

## COMMENT ON JAMABANDI / MUTATION LAW

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It is gratifying to note that our welfare state is based on rule of law. It is also a matter of pride that the functionaries of the state are guardians of the rights of citizens. The concept of rule of law would lose its vitality if the functionaries of the state are not enjoined upon the duty of discharging their functions in a fair and purposive manner. We are conscious that such enlightened functionaries always consider that the ends of justice are always higher than the technicalities of law.

In case where it is indisputable that the representationist is in possession fulfilling both its elements i.e. mental (ANIMUS POSSESSIONDI) and physical (CORPUS POSSESSIONDI) possession and if it is further evident that the state could not and did not take possession on the land in question and no compensation amount has ever been paid in lieu of the land in question at any point of time. Accordingly, in terms of the Repealing Act the proceeding, if any under the Urban Ceiling Act abated. The term ‘abatement’ is no longer res-integra. The case is squarely covered by the constitutional bench decision of Hon’ble Supreme Court in case of *Angoori Devi v. State of Uttar Pradesh*<sup>1</sup>. It stands obliterated from its inception and the order, if any, becomes congenitally void.

One of the basic dictums of law is ‘OUOD AB INITIO NON VALET IN TRACTU TEMPORIS NON CONVALESAIT’ i.e, ‘that which is originally void, does not by lapse of time become valid’. Such dictums of the common law of England are applicable in our country. They are not contrary to any provision of the law of land or any enactment. Accordingly, even in terms of Article 372 of the Constitution of India they are also an integral part of the constitution falling even within the ambit of Article 13(1) enshrined in part III of the constitution.

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<sup>1</sup> AIR 2001 (SCW) 5128

It is well settled that the creation of Jamabandi is neither a mirror of title nor is it a reflection of actual physical possession. The apex court in case of *Jattu Ram v. Hakam Singh*<sup>2</sup> it has been authoritatively laid down the law as follows:

*“It is well settled law that Jamabandi/mutation entries are only for fiscal purpose. It neither creates nor extinguishes title or ownership.”* This view was reiterated in many decisions including *Sawarni v. Inder Kaur*<sup>3</sup>. It bears the testimony that such revenue entry is relevant for fiscal purpose alone and is relevant for collection of rent.

However, possession is *sine qua non* for Mutation and issuance of rent receipt. The person in possession alone is entitled to be issued rent receipts. Various authorities including *Depta Tiwari v. State of Bihar*<sup>4</sup> bears testimony to this proposition with following words:-

*“It is not disputed nor can it be in law that an order with regard to mutation has to be passed on the basis of possession only.”*

It is to be borne in mind that in the earlier Act, being Tenants Holding (Maintenance of Records) Act 1973 or any earlier law of mutation there was no power of cancellation of Jamabandi/order of mutation. Reference may be made to the decision of Hon’ble Patna High Court in case of *Harihar Singh & Others v. Additional Collector I/c Land Reforms*.<sup>5</sup> Such instance can be multiplied, but VERB SAP. It was for the first time that in Mutation Act, 2011, the power of cancellation of Jamabandi was conferred under section 9 of the said Act upon the Additional Collector with a right to appeal and revision against the same.

Nothing succeeds like success and nothing fails like failure. In such a case it is never too late to mend the ways, correct the tenants’ ledger and augment the revenue of the state. It can only be done by revival of earlier order, mutation and by providing rent covering even back years.

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<sup>2</sup> 1994 (1) PLJR 18 (SC)

<sup>3</sup> AIR 1996 SC 2823

<sup>4</sup> 1987 PLJR 1037

<sup>5</sup> 1978 BBCJ 323