

(2019) 07 JH CK 0013
In the Jharkhand High Court
Case No : Writ Petition (c) No. 3538 Of 2016

Md. Rabbani Mian

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 03-07-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 07 JH CK 0013

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : Kislay Kumar, Rupesh Singh

Final Decision : Dismissed

Judgement

1. This writ petition has been filed under Article 226 of the Constitution of India for quashing communication dated 16.05.2016 addressed to Circle

Officer, Keredari by which, the Deputy Commissioner, Hazaribagh after considering the enquiry report has passed order for initiating proceeding for

cancellation of Jamabandi and also directed to institute F.I.R. against the involved person.

2. It is the case of the petitioner that before making such communication no opportunity of hearing was given to the petitioner, therefore, the said

communication is in violation of principles of natural justice.

3. Mr. Rupesh Singh, learned G.P. V appearing for the State referring to counter affidavit submitted that writ petition was prematurely filed as it was

filed before cancellation of such Jamabandi and the impugned letter is only communication by the Deputy Commissioner, Hazaribagh to Circle Officer,

Keredari to initiate proceeding for cancellation of Jamabandi and further to take necessary legal action against the involved persons. Referring to

Annexure C series to the counter affidavit, learned counsel for the respondents submitted that in continuation to communication dated 16.05.2016, a

regular proceeding for cancellation of Jamabandi was initiated, in which, the petitioner was noticed and the service upon the petitioner was effected,

therefore, what has been pleaded by the petitioner is not worth to be considered as communication dated 16.05.2016 cannot be said to a final order

rather it is purely a communication and even not addressed to the petitioner in any manner.

4. Having heard learned counsel for the parties and on appreciating the rival submissions and contentions raised on behalf of respondents-State to the

effect that letter dated 16. 05.2016 is a communication, hence cannot be said to be a decision in the eye of law, this Court is in agreement to the said

submission of the State and is of the view that letter dated 16.05.2016 is an communication between Deputy Commissioner, Hazaribagh and Circle

Officer, Keredari. Hence, question of providing opportunity of hearing does not arise in a departmental internal communication between the officers of

the State.

5. However, when a regular proceeding was initiated on the basis of said communication dated 16.05.2016, as evident from Annexure C series to the

Counter Affidavit dated 18. 09.2017, notice was issued upon the petitioner and thereafter recommendation to cancel the Jamabandi was passed.

6. Therefore, the contention, as has been raised by learned counsel for the petitioner that opportunity of hearing was not given is found to be incorrect.

7. It is not in dispute that against the order of recommendation of cancellation of Jamabandi, alternative forum is available, by way of filing appeal or

revision in accordance with the provisions of Bihar Land Reforms Act, 1950.

8. Therefore, this Court is of the view that since factual aspect is to be adjudicated and there is availability of alternative remedy under the Statute, this

Court is not inclined to interfere with the impugned communication. Since the communication dated 16.05.2016 is not a final order; hence on the date

of filing of writ petition there was no cause of action to file the writ petition because there was no final order to the effect that jamabandi was

cancelled or recommendation was made to cancel the jamabandi and merely on the basis of such communication, the writ petition was filed, hence it

was premature as at that point of time.

9. It further transpires that in course of pendency of writ petition when a regular proceeding has been initiated and order for recommendation for

cancellation of jamabandi was passed that order has not been challenged by the petitioner even by way of filing Interlocutory Application.

10. In view thereof, the writ petition is dismissed.

11. However, it is open to the petitioner to approach the competent authority to avail alternative remedy, if so advised.