

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.3170 of 2023**

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1. Ganesh Kumar Gupta Son of Late Yogendra Prasad Gupta Secretary, Hati- Kadli Gram Panchayat Raiyati Bhumi Bachaw Samiti, Resident of Village- Hati, Ward No. 11, Post- Hati, P.S. Nauhatta, District- Saharsa- 852130.
  2. Vishwanath Sah, Son of Mahabir Sah President, Hati- Kadli Gram Panchayat Raiyati Bhumi Bachaw Samiti, Resident of Village- Rampur, Kedli Patti, P.S. Nauhatta, District- Saharsa- 852123.
  3. Rajdev Pandit, Son of Gannu Pandit Resident of Village- Chhatwan, Kedli Patti, P.S. Nauhatta, District- Saharsa- 852123.
  4. Rajkishor Singh, Son of Bhuvneshwar Singh Vice President, Hati- Kadli Gram Panchayat Raiyati Bhumi Bachaw Samiti, Resident of Village- Hati, P.S. Nauhatta, District- Saharsa- 852130.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Revenue and Land Reforms, Government of Bihar, Patna.
2. The Director, Land Records and Measurement, Bihar, Patna.
3. The District Magistrate, Saharsa.
4. The Settlement Officer, Saharsa.
5. The Assistant Settlement Officer, Saharsa.
6. The Circle Officer, Nauhatta, District- Saharsa.
7. The Station House Officer, District- Saharsa.

... ... Respondent/s

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Bihar Special Survey and Settlement Act, 2011- Section 11(2)

Bihar Tenancy Act, 1885- Section 52

The present writ petition is filed for seeking directions to the state authorities for not disturbing the petitioners from their enjoyment of their respective lands in the garb of sub-merger in the bed of river, Kosi, and with the additional prayer to continue their respective names be reflected in record of rights maintained in the revenue records.

Held that admittedly, lands in question use to sub-merge in the river Kosi during the rainy season and whenever lands come out, the petitioners and their ancestors use to cultivate and grow crops. Held further that because of the Bihar Special Survey and settlement Act, 2011, the new survey was conducted and the names of the petitioners were deleted from the record of rights and the name of the State was entered therefor.

Having noted the invocation of Bihar Special Survey and settlement Act, 2011, the Collector, Saharsa was directed to settle the grievance of the petitioners in accordance with the policy of the State of Bihar.

Writ petition is disposed off with the aforesaid terms.

(Para-7)

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... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Binod Kumar, Adv.  
For the Respondent/s : Mr. Md. Khurshid Alam (Aag12)

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**CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN**  
**ORAL JUDGMENT**

Date : 04-09-2023

Heard learned counsel for the petitioners and learned  
counsel for the State.

2. The present writ petition has been filed seeking  
direction to respondent authorities for not disturbing on the  
lands in the garb of sub-merger in the bed of river ‘Koshi’



situated in Hati and Kedli Gram Panchayat. The further prayer is that the name of the petitioners be maintained in the survey settlement records of right on the basis of cadastral survey made in the year 1967-68 and it has also been directed to the respondents not to enter the name of the State of Bihar in the record of rights only on the ground of the sub-merger in the water of the river 'Koshi' and allowed the petitioners to continue the raiyati right over the land and issue possession certificate for the same.

3. Counsel for the petitioners submits that admittedly, the land in question used to submerge in the river 'Koshi'. The said lands are situated in river in revenue Village Hati and Kedli *Gram Panchayat* situated on the embankment of river 'Koshi'. Counsel further submits that petitioners and their ancestors are residing in the village having right, title and interest over the raiyati land which sometimes in certain period sub-merge in the river and sometimes comes out. He submits that the nature of stream of river 'Koshi' changes time to time. Whenever, the land comes out from the river, the petitioners used to cultivate and continue in the possession of the said river. It has been informed by the authorities orally that after completion of the Special Survey under the Bihar Special Survey and Settlement



Act, 2011, the name of the respective users shall be recorded. The said law has come in the year 2011, but till date, no progress has been made from the State side. The petitioners have tried the level best to obtain information under RTI, but even then, information has not been provided. The petitioners have filed a case bearing Case No. 6467 of 1986 in the court of Revenue Officer, Saharsa under Bihar Tenancy Act, 1885 for opening of records of right as the name of the State has been wrongly entered, but still, lands are not recorded in the petitioners' name.

4. Counsel for the State has filed a counter-affidavit and submits that the Department of Revenue and Land Reforms, Government of Bihar, has time to time issued a letter with regard to the lands which sometimes comes out from the river in which the specific stand has been taken by the Government that Department of Revenue and Land Reforms, Government of Bihar through Letter No. 17-1 (Tech) Cell 23/93/1977 dated 04.04.1996, had issued a direction to the effect that if the raiyati land comes under the bed of river, such land would be considered to be watery land of the river and if the river flows through the raiyati land at the time of preparation of survey map and preparation of Khatiyani, such watery land would be treated



as the land of the State of Bihar and its khata entity would accordingly be made in the name of the State of Bihar. It is also stand of the State that Section 52 of the Bihar Tenancy Act, 1885 specifically lays down that if the river changes its course and the land underneath comes out of the watery area of river, Khata entry of such land would be made in the name of the bonafide raiyats if prior to its submergion, it was raiyati land. But in case, if the submerged land was *Gairmajarua Aam* or *Anabad Surva Sadharan*, its khata entry would be made in the name of the *Anabad Surva Sadharan*.

5. It has also stand of the State that if after the change of the course of the river, the land comes out of water, there is direction to make Khata entry of the land in the name of State of Bihar, if such land is not duly settled to any raiyat. It also comes that if during the cadastral survey, current of river was flowing through any piece of land and after its surfacing out of water and if any person takes the land in its possession, in that case also, Khata entry of such land would be made in the name of the State of Bihar, unless and until there is any adverse order of competent civil court. Thus, there is clear policy decision of the Government of Bihar in this regard.

6. Counsel also submits that the policy decision of the



Government of Bihar is beneficial to all concerned as any deviation from this policy would create huge numbers of unnecessary land disputes and fishing rights, etc.

7. In the light of the submissions made by the parties and the stand taken by the State of Bihar particularly, when the operation of the Bihar Special Survey and Settlement Act, 2011 has started in the different parts of the State and in some parts of the State, it has been completed effectively. It is directed to the Collector, Saharsa to settle the grievances of the petitioners in accordance with the policy annexed in the writ petition as well as in the light of the rights provide to every such individual under the Bihar Special Survey and Settlement Act, 2011 (Bihar Act 24 of 2011) (hereinafter referred to as 'the Act of 2011') in which there is categorical direction under Section 11(2) of the Act of 2011 that claims and objections with regard to rights may be filed within a specified period and the Collector of the District shall decide in accordance with law.

8. In this view of the matter, the petitioners are directed to file their fresh representations before the Collector, Saharsa within 4 weeks from today and the Collector, Saharsa is directed to decide the claims of the petitioners by reasoned and speaking order within 6 weeks, thereafter hearing all



concerned parties.

9. With the aforesaid direction, the present writ application is hereby disposed of.

**(Dr. Anshuman, J.)**

prakashmani/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	13.09.2023
Transmission Date	NA

