

केस का सं० और तारीख	आदेश ओर पदाधिकारी का हस्ताक्षर	आदेश पर की गई के बारे में टिप्पणी, के साथ
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IN THE COURT OF THE DEPUTY COMMISSIONER, RANCHI
Misc Case No.- 18/2018-19

Sudhir Kumar Son of Late Gupteshwari Prasad
R/o Flat No.-203 & 204, Shalimarbagh,
P.O. & P.S. Pundag, District Ranchi Petitioner
-Versus-
State ... Opp. Party

ORDER

Present proceeding has been initiated on the direction of the Hon'ble High Court passed on 10.05.2018 in WP (C) No.-3123/2014, wherein the Hon'ble Court after quashing the order dated 20.08.2015 passed by the Deputy Commissioner, Ranchi, accepting the recommendation made by the Addl Collector, Ranchi for cancellation of Jamabandi running with respect of land under Khata No.-383, Plot No.-446 area 47 ½ Decimals of Village Pundag, Thana No.-228, District Ranchi in name of Bishwambhar Prasad; has directed present petitioner to appear before the Deputy Commissioner, Ranchi on 13.07.2018 alongwith a copy of the order and a petition making out his case

According to the learned Advocate appearing on behalf of the petitioner:-

The land in question being the part and portion of Khata No.-383, Plot No.-446 part area 16.67 Acres, situated in village Pundag, Thana No.-228, District Ranchi stands originally recorded as Gairmajarua Khas in the record of right. Out of the land under Khata No.-383, Plot No.-446, 462 and 492 was

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29.12.2020

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settled by the ex-landlord through a registered deed of Kabuliat dated 23.3.1946, which is apparent from the deed of surrender dated 22.04.1948 vide registered deed No. 2164. However the said land could not be retained by the raiyats for long and was eventually surrendered to the paramount title holder i.e. the land owner by a registered deed of surrendere and thus the aforesaid land became Bakast/Rayati land of the landlord.

Subsequently the landlord created a Trust namely Chinta Mani Trust and the land was sold to Sheikh Miyanjan Ali in the year 1954 vide deed No. 2858 dated 28.04.1954 and thereafter the said Miyanjan has sold 47 ½ Decimals out of the Plot No. 446 under Khata No. 383 of Village Pundag, Thana No. 228, Dist - Ranchi to one Shri Bishwambhar Prasad through registered deed of sale bearing Sale Deed No.- 2137 dated 23.02.1983 and ultimately the said Bishwambhar Prasad transferred 10 Kathas i.e. 16.67 Decimals out of the same to the petitioner vide registered deed of sale bearing Sale Deed No.-4837 dated 03.05.2001.

The vendor of the petitioner Bishwambhar Prasad got his name mutated vide Mutation Case No.-221 R 27/1990-91 and his name was entered at Vol.- VIA, Page No.-59 of the Register II. The petitioner too applied for getting his name mutated in the year 2001, but the matter kept pending for no reason up to the year 2014, and so having no other option left, the petitioner filed writ application before the Hon'ble Jharkhand High Court bearing no. WP (C) 3123/2014 which was ultimately disposed of on 10/05/2018 quashing/setting aside order of cancellation of jamabandi dated 20.08.2015 passed by the Deputy Commissioner, Ranchi accepting the recommendation of Addl. Collector Ranchi.

In the year 2012, the petitioner came to know that there have been some changes in the jurisdictional power of Ratu

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Anchal and Nagri Anchal and the area comprised within Village Pundag came under the jurisdiction of Nagri Anchal, from Ratu Anchal. The petitioner immediately approached the Circle Officer, Nagri for passing appropriate orders but he came to know the record has not yet been sent to the Ratu Anchal to Nagri and as the record of the matter was misplaced and could not be traced and a supplementary record was opened on the basis of documents filed by the Petitioner by the Circle officer, Ratu and the same was sent to the Nagari Anchal vide letter no. 744 dated 26.12.2012, but no order was passed upon the same prior to filing of the writ application by the petitioner.

The normal rule regarding the law distinguishing a mutation proceeding and Jamabandi (rent fixation)/cancellation of Jamabandi is that when there is change by way of succession/partition or other testamentary succession or inter vivos transfer like sale, gifts, lease, mortgage etc., such transfer is in terms of the mandates of Section 14 of the Transfer of Property Act, 1882. The law recognizes the cancellation of Jamabandi in terms of section 4 (h) of the Bihar Land Reforms Act (Now Jharkhand) with certain riders. The proceeding U/s 4 (h) of the Bihar Land Reforms Act, has to be initiated if such transfer has been made with a view to defeat the provision of Bihar Land Reforms Act after giving reasonable opportunity to the person in whose name the Jamabandi runs. The initial authority who enjoined with the power of mutation is circle officer which is followed by the appeal before L.R.D.C. (Land Deputy Collector) and revision before the Collector of the district, while the proceeding for cancellation of Jamabandi is initiated by L.R.D.C., therefore it is crystal clear that mutation and cancellation of Jamabandi cannot be collateral. It is well settled principle of law that for initiation of cancellation of settlement under 4 (h) and 6(1) of Bihar Land Reforms Act, 1950, notice is required to be served upon the person, who has

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settled the land meaning thereby that in this instant case the ex-zamindar Badalal Kandarp Nath Shahdeo and the settlee (Sheikh Miyanjan) are required to be noticed before the initiation of proceeding under Section 4 (h), but no notice has been issued to them, rather, subsequent purchaser has erroneously been noticed, who has already sold the land 18 years back and has no interest over the land.

The State Government had on earlier occasion soon after vesting of Jamindari right had resolved not to disturb the settlement by erstwhile landlords up to 5 Acres of land. Vide letter dated 15th April, 1953 contained in letter No. E/XVII-109/53- 1839-LR Patna, it has been directed that, it is not necessary to institute any enquiries in each and everyone's case under section 4 (h) of the B.L.R. Act, 1950 because to do so would only mean a great deal of harassment to a large number of raiyats who had taken settlement of the land in the last seven years, such Nilami Holdings on being purchased Jamindar becomes his "Bakast" land and on the vesting the Jamindari in the State, he could have retained it as "raiyaati land" under as section 6 of the Land Reforms Act. Therefore, if the Jamindar has made any settlement with regard to such land, it cannot be said to have been done with the object of defeating any of the provisions of the Act.

The Government vide letter 433/55-6650-L.R. Patna dated 22nd November, 1955 had directed the Collectors to avoid unnecessary trouble to the persons who took settlement of a small of lands from the out going landlords.

In case at hand the land in question becomes "Bakast Land" of the then landlord, when Asuruddin and SK. Miyanjan surrendered the land in question through the registered deed dated 23.03.1946 and after vesting of Zamindari rights, the land in question would have otherwise become raiyaati holding of the

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outgoing landlord in view of Section 5, 6 and 7 of the Bihar Land Reforms Act, 1950.

As per the circular dated 1st October, 1964 of the Government of Bihar, Department of Revenue contained in letter No. E/RP-1052/64-919-LR Patna, the State is not empowered to re-open the proceeding when it had never preferred any appeal. Therefore the initiation of the proceedings by any executive order suo motto or even on any application by any person is forbidden.

So far the order dated 20.08.2015 is concerned, there is no any finding in the order dated 20.08.2015 as to how the transfer of the land having been made by the ex-intermediary with a view to defeat the provisions of the BLR Act 1950 or catching a higher compensation and thereby causing loss to the State.

On the other hand according to the Learned Government Pleader appearing on behalf of the State :-

Present petitioner Sudhir Kumar filed a petition for mutation of the land of Mauza -Pundag, P.S. No. 228, Khata No. 383, Plot No. 446, Area-10 Kathas in his name, which was registered as Mutation Case No.265R27 of 2005-06. The then Circle Officer, Ratu rejected the said mutation application preferred by the present petitioner in terms of order dated 10.05.2005 and against the aforementioned order, the present petitioner preferred Mutation Appeal No.-40 R 15/2005-06, in the Court of the Land Reforms Deputy Collector, Sadar, Ranchi, wherein and whereunder the then learned Land Reforms Deputy Collector, Sadar, Ranchi set aside the said order of the then Circle Officer, Ratu and remanded the case to the Circle Officer, Ratu for passing a fresh order after hearing the party in the light of the provisions of the Bihar Land Reforms Act, 1950 with regard to creation of jamabandi of the 'Gair Mazrua Malik' land and in the light of the order passed in W. P. (C) No.1119 of

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2006 and W.P. (C) No.4895 of 2007.

The Circle Officer, Nagri requested the Circle officer, Ratu to send the Mutation Case No.265 R 27 of 2005-06 vide his letter No.776 (ii), dated 17.12.2012 and subsequent reminder nos. 967 (ii), dated 16.09.2014 and 1142 (ii), dated 05.11.2014. The Circle Officer, Ratu informed Circle Officer, Nagri vide his Letter No.744 dated 20.12.2012 that the said mutation case record no.- 265 R 27/2005-06 was sent to the Land Reforms Deputy Collector, Sadar, Ranchi & it was not available in the Circle officer, Ratu. The petitioner, Sudhir Kumar, had produced a photocopy of the Certified copy of the said mutation case record before Circle officer, Nagri and made request to take further necessary action on the basis of the same. Accordingly on the basis of the said document submitted by the petitioner, a shadow case record of the mutation case no. 265R27 of 2005-06 was opened. Circle Officer, Nagri Anchal, obtained an enquiry report from the concerned Revenue Karmchari through the Circle Inspector upon the matter.

The learned Circle Officer, Nagri examined the case of the petitioner thoroughly and held that the then Circle officer, Ratu had got the matter enquired by the concerned Revenue Karmchari as the as Circle Inspector, Ratu and had taken necessary action for annulling the doubtful jamabandi of the land of Mouza - Pundag, Thana No.228, Khata No. 383, Plot No. 446, Area-47 decimals standing in the name of the so called jamabandi raiyat, Bishambhar Prasad Singh, Son of Bindeshwar Prasad Singh in the Register-II by initiating Miscellaneous Case No.37 of 2002-03.

The said so called jamabandi raiyat was issued notice to produce the paper/ document in support of his claim over the land in question, but no paper/document was produced before

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the Circle Officer, Ratu. It has been held on enquiry that the land in question stands recorded as 'Gair Majurwa Malik' in the Revisional Survey Record of Rights and the nature of the land is 'Tongri' which cannot be settled.

The matter was examined by the then Land Reforms Deputy Collector, Sadar, Ranchi as well as by the then learned Additional Collector, Ranchi. They recommended to annul the said illegal jamabandi of the 'Gair Majurwa Malik' land of the government property. The then Learned Deputy Commissioner, Ranchi has annulled the said illegal doubtful Jamabandi of the 'Gair Majurwa' land in terms of order dated 20.08.2015 and since the petitioner, Sudhir Kumar, has purchased the land in question from the said so called jamabandi raiyat, Bishambher Prasad Singh, hence the application of the petitioner for mutation with respect of land of Mouza-Pundag, P.S. No.228, Khata No. 383, Plot No.446, Area-10 Kathas has been rejected by the Circle Officer, Nagri upholding the order then Circle Officer, Ratu in terms of order dated 05.07.2016. Since no appeal or revision has been preferred against the aforesaid order, the same has attended finality.

The land in question being gair majurwa has been vested in the State free from all encumbrances by virtue of the provisions laid under the Bihar Land Reforms Act, 1950 and the petitioner has failed to prove through cogent evidences, whether any return with respect of land in question has been filed by the outgoing intermediary's. In absence of valid return, it can safely be presumed that the land in question vested in the State and the Jamabandi with respect of the land in question has been fraudulently created in the name of the predecessor of interest of the petitioner.

Having heard the parties and on going through the materials

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available on record, I find that, the claim of the petitioner that the land in question became the Bakast land of the ex-landlord is not acceptable in view of the fact that, it would be apparent that the land under Khata No.-383, Plot No.-446, 462 and 492 area 4.40 Acres of Village Pundag has been alleged to be surrendered by Sheikh Ashmuddin and Shielk Miyanjaan. While the land measuring an area of 4.01 Acres of Plot No.-446 under Khata No.-383 of Village Pundag has been claimed to have been settled on the basis of Kabuliat executed by Shiekh Miyanjaan. Hence both the land are not same. So, the aforesaid claim of the petitioner falls flat on the ground. It is settled law that Kabuliat i.e. counterpart engagement is executed unilaterally conforming the terms of the settlement made to a person and as the petitioner has failed to bring on record any such document suggesting that the land in question has been validly settled with the predecessor in interest of the petitioner, as such only on the basis of the unilaterally executed Kabuliat, it cannot be presumed that the land has been validly settled with the predecessor in interest of petitioner. Apart from above, the petitioner has also failed to prove through cogent evidence that the ex-landlord had filed return showing the land in question settled with the predecessor in interest of the petitioner.

Hence for the reasons aforementioned, I do not find any merit in the application filed by the petitioner and so the proceeding of the instant case is dropped.

Communicate the order to the Deputy Collector Land Reforms, Sadar, Ranchi and Circle Officer Nagri Anchal, Ranchi for information and necessary action.



Deputy Commissioner,
Ranchi

Dictated and Corrected by

Deputy Commissioner,
Ranchi