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**(2007) 12 PAT CK 0010**  
**In the Patna High Court**  
**Case No : CWJC No. 7235 of 2003**

Yogendra Pd. Shukla @ Yogendra

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

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**Date of Decision :** 07-12-2007

**Acts Referred:**

**Citation :** (2008) 3 PLJR 395

**Hon'ble Judges :** Navin Sinha, J

**Bench :** Single Bench

**Advocate :** Shashi Shekhar Dwivedi, R.S. Dwivedi, Ranjan Kr. Dubey, Shailendra Kr. Dwivedi and L.L Pandey, for the Appellant;

**Final Decision :** Allowed

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## Judgement

Navin Sinha, J.—Heard learned counsel for the petitioner and learned counsel for the State. The petitioner is aggrieved by the order dated 27.5.2003 as affirmed on 8.6.2003 passed in Jamabandi Case No. 1/01-02 by which the Jamabandi standing in his name has been cancelled.

2. It is the contention of the petitioner that the lands in question, identified as 12 Kaunas of plot No. 5045, Khata No. 270 in village Kabirpur was settled by the erstwhile landlord in favour of the grandfather of the petitioner, Mathura Prasad Shukla. A parwana was issued on 16.7.1940 in proof of acceptance of Salami. Mathura Prasad Shukla was put in possession and the State started to realize rent from him. At the time of vesting of estates, the landlord in his return did not mention the lands settled in favour of Mathura Prasad Shukla. Shri Shukla then filed a rent fixation case No. 23/61-62. On 9.5.1963 final orders were passed after enquiry by the Circle Officer fixing the rent and Jamabandi No. 436 was created in favour of Mathura Prasad Shukla. It is the further case of the petitioner that as early as 1968 an application was filed by certain persons challenging the rent fixation and Jamabandi in the name of Mathura Prasad Shukla. Though it is his case that after filing of the show-cause the matter was dropped, no documentary evidence has been brought on record. Mathura Prasad

Shukla died in 1983 leaving behind the petitioner as one of the legal heirs. The petitioner filed an application for mutation before the Circle Officer, Mairwa when the mutation application was allowed and the Jamabandi No. 436 continued. In 1992 the petitioner was again asked to show cause with regard to the Jamabandi and settlement. He again filed his show cause. The show cause filed is Annexure-8. It is his case that having heard the matter the proceedings were again dropped. However, on this occasion also no documentary evidence has been brought on record. In the year 2002 the settlement made with the ancestors of the petitioner subsequently mutated in the name of the petitioner 40 years later was sought to be questioned on the floor of the Assembly. The very opening of the Jamabandi Cancellation Case starts with the recital that a proposal for cancellation had been submitted in view of the question raised with regard to the settlement and jamabandi of the petitioner in the Assembly. The show-cause notice was again issued to the petitioner when final orders for cancellation have been passed.

3. The counter affidavit on behalf of the respondents seeks to question the settlement made distant in time by the landlord in favour of Mathura Prasad Shukla. It also seeks to make an issue of the orders passed in the rent fixation case in 1963 vis-a-vis Mathura Prasad Shukla and the jamabandi opened in his name. The counter affidavit states that the officials searched the case records but could not find any such records. Hence, the State makes the submission that the documents were bogus and created doubts. Therefore, the claim of the rent fixation case and consequent creation of Jamabandi did not appear genuine.

4. The petitioner has asserted in para-graph-13 of the writ application that the proceedings initiated by the Government in 1968 were dropped. No document has been annexed in support thereof and therefore in paragraph-16 of the counter affidavit the respondents have had the boldness to deny the same. When the petitioner reiterates the issuance of a fresh show-cause to him in 1992 and at paragraph-16 of the writ application encloses his reply to the show cause. The official respondents in their wisdom in reply in paragraph-18 of the counter affidavit to play it safe say that no records are available to show that the reply to the show-cause was accepted. There is no denial that a proceeding had been initiated in which a show cause was filed by the petitioner.

5. The fact that the rent fixation and jamabandi in the name of Mathura Prasad Shukla continued uninterruptedly in his lifetime and was never questioned by the respondents is not in controversy. What was acceptable to the respondents with regard to Mathura Prasad Shukla during his lifetime now becomes unacceptable to them when he is no more there to answer their queries. Those who created the Jamabandi and passed orders in the rent fixation case in favour of him are also not available any more. From the counter affidavit of the respondents themselves it is apparent that no records are available with them also of what had transpired more than 40 years back on basis of the nonavailability of records, the respondents now seek to declare as illegal what may have been

legal when it was done and seek to question the same when the evidence is no more available by passage of time either by documents or by individuals.

6. In AIR 1916 PC 110, (Banga Chandra Dhur Biswas and Another vs. Jagat Kishore Achariya Chowdhuri and Others), their Lordships were considering the challenge to the recitals in a sale-deed executed about sixty years ago of the legal necessity of alienation by a widow. The Court observed in the relevant extract as follows:-

"But in such a case as the present their Lordships do not think that these recitals can be disregarded, nor on the other hand, can any fixed and inflexible rule be laid down as to the proper weight which they are entitled to receive. If the deeds were challenged at the time or near the date of their execution, so that independent evidence would be available, the recitals would deserve but slight consideration, and certainly should not be accepted as proof of the facts. But, as time goes by, and all the original parties to the transaction and all those who could have given evidence on the relevant points have grown old or passed away, a recital consistent with the probability and circumstances of the case, assumes greater importance, and cannot lightly be set aside; for it should be remembered that the actual proof of the necessity which justified the deed is not essential to establish its validity. It is only necessary that a representation should have been made to the purchaser that such necessity existed, and that he should have acted honestly and made proper enquiry to satisfy himself of its truth. The recital is clear evidence of the representation, and, if the circumstances are such as to justify a reasonable belief that an enquiry would have confirmed its truth, then when proof of actual enquiry has become impossible, the recital, coupled with such circumstances, would be sufficient evidence to support the deed. To hold otherwise would result in deciding that a title becomes weaker as it grows older, so that a transaction- perfectly honest and legitimate when it took place-would ultimately be incapable of justification merely owing to the passage of time.

The present case well illustrates the necessity of this view. Nearly sixty years passed between the date of the first deed and the institution of these proceedings and the attempt to support it by contemporary evidence-statements as to the private affairs of the deceased man or of his widows-has only resulted, as might have been expected, in a number of witnesses attempting to give first-hand evidence upon matters which occurred when they were of tender years, and now can only be dimly and imperfectly remembered. Their Lordships are not surprised that the learned Judge who tried the case rejected this evidence as untrustworthy and they place no reliance upon it."

7. This Court therefore finds it difficult to uphold the orders dated 27.5.2003 and 8.6.2003 in Jamabandi Case No. 1/2001-2002. The same are accordingly set aside. The writ application is allowed.