

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18991 of 2024

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Yashwant Giri @ Yashvant Giri Son of Yadu Vansh Giri, Resident of- Village Manikpur, P.S.- Gopalganj Town, District- Gopalganj, presently residing at Near Dainik Jagran Press, P and T Colony, Patna G.P.O., P.S.- Buddha Colony, Bihar-800001.

... .. Petitioner/s

Versus

1. The State of Bihar through Additional Chief Secretary, Revenue and Land Reforms Department, Govt. of Bihar.
2. The Additional Chief Secretary, Revenue and Land Reforms Department, Govt. of Bihar.
3. The Collector, Gopalganj, Bihar.
4. The Additional Collector, Gopalganj, Bihar.
5. The Land Reforms Deputy Collector, Gopalganj, Bihar.
6. The Circle Officer, Manjha, Gopalganj, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Mrigank Mauli, Adv. Mr. Devashish Giri, Adv.
For the Respondent/s	:	Mr. Kinkar Kumar, SC-9 Ms. Sushmita Sharma, AC to SC-9

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CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

4 23-06-2025 1. Heard learned Senior Counsel for the petitioner Mr. Mrigank Mauli and the learned SC-9 Mr. Kinkar Kumar, appearing on behalf of the State.

2. Learned Senior Counsel for the petitioner submits that Sri Yadu Vansh Giri (hereinafter referred as to Sri Y.V. Giri) purchased 7 katha 10 dhur land pertaining to Khata No.147, Khesra No.915 at Mauza- Bharkuiya, District Gopalganj vide registered sale deed no.13143 dated 27.04.2003 (Annexure-1) from Upendra Pandey, further Sri Y.V. Giri purchased 7 katha 10



dhur of land pertaining of Khata No.147, Khesra No.915 at Mauza-Bharkuiya, District Gopalganj vide registered sale deed no.13144 dated 24.07.2003 (Annexure-1/A) from Azad Pandey and Binod Pandey, as such Sri Y.V. Giri by aforesaid two registered sale deeds purchased 15 katha of land.

3. It is submitted that the aforesaid lands are recorded as gairmazarua Biritdar in the name of Amika Pandey and others (ancestors of the aforesaid vendors) in the C.S. Khatiyani (Annexure-2). The aforesaid lands were transferred by erstwhile landlord as a Birit (grant in lieu of religious services) to the ancestors of the vendors. It is further submitted that vide order dated 24.01.1984 passed in Rent Fixation Case No.3/83-84 (Annexure-3) by the DCLR, Gopalganj, rent of Rs.8 per acre per year with respect to the aforesaid land was fixed in favour of Surendra Pandey (father of Azad Pandey and Binod Pandey) with a direction that the rent will be recovered from the date of vesting of tenure in the State. It was also observed in the order sheet of in the Rent Fixation Case No.3/83-84 (Annexure-3) that the land in question are not for use of Sairat or the Government. It is next submitted that Jamabandi No.261 was created in the name of Surendra Pandey (father of Azad Pandey and Binod Pandey) and Upendra Pandey.



4. It is next submitted that Sri Y.V. Giri after purchasing the aforesaid land filed Mutation Case No.272/2003-2004 for mutating his name over the purchased land before the Circle Officer, Manjha. The Circle Officer, Manjha sought an opinion from the Additional Collector, Gopalganj that as to whether gairmajarua Biritdar land is transferable or not. The Additional Collector, Gopalganj vide his letter no.1212Ra dated 24.12.2003 directed the Circle Officer to dispose of the mutation application opining that such land is transferable. It is thus submitted that when Sri Y.V. Giri applied for taking mutation of his name over the purchased land, the Additional Collector, Gopalganj had directed the Circle Officer to dispose of the mutation case opining that Brit land is transferable.

5. It is submitted that the Circle Officer allowed Mutation Case No. 272/2003-04 by an order dated 30.12.2003 (Annexure-4) and directed for issuance of correction slip and Jamabandi No.340 was created in the name of Sri Y.V. Giri.

6. It is submitted that Sri Y.V. Giri since then is coming in peaceful possession of the land and rent is paid up-to-date till 2024-25 as would manifest from Annexure-5 and 5/A to the writ application. It is submitted that Jamabandi No.340 was created in the name of Sri Y.V. Giri. It is next submitted that



Jamabandi No.340 is offshoot of Jamabandi No.261 created in the name of Surendra Pandey and Upendra Pandey i.e. ancestors of the vendor of Sri Y.V. Giri and one of the sellers.

7. The learned Senior counsel for the petitioner next submits that Sri Y.V. Giri transferred the aforesaid land to his son Yashwant Giri (writ petitioner) through a registered partition deed bearing no.6754 dated 30.05.2023 (Annexure-6).

8. The petitioner thereafter filed online application for mutating his name with regard to the aforesaid land which came to his share through registered partitioned deed dated 30.05.2023, accordingly, Mutation Case No.570R27/2023-2024/ Manjha was instituted on 01.06.2023 (Annexure-7).

9. It is submitted that petitioner never received any notice either physically/digitally/registered post or through any other mode. The representatives of the petitioner in April, 2024 went to the office of the Circle Officer to seek opinion with regard to the aforesaid mutation case, when they were informed that the Circle Officer, Manjha by an order dated 30.11.2023 (Annexure-8) has rejected the mutation application, accordingly, the copy of the order dated 30.11.2023 was supplied to the representatives of the petitioner on 27.04.2024. The order dated 30.11.2023 passed by the Circle Officer, Manjha in Mutation



Case No.570R27/2023-24/Manjha is impugned in the instant writ application.

10. The learned Senior counsel for the petitioner next submits that from order sheet of the Mutation Case No.570R27/2023-24/Manjha, it would manifest that Karmchari submitted a report dated 21.06.2023 to the Circle Officer, recording therein that the aforesaid land under Khata No.147 is recorded as gairmajarua Biritdar, hence mutation cannot be done, thereafter Revenue Officer also in light of the report of the Karmchari, recommended to reject the mutation application. It is submitted that thereafter the Circle Officer on 08.07.2023 sought a clear report from the Karmchari, the Karmchari submitted his report in compliance of the order dated 08.07.2023 of the Circle Officer on 10.09.2023, wherein he recorded that Jamabandi No.340 is running in the name of Sri Y.V. Giri and petitioner is in peaceful possession of the land and has supplied all the relevant documents relating to the land, thus recommended for proceeding with the mutation case. It is submitted that another Karmchari on the same day i.e. 10.09.2023 namely Ishwar Prasad filed an objection stating that the report dated 10.09.2023 was filed inadvertently and recommended to return the mutation case. Further, on



18.09.2023 the Karmchari again filed a report, recording that the relation of the vendor with the Jamabandi of the concerned Khata does not match. On the aforesaid report, the petitioner was directed to produce the intermediate evidence related to his deed, family tree, khatian and rent receipt on 18.09.2023 itself before the karmchari failing which the case will be rejected.

11. It is subjected that objection dated 18.09.2023 is vague and petitioner was not served with any notice to produce the aforesaid documents. It is also submitted that objection of the karmchari is dated 18.09.2023 and on the same day the petitioner was asked to produce the evidence sought for, which amply demonstrates that in a perfunctory manner the objection was raised and evidence sought and thereafter mutation application was rejected.

12. The petitioner filed Mutation Appeal Case No.173/2024-25 before the DCLR against the order dated 30.11.2023 passed by the Circle Officer, Manjha in Mutation Case No.570R/27/2023-24/Manjha. The learned Senior counsel submits that during pendency of the mutation appeal, Case No.173/2024-25, the District Bar Association, Gopalganj declared indefinite boycott of the Court of the D.C.L.R., Gopalganj, as would manifest from Annexure-9 to the writ



application. The Mutation Appeal Case No.173/2024-25 was listed on 08.08.2024, when boycott was in vogue, thus petitioner sought time for producing some documents.

13. It is submitted that the D.C.L.R., rejected the mutation appeal by an order dated 08.08.2024 (Annexure-10) which is also impugned in the instant writ application. The learned Senior counsel submits that the District Bar Association had boycotted the Court of DCLR for an indefinite period as such the petitioner on 08.08.2024 could not be represented hence the appeal was dismissed without giving any reasonable opportunity of hearing to the petitioner.

14. It is next submitted that the DCLR dismissed the appeal on the ground that petitioner did not file evidence with regard to Patta return, in terms of letter no. 613(6) dated 17.06.2015 (Annexure-11) issued by the Revenue and Land Reforms Department, but did not consider the judgment of this Court in the case of Maya Devi & Others vs The State of Bihar and Others reported in **2014 (3) PLJR 584**, which was submitted along with the appeal. It is also submitted that this Court in the case of Chariter Dusadh & Anr. Vs. Bhagwati Pandey, reported in **1934 SCC OnLine Pat 125, AIR 1934 Pat 596** held that -Birt is a rent free land in consideration of



religious services, past, present or future and such grants are almost invariably heritable and transferable even to persons who can not be expected to keep up the particular observances for which the grants were originally made. Therefore, it manifests that the Birt land is an absolute property of a person to whom it is transferred and it is not the property of the landlord.

15. It is next submitted that the petitioner thereafter filed Mutation Revision Case No.07 of 2024-25 under Section 8(1) of the Bihar Land Mutation Act, 2011, before the Additional Collector, Gopalganj, assailing the order dated 30.11.2023 and 08.08.2024 passed by the Circle Officer and D.C.L.R., in mutation case and mutation appeal, respectively.

16. The Additional Collector finding that D.C.L.R., Gopalganj, without providing reasonable opportunity of hearing passed the order dated 08.08.2024 in Mutation Appeal Case No.173/2024-25, remanded the matter back to the DCLR vide order dated 12.11.2024 (Annexure-15) with a direction to conduct a proper hearing and pass an appropriate order. It is submitted that Additional Collector though not expressly set aside the order of the D.C.L.R. but remand can be construed that the order was set aside as the D.C.L.R. was directed to pass order afresh.



17. It is next submitted that the D.C.L.R., on 13.11.2024, i.e. on the very next date of remand by the Additional Collector, without issuing any notice and affording any opportunity of hearing to the petitioner passed the order dated 13.11.2024 (Annexure-16), affirming the earlier order dated 08.08.2024 passed in Mutation Appeal Case No.173/2024-25, the order dated 13.11.2024 is also impugned in the instant writ petition. The learned Senior Counsel submits that it absolutely does not stand to reason that as to why the DCLR was in a hurry i.e. the DCLR on the very next day of remand i.e. on 13.11.2024 passed an order affirming his earlier order dated 08.08.2024 whereby he had affirmed the order passed by the Circle Officer, Manjha rejecting the mutation application of the petitioner.

18. It is next submitted that the D.C.L.R., in his order dated 13.11.2024, without any material on record observed that creation of Jamabandi is suspicious and recommended for cancellation of Jamabandi existing in the name of the father of the petitioner.

19. Learned Senior Counsel for the petitioner submitted that earlier a specific submission based on pleadings was made that Jamabandi No. 261, was created in the name of



Upendra Pandey and Surendra Pandey and Jamabandi No.340 was created in the name of Sri Y.V. Giri after he purchased the land from his vendor as such Jamabandi No.340 is an offshoot of Jamabandi No.261, hence the jamabandi is a long standing jamabandi. It is also submitted that if Jamabandi 340 standing in the name of Sri Y.V. Giri is cancelled in that event it would amount to doubting the Jamabandi no. 261 also which was never in challenge. It is also submitted that even Brit land are transferable and inheritable. It is also submitted that Jamabandi No.340 in the name of Sri Y.V. Giri was created when the Circle Officer was satisfied that Brit land is both inheritable and transferable, as such the DCLR in a mechanical manner recommended for cancelling the Jamabandi standing in the name of Sri Y.V. Giri. It is submitted that law is clear that in the event if the State intends to get a long standing jamabandi cancelled in that event the same cannot be cancelled in a summary proceeding rather the State has to approach a Court of competent civil jurisdiction for getting the long standing jamabandi cancelled.

20. The learned Senior counsel next submits that from the facts recorded hereinabove, it becomes clear that the manner in which the Circle Officer and the DCLR has passed orders in



Mutation Case and the Mutation appeal amply demonstrates that they are not aware of the law for the reason as recorded hereinabove. It is next submitted that what is not in dispute rather stands admitted is that jamabandi No.340 was created in the name of the father of the petitioner by the Circle Officer which enmates from Jamabandi No. 261 and it was only after execution of registered partitioned deed (Annexure-6), the petitioner filed an application online seeking mutation of the land in his name. It is next submitted that whether Jamabandi No.340 created in the name of the father of the petitioner was legal or illegal was not an issue before the Circle Officer or the DCLR. It is also submitted that once jamabandi was created in the name of the father of the petitioner then the Circle Officer had no option but to mutate the land in the name of the petitioner on the ground that earlier mutation was in the name of his father. It is further submitted that Karmchari in his report had also recorded that possession of the land in dispute is with the petitioner but then the Circle Officer was unnecessarily harassing the petitioner by seeking reports after reports from the different karmcharis. It is also submitted that it absolutely does not stand to reason that one Karmchari on 10.09.2023 reports that petitioner has supplied all the relevant documents



relating to the land and is in peaceful possession of the land in dispute and recommended for proceeding with the mutation case but on the same day another karmchari contradicts the said report and recommend that mutation application be rejected which amply demonstrates the high handedness of the Karmchari for the reason that the order sheet of the mutation case does not even remotely suggest that after the Karmchari had submitted his report dated 10.09.2023 any further report was called for by another Karmchari by the Circle Officer. It is thus submitted that since hands of the Karmchari and other authorities was not greased as such a mechanical order rejecting the mutation application came to be passed.

21. The learned Senior counsel next submits that since Sri Y.V. Giri after purchasing the land got the same mutated as such the subsequent Circle Officer by rejecting the mutation application filed by the petitioner (son of Sri Y.V. Giri) reviewed the order passed by his predecessor in the case of Sri Y.V. Giri and the Mutation Act does not empower any authority including the Circle Office to review his own order. It is thus submitted that rejection of the application of the petitioner seeking mutation of the land in his name by the Circle Officer, amounted to reviewing the order creating jamabandi in the name of the



father of the petitioner by the predecessor of the present Circle Officer. It is also submitted that the D.C.L.R., in appeal also was not able to appreciate the fact that long standing jamabandi cannot be cancelled in a summary proceeding.

22. Learned SC-9, Mr. Kinkar Kumar, assisted by Ms. Sushmita Sharma, appearing on behalf of the State submits that the petitioner has rushed to this Court without availing his alternative remedy of appeal before the Additional Collector against the order passed by the D.C.L.R., in mutation appeal, the said submission on behalf of the State is vehemently rebutted by the learned Senior Counsel for the petitioner on the ground that order dated 13.11.2024, passed by the D.C.L.R. in Mutation Appeal No.173/2024-25, was passed without giving any opportunity of hearing to the petitioner and thus, was in complete breach of the principles of natural justice and secondly, the authorities could not have rejected the mutation application of the petitioner on the ground that the documents were not submitted when earlier Jamabandi was already running in the name of his father and the karamchari had also reported that petitioner was in possession. The learned Senior counsel further submits that alternative remedy will not fetter the power of the constitutional courts, if the same has been passed in



breach of the principles of natural justice. The learned State counsel at this stage submits that one of the grounds for rejecting the mutation application was that the land in dispute is Brit land and the same was not transferable/inheritable and got vested with the State after vesting of zamindari. The said submission of the learned State counsel is also rebutted by the learned Senior counsel appearing on behalf of the petitioner. It is submitted that Jamabandi No.261 in the name of the ancestor of the vendor of the father of the petitioner namely Surendra Pandey and Upendra Pandey was never doubted. It is also submitted that based on the purchased made by the father of the petitioner the land was also mutated in his name and the land was mutated only after the Circle Officer sought opinion of his superior i.e. the Additional Collector, Gopalganj who opined that Brit land are inheritable/transferable. It is thus submitted that had the land vested in the State of Bihar in that event jamabandi would not have been created in the name of the father of the petitioner. It is reiterated and submitted that in the event if the authorities are aggrieved by the Jamabandi No. 340 standing in the name of the father of the petitioner in that event the authorities will have to approach a Court of competent civil jurisdiction for getting the same cancelled as the long standing



jamabandi cannot be cancelled in a summary proceeding and for the said proposition relies on an order dated 27.01.2025 in C.W.J.C. No.1241/2024 (Pravir Krishna vs State of Bihar & Ors.), more so when the Jamabandi was created in the name of the father of the petitioner enmates from Jamabandi No.261 which was never questioned.

23. After hearing learned counsels for the parties, the Court is in complete agreement with the submissions made on behalf of the learned Senior counsel appearing on behalf of the petitioner.

24. Having regard to the facts and circumstances of the case, the order dated 30.11.2024, passed by the Circle Officer, Manjha, Gopalganj in Mutation Case No.570R27/2023-24/Manjha, the order dated 08.08.2024, passed by the D.C.L.R., Gopalganj in Mutation Appeal No.173/2024-25 and the order dated 13.11.2024, passed by the D.C.L.R., Gopalganj in Mutation Appeal No.173/2024-25 in pursuance of the order of remand dated 12.11.2024, passed by the Additional Collector in Mutation Revision Case No.07/2024-2025 are hereby quashed.

25. It is made clear that the Authorities are directed to mutate the name of the petitioner over the land in dispute. However, if the respondents are aggrieved by creation of



jamabandi No. 340 in the name of the father of the petitioner in that event the respondents shall not be precluded from approaching a Court of competent civil jurisdiction for getting it cancelled, in accordance with law.

(Satyavrat Verma, J)

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