

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16494 of 2018

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Ramowtar Lakhotia, Son of late Chaturbhuj Lakhotia, resident of Kali Mela Road, Ward No. 7, P.O. Forbesganj, District- Araria, 854318 one of the Partners of M/s Shree Mahabir Cold Storage a Partnership firm having it's place of Business at Dr. Ram Manohar Lohia Path, P.O. Forbesganj, District- Araria through it's authorized attorney namely Ravindra Lakhotia, Son of Ramovtar Lakhotia, Resident of Kali Mela Road, Ward No. 7, P.O. Forbesganj, District- Araria-854318.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Old Secretariat, Bailey Road, Patna.
2. The Principal Secretary Cum Commissioner, Department of Revenue and Land Reforms, Government of Bihar, Patna
3. The District Magistrate Cum Collector, Araria.
4. The Additional District Magistrate Cum Collector, Araria.
5. The Circle Officer, Forbesganj, Araria.

... .. Respondent/s

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Constitution of India---Article 226, 300A, 21, Entry 45 List II Schedule VII---Bihar Land Mutation Act, 2011---section 2 (1), (2), (22), (23), (26), 9(1), 11, 16, 21 and 23 --- Bihar Land Mutation Rules, 2012---- rule 13(11) and 13(12)—challenge to validity of Section 9(1) of the Act, 2011 and Rules 13(11) and 13(12) of the Rules, 2012 whereby and whereunder power was conferred upon the Additional Collector “to dispossess a person from the land in question, whose Jamabandi has been cancelled and to put in possession the legitimate owner/custodian of such land on such terms as may appear to the Additional Collector to be fair and equitable”---plea that impugned section and rules would be in excess of the scope of Entry 45, which is confined to determination & collection of revenue, survey to enable that purpose and maintenance of records---further argument that impugned section and rules has the effect of denuding the civil courts of competent jurisdiction, from their powers to decide the issues of right, title and possession of a person in an immovable property---state countered by submitting, inter alia, that the Act has been incorporated to provide for regulating the process of mutation of land and making it concomitant with the needs of the time and the peculiar situation in the State of creation of false revenue records and obtaining jamabandi fraudulently.

Held: mutation of land in the revenue records, only enables the person in whose favour mutation is ordered to pay the land revenue, and does not create or extinguish the title over such land nor has it any presumptive value on the title-- it is the requirement under the law that even after cancellation of Jamabandi and affirmed by the appellate and revisional authority, the legitimate owner/custodian is obligated to get his right, title and interest adjudicated and get an order of decree of eviction for dispossession of the person, who has been successful to get the Jamabandi in his favour--- conferment of the power on the Additional Collector to cancel Jamabandi and dispossess the person and deliver possession to the legitimate owner/custodian clearly transgress the valuable right of a person to get his claim of title or possession adjudicated by a Court of competent jurisdiction, which right cannot be put to peril or jeopardized by a summary proceeding relating to collection of revenue by an executive officer of the State-- power conferred under Section 9(1) of the Act, 2011 to the extent it empowers the Additional Collector to cancel Jamabandi would be perfectly in order. But to dispossess the person whose Jamabandi is cancelled and deliver possession to the legitimate owner/custodian would not be possible since Jamabandi by itself does not determine title--- in no stretch, the State and its authority can usurp the power of the Civil Court and leave it to the executive officers to adjudicate title between the parties on the basis of Jamabandi or its cancellation---impugned provisions struck down being ultra vires Article 300A and 21 of the Constitution of India, apart from being beyond the scope & ambit of Entry 45 of List II of Schedule VII---writ allowed. (Para 2, 3, 13, 20, 35-39, 42, 46-50)

1996 (6) SCC 223, 1997 (7) SCC 137, 2009 (5) SCC 591**Referred to.**

(2004) 1 SCC 769, 1968 (3) SCR 163, (1989) 4 SCC 131, AIR 1982 (SC) 1081, (2013) 1 SCC 353, AIR (1977) SC 619, (1993) 4 SCC 349, (1993) 4 SCC 403, (2021) 14 SCC 703, (2015) 13 SCC 50, (1968) 2 SCR 455, (1975) 4 SCC 518

.....**Relied Upon.**

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16494 of 2018

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... .. Petitioner/s

Versus

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3. The District Magistrate Cum Collector, Araria.
4. The Additional District Magistrate Cum Collector, Araria.
5. The Circle Officer, Forbesganj, Araria.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Gautam Kumar Kejriwal with Mr. Atal Bihari Pandey, Mr. Alok Kumar Jha, Mr. Akash Kumar, and Mr. Mukund Kumar, Advocates
For the Respondent/s	:	Md. Khurshid Alam, AAG-12

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE HARISH KUMAR
C.A.V. JUDGMENT
(Per: HONOURABLE MR. JUSTICE HARISH KUMAR)

Date :10-04-2024

We have heard Mr. Gautam Kumar Kejriwal, learned advocate for the petitioner and Md. Khurshid Alam, learned AAG-12 for the respondents.

2. The challenge in the present writ petition under Article 226 of the Constitution of India is to the vires of Section



9(1) of the Bihar Land Mutation Act, 2011 (hereinafter referred to as 'the Act, 2011') and Rules 13(11) and 13(12) of the Bihar Land Mutation Rules, 2012 (hereinafter referred to as 'the Rules, 2012'). What is challenged is the power conferred upon the Additional Collector "*to dispossess a person from the land in question, whose Jamabandi has been cancelled and to put in possession the legitimate owner/custodian of such land on such terms as may appear to the Additional Collector to be fair and equitable*", alleged to be ultra vires the Constitution of India, as such part of the legislation is beyond the scope & ambit of Entry 45 of List II of Schedule VII of the Constitution of India.

3. The petitioner seeks a declaration that Section 9(1) of the Act, 2011 and Rule 13(11) and 13(12) of the Rules, 2012 to the extent it confers power upon the Additional Collector to dispossess a person from such land, on cancellation of *jamabandi*, so as to put in possession the person found legitimately entitled; would be in excess of the scope of Entry 45, which is confined to determination & collection of revenue, survey to enable that purpose and maintenance of records. It is argued that it is further unsustainable in the eyes of law since it has the effect of denuding the civil courts of competent jurisdiction, from their powers to decide the issues of right, title



and possession of a person in an immovable property. The power conferred by the impugned provisions is in excess of the jurisdiction and authority, beyond the scope of Entry 45 of List II of Schedule VII of the Constitution of India. The Additional Collector being a revenue authority has been bestowed with the jurisdiction of a civil court to decide the right, title and possession of a person in an immovable property which is impermissible in terms of the language of the said Entry.

4. The petitioner also challenged the vires of the impugned section and the rule on the ground that right to title and possession of an immovable property besides being a Constitutional Right under Article 300A of the Constitution of India is a civil right which is enforceable and justiciable through the machinery of competent civil courts alone by way of civil procedure prescribed for the functioning of such courts and as such Section 9(1) of the Act, 2011 and Rules 13(11) and 13(12) of the Rules, 2012 to the extent it confers power upon the Additional Collector to dispossess a person from the land and to put in possession, the person found legitimately entitled is further unsustainable in the eye of law, inasmuch as the proceedings of grant of mutation, fixation of rent and creation of Jamabandi are confined to revenue purposes and has no



connection with the correctness of claim of title and possession of a person in an immovable property. All the more, Section 9(1) of the Act, 2011 and Rules 13(11) and 13(12) of the Rules, 2012 to the extent it is under challenge is further inconsistent and not in conformity with Sections 11, 16, 21 and 23 of the Act. Section 16 by which the Authorities under the Act have the powers of the civil court is only for conducting an enquiry, summoning witnesses, ensuring their attendance and production of documents and admission of evidence; which enquiry is only summary in nature and cannot decide the substantive rights of parties and determine title.

5. Entry 45 of List II of Schedule VII of the Constitution of India deals with the subject matter of land, revenue, assessment, collection of revenue, maintenance of land records and similar such functions which is within the legislative domain of the State legislature. It is submitted that in terms of such power conferred, the legislature of the State of Bihar for the purpose of maintenance of record of rights, tenants register, fixation of annual rent, grant of mutation, issuance of corrections slip and respective correction/amendment in the records, creation of Jamabandi has carved out connected procedures under the Act, 2011 and the Rules made therein.



6. Having taken this Court to the Preamble and various provisions of the Act, 2011, it is contended that the plain words in the Preamble goes to show that Act, 2011 is meant for regulating the process of mutation of land and does not deal with adjudication of the issues of right, title and possession of a person to a piece of land. The Act also would not appear to have been enacted for the purpose of conferring any power to the revenue authority to decide the issue of right to possession or dispossession from a piece of land.

7. The plain reading of section 9 (1) of the Act, 2011 empowers the Additional Collector of the district while dealing with the application filed by any interested person or *suo motu* in the matter of a challenge put to the existing *Jamabandi* of a person with respect to a piece of land to dispossess such person in case the challenge taken to his existing *Jamabandi* succeeds. Primarily the Act empowers the competent authorities to deal with the issue of grant of mutation, assessment of annual rent and collection thereof, entitlement of a person to mutation and creation of *Jamabandi* as well as maintenance of revenue records with respect to the areas within their respective jurisdiction. The Act, 2011 has been designed for the very specific purpose of maintenance of records of land



and collection of prescribed revenue from such land. It nowhere deals with any mechanism meant for identification, certification adjudication or confirmation of right of title and possession of any person with respect to any piece of land. The Act, 2011 restricts its scope to the extent of admission of a person claiming to be the owner of a holding or rejection of such claim of a person. In case, the claim of a person on the basis of some documents reflecting title or ownership to a particular land is found to be genuine, the competent authority under the Act has been obliged to grant mutation to such person i.e. the creation of a record in the name of such person for the purpose of payment of annual rent.

8. Learned counsel for the petitioner also submitted that well settled it is that no person can be dispossessed or evicted from any property in the absence of due process of law followed for such purpose. It would appear that even if the power of the respondent Additional Collector as conferred in terms of section 9 (1) of the Act, 2011 and Rules 13 (11) and 13 (12) of the Rules, 2012 is accepted for a while, no power has been conferred nor any procedure has been prescribed for determination of complex issues of right, title and possession of a person in an immovable property. On mere cancellation of



Jamabandi the person in possession is peremptorily evicted from the land; when it is trite that mutation does not determine or decide title.

9. In the aforementioned background, it is submitted that the impugned part of Section 9 (1) of the Act, 2011 and Rules 13 (11) and 13 (12) of the Rules, 2012 is liable to be held ultra vires the Constitution of India and accordingly struck down by this Hon'ble Court from the statute.

10. Reliance has also been placed on various decisions, including **Bishan Das & Others Vs. State of Punjab & Ors; AIR 1961 SC 1570, Sawarni (Smt) Vs. Smt. Inder Kaur & Others, (1996) 6 SCC 223, R. Gowda Vs. Varadappa Naidu, (2004) 2 PLJR SC 36, Tukaram Kana Joshi & Others Vs. Maharashtra Industrial Development Corporation & Others, (2013) 1 SCC 353, Prem Nath Khanna & Others Vs. Narinder Nath Kapoor & Others, (2016) 12 SCC 235, Bhimabai Mahadeo Kambekar Vs. Arthur Import and Export Company & Others, (2019) 3 SCC 191**. The aforementioned judgments have been cited on the point of mutation and *Jamabandi* being no absolute evidence of title and right to possession.

11. Further reliance has been placed on a decision



rendered by the Hon'ble Supreme Court in the case of **Govt. of Andhra Pradesh Vs. Thummala Krishna Rao & Anr**, AIR **1982 SC 1081** in support of the contention that no dispossession can be made from immovable property without due process of law.

12. Apart from various other judgments, reliance is also placed on the case of **B. K. Ravichandra Vs. Union of India & Others**, (2021) 14 SCC 703, which held that the right to property is a valuable Constitutional right guaranteed under Article 300A of the Constitution.

13. Per contra, learned Additional Advocate General has taken this Court firstly to the Preamble of the Act, 2011 and submits that the Act has been incorporated to provide for regulating the process of mutation of land and making it concomitant with the needs of the time and the peculiar situation in the State of creation of false revenue records and obtaining *jamabandi* fraudulently. As such, the Preamble clarifies the needs of the time and highlights the need for expeditious, smooth and inexpensive adjudication of land dispute in the interest of public at large by the said enactment.

14. Referring to the provisions of the other Acts and Rules, it is contended that the Revenue Courts, obviously have



also been empowered to adjudicate the matters which are assigned by the prevailing revenue laws and rules. These courts have also constitutional validity and as such cannot be denigrated outrightly and the orders passed by these courts are to be honoured. The revenue courts by adjudicating the disputes between parties concerned confer lawful rights to the rightful land holders. Of course, subject to the power of the civil courts to review the orders passed by the revenue courts. It is next submitted that the civil courts decide the title whereas the revenue courts grant rights. Obviously, right and title cannot be clubbed together, since rights accrue only from the title and as such both are separate entities with separate implication in land matters and are not synonymous and these aspects are to be taken into consideration while disposing of land disputes. It is lastly submitted that the writ petition is devoid of any valid legal challenge and in fact the petitioners attempt is to impede the power of the State to legislate with the intend to regulate and rationalize the rights over lands, by early disposal of disputes over land to ultimately benefit its citizens.

15. Before examining the vires of the impugned provisions of the Act, 2011 and Rules, 2012, it would be worthy to highlight the relevant provisions of the Acts and Rules for



proper appreciation of the issue involved in the present writ petition.

16. The Bihar Land Mutation, Act 2011 has been incorporated to provide for regulating the process of mutation of land and making it concomitant with the needs of the present times. Section 2 (1) defines “Mutation” as alteration in the entries in the Continuous Khatian, Tenants’ Ledger and Khesra Register on account of transfer of right of a person in a holding or a part thereof by way of any of the means/instruments mentioned therein from clause (a) to (p). Sub-section (2) describes “Record of Rights” as the latest Record of Rights as finally published under Chapter X of the Bihar Tenancy Act, 1885. Sub-section (22) speaks of Mutation Petition Register and sub-section (23) talks about Mutation Register, wherein the petitions filed before the Circle Officer and the orders passed therein are entered as registered. Sub-section (26) defines “*Jamabandi*”, which reads as follows:

“(26) “*Jamabandi*” means a number showing the page allotted to all tenants in Tenants Ledger Register where entries of details of their tenancies as well as demand and collection of rent and cess are made.”

17. Now, coming to impugned Section 9 (i) which talks about Cancellation of *Jamabandi*, it would be apposite to



quote hereunder:

“9 (i) Cancellation of Jamabandi .- The Additional Collector, either suo motu or on an application, shall have the power to make inquiries in respect of any Jamabandi, which has been created in violation of any law for the time being in force or in contravention of any executive instruction issued in this behalf. The Additional Collector, in whose jurisdiction the land is situated, may, after giving reasonable opportunity to the parties concerned to appear, adduce evidence and be heard, cancel such Jamabandi, dispossess the person claiming under it and deliver the possession to the legitimate owner/custodian, on such terms as may appear to the Additional Collector to be fair and equitable.”

[portion underlined by us is the subject of challenge]

18. All proceedings under the Act are to be summary in nature, as per Section 11 of the Act, 2011. The Collector, Additional Collector, the Land Reforms Deputy Collector and the Circle Officer under this Act shall have the same powers in admission of evidence, making enquiries, summoning and enforcing the attendance of any person and examining him on oath, compelling the production of documents and award of costs as are vested in a Court under the Code of Civil Procedure, 1908 as per Section 16. Section 21 says that the provisions of this Act shall be in addition to and



not in derogation of any of the provisions contained in other laws. Lastly, the power of the Government to make Rules, is prescribed under Section 22 of the Act, 2011.

19. Now, we come to Bihar Mutation Rules, 2012, framed by the State Government in exercise of the powers conferred under Section 22 of the Act, 2011. Rule 13 deals with the cancellation of *Jamabandi* and sub Rule (11) and (12) of Rule 13 which are impugned herein, empowers the Additional Collector to dispossess a person whose *Jamabandi* has been cancelled and put in possession, of the person, whose claim appears to be legitimate on terms as deemed fair and equitable. If it is not possible without the use of force, the Additional Collector could ensure the same by deputation of Magistrate and direct Deputy Superintendent of Police for deputation of police officer with adequate force for dispossessing persons claiming under the cancelled *Jamabandi* and restore the possession of legitimate owner/custodian of the land.

20. Having noted all the relevant provisions, now coming to mutation and *Jamabandi* and its effect, it is needless to observe as mandated by the decisions of this Court and the Hon'ble Supreme Court; mutation of land in the revenue records, only enables the person in whose favour, mutation is



ordered to pay the land revenue, in question. Undoubtedly, the entries in the revenue record does not create any title in respect of the land in dispute. The Hon'ble Supreme Court has consistently held that mutation of land in the revenue records does not create or extinguish the title over such land nor has it any presumptive value on the title.[**Vide Sawarni Vs. Inder Kaur reported in 1996 (6) SCC 223, Balwant Singh Vs. Daulat Singh reported in 1997 (7) SCC 137 and Narasamma & Ors. Vs. State of Karnataka & Ors. reported in 2009 (5) SCC 591**].

21. Salmond in his book on Jurisprudence (Twelfth Edition) defines possession as a good title of right against anyone who cannot show a better one. The possession gives a right to continue, unless displaced and even a wrongdoer, who is deprived of his possession, can recover it from any person whoever, simply on the ground of his possession. The true owner, who has thus taken over possession may be forced in this way to restore it to the wrongdoer, and would not be permitted to set up his own superior title, till restoration is effected. He must first give up possession, and then proceed in due course of law for the recovery of the land on the ground of his ownership. The intention of law is that every possessor shall be entitled to



retain and recover his possession, until deprived of it by a judgment in accordance with law.

22. A three Judge Bench of the Hon'ble Supreme Court in the case of ***Rame Gowda (D) by Lrs. Vs. M. Varadappa Naidu (D) By Lrs***, [(2004) 1 SCC 769/AIR 2004 SC 4609] held that the law presumes possession to go with the title, unless rebutted, referring to various decisions, including that of a Full Bench of the Allahabad High Court in ***Yar Mohammad & Anr. Vs. Lakshmi Das & Ors.*** reported in ***AIR 1959 All 14***. The Full Bench, which was quoted with approval, held that law respects possession even if there is no title to support it. It will not permit any person to take the law into his hands and to dispossess a person in actual possession without having recourse to a Court. No person can be allowed to become a judge in his own cause.

23. In the case of ***Nair Service Society Ltd Vs. Rev. Father K.C. Alexander and Ors.*** reported in ***1968 (3) SCR 163***, the Apex Court held that a person in possession of land in an assumed character of owner and exercising peaceably the ordinary rights of ownership, is a perfectly good title against all the world, but the rightful owner. When the facts disclose no title in either party, possession decides it. In ***Krishna Ram***



Mahale (dead) by his Lrs. Vs. Mrs. Shobha Venkat Rao
reported in (1989) 4 SCC 131, it was held that where a person is in settled possession of property, even on the assumption that he had no right to remain on the property, cannot be dispossessed by the owner of the property except by recourse to law.

24. Referring to all the aforementioned judgments, the Apex Court in the case of **Rame Gowda (supra)** has held in paragraph no. 8, thereof as follows:

“(8) It is thus clear that so far as the Indian law is concerned the person in peaceful possession is entitled to retain his possession and in order to protect such possession he may even use reasonable force to keep out a trespasser. A rightful owner who has been wrongfully dispossessed of land may retake possession if he can do so peacefully and without the use of unreasonable force. If the trespasser is in settled possession of the property belonging to the rightful owner, the rightful owner shall have to take recourse to law; he cannot take the law in his own hands and evict the trespasser or interfere with his possession. The law will come to the aid of a person in peaceful and settled possession by injuncting even a rightful owner from using force or taking law in his own hands, and also by restoring him in possession even from the rightful owner (of course subject to the law of limitation), if the latter has dispossessed the prior possessor by use of force. In the absence of proof of better title, possession or prior peaceful settled possession is itself evidence of title. Law presumes the possession to go with the



title unless rebutted. The owner of any property may prevent even by using reasonable force a trespasser from an attempted trespass, when it is in the process of being committed, or is of a flimsy character, or recurring, intermittent, stray or casual in nature, or has just been committed, while the rightful owner did not have enough time to have recourse to law. In the last of the cases, the possession of the trespasser, just entered into would not be called as one acquiesced to by the true owner.”

25. The Hon’ble Supreme Court in the case of ***Government of Andhra Pradesh Vs. Thummala Krishna Rao and Anr.***, reported in ***AIR 1982 (SC) 1081***, while considering the provisions prescribed under Sections 6 and 7 of the Andhra Pradesh Land Encroachment Act, 1905 has held that if there is a bona fide dispute regarding the title of the Government to any property, the Government cannot take a unilateral decision in its own favour that the property belongs to it, and on the basis of such decision take recourse to the summary proceeding provided by Section 6 for evicting the person who is in possession of the property under a bona fide claim or title. The summary remedy prescribed by Section 6 is said to be not in the nature of a legal process, which is suited to an adjudication of complicated questions of title. Even the State claiming title cannot resort to summary eviction.

26. In the case of ***Tukaram Kana Joshi and Ors.***



Vs. Maharashtra Industrial Development Corporation and Ors. (2013) 1 SCC 353, the two Judge Bench of the Apex Court highlighting the essence of right to property held it to be not only a constitutional or statutory right but also a human right. It is succinctly held that even after the right to property ceased to be a fundamental right, taking possession of or acquiring the property of a citizen most certainly tantamounts to deprivation and such deprivation can take place only in accordance with the “law”, as the said word has specifically been used in Article 300-A of the Constitution. In paragraph 17 of the afore-noted judgment, it was held that depriving the appellants of their immovable properties was a clear violation of Article 21 of the Constitution.

27. In India, as in the other nation states, none are permitted to take forcible possession, which they can obtain only as entitled to, through a Court of law. In the case of *Ram Rattan and Ors. Vs. State of Uttar Pradesh, AIR (1977) SC 619*; it was held that a true owner has every right to dispossess or throw out a trespasser, while he is in the act or process of trespassing but this right is not available to the true owner if the trespasser has been successful in accomplishing possession as against and with the knowledge of the true owner. In such



circumstances the law requires that the true owner should dispossess the trespasser by taking recourse to the remedies under law.

28. The Supreme Court in the case of ***Guru Amarjit Singh Vs. Rattan Chand and Ors.***, (1993) 4 SCC 349, held that the entries in *Jamabandi* are not proof of title in respect of an immovable property. In ***Jattu Ram Vs. Hakam Singh and Ors.*** (1993) 4 SCC 403, the Apex Court observed that entries made by patwari in official record are only for the purpose of records and do not by itself prove the correctness of the same nor can statutory presumption be drawn on the same, particularly, in the absence of corroborative evidence.

29. ***B. K. Ravichandra & Ors. Vs. Union of India & Ors.***, (2021) 14 SCC 703, was a matter relating to legality of the order of the Karnataka High Court directing the respondent to vacate their land, leaving it open the Union of India to initiate appropriate proceedings for acquisition of certain land, which belong to the appellant; in which the essence of right to property under Article 300 A of the Constitution was highlighted. It would be relevant to quote paragraph no. 35 thereof, which reads as follows:

“35. It is, therefore, no longer open to the State: in any of its forms



(executive, State agencies, or legislature) to claim that the law - or the Constitution can be ignored, or complied at its convenience. The decisions of this Court, and the history of the right to property show that though its pre-eminence as a fundamental right has been undermined, nevertheless, the essence of the rule of law protects it. The evolving jurisprudence of this Court also underlines that it is a valuable right ensuring guaranteed freedoms and economic liberty. The phrasing of Article 300-A is determinative and its resemblance with Articles 21 and 265 cannot be overlooked, they in effect, are a guarantee of the supremacy of the rule of law, no less. To permit the State: whether the Union or any State Government to assert that it has an indefinite or overriding right to continue occupying one's property (bereft of lawful sanction) - whatever be the pretext, is no less than condoning lawlessness. The courts' role is to act as the guarantor and jealous protector of the people's liberties: be they assured through the freedoms, and the right to equality and religion or cultural rights under Part III, or the right against deprivation, in any form, through any process other than law. Any condonation by the court is a validation of such unlawful executive behaviour which it then can justify its conduct on the anvil of some loftier purpose, at any future time, aptly described as a "loaded weapon ready for the hand of any authority that can bring forward a plausible claim of an urgent need."

[Underlining by us for emphasis]

30. Now in the aforesaid facts and circumstances



before adverting to the various contentions raised challenging the vires of the impugned Act and the Rules, it is proper to highlight the caution to be observed, as has been held in the case of **PGF Limited and Others Vs. Union of India and Another, (2015) 13 SCC 50**, wherein the Hon'ble Supreme Court held that the Court at the first instance, examines whether there is a *prima facie* strong ground made out in order to examine the vires of the provisions raised in the writ petition. Whether such challenge is made at the earliest point of time when the statute came to be introduced or any provision was brought into the statute book or any long time-gap exists as on the date of the enactment and the date when the challenge is made. It should also be clarified as to whether the grounds of challenge based on the facts pleaded and the implication of the provision really has any nexus, apart from the grounds of challenge made.

31. Whether the challenge to the provision of law, on grounds of its constitutionality is raised with a view to thwart the applicability and rigour of those provisions and as an escape route from the applicability of those provisions of law and thereby create an impediment for the authorities and the institutions concerned who are to monitor those persons who raise such challenge, by abusing the process of court. It is,



therefore, imperative and worthwhile to examine at the threshold as to whether such challenge made is bona fide and do require a consideration at all by the writ courts by applying the principle of “lifting the veil” and as to whether there is any hidden agenda in perpetrating such litigation.

32. Having taken note of settled legal position, now before examining the validity of the impugned Section 9(1) of the Act, 2011 and Rules 13(11) and 13(12) of the Rules, 2012, it is to be noticed that the subject Act and the Rules came into effect in the year 2011 and 2012 respectively. Before the filing of the writ petition there was a pending *Jamabandi* case and the petitioner had been apprehensive and suspected that the order passed in *Jamabandi* Cancellation case may not be in his favour and he might be ordered to be dispossessed by virtue of the impugned Section and the Rules. The respondent has also categorically averred in its counter affidavit that the Additional Collector, Araria, has already disposed the *Jamabandi* Case No. 213/ 2018-19.

33. Obviously the constitutionality of the impugned provision of the Act and the Rules have been challenged due to the pending *Jamabandi* case in which the petitioner is a party and his apprehension of being dispossessed cannot be ruled out.



The seminal nature of the issue raised and question posed, also cannot be ignored and this Court is satisfied that there is a factual nexus with the challenge raised and the provisions challenged; as apprehended may cause prejudice to the petitioner by an abrupt and sudden dispossession on the cancellation of *Jamabandi* which is a summary proceeding.

34. Indubitably, the proceeding under the Act, 2011 is a summary proceeding vesting the power of the Civil Court on the authorities to the extent of admission of evidence, making enquiries, summoning and enforcing the attendance of any person and examining him on oath, compelling the production of documents and award of costs as are vested in the Court under the Code of Civil Procedure, 1908. The Act further clarifies that the provisions therein shall be in addition to and not in derogation of any of the provisions contained in any other law for the time being in force.

35. The impugned Section 9(1) of the Act, 2011, only empowers the Additional Collector to make inquiries in respect of any *Jamabandi*, which has been created in violation of any law for the time being in force or in contravention of any executive instruction issued in this behalf, clearly confining the power of the Additional Collector. It is further mandated that



before passing any order in respect of *Jamabandi*, he has the power to make enquiries, to provide reasonable opportunity to the parties concerned to appear, adduce evidence and affording reasonable hearing, which is only a summary proceeding. The power conferred to carry out the summary enquiry adopting the same procedure as a Civil Court would do; is not a conferment of the powers of the Civil Court as such.

36. The aforesaid exercise is only confined to decide the issue of mutation and *Jamabandi* or its cancellation but for dispossession, the applicant will have to approach the Civil Court, in which event *Jamabandi* or its cancellation will be a strong evidence. Also, the Court on finding title could set aside the order of cancellation of *Jamabandi*.

37. In other words, it is the requirement under the law that even after cancellation of *Jamabandi* and affirmed by the appellate and revisional authority, the legitimate owner/custodian is obligated to get his right, title and interest adjudicated and get an order of decree of eviction for dispossession of the person, who has been successful to get the *Jamabandi* in his favour. Otherwise, the title would be decided from mutation and in case any unscrupulous litigant succeeded in getting the *Jamabandi* cancelled by hook or crook, the



legitimate owner who is also in possession shall have to give way to him.

38. In terms of Entry 45 of List-II of Schedule VII, the Act of 2011 is enacted to regulate the process of mutation of land, making it in consonance with the needs of present times. However, the Preamble of the Act, 2011 indubitably makes it clear that it only regulates the process of mutation of land and thus any action in respect to dispossession of a person after cancellation of *Jamabandi* shall certainly be beyond the scope of Act, 2011 and the field of legislation; amounting to usurping the exclusive powers of the Civil Court of competent jurisdiction.

39. The conferment of the power on the Additional Collector to cancel such *Jamabandi* and dispossess the person and deliver possession to the legitimate owner/custodian clearly transgress the valuable right of a person to get his claim of title or possession adjudicated by a Court of competent jurisdiction, which right cannot be put to peril or jeopardized by a summary proceeding relating to collection of revenue by an executive officer of the State.

40. The concept of settled possession and the right of the possessor to protect his possession against the owner has



come to be settled by a catena of decisions. It was held in the case of **Munshi Ram and Ors. Vs. Delhi Administration (1968) 2 SCR 455** that no one, including the true owner, has a right to dispossess the trespasser by force if the trespasser is in settled possession of the land and in such a case unless he is evicted by due course of law, he is entitled to defend his possession even against the rightful owner. But merely stray or even intermittent acts of trespass do not give such a right against the true owner. The possession which a trespasser is entitled to defend against the rightful owner must be settled possession, extending over a sufficiently long period of time and acquiesced to by the true owner. A casual act of possession would not have the effect of interrupting the possession of the rightful owner.

41. The rightful owner may re-enter and reinstate himself provided he does not use more force than is necessary. Such entry will be viewed only as resistance to an intrusion upon his possession which has never been lost. In **Puran Singh and Ors. Vs. The State of Punjab, [(1975) 4 SCC 518 : 1975 SCC (Cri) 608]** the Court clarified that it is difficult to lay down any hard-and-fast rule as to when the possession of a trespasser can mature into settled possession. The “settled possession” must be (i) effective, (ii) undisturbed, and (iii) to



the knowledge of the owner or without any attempt at concealment by the trespasser.

42. The power conferred under Section 9(1) of the Act, 2011 to the extent it empowers the Additional Collector to cancel such *Jamabandi* would be perfectly in order. But to dispossess the person whose *Jamabandi* is cancelled and deliver possession to the legitimate owner/custodian would not be possible since *Jamabandi* by itself does not determine title. It would then lead to dispossession of a person, who has been in settled possession who also had effected Mutation and had *Jamabandi* in his favour; and thus it would be unfair and inequitable, in the opinion of this Court. In the circumstances of a person having long standing possession, he would also be able to satisfy, by his possession alone, that there is a disputed question of right, title and interest, as against a claim to title raised by any other person. *Jamabandi* being only one compelling circumstance/evidence to prove title cannot solely establish it and mere cancellation of the entry in the registry of records maintained for the determination and collection of revenue cannot lead to a peremptory or abrupt dispossession from the property.

43. The term 'Mutation' is an alteration in the



entries in continuous Khatian, Tenant's Ledger and Khesra Register on account of transfer of a right of a person in holding or a part thereof and *Jamabandi* only denotes a number showing the page allotted to all tenants in Tenants Ledger Register for fiscal purposes. Thus, well settled it is that the entries of *Jamabandi* are not proof of title in respect of an immovable property. It is only for the purposes of revenue records and do not by itself prove title to the immovable property nor is there any statutory presumption in favour of title. In such circumstances, the conferment of power of dispossession to the Additional Collector in case of cancellation of *Jamabandi* is, *prima facie*, an excess of the power conferred on the legislature under Entry 45-List II-VIIth Schedule and is beyond the scope and ambit of the legislation; the Act, 2011.

44. The prescription of summary procedure in the Acts/Rules is only to ascertain as to whether on account of transfer of a right of a person holding a land or a part thereof is correspondingly entitled to get alteration done in the entries in the Revenue Records.

45. Right to acquire, hold and dispose of the property continues to be a legal right that no person shall be deprived of save and except by and in accordance with law. The



word 'Law' under Article 300A of the Constitution of India would mean a validly enacted law, meaning thereby a just, fair and reasonable law.

46. The power to dispossess any person after cancellation of *Jamabandi*, where it has been created even in violation of any law for the time being in force or in contravention of any executive instruction or when there is fraudulent creation, is only a cloud over the possession till the right, title and interest of such person is determined by a court of competent jurisdiction. The fundamental duty is also cast upon the State to safeguard the right and interest of bonafide legitimate owner/custodian, if he is able to make out a prima facie case at least against a person who does not have any semblance of right or title over that holding or part thereof, but in no stretch, the State and its authority can usurp the power of the Civil Court and leave it to the executive officers to adjudicate title between the parties on the basis of *Jamabandi* or its cancellation.

47. Being conscious of the settled proposition of law that illegal deprivation of property would transgress the right to life enshrined under Article 21 of the Constitution of India, the power of dispossession after cancellation of



Jamabandi and restoration/delivery of possession to the proclaimed legitimate owner/custodian, it is to be held; that too after a summary procedure, has no rationale and militates against the safeguards from illegal deprivation of property.

48. In the aforesaid premise of settled legal position that mutation/*Jamabandi* enabling a person in whose favour order of mutation/*Jamabandi* is passed to only pay land revenue of the land in question, the restoration/delivery of possession by holding or treating that person as legitimate owner/custodian of the land basing upon *Jamabandi* alone, would in the opinion of this Court be ultra vires Articles 300A and 21 of the Constitution of India. Possession though only a semblance of title/ownership, that cannot be interfered with in such a casual and cavalier manner.

49. In view thereof, this Court would strike down the impugned Section 9(1) of the Bihar Land Mutation Act, 2011 to the extent it confers power upon the Additional Collector “*to dispossess the person whose Jamabandi has been cancelled and to put in possession the legitimate owner/custodian on such land on such terms as may appear to the Additional Collector to be fair and equitable*” and Rules 13(11) and 13(12) of the Bihar Land Mutation Rules, 2012 for



being ultra vires Article 300A of the Constitution of India, apart from being beyond the scope & ambit of Entry 45 of List II of Schedule VII.

50. The writ petition stands allowed to the extent indicated above. There shall be no order as to costs.

(Harish Kumar, J)

K. Vinod Chandran, CJ: I agree

(K. Vinod Chandran, CJ)

uday/-

AFR/NAFR	AFR
CAV DATE	15.02.2024
Uploading Date	10.04.2024
Transmission Date	NA

