

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(C) No. 5350 of 2014

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1. Phulwanti Devi, W/o Ishwari Pd. Sahu.
 2. Urmila Devi, W/o Mahabir Mahto and Daughter-in-law of Tirthmani Devi. Both are R/o Mohalla-Dibdih, P.O.- Hinoo, P.S.-Doranda, Dist. Ranchi.

..... Petitioners

Versus

1. The State of Jharkhand
2. The Deputy Commissioner, Ranchi
P.O.- Ranchi, P.S.-Kotwali, Dist.-Ranchi
3. The Additional Collector, Ranchi.
4. The D.C.L.R., Ranchi.
5. The Circle Officer, Ranchi.
All are P.O.-Ranchi, P.S.-Kotwali, Dist.-Ranchi
6. Manish Oraon, S/o Vimal Oraon
R/o Village- Kumbatoli, Bariyatu, P.O.-Hehal, P.S.- Jagarnathpur, Dist.-Ranchi.

..... Respondents

CORAM : HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioners	: Mr. Indrajeet Sinha, Advocate
	: Mr. Santosh Kumar Shukla, Adv.
For the Respondent-State	: Mr. Subhash Chandra Prakash, S.C (L&C)-I

22/Dated 17th January, 2020

Heard Mr. Indrajeet Sinha, learned counsel appearing on behalf of the petitioners and Mr. Subhash Chandra Prakash, learned counsel appearing on behalf of the respondent-State.

The petitioners have preferred this writ petition to quash the order passed by the Deputy Commissioner, Ranchi in Misc. Case No.04/2013-14 dated 28.08.2014 which is contained in Annexure-9 to the writ petition.

Learned counsel for the petitioners submits that land of Khata No.73 appertaining to Plot No.4, 5 & 6, measuring an area of 3 Acres 24 decimals, 0.13 acres, 0.8 acres, respectively to measuring an area of 3 Acres 45 decimals situated in village- Bariyatu, Thana No.141, Anchal District- Ranchi has been settled in the name of one Laxman Thakur, S/o Bodhan Thakur vide Hukumnama on 09.03.1936 taking into consideration. The said Hukumnama

is brought on record by way of Annexure-1 to the writ petition. He submits that in the cadastral survey the land under question has been shown as Gair Majuruwa Malik land and the name of the landlord shown as Lal Harak Nath Sahdeo, the photocopy of the Khatiyani of Cadastral survey in respect of the land has been annexed as Annexure-2 to the writ petition. After vesting of Zamindari the ex-land lord Harak Nath Sahdeo has filed the return vide Compensation Case No.14/1955-56 in respect of the land under question in the name of Laxman Thakur, Son of Bodhan Thakur in which, it has been mentioned that Laxman Thakur has obtained the land under question vide Hukumnama in the year 1936, the certified copy of the Compensation Case No.14/1955-56 has been annexed as Annexure-3 to the writ petition. After vesting of Zamindari the name of Laxman Thakur was incorporated in the Serista of State Government, in respect of the land under question and also entered in Demand Register-II, on Volume No.1, Page No.108 and in that view of the matter, the rent receipt of the land under question has been granted in the name of Laxman Thakur duly sealed and signed by the competent authority, the rent receipt is annexed as Annexure-4 to the writ petition. He further submits that Laxman Thakur has sold the land in the name of petitioners namely, Phulwanti Devi and one Tirthmani Devi (Mother-in-law of the petitioners No.2) vide Registered Sale Deed No.5892/6242 dated 23.05.1990 on the valuable consideration, the sale deed is annexed as Annexure-5 to the writ petition and pursuant to sale deed the petitioner's came in possession of the land under question and having the perfect right, title and interest possession of the land. He further submits that they applied before the Circle Officer to enter their names of i.e., Phulwanti Devi & Ors. in Register-II in respect of the land in question which has been purchased by them. After exhausting all the remedies, the Circle officer, Ranchi entered the name of

Phulwanti Devi & Ors. in Mutation Records, the correction slip is brought on record by way of Annexure-6 to the writ petition and the rent receipt is also issued in favour of the petitioners and the rent receipt is annexed as Annexure-7 series to the writ petition.

Mr. Indrajit Sinha, learned counsel for the petitioners submits that with regard to possession of the petitioners the report was called from the competent authority in Misc. Case No.3/12-13 and the Anchal Amin & Circle Inspector has submitted the report to the Circle officer showing therein the physical possession over the land in favour of the petitioners, which are annexed as Annexure-8 and Annexure-8/A to the writ petition. It has been submitted by the learned counsel for the petitioners that on petition filed by respondent no.6 the Deputy Commissioner has issued the impugned order dated 28.08.2014, which is contained in Annexure-9 whereby, he has cancelled the Jamabandi of the petitioners as well as the respondent No.6.

Mr. Indrajit Sinha, learned counsel for the petitioners has assailed the impugned order on the ground that without providing any notice to the petitioners the impugned order has been passed. He further submits that the concerned authority is required to look into the possession in view of the judgment of the Hon'ble Apex Court and the report is in favour of the petitioners with regard to possession. He further submits that respondent-Deputy Commissioner is not the competent authority to cancel long running Jamabandi. He also submits that there is dispute between the two private parties and the Deputy Commissioner has exceeded his jurisdiction in deciding the lis between two private parties with regard to the land in question. He further submits that the case of the petitioners' is fully covered by a Division Bench of this Court in the case of *The State of Jharkhand & Ors.*

vs. Chanchala Devi as reported in **2018 (2) JCR 486 (Jhr)**. Relevant paragraph Nos. 7, 8 and 9 of the said judgment is quoted herein below:-

7. *Thus, it appears from the facts of case that originally Thakur Mahendra Nath Sahdeo settled the land in favour of Rang Nath Sahu on 09.06.1942. After the Bihar Land Reforms Act, 1950, the assessment was also made in the name of Rang Nath Sahu from 1955-1956. The Mutation entries and revenue records reveal the name of Rang Nath Sahu from whom the petitioners of both the writ petitions, purchased the part of the land i.e., 20 decimals + 20 decimals by two different sale-deeds dated 04.05.1992 and 07.07.1992 and in their names also, orders have been passed by the Circle Officer for carrying out the mutation entries in the name of purchasers in the year 1993-1994.*

8. *These entries have been cancelled in the year 2002 because one halka Karamchari has given a report that the land in question is a gair majaruwa malik land. This one line report of halka karamchari has given birth to several litigations which has led to two letters Patent Appeals by the State.*

9. *It appears from the facts of the case that the presumption on the part of the halka karamchari that the land in question is a gair majaruwa malik land is not permissible in the eyes of law. If the State Government is claiming the ownership upon the property in question, which is in possession of the original petitioners and which is in possession of the predecessor-in-title from 09.06.1942, the Civil Suit is the only remedy available with the State of Jharkhand. They cannot drag the citizens to be the plaintiff. The burden of proof lies upon the plaintiff. Burden of proof that the State is owner of the property in question lies upon the State Government. The defendant has to deny the allegations and nothing beyond that. There is vast difference between burden of proof for the plaintiff and for the defendant. The purchasers of the property by the registered sale-deeds in the year 1992 from their predecessor-in-title Rang Nath Sahu, who is owner of the property from 09.06.1942, cannot be upset by a report of halka Karamchari that the land in question is a gair majaruwa malik land. Prima faice, no fraud has been played by the purchasers of the property who are the petitioners in the writ petitions. Likewise, prima facie,*

Rang Nath Sahu is the owner of the property, looking to the revenue entry from 1955-1956. Thus, more than 30 years old entries and documents cannot be upset by or cannot be brushed aside by one line report of the halka karamchari that the land in question is a gair majaruwa malik land. These aspects of the matter have been properly appreciated by the learned Single Judge, while allowing the writ petitions W.P.(C) No.2900 of 2007 and W.P.(C) No.4452 of 2008 and we see no reason to take any other view to what is taken by the learned Single Judges in both the writ petitions.

Learned counsel for the petitioners submits that a doubt or surmises is not proof of a fact. A suspicion that there might have been collusion and fraud is not proof of collusion and fraud and the Deputy Commissioner has exceeded his jurisdiction by deciding such dispute. To buttress his argument, learned counsel has relied upon a judgment passed by the Hon'ble Apex Court in the case of ***Elizabeth Jacob vs. District Collector, Idukki & Others*** as reported in ***(2008) 15 SCC 166***. Relevant paragraph No.15 of the said judgment is quoted herein below:-

15. Having held so, the Division Bench proceeded to allow the appeal on the unsupported surmises and inferences. One surmise was that it was generally known that the Revenue Authorities used to assign lands by ignoring the provisions of protective enactments and the public trust doctrine. The second surmise was that the past experience in the State showed a possibility that the land assigned in 1981 and 1984 was forest land and the Revenue Authorities colluded with the assignees in assigning the land. The third was that therefore the appellant should approach the civil court and seek a declaration that the land purchased by her was not forest land and establish her title and then obtain possession. Such a direction on surmises alone was unwarranted. A doubt or surmise is not proof of a fact. A claim that land may be forest land is not proof that it is forest land. A suspicion that there might have been collusion and fraud is not proof of collusion and fraud. At all events, who should establish

fraud and collusion? Is it for the State which alleged fraud and collusion by someone in 1981 and 1984 to establish those facts? Or is it for the bona fide purchaser from the State to establish that there was no fraud or collusion in respect of the property put up by the State for sale? The onus is clearly on the State. We are therefore of the view that the Division Bench committed a jurisdictional error in interfering with the order of the learned Single Judge.

Per contra, learned counsel for the respondent-State submits that there is no illegality in the impugned order of the Deputy Commissioner and the Deputy Commissioner has rightly invoked his power.

As a cumulative effect of above discussions, this Court finds that the Deputy Commissioner has entered into the private disputes between the two parties which is not in his domain. The authority needs to look into the possession of parties and the possession report is in favour of the petitioners. Only on the basis of doubts or surmises, the Deputy Commissioner has come to a conclusion that there is a fraud on behalf of the petitioners as well as respondent No.6. The order has been passed without providing any opportunity of hearing. Accordingly, the impugned order dated 28.09.2014 which is contained in Annexure-9 is, hereby, quashed.

Accordingly, the writ petition stands allowed and disposed of.

Consequently, interlocutory application, if any, also stands disposed of.

(Sanjay Kumar Dwivedi, J.)

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