC to SC-13.

2. The learned counsel for the petitioners submits that
the original writ petitioner (Sabita Singh @ Nilkamal @ Sabita
Sinha) died during pendency of the writ application, as such,
I.A. No. 1 of 2024 has been filed for substituting the legal heirs
of the writ petitioner.



3. I.A. No. 1 of 2024 is allowed.

4. The office is directed to accordingly modify the party position in the writ application, as per the description of legal heirs given in I.A. No. 1 of 2024.

5. It is next submitted that during pendency of the writ application, the order dated 30-3-2024 has been issued by the District Magistrate, Gopalganj granting approval of transfer of land bearing Khata No. 75, Khesra No. 250 (part) measuring 67 decimals to Home Department (Special Branch), Patna for the purpose of construction of office/residential building for Bihar Home Guard Police, Gopalganj, as such, the said order dated 30-3-2024 has been challenged by filing I.A. No. 2 of 2024.

6. I.A. No. 2 of 2024 is allowed for consideration.

7. The learned counsel for the petitioners submits that the land pertaining to Khata No. 75, Khesra No. 122 and 250, Thana No. 77, Area 2-13-06 decimal at Mauza- Khajuria, District-Gopalganj is recorded in the khatian as Garmajarua Malik Parti Kadam in the name of Maharaja Guru Mahadev Asram Prasad Sahi belonging to Hathua Estate (hereinafter referred to as "land in dispute").

8. It is submitted that the land in dispute was settled



in the name of late Laxmi Devi, whose husband late Chandrika Prasad Singh was cultivating the land. After vesting of zamindari in the year 1953, Hathua Raj filed return showing the land settled in favour of late Laxmi Devi, on basis of the aforesaid return, Jamabandi No. 58 was created in the name of Laxmi Devi in the year 1953 and since then the land is in peaceful possession of the family and rent has been paid regularly.

9. It is submitted that a family partition took place and the land was divided amongst four sons of Laxmi Devi and Chandrika Prasad Singh. It is next submitted that Surendra Nath Singh, son of late Laxmi Devi, husband of original writ petitioner, executed Registered Gift Deed dated 16-10-1986 of his share in the land, in favour of the original writ petitioner.

10. It is submitted that the original writ petitioner, at the time of filing of the writ application, was aged about 83 years and she died during the pendency of the writ application, which led to filing of I.A. No. 1 of 2024 for substituting her legal heirs, which has been allowed.

11. It is next submitted that based on the gift deed, the Jamabandi No. 129 was created in favour of the original writ petitioner, similarly another son of Laxmi Devi, namely,



Yogendra Prasad Sinha in relation to his share executed a gift deed in favour of original writ petitioner in the year 1999 and based on the gift deed, Jamabandi No. 187 was created in favour of the original writ petitioner, accordingly the original writ petitioner was making payment of rent in respect of 1-06-12½ decimal of land on regular basis, as would manifest from the rent receipts (Annexure-1 series). It is submitted that Jamabandi Nos. 129 and 187 were created from Jamabandi No. 58, which was created in the Year 1953.

12. It is next submitted that when original writ petitioner tried to make payment of rent, it came to her knowledge that Jamabandi Nos. 129 and 187 were cancelled behind her back without giving any notice, on enquiry, it transpired that C.O. Gopalganj had sent recommendation dated 16-8-2022 (Annexure-2) for cancelling Jamabandi Nos. 129 and 187 running in the name of the original writ petitioner, on basis of such recommendation, Jamabandi Cancellation Case No. 209/2022-23 was initiated against the original writ petitioner and 19 other persons. It is submitted that notice was never served upon the original writ petitioner, accordingly an ex-parte proceeding was initiated and Jamabandi Nos. 129 and 187 were cancelled by the Additional Collector by order dated 14-7-2023



(Annexure-4), which is impugned in the present writ petition.

13. It is next submitted that when the original writ petitioner verified the records, it transpired that on notice signature of Sabita Devi and Nilkamal, as two persons stands recorded, when original writ petitioner was also known by the name of Nilkamal, hence submits her signature was forged. It is next submitted that during proceeding of Jamabandi Cancellation No. 209/2022-23, the C.O., Gopalganj, again vide his order dated 5-1-2023 (Annexure-5), recommended for cancellation of Jamabandi Nos. 129 and 187, based on which fresh Jamabandi Cancellation Case No. 17 of 2023-24 was initiated on 12-4-2023 and in the said case, fresh notices were issued, which were returned with an endorsement that person with the name of original writ petitioner does not reside in the village. The proceeding of Jamabandi Cancellation Case No. 17 of 2023-24 is still pending.

14. The learned counsel for the petitioners submits that when the Circle Officer, on 16-8-2022 (Annexure-2) had recommended for cancellation of Jamabandi No. 129 and 187, based on which Jamabandi Cancellation Case No. 209/2022-23 was instituted, then where was the occasion for the Circle Officer to again recommend for cancellation of Jamabandi Case



Nos. 129 and 187 by his order dated 5-1-2023 (Annexure-5).

15. It is also submitted that it absolutely does not stand to reason that as to why the Additional Collector instituted Jamabandi Cancellation Case No. 17/2023-24, when Jamabandi Cancellation Case No. 209 of 2022-23 was already instituted. It is next submitted that in Jamabandi Cancellation Case No. 17/2023-24, notices were sent to the original writ petitioner, but the same was returned with an endorsement that petitioner does not reside in the village, which amply demonstrates that in the earlier notices in Jamabandi Cancellation Case No. 209/2022-23, the signature of the original writ petitioner was forged.

16. It is further submitted that in pursuance of the order dated 14-7-2023 (Annexure-3) passed by the Additional Collector, Gopalganj in Jamabandi Cancellation Case No. 209/2022-23, the lands have been held to be government land and the same has been identified for construction for residential building of Bihar Home Guard Police, as would be evident from Letter No. 1551 dated 21-9-2023 (Annexure-6), whereby District Commandant, Gopalganj requested the District Magistrate, Gopalganj, for transferring the land for Bihar Home Guard, as such, the petitioners in the instant writ petition have also prayed to direct the respondents not to interfere with the



private lands of the petitioners and to hold the action of the respondents in identifying the land as government land for the purpose of construction of Home Guard residential building as violative of Article 300A of the Constitution of India.

17. It is submitted that during pendency of the writ application, the District Magistrate, Gopalganj vide order dated 30-3-2024 had transferred the said land to the Bihar Home Guard Police, as such, IA No. 2 of 2024 has been filed seeking quashing of the order dated 30-3-2024 (Annexure-4) passed by the District Magistrate, Gopalganj.

18. The learned counsel for the petitioners next submits that this Court in the case of *Ramnandan Singh vs. the State of Bihar & Ors., 2014 (2) PLJR 636*, had clearly held that if any jamabandi was created in the year 1956 and is to be cancelled under Section 4(h) of the Bihar Land Reforms Act, 1950, in that event, the Collector can invoke the power under Section 4(h) of the Act only when three contingencies arise, i.e., (i) where soon after vesting, it is found that any settlement had been made by the ex-landlord after 1st day of January 1946, the genuineness of those settlements could be examined for the reason of avoidance of consequences of *Zamindari* abolition, (ii) where settlements were made to enhance the claim of compensation of



Zamindari abolition, and (iii) such settlements were made to cheat the government, further this Court, relying on precedents as recorded at para-7 of the aforesaid judgment, also recorded that it has been held that if State for any reason wants to challenge the authority or the title of any person based on such settlements, then the only option left to the State is to approach the civil court for cancellation of the jamabandi. The learned counsel for the petitioner thus submits that from perusal of the order impugned, it would manifest that the jamabandi of the petitioners has been cancelled without appreciating the facts of the case in its correct perspective, i.e, Jamabandi Nos. 129 and 187 were offshoots of Jamabandi No. 58, which was created in the year 1953. The learned counsel also relies on the case of ***Jagarnath Jha vs. the State of Bihar & Ors, 2023 (4) PLJR 565***, to submit that this Court has held that if State is disputing long standing jamabandi, the only option left to the State is to approach the competent civil court for appropriate relief, but instead of doing so, the State has cancelled the long standing jamabandi in a summary proceeding, which is illegal.

19. The learned counsel for the petitioners next submits that in the instant case also, the land was settled by Hathua Estate and after vesting of Zamindari in the year 1953,



Jamabandi No. 58 was created in the name of Laxmi Devi, mother-in-law of the original writ petitioner in the year 1953 and Jamabandi Nos. 129 and 187 were offshoot of Jamabandi No. 58, as such, by cancelling the Jamabandi Nos. 129 and 187, the Additional Collector has indirectly questioned the legitimacy of Jamabandi No. 58 created 71 years ago.

20. The learned counsel appearing on behalf of the State submits that a counter-affidavit on behalf of the Respondent No. 6 dated 31-10-2024 has been filed, but then is not in a position to countenance the submission of the learned counsel appearing on behalf of the petitioners that long standing jamabandi cannot be cancelled in a summary proceeding, and is also not in position to clearly submit based on the stand taken in the counter-affidavit that as to why two jamabandi cancellation case were instituted against the original writ petitioner, but then submits that the petitioners have filed Jamabandi Appeal Case No. 1 of 2024 against the order dated 14-7-2023 in Jamabandi Cancellation Case No. 209/2022-23 passed by the Additional Collector, Gopalganj.

21. After hearing the learned counsel for the parties, the Court *prima facie* was convinced with the submission of the learned counsel for the petitioners that long standing jamabandi



cannot be cancelled in a summary proceeding and if the authorities intend to cancel long standing jamabandi, in that event, they should take resort of a court of competent civil jurisdiction, as cancellation of Jamabandi Nos. 129 and 187 indirectly questions Jamabandi No. 58 created in the year 1953, of which the aforesaid two jamabandis, i.e., Jamabandi Nos. 129 and 187, are offshoots, but since the original writ petitioner had filed an appeal before the Collector, Gopalganj assailing the order passed by the Additional Collector in Jamabandi Cancellation Case No. 209/2022-23, as such, the Court is not inclined to adjudicate the writ application on merit.

22. The writ application is disposed of with a direction to the Collector, Gopalganj to dispose of the Jamabandi Appeal No. 1 of 2024 filed against the order dated 14-7-2023 in Jamabandi Cancellation Case No. 209/2022-23 passed by the Additional Collector, Gopalganj within a period of three months from today after giving proper opportunity of hearing to the petitioners.

23. It is made clear that the order contained in letter dated 30-3-2024 shall remain stayed until the appeal is finally adjudicated by the Collector, Gopalganj.

24. It is further made clear that the Collector will



adjudicate Jamabandi Appeal No. 1 of 2024, on merits in
accordance with law, without being swayed by the present order.

(Satyavrat Verma, J)

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