

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4876 of 2021

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Bipin Bihari Verma, Son of Basudeo Sahay Verma resident of C/O Pramod Kumar, C-102, Pushpanjali Vihari Apartment, Saristabad Road, Near Kacchi Talab, Gardanibagh, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Chief Secretary Government of Bihar, Old Secretariat Building, Patna.
2. The Principal Secretary Department of Revenue and Land Reforms, Government of Bihar, Patna.
3. The District Magistrate, Patna.
4. The Additional Collector, Patna.
5. The SDO, Patna City, Patna.
6. The Deputy Collector Land Reforms, Patna City.
7. The Circle Officer, Patna Sadar, Patna.
8. Mahesh Prasad son of Late Harinandan Prasad, resident of Bahari Begumpur, Beldari Tola, P.O.-Begumpur, Police Station-Bypass, District-Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Jitendra Kishore Verma, Adv. Mr. Anjani Kumar, Adv. Mr. Ravi Raj, Adv. Mr. Abhishek Kumar Srivastava, Adv. Ms. Kumari Shreya, Adv. Mr. Md. Arsam, Adv. Mr. Akshansh Shanker, Adv. Mr. Satyendra, Adv.
For the State	:	Mr. Dhurjati Kumar Prasad, GP-14 Mr. Ajay Prasad, AC to GP-14
For the Intervenor	:	Mr. Kaushal Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE SOURENDRA PANDEY
C.A.V. JUDGMENT

Date : 21-05-2026

Heard learned counsel for the petitioner, the learned
counsel for the State as well as learned counsel for the
intervenor-respondent.



2. The present writ petition has been filed against the order dated 05.12.2020 passed by the District Collector Land Reforms, Patna City, in Jamabandi Cancellation Case No. 04 of 2020-21, which is recommended on the basis of the report of the Circle Officer to cancel Jamabandi No. 69, which was in favour of the petitioner and also Jamabandi No. 337 running in the name of Ranjit Kumar Sinha, who is the purchaser from the petitioner. The writ petitioner also seeks mandamus against respondents not to disturb peaceful possession of the petitioner and/or not to demolish the pucca boundary of the wall of the petitioner during the pendency of the writ application.

3. During the pendency of the writ application, the Additional Collector, Patna, by its order dated 16.08.2021, cancelled the jamabandi through Jamabandi Cancellation Case No. 77 of 2020-21, relying upon a report of the Circle Officer and District Collector, Land Reforms, Patna City. Thereafter, the petitioner through I.A. No. 1 of 2021 prayed for amendment in the writ petition seeking relief of setting aside the said order and the I.A. was allowed by order dated 14.09.2022 and an interim order was granted directing the State not to disturb the possession of the petitioner and not to make any further demolition. However, violations of this order by state authorities



were made at the instance of local land mafia and politicians, upon which this Hon'ble High Court vide order dated 22.12.2022, has directed the Superintendent of Police to see that the order of this court is not violated and it has further been directed to take coercive actions, including arresting those persons who violates the said order.

4. The present dispute relates to 2 acres and 52 decimals of land of C.S. Khata No. 231, C.S. Plot No.1, Tauzi No. 83 recorded in Khewat No.1 in the name of Gulabo Kuer and Khewat No. 4 Babu Banke Lal. The cadastral survey held in 1906-07 recorded it as Gair Mazarua Aam and the nature of land as 'Nala' (Drain).

5. The case of the Petitioner is that he is the rightful owner of property situated at Mauja Dhawalpura, ward No. 29, 36 old (56,68 at present), Sheet No. 247, Municipal Survey Plot Part No. 1480 under Patna Municipal Corporation. Petitioner has sold 2k 10 dhur land each to Mangal Saw and Sanjeet kumar and others through a registered sale deed executed by Ranjit Kumar Sinha and Rahul Jamuar on 09.02.2019. Petitioner has executed a general power of attorney in favour of Rahul Jamuar whereupon he executed the sale deed.

6. The petitioner admits that the property was



originally Gair Majarua Malik land belonging to the proprietary estate of Radhe Krishna Lal Jamuar, who was in possession and Basodev Sahay took this land for cultivation in the year 1944, on payment of salami followed by delivery of possession evidenced by hukumnama in the year 1944. However, the said Basodev Sahay took settlement in the name of trustee Late Madho Prasad who had entrusted to negotiate on his behalf, but payment of salami and rent to the ex-landlord was made by Basodev Sahay only.

7. The case of the petitioner is that upon aging, Madho Prasad executed *Ladavi* in 1984 and no one claimed any interest over the scheduled property. By virtue of this *Ladavi*, Basodev Sahay obtained mutation in his name and began paying rent under receipts. Being ignorant of real facts, one Umesh Prasad son of Madho Prasad obtained an illegal order from the DCLR in Mutation Appeal No. 18 of 1991-92, which was challenged in Mutation Revision No.63 of 1992-93 but it stood dismissed for default on account of Basodev Sahay's death. It is after this that the petitioner, who is son of late Basodev Sahay, filed a title suit bearing Title Suit No. 105/1999 for declaring him as the real owner of the scheduled property of many municipal survey plot Nos. including sheet no. 247, having an



area of 7 acres 16 decimal and for mutating his name in the Circle office. Subsequently, a compromise decree was prepared in view of the compromise petition filed by the petitioner which was dated 14.09.2000, in which the defendant acknowledged the plaintiff's title and possession and also admitted him to be the real owner/ raiyat (Annexure-4).

8. The further case of the petitioner is that a writ petition bearing CWJC No. 24362 of 2018 was filed by private respondents who relied upon the recommendation of the Circle Officer to the State that encroachment is being caused over land pertaining to Khata No. 231, wherein liberty was granted to the said writ petitioners to proceed against encroachers and which was to be disposed of by the Circle Officer, Patna Sadar.

9. Encroachment Case No. 44/2019-20 was initiated, directing construction over land to be stopped. However, it is submitted that the present petitioner had written a letter to the DCLR with regard to starting the work on the strength of the cadastral survey khatian, mutation survey, ladavi deed, all of which runs in the name of the ancestors of petitioner.

10. It is the further case of the petitioner that another writ petition bearing CWJC No. 20062 of 2019 was filed in which this court directed the conclusion of encroachment



proceedings and the removal of any such encroachment found. (Annexure-7). It is submitted that one MJC contempt was also filed bearing MJC No. 712 of 2020 and under the fear of contempt, Circle Officer gave a report on 12.10.2020 that Cadastral Survey records the nature of land as 'Gair Mazarua Aam Nala', but subsequent municipal survey records land as MS Plot No.1480, Ward No. 29, Area 2.65 acres and in remarks column, the names of Radhe Krishna Lal, Bhagwat Sahay, Girija Narayan and Brahmdeo Narayan are recorded. Thus, it is next submitted that land as per the Municipal Survey khatiyan appears to be raiyati land and runs in the name of Basudev Sahay in Register - II, Jamabandi No. 69 was created and rent is being paid and so long as it is not cancelled, the order to remove encroachments taking aid of the cadastral survey entry cannot be complied with, which ignores the municipal entry recording land as raiyati.

11. It is submitted that DCLR on the report of the Circle Officer, as aforesaid, referred Jamabandi Cancellation Case No. 4 of 2020-21 to Additional Collector, which was earlier impugned in the present writ petition and during the pendency of this writ, the said Additional Collector cancelled the Jamabandi through Jamabandi Cancellation Case No. 77 of



2020-21 upon report of the C.O. and DCLR, Patna City by order dated 16.08.2021 (Annexure - 17 of Supplementary Affidavit on behalf of petitioner). Thereafter, I.A. No. 1 of 2021 was filed through which the petitioner prayed for amendment of the prayer to seek setting aside the order dated 16.08.2021 passed by the Additional Collector, Patna City and the I.A. was allowed on 14.09.2022 granting interim relief in favour of petitioners.

12. To buttress his submissions, the learned counsel for petitioner has relied upon various judicial pronouncements to substantiate such submissions. It is the contention of the petitioner that State authorities are discarding municipal entry made 85-90 years back, which has been treated as raiyati land for a long time and this municipal survey holds statutory presumption of correctness under Bihar and Orissa Municipal Survey Act, 1920. For this, reliance has been placed on *Byasdeo Mandal & Ors. V Smt. Longi Devi* **Second Appeal No. 392 of 2009** and further relied on *Vijay Singh & Ors. V State of Bihar* **2015(2) PLJR 796** wherein it was held that a mere particular entry in a cadastral survey at an earlier point of time would not remain unaltered and the nature of land determined in a recent municipal survey prevails.

13. It is next contended that the ex-landlord settled the



lands way back on 01.07.1923 in favour of Radha Krishna Lal and after vesting, the state authorities themselves opened Jamabandi No.10 in Register-II in the name of his successor, namely Babu Madhav Prasad, which subsequently came to be vested in the name of Basudev Sahay in the early 90's and Jamabandi was changed and recorded as No. 69. Reliance is placed on a catena of judgments of this Hon'ble court including **Maya Devi & Others versus The State of Bihar & Others**{2014(3) PLJR 584}, **Ramnandan Singh vs. The State of Bihar & Ors.**{2014(2) PLJR 636}, **Vijay Kumar Prasad vs. The State of Bihar & Ors.**{ 2017(1) PLJR 818} to contend that a long-standing Jamabandi cannot be cancelled by state authorities through a summary proceeding of Jamabandi cancellation. Reliance is also placed on *Umesh Jha v The State and Another* **AIR 1956 Pat 425** to contend that the collector under section 4(h) of Bihar Land Reforms Act has jurisdiction to dispute the settlement and to determine its question of existence only if it is made after 01.01.1946 and in the present case, such a settlement was made by the ex-landlord long before this concerned date, thereby rendering its jurisdiction as wrongly exercised. It is also contended that Jamabandi was of 1946, whereas settlement was of year 1923, thus suo moto power



exercised by the Additional Collector under the Bihar Land Mutation Act, 2011 is to be made within a reasonable time and not after generations, which is succinctly the position as held in ***State of Bihar v Harendra Nath Tiwari* {2015(1) PLJR 606}**.

14. The learned Counsel for the petitioner relies upon the judgment passed in ***Khiru Gope v Land Deputy collector* {AIR 1983 Patna 121}** wherein it was held that State cannot cancel a settlement made by an ex-landlord, like opening a jamabandi, which is impermissible, in fact, the Collector had no jurisdiction to cancel jamabandi or remove the names of the settlers because it is similar to canceling a settlement by an ex-intermediary, which is impermissible as contended by the present writ petitioner.

15. The further submission of the learned counsel for the petitioner is that Jamabandi cancellation is primarily a dispute between the Jamabandi holder and the State of Bihar and no third party has any locus to be heard and hence I.A. No. 3 of 2023 where a third person prays for impleadment as party in this proceeding, is fit to be rejected. It has further been submitted that the argument of respondents that encroachment and Jamabandi cancellation was carried out at the instance of orders passed by the Division bench of this Hon'ble High Court



is baseless. It is submitted that no factual basis is found in either the first instance in CWJC No. 24362 of 2018 (PIL) or CWJC No. 20062 of 2019 on the basis of which Respondents made such a claim and in fact, the state itself has been treating the lands as raiyati and Jamabandi is already found to be running.

16. Reliance is placed on a Single Bench judgment of this court in *Yadunandan Singh vs. State of Bihar*{2016(3) **PLJR 237**}, where the writ petitioner was never heard, yet mandamus was issued to authorities to act in accordance with law in a PIL case, whereafter it was held that when a complaint is referred for adjudication by statutory/administrative authorities, it does not require the authority to proceed in a mechanical manner, rather, it is required that the matter be examined upon its facts and judicial pronouncements on that issue. Thus, it is now submitted that the Additional Collector, DCLR or CO could not have started Jamabandi cancellation in the teeth of the Municipal Survey entry of 1922-23.

17. It has been submitted that during the pendency of the writ petition Additional Collector cancelled the Jamabandi, and for that purpose I.A. No.1 of 2022 was filed by the petitioner seeking amendment of the prayer to set aside this order cancelling the Jamabandi, and this Court, despite



availability of statutory remedy of Appeal under the Act, allowed amendment via the said I.A. Heavy reliance is placed on ***M/S Tis Fab Ltd. vs. State of Bihar***{1998(2) PLJR 148} where this court has entertained the writ petition at the admission stage and the parties have exchanged affidavits, therefore, it is held inappropriate to dismiss it on the ground of an alternative remedy being available. The counsel also relies on ***M/S Godrej Sara Lee Ltd. vs. Excise and Taxation Officer-cum- Assessing Authority***{AIR 2023 SC 781}, wherein the Hon'ble Apex Court has held that where the controversy is purely a legal one and it does not involve disputed questions of facts but only questions of law, then it should be decided by the High Court instead of dismissing it on the ground of an alternative remedy being available.

18. It is also submitted that as per the report of Circle Officer, findings were given that the land was raiyati, (Annexure-8) which is the basis of the order of DCLR and Additional Collector for cancellation of Jamabandi which is wholly impermissible, amounting to a contrary view on the same materials. It has furthermore been submitted that the show cause notice for cancellation of Jamabandi is quite mechanical and thus, is illegal in view of settled law laid down in ***Richesh***



Anand vs. State of Bihar {2019(3) PLJR 624} and ***Nityanand Sharma & Ors. vs. State of Bihar & ors. {2020 (5) BLJ 529}*** wherein it is held that as per sec. 9 (1) of Bihar Land Mutation Act, 2011 and its Rule 19(3), initiation of proceedings must be based on satisfaction of materials before the Collector or it must not be in contravention of any executive instruction. Thus, it is contended that notices in this case do not comply with these requirements (Ann-14 and Ann-16 to Supplementary Affidavit).

Submissions on behalf of Respondent no. 3 to 7

19. The learned G.P.-14 for the respondent- state submits by referring to the counter affidavit filed on behalf of respondent no 3 to 7 that the present writ petition is vague and obnoxious. It is submitted that the writ petition has been filed for setting aside the order dated 05-12-2020 passed by D.C.L.R, Patna City in Jamabandi cancellation case no 04/2020-21, whereby and whereunder the D.C.L.R, Patna City had recommended the cancellation of the Jamabandi bearing No- 69 running in the name of Basudeb Sahay, S/O - Baijnath Prasad and Jamabandi no 337 running in the name of Ranjit Kumar Sinha, S/O Akhilesh Prasad.

20. The learned counsel for the respondent- state submits that the land in question is Gaimajarua Aam Land and



its Nature is 'Nala'. The D.C.L.R, Patna city vide letter dated 05.12.2020 has sent the record of the encroachment case no-44/2019-2020 to the Additional Collector, Patna in view of the recommendation made by the Circle Officer, Patna Sadar for the cancellation of Jamabandi no. - 69 and 337, created in the name of Sri Basudev Sahay and Ranjit Kumar Sinha respectively.

21. It is next submitted that Additional Collector Patna issued a notice to the parties, where the parties appeared and after considering all the facts and circumstances of the land in question, held that the land is Gairmajarua Aam Land and in the survey khatiyaan it is mentioned as 'Nala'. It is further submitted that the nature of land being public land and the creation of Jamabandi in view of converting the municipal plot and allotting it to any raiyat without any order passed by the competent authority is not tenable in the eyes of law.

22. The learned counsel for the respondent- state submits that the Additional collector, Patna, taking into account the facts and circumstances as aforesaid, passed order dated 16-08-2021 in Jamabandi Cancellation case no- 77/2020-21 whereby the Jamabandi No - 69 and 377 has been cancelled.

Submissions on Behalf of Respondent No. 8

23. The learned counsel for the respondent no. 8



submits that the respondent no. 8 is the intervener petitioner and through an I.A bearing I.A no 03/2023 and by order no.8 dated 08.08.2023, the intervention petition was allowed and the intervener petitioner was made respondent no.8 and then he filed a counter affidavit.

24. The learned counsel for the respondent no. 8 submits that the writ application is not maintainable and is fit to be dismissed. Relying on the judgment passed in the case of **Sharda Devi vs. The State of Bihar, reported in 2023(1) PLJR 315** it has been contended that when a right has been created under a statute the same may be exhausted before enforcing the discretionary remedy under Article 226 of the Constitution of India. The writ petitioner has not exhausted the remedy, nor has he filed an appeal under section 9(6) of Bihar Land Mutation Act, 2011 before the Collector against an order passed by the Additional Collector on 16.08.2021. It has further been submitted that the order is well within the jurisdiction of the Additional Collector who passed the order of cancellation. Though the writ petitioner has claimed this land only on the basis of Hukumnama of 1944, however no date of such Hukumnama was mentioned and barring assertion that it was made in 1944, there is nothing.



25. The learned counsel for the Respondent no .8 submits that the Hukumnama of 1944 has not been annexed in the writ application, therefore claiming the land by the writ petitioner without any documentary proof of Hukumanama has no meaning and the same cannot be accepted. It has further been submitted that the State has filed a counter affidavit stating therein in paragraph no. 17, inter alia stating therein that considering the facts and records it has been concluded that the land in question is Gair Majurua Aam land in the survey Khatihan. It is mentioned as 'Nala'. Thus, it is a public land and the creation of jamabandi in view of converting it into a municipal plot or allotting any right on it, is not tenable in law. There has been no rent fixed with regard to the land in question. Therefore, it is an admitted fact that the aforesaid land was Gair Majrue Aam land which has been supported by sending a reply under the Right to Information as well as also mentioned in the contempt application that the said land was Gair Majrue Aam land.

26. The learned counsel for the respondent no.8 further submits that the judgment cited in 2014(3) PLJR 58 has not been applied in the case of the petitioner as the said judgment has been passed under Bihar Land Reforms Act, 1950



in respect to Section 4(g) and 4(h). The learned counsel for respondent no. 8 submits that the Land Reforms Act, 1950 has not been applied in the case of the petitioner because the facts and circumstances of the case are different.

27. It has been submitted, relying upon an unreported judgment of a Supreme Court passed in the case of R.V.E. Venkata Challa Gounde vs. Arumigu V S Wesaraswami & Ors. decided on 08th October, 2003, that Gair Majrua lands cannot be converted into Raiyati lands. The learned counsel has also relied upon the judgment passed in Civil Appeal No. 1132/2011, Jaspal Singh & Others vs. The State of Punjab & Others on the same point and also in CWJC No. 13579 of 2017, Achutanand Yadav vs. The State of Bihar & Others.

CONSIDERATION

28. Having heard the learned counsel for the parties, one of the main thrust of the argument on behalf of the petitioner is on the fact that the even if the land was entered as Gair Majrua Malik with nature "Nala", the same can change its nature over the period and once the entry in favour of the petitioner stood for long years on the basis of the Hukumnama and then by the civil court, the same cannot be cancelled in a summary proceedings by a revenue authority.



29. The fact that the Jamabandi was standing in the name of the petitioner since long has not been disputed and now at the behest of the private respondents the same was cancelled in the midst of this proceedings by the authorities relying upon the entries of C S Khatiyani. It has been noted that the creation of Jamabandi was done by the State authorities and they had not questioned the same till it was challenged by the private respondent.

30. The act of cancellation of jamabandi during the pendency of the writ petition in the opinion of this Court amounts to overreaching the authority of this Court and such act cannot be said to be an isolated act as the authorities were well aware of the pendency of the writ application yet after 6 months of the filing of the present case, it had the audacity to pass an order when the writ petitioner had already approached this Court for adjudication of the grievances.

31. It is a well-settled law that when a dispute is pending before a Court of Justice no action should be taken by an Authority which would disturb the Court of Justice. It would be apt to refer to the Full Bench judgment of this Hon'ble Court passed in the case of *The King vs. Parmanand and Others*, reported in *AIR (36) 1949 Patna 222*, paragraph '23' of the said



judgment observes as under:-

*".....It is a cardinal principle that when a matter is pending for decision before a Court of justice nothing should be done which might disturb the free course of justice and this Court will discountenance any attempt on the part of any executive official, however high he may be, to prejudge the merits of a case and to usurp the functions of the Court which has got seisin of the case..
..."*

32. In view of the aforesaid, the passing of the impugned order dated 16.08.2021 amounts to overreaching the authority and also, in view of the aforesaid judgment, is held to be illegal and therefore is set aside.

33. Now, the question as to whether the Municipal entries can be ignored and the same can be cancelled by cancelling the Jamabandi in favour of the petitioner. At this juncture the reliance placed by the learned counsel for the petitioner in the case of ***Umesh Jha v The State and Another, (Supra)*** to contend that the collector under section 4(h) of Bihar Land Reforms Act has jurisdiction to dispute the settlement and to determine its question of existence only if it is made after 01.01.1946 and in the present case, such a settlement was made by the ex-landlord long before this concerned date, thereby



rendering its jurisdiction as wrongly exercised, seems to be apt. In the opinion of this court also, any Jamabandi created on the basis of a settlement said to have taken place way back prior to vesting of the Jamindari, even if the same was not permissible in law, the same needed to be challenged either immediately or if with delay then the proper forum of approaching the competent civil court would be the remedy for cancellation of the settlement first and then cancellation of Jamabandi.

34. Thus, annulling the Jamabandi in effect annulled the settlement and subsequent transfers and the Collector under the Act does not have any authority to question its veracity, if the same is disputed. Para 31 of the aforesaid judgment of ***Umesh Jha v The State and Another, (Supra)*** is relevant and is reproduced here -

"For the reasons given above, I am of the opinion the Additional Collector had no jurisdiction to entertain and decide the question that the settlement in the present case, which is prima facie shown to have been made much before the First day of January, 1946, was actually made after that date and his order annulling the settlement was, therefore, without jurisdiction. This is, therefore, a fit case where a writ of certiorari should issue quashing the order of



the Additional Collector passed in that behalf. ”

35. The law on cancellation of long standing Jamabandi is no more res integra. There are a series of judgments which goes on to hold that any long standing Jamabandi cannot be cancelled in a summary proceeding. The case of **Khiru Gope & Ors. (Supra)** where a design bench of this Court dealing with the power of the Collector in cancellation of Jamabandi. Para- 16 of the said Judgment is reproduced here for reference, which completely covers the case of the writ petitioner.

*“ 16. The view taken in **Harihar Singh’s case (1978 BBCJ (HC) 323)** has been reaffirmed by another Bench decision of this Court in the case of **Jamaluddin Ahmed v. Subdivisional Officer, Khagaria (1979 BBCJ (HC) 605)**. On the strength of these two Bench decisions of this Court, it is obvious that the Land Reforms Deputy Collector had no jurisdiction or power to cancel the Jamabandi and remove the names of Petitioners Nos. 1 and 2 from the tenant’s register, the effect whereof in a way was to cancel the settlement by the ex-intermediary in favour of the Petitioners Nos. 1 and 2.”*

36. For the reasons stated above, the case of the



writ petitioner is fully covered with that of the ratio of the case of Khiru Gope and the judgment on which the said Court relied upon, i.e., *Harihar Singh vs. The State of Bihar*, reported in *1978 BBCJ (HC) 323* to the extent that the Additional Collector does not have the authority to cancel the long standing Jamabandi in favour of the ancestors of the writ petitioner and therefore the order dated 05.12.2020 Passed by the District Collector Land Reforms is set aside.

37. In view of the above, both the impugned orders dated 05.12.2020 and 16.08.2021 stands quashed.

38. The writ application is allowed. The Jamabandi standing in the name of the petitioner’s father be restored and the name of the writ petitioner be substituted therein. The State is further directed not to disturb the peaceful possession of the petitioner over the land in question.

39. The pending Interlocutory applications, if any, stands disposed of.

(Sourendra Pandey, J)

manoj/-

AFR/NAFR	AFR
CAV DATE	08.05.2026
Uploading Date	21.05.2026
Transmission Date	NA

