

(2008) 03 JH CK 0063
In the Jharkhand High Court

Smt. Kanak Kumari Devi and Another	APPELLANT
Vs	
State of Jharkhand and Others	RESPONDENT

Date of Decision : 31-03-2008

Acts Referred:

Citation : (2008) 2 JCR 597 : (2009) 106 RD 417

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Narendra Nath Tiwari, J.

I.A. No. 1005 of 2008 :

1. In this interlocutory application, the petitioners have prayed for substitution of heirs and legal representatives of petitioner No. 1, who died leaving behind her legal heirs, whose names and addresses have been described in Para 2. It has been stated that this application is within time.

The respondents have not disputed the said contentions.

Considering the above, this interlocutory applications is allowed. Let the legal heirs and representatives of the petitioner No. 1, whose details have been given in Para 2, be substituted in her place.

I.A. No. 1005 of 2008 is disposed of.

W.P. (C) No. 4895 of 2007:

The petitioners in this writ petition have prayed for quashing the order dated 22nd January, 2007 passed by the Commissioner, south Chhotanagpur Division, Ranchi in Revenue appeal No. 122 of 2006, rejecting the appeal filed by the petitioners against the order dated 15th June, 2006 passed by the Deputy Commissioner, Ranchi in Misc. Case No. 58 of 2002-03/22 of 2003-04, whereby the jamabandi running in the name of the petitioners" vendor in respect of the

land appertaining to Plot Nos. 492 and 496, khata No. 383 of Mouja Pundag, District Ranchi, has been cancelled without giving notice and opportunity of hearing.

2. It has been stated that the said land was recorded as gairmazarua malik in the name of the ex.landlord. The landlord settled the said land in the name of the petitioner's vendor-Maheshwar Nath Shahdeo by virtue of Sada settlement in 1943, followed by rent receipt and delivery of possession.

3. In the year 1948, the ex.landlord had created trust, namely, Chintamani Trust, in respect of the properties by virtue of registered deed dated 19th August, 1948. The petitioners since thereafter had been paying rent to Chintamani Trust. The said estate vested in State of Bihar under the provisions of Bihar Land Reforms Act, 1950. After the vesting, demand in respect of the said land was opened in the name of the petitioners' vendor-Maheshwar Nath Shahdeo. He had been in possession of the land and in exercise of the right of ownership and possession, he had been paying rent continuously.

4. In the year 1983, the petitioners purchased the portion of the said land from the wife of Maheshwar Nath Shahdeo and since thereafter they have been in physical possession of the same. Mutation to the extent of the portion of the said land purchased by them was allowed in their names in Misc. Case Nos. 1 and 2 of 1985-86. The petitioners have been paying rent since thereafter in respect of the land purchased by them. By the impugned order, the Deputy Commissioner, Ranchi cancelled the long running jamabandi in the name of the petitioners' vendor as also the jamabandi running in the names of the petitioners in the said Misc. Case No. 58 of 2002-03/22 of 2003-04.

5. The proceeding was against the dead person-Maheshwar Nath Shahdeo. Successors in interest were not made parties and no notices were served on them.

6. The petitioners came to know about the said order belatedly. They preferred appeal before the Commissioner, South Chhotanagpur Division, Ranchi, being Revenue Appeal No. 122 of 2006. The petitioners explained the delay and submitted that from the date of knowledge, the appeal was within time. However, by order dated 22nd January, 2007, learned Commissioner dismissed the appeal summarily holding that the appeal is time barred. The petitioners being aggrieved by the said order have filed this writ petition.

7. The respondents have appeared and filed counter-affidavit, contesting the petitioners' claim. It has been contended, inter alia, that the writ petition is not maintainable inasmuch as the order passed by the learned Commissioner and the Deputy Commissioner are legal and proper. The land, in question, was recorded as gairmazarua malik of the ex-landlord. By operation of Bihar Land Reforms Act, 1950, the said land vested in the State. The State became the owner of the said land. Creation of jamabandi in favour of the petitioners' vendor was without any legal basis. The same is not binding on the respondents. The petitioners or their

vendors have absolutely got no right and interest over the said land.

8. The jamabandi running in their name is not sustainable. Learned Deputy Commissioner had considered the said aspect and has rightly passed the impugned order. There is no illegality or infirmity in the said order. The petitioners, who were not parties to the proceeding, had no locus standi to prefer appeal before the Commissioner. That appeal was filed after the expiry of the period of limitation. Learned Commissioner, therefore, has rightly passed the order, dismissing the appeal. There is no valid ground for assailing the impugned order.

9. I have heard learned Counsel for the parties and considered the facts and materials on record. It is an admitted fact that the jamabandi in respect of the land, in question, was running in the name of the petitioners' vendor since long. The petitioners are purchaser of a portion of the said land and on the basis of their purchase by virtue of the registered sale deed and after due enquiry, the area of the land purchased by the petitioners, was separated and the jamabandi was created in their favour in respect of the purchased area of the land.

10. It is well settled that a long running jamabandi cannot be cancelled unless fraud and misrepresentation is established in opening jamabandi. Creation of jamabandi gives a valuable right to the raiyats. The respondents have no authority to cancel the long running jamabandi and that too without giving any notice or opportunity of hearing to the present raiyat. Jamabandi of the petitioners' vendor has been cancelled in a proceeding against a dead person. The petitioners, who have been recorded in revenue register, were also not given any notice. The order impugned was passed behind their back and without giving them any opportunity of hearing. Learned Commissioner also summarily dismissed the appeal without applying his mind on the said legal aspects and without affording opportunity of hearing the appeal on merit.

11. The impugned orders are thus vitiated on account of the said illegality. The same are also unjust, arbitrary and violative of the principle of natural justice and are, hereby, quashed. This writ petition is allowed.