

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19368 of 2021

=====

Rina Devi W/o Sri Sudhir Prasad A resident of Ashok Nagar, Road no. 11,
P.S.- Sampatchak, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar Through Collector, Patna.
2. The Additional Collector Patna.
3. The Anchal Adhikari Sampatchak, Patna.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Nitesh Kumar, Advocate
For the Respondent/s	:	Mr. Md. Khurshid Alam (AAG-12)
		Mrs.Nutan Sahay, AC to AAG-12

=====

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL JUDGMENT

Date : 11-01-2024

This writ application has been filed for quashing the initiation of *jamabandi* cancellation proceeding which was registered as Jamabandi Cancellation Case No. 25/2021-22 and further to quash the notice dated 13.07.2021 issued to the petitioner by the respondent no. 2 as the notice itself is beyond jurisdiction since the notice does not disclose the reason which is the mandatory requirement, as contemplated under section 9 of the Bihar Land Mutation Act, 2011 (hereinafter referred to as the 'Act, 2011') and also to grant any other relief/reliefs to which the petitioner is found entitled to including the cost of this proceeding.



2. The case of the petitioner, in short, is that the land appertaining to Khata no. 616, Survey Plot no. 314 (in part) area ad-measuring 10 *dhur* which is equivalent to 1.5625 decimal of land situated at Mauza - Manpur Bairiya, Thana Code no. 174, Tauzi no. - 360 has been purchased by the petitioner through absolute sale-deed dated 11.03.2015 from Ranjan Kumar and Chandan Kumar both sons of Sri Surendra Prasad Sinha. After the purchase of aforesaid land through the registered sale-deed, the petitioner applied for mutation before the respondent no. 3 which was registered as, Mutation Case No. 2338/04 / 2014-15 and after verification the name of the petitioner is mutated and *jamabandi* has been created in favour of the petitioner. But all of a sudden, the petitioner received a one page notice i.e. Annexure - 1 from the court of Additional Collector (respondent no. 2) that *jamabandi* cancellation proceeding has been initiated against her (petitioner) and petitioner has to appear on 02.09.2021 and to contest the matter otherwise *ex-parte* order will be passed.

3. Learned counsel for the petitioner submits that the notice itself is beyond jurisdiction, since the notice does not disclose the mandatory requirement, as contemplated under section 9 of the Bihar Land Mutation Act, 2011 for initiation of an action for cancellation of *jamabandi*. The notice is completely



vague, cryptic and does not disclose any application of mind. No ground has been mentioned on which the initiation of cancellation of *jamabandi* proceeding has been initiated and as such, notice is required to be quashed.

4. On the other hand, learned counsel appearing on behalf of State, while opposing the prayer made on behalf of petitioner and referring to different paragraphs made in the counter affidavit, submits that in the weekly meeting for redressal of the grievances of the people jointly by the concerned police station and Circle Officer, one Vijay Kumar Sinha has filed complaint against Ranjan Kumar, Anil Mehta, Sunil Kumar Sinha and Bali Rai that they are creating dispute over his land. In this regard, the Revenue *Karmachari* was directed to submit his report with regard to the land in question and in compliance thereof, he submitted report pertaining to the land under Mauza-Bairiya, Thana no.-122, Khata no.-616. Plot no.-314, area-13 dismil and Plot no.- 350, area-17 dismil along with the of name the *raiya*s and *jamabandi* number created over the said lands. Thereafter, notice was issued to all the concerned persons, in which, it was found that the Plot no.-314 and 350 are vacant land and there is dispute between both the parties with regard to possession over the land. The Circle Officer, Sampatchak, after considering all facts on record, has



observed that there is serious dispute with regard to the claim made by the parties over the land in question and the *jamabandies* created in their favour without verification proper and without the possession of the land by the concerned persons. Thus order dated 26-03-2021 has been passed by the then Circle Officer, Sampatchak, whereby recommendation has been made for cancellation of the *jamabandi* which has been created without any basis. Thus, the matter has been referred to the Additional Collector, Patna for needful in the matter.

5. It is next submitted on behalf of the State that petitioner, instead of approaching this Court, ought to have appeared and filed show-cause annexing all the documents in support of her claim before the Additional Collector. It has been argued that the petitioner ought not to have approached this Court against issuance of notice itself, which cannot be said to be lacking in jurisdiction. It has also been argued that since the petitioner has alternative / statutory remedy, this writ petition under Article 226 of the Constitution of India should not be entertained.

6. In reply thereof, learned counsel for the petitioner, by referring to I.A. No. 1 of 2022, submits that petitioner already appeared on 02.09.2021 before the Additional Collector/ respondent no. 2 through her counsel and asked for the papers,



which she has to answer and also asked the reason for initiation of *jamabandi* cancellation proceeding, on which, it was informed that on the recommendation of the Anchal Adhikari, the present proceeding has been initiated, but no chit of paper was supplied to this petitioner.

7. Heard learned counsel for the parties and perused the materials available on record. I have also carefully examined the impugned notice dated 13.07.2021 (Annexure – 1 to the writ petition), issued by the Additional Collector. In the said notice, he has simply indicated the date, which has been fixed for hearing in this regard. On the said date, petitioner has been directed to appear alongwith necessary documents.

8. Section 9 of the Act, 2011 contemplates that 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. It would be better to quote Section 9(1) of the Bihar Land Mutation Act, 2011, which is as follows:-

“9. Cancellation of *jamabandi* — (1) 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.”

9. In the show-cause notice, which is under-challenge, no ground has been assigned. The notice dated 13.07.2021 is quoted here-in-below:-

"ज्ञापांक 408/m. 13/7/21

न्यायालय अपर समाहर्ता, पटना

जमाबंदी रद्द वाद संख्या :- 25/2021-22

रंजना देवी बनाम सुरेन्द्र प्रसाद सिन्हा एवं अन्य

नोटिस बनाम

5. रीना देवी, पति - सुधीर प्रसाद

बजरिये नोटिस सूचित किया जाता है कि उक्त वाद में सुनवाई की तिथि 02.09.2021/ 2/9/21 निर्धारित की गई है।

अतः उक्त वाद में निर्धारित तिथि को अद्योहस्ताक्षरी के न्यायालय में उपस्थित हो कर पुरवाई करें, अन्यथा एक पक्षीय सुनवाई कर आदेश पारित कर दिया जाएगा।

इसे ताकिद जाने।

अपर समाहर्ता, पटना"



10. From bare perusal of impugned notice, it is apparent that no ground has been mentioned as to why *jamabandi* cancellation proceeding has been initiated against the petitioner. It is settled law that the existence of an alternative remedy is not a bar for this Court to entertain a writ application. If an order is absolutely beyond jurisdiction, this Court must interfere with at the stage of issuance of notice itself, else it will cause serious prejudice. In this regard, reference can be made to a Supreme Court decision, reported in (1998) 8 S.C.C. 1 (*Whirlpool Corporation vs. Registrar of Trade Marks Mumbai and Others*).

11. In the opinion of this Court, a notice under Section 9 of the Act, 2011 for cancellation of *jamabandi* must disclose specific *prima facie* opinion of the Additional Collector that the *jamabandi* created in favour of a person is in violation of any law or is in contravention of any executive instruction. The notice apparently does not indicate as to which law has been violated and which instruction has been contravened while creating *jamabandi* in favour of the petitioner. The notice is completely vague, cryptic and does not disclose the ground, on which proceeding for cancellation of *jamabandi* has been initiated against the petitioner. It cannot be said to have issued in conformity with the provision contained in Section 9(1) of the Bihar Land Mutation Act, 2011



and as such, the same deserves to be set aside and is, accordingly, set aside.

12. In the facts and circumstances of the case, the Additional Collector, Patna is directed to issue a fresh show cause notice to the petitioner, disclosing the materials, which are the basis for him to form an opinion that *jamabandi* created in the name of the petitioner deserves to be cancelled. Such a notice must be issued within two months from today. The Additional Collector, Patna shall proceed in the matter in accordance with law.

13. The writ petition is allowed with the aforesaid observation and direction.

(Prabhat Kumar Singh, J)

Anay

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	16.01.2024
Transmission Date	N/A

