IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P. (C) No. 1341 of 2008

Harish Chandra Kushwaha, son of Late Baijnath Mahto, resident of Village- Chengra, P.O. & P.S. Ichak, District- Hazaribagh

... Petitioner

-Versus-

1. State of Jharkhand
2. Commissioner, North Chhotanagpur Division at Hazaribagh
3. Additional Collector, Hazaribagh
4. Circle Officer, Ichak, Hazaribagh
5. Thakur Mahto, son of Late Dungar Mahto, resident of Village- Khaira Karma, P.O. & P.S. Ichak, District- Hazaribagh **... Respondents**

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner : Mr. Bhaiya Vishwajeet Kumar, Advocate
Mr. Shailendra Jit, Advocate
Mr. Sachin Mahato, Advocate
For the State : Mr. Vineet Prakash, A.C. to S.C.-IV
For Respondent No.5 : None

08/21.09.2026 Respondent no.5 has appeared through Mr. Awani Kant Prasad, learned Advocate. Vide order dated 06.09.2019, the Coordinate Bench of this Court directed Mr. Awani Kant Prasad to serve counter affidavit of respondent no.5 upon the learned counsel for the petitioner, however, said order was not complied with and on 06.05.2025, again Coordinate Bench of this Court had directed the learned counsel for respondent no.5 to comply with the order dated 06.09.2019.

2. Mr. Bhaiya Vishwajeet Kumar, learned counsel appearing for the petitioner submits that till date counter affidavit filed by respondent no.5 has not been served upon him.

3. Today on repeated calls, Mr. Awani Kant Prasad has not responded on behalf of respondent no.5.

4. In view of aforesaid two orders, which has not been complied with, prima facie it appears that respondent no.5 is not interested in proceeding with this matter as two orders passed by the Coordinate Bench of this Court has not been complied with by respondent no.5.

5. Today again on repeated calls, nobody has responded on behalf of respondent no.5. This matter is of the year 2008. In view of that, this writ petition is being heard and decided in absence of respondent no.5.

6. Heard Mr. Bhaiya Vishwajeet Kumar, learned counsel appearing for the petitioner and Mr. Vineet Prakash, learned counsel appearing for the State.

7. This writ petition has been filed under Article 226 of the Constitution of India for quashing the order dated 04.11.2003 passed by the Commissioner, North Chhotanagpur Division at Hazaribagh in Zamabandi Cancellation Revision No.97/2000. The further prayer is made for restraining the respondents from acting pursuant to and in furtherance of impugned order dated 04.11.2003 and interfere with peaceful possession of the petitioner appertaining to Plot nos.131, 199, 141, 334, 173, 324, 180, 336 and 189 of Khata nos.1, 2 and 13 of Village Chengra situated at Village Chengra, P.S. Ichak, District-Hazaribagh.

8. Mr. Bhaiya Vishwajeet Kumar, learned counsel appearing for the petitioner submits that the land appertaining to Plot nos.113, 131, 136, 138 and 194 of Khata no.1 of Village Mouza Chengra, total area 3.09 acres was recorded in revisional survey khatian in the name of Tukan Mahto and others, as a Zirat and Bakast land. He further submits that Tukan Mahto was son of Karu Mahto and Karu Mahto had a brother Khewan Mahto. He submits that

Tukan Mahto was the great grandfather of Hari Chandra Kushwaha, the petitioner. The petitioner along with other descendants succeeded to and came into the possession of land as raiyat and has been paying the rent to the State of Bihar after vesting of Zamindari. He then submits that the recorded Khewatdar had never made any surrender of his Bakast land to Maharaja of Ramgarh. On the date of vesting, the petitioner and others being the descendant of Tukan Mahto were held to be raiyat. He next submits that the petitioner along with co-sharer made an application for fixation of rent in his name, which was registered as I.R.R. no.10/1998-99 and the Circle Officer issued notice inviting objection in view of the circumstances that respondent no.5-Thakur Mahto was also paying rent in relation to the said plot. He also submits that the Circle Officer has directed the Circle Inspector and Karamchari to submit a report about the petitioner. The Circle Inspector submitted a report to the Circle Officer of Ichak Anchal, stating therein that in the survey record of right and khatian, the lands in question were recorded as Zirat and Bakast land Tukan Mahto and others, but in Register II, without any valid order by the competent authority, after cutting down the earlier raiyat, name of Dugar Mahto was inserted and it was also reported that in absence of any registration of deed of surrender, the claim of raiyati settlement by the Raja of Ramgarh was impossible. The said report dated 18.03.1998 is contained at Annexure-1 of the petition. He further submits that after the notice, the respondents appeared and after hearing the parties, the Circle Officer vide order dated 20.05.1998 held that the documents filed on behalf of Dungar Mahto was not genuine and, therefore, the rent should be received by the petitioner, who was found in possession. The said order

dated 20.05.1998 is contained at Annexure-2 of the petition. He submits that the Circle Officer has recommended the matter to the Land Reforms Deputy Collector and pursuant to that, the Land Reforms Deputy Collector, Hazaribagh has passed the order dated 31.07.1998 holding that the rent should be allowed to be issued in the name of the petitioner. The order dated 31.07.1998 is contained at Annexure-3 to the petition. He next submits that thereafter respondent no.5 aggrieved by the order of the Land Reforms Deputy Collector, Hazaribagh moved before the Additional Collector in appeal which was registered as M.A. Revenue Appeal No.31/1998. He submits that in memo of appeal, the petitioner was described by name of Harish Chandra Kushwaha, son of Baijnath Mahto, resident of Village Chengra, P.S. Ichak. The said appeal was dismissed by the Additional Collector vide order dated 12.10.2000 upholding the order of the Land Reforms Deputy Collector, Hazaribagh. The order dated 12.10.2000 is contained at Annexure-4 of the petition. He also submits that thereafter respondent no.5 moved before the Commissioner for revision of the said order against Harish Chandra Mahto, which was registered as Demand Cancellation Revision No.97/2000. He submits that the said revision application was admitted on 01.04.2002, however, subsequently the said revision application was dismissed for default vide order dated 03.09.2002. He further submits that on 09.09.2002, a restoration petition was filed by respondent no.5-Thakur Mahto, in which, notice has ben issued to the petitioner. He next submits that in the said restoration petition, notice upon the petitioner has not been served and no proper steps have been taken for notice and even on the wrong address, notice has been sent. He submits that thereafter straightway,

prayer was made on behalf of respondent no.5 before the Commissioner to take substituted steps of notice by way of paper publication on 05.08.2003. He submits that in the revision application as well as in paper publication, the address of the petitioner was not properly described. He next submits that even the revision power is not there to the Commissioner, however, he has exercised the power. To buttress this argument, he refers to Section 16 of the Bihar Tenant's Holdings (Maintenance of Records) Act, 1973. He submits that the said power is there with the Collector of the district. He also submits that it has been held by this Court in the case of ***Sunita Devi v. State of Jharkhand and others***, passed in ***W.P.(C) No.3785 of 2016*** vide order dated 02.04.2024 that the revisional authority under the Bihar Tenant's Holdings (Maintenance and Records) Act, 1973 is the Deputy Commissioner. He then submits that in the case of ***Chitranjan Das Mahto & others v. The State of Jharkhand & others***, reported in ***2018 0 Supreme (Jhk) 1434***, the learned counsel for the State also admitted the statutory provision to the effect that the revision before the Commissioner is not maintainable. He further submits that relying on the above two judgments, the Coordinate Bench of this Court holding the same and quashed the order passed by the Commissioner vide order dated 02.05.2024 in W.P.(C) No.5180 of 2016. On these grounds, he submits that the impugned order may kindly be set-aside.

9. Mr. Vineet Prakash, learned counsel appearing for the State submits that in light of Section 14 of the Act, 1973, the power of mutation is to be exercised by the Circle Officer and in light of Section 15 of the Act, 1973,

appeal lies before the Land Reforms Deputy Collector against the order of the Circle Officer and under Section 16 of the Act, 1973, the power of revision is there to the Collector or Deputy Commissioner. He submits that it appears that the Circle Officer has recommended the matter to the Land Reforms Deputy Collector and pursuant to that, the Land Reforms Deputy Collector has passed the order.

10. In view of the above submissions of the learned counsel for the parties, it transpires that the petitioner is said to be raiyat as has been held by the Land Reforms Deputy Collector pursuant to the report submitted by the Circle Officer and in the appeal, the appellate authority has also held so. Section 14 of the Act, 1973 clearly suggests that the power of requisition and disposal of mutation case is there to the concerned Circle Officer. Section 15 of the Act, 1973 prescribes the appeal and that power is there with the Land Reforms Deputy Collector. Section 16 of the Act, 1973 is the revisional power vested with the Collector and even the suo motu power of revision is there to the Collector of the district and that power is further there to the Collector to examine any illegality of the order in light of Section 16. Further, it has been pointed out that although the revision was dismissed for default, however, without restoration, final order has been passed cancelling the zamabandi of the petitioner.

11. Section 16 of the Bihar Tenant's Holdings (Maintenance of Records) Act, 1973 reads as under:

> ***"16. Revision**.- The Collector of the district may, on an application made to him in this behalf or for the purpose of satisfying himself as to the legality or propriety of any order made under this Act or the rules made thereunder by any authority or officer call for and examine the record of any case pending before or disposed of by such authority or officer and*

pass such order as he thinks fit :

Provided that the Collector shall not entertain any application from any person, aggrieved by any order, unless it is made within thirty days from the date of the order;

Provided further that no order modifying, altering, or setting-aside, any order made by such authority or officer shall be passed by the Collector unless the parties concerned have been given a reasonable opportunity of being heard."

12. From reading of Section 16 of the Act, 1973, it is crystal clear that the power of revision is vested upon the Collector of the district and not on the Commissioner of the Division and in absence of any power vested upon the Commissioner of the Division by any statute, to entertain a revision, the Commissioner has committed gross illegality in entertaining and passing the final order in Cancellation Revision No.97/2000.

13. It further transpires that although notice has been issued on the petition for restoration, however, that has not been served upon the petitioner. It has been pointed out that even the name and address of the petitioner have been wrongly mentioned. It appears that respondent no.5 of its own filed a copy of the public notice in the paper. Even the satisfaction of the Commissioner with regard to service of notice has not been recorded in the order. From the order-sheet annexed with the writ petition, service report is also not there.

14. There is no whisper regarding the satisfaction of the Commissioner about non-service of notice of the petitioner or to the effect that the petitioner is avoiding service, despite repeated efforts by the Commissioner. Before dealing with application under Order V Rule 20 C.P.C. it was duty of the Commissioner to record its satisfaction that the petitioner was avoiding the service of notice. The Commissioner did not bother to record the statement of process server who had taken the summons for service on the petitioner

at his address shown in the petition.

15. It has been pointed out that the petitioner's correct address was not disclosed even the Commissioner has not framed issues with regard to the service of notice to the petitioner.

16. The Hon'ble Supreme Court in the case of ***Smt. Yallawwa v. Smt. Shantavva***, reported in ***AIR 1997 SC 35*** held that the trial court could not have almost automatically granted the application for substituted service without taking steps for serving the respondent by ordinary procedure as laid down by Order V Rules 12, 15 and 17 of the C.P.C. It must be kept in view that substituted service has to be restored as the last resort when the concerned party cannot be served in the ordinary way and the Court is satisfied that there is reason to believe that the concerned party is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way. Evidence has also not been led on the issue of service of notice.

17. For the aforesaid reasons, the Court finds that the revisional power is not there with the Commissioner and without restoring the said revision application, final order has been passed cancelling zamabandi of the petitioner that too in absence of proper petition.

18. In view of the above, it is crystal clear that the order has been passed by the Commissioner without jurisdiction and further without following procedure of law and, as such, the order dated 04.11.2003 passed by the Commissioner, North Chhotanagpur Division at Hazaribagh in Zamabandi Cancellation Revision No.97/2000 is, hereby, quashed.

19. Accordingly, this writ petition is allowed in above terms and disposed of.

20. Pending I.A., if any, is disposed of.

(Sanjay Kumar Dwivedi, J.)

Dated: 21st September, 2026
Ajay/ ***A.F.R.***

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