

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.507 of 2007

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Birendra Sahu son of Sri Ram Sahu, resident of village+P.O. Jafara, P.S.
Bisfi, District-Madhubani

.... Petitioner/s

Versus

1. The State of Bihar
2. The Collector, Madhubani, District-Madhubani
3. The Deputy Collector, Land Reforms, Benipatti, District-Madhubani
4. The Sub-Divisional Officer, Benipatti, District-Madhubani
5. The Anchal Adhikari, Bisfi, District-Madhubani
6. Bikaru Mukhiya son of Late Maithur Mukhiya

Respondent no. 6 is resident of village-Jafara, P.O. Jafara, P.S.
Bisfi, District-Madhubani

.... Respondent/s

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with

Civil Writ Jurisdiction Case No.761 of 2007

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Birendra Sahu son of Sri Ram Sahu, resident of village + P.O. Jafara, P.S.
Bisfi, District-Madhubani

.... Petitioner/s

Versus

1. The State of Bihar
2. The Collector, Madhubani District, Madhubani
3. The Deputy Collector, Land Reforms, Benipatti, District-Madhubani
4. The Sub-Divisional Officer, Benipatti, District-Madhubani
5. The Anchal Adhikari, Bisfi, District-Madhubani
6. Mahendra Mukhia son of Late Ram Lakhan Mukhia, respondent no. 6 is
resident of village-Jafara, P.O. Jafara, P.S. Bisfi, District-Madhubani

.... Respondent/s

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with

Civil Writ Jurisdiction Case No.849 of 2007

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Birendra Sahu son of Sri Ram Sahu, resident of village + P.O. Jafara, P.S.
Bisfi, District-Madhubani

.... Petitioner/s

Versus

1. The State of Bihar
2. The Collector, Madhubani, District-Madhubani
3. The Deputy Collector, Land Reforms, Benipatti, District-Madhubani
4. The Sub-Divisional Officer, Benipatti, District-Madhubani
5. The Anchal Adhikari, Bisfi, District-Madhubani
6. Dasarath Sada son of Late Berahapati Sada, respondent no. 6 is resident
of village-Jafara, P.O. Jafara, P.S. Bisfi, District-Madhubani

.... Respondent/s

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with

Civil Writ Jurisdiction Case No.10629 of 2005

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Birendra Sahu son of Sri Ram Sahu, resident of village-Jafara, P.O. Jafara,
P.S. Bisfi, District-Madhubani

.... Petitioner/s

Versus

1. The State of Bihar
2. The Collector, Madhubani, District-Madhubani
3. The Deputy Collector, Land Reforms, Benipatti, District-Madhubani
4. The Sub-Divisional Officer, Benipatti, District-Madhubani
5. The Anchal Adhikari, Bisfi, District-Madhubani
6. Bikhari Sada son of Chaudhary Sada

Respondent no. 6 is resident of village-Jafara, P.O. Jafara, P.S. Bisfi, District-Madhubani

.... Respondent/s

with

Civil Writ Jurisdiction Case No.11796 of 2005

1. Sanjay Bhandari son of Late Bansi Bhandari
 2. Ram Chandra Kamat son of Late Baldeo Kamat
- Both are resident of village-jafara, P.O. Jafara, P.S. Bisfi, District-Madhubani

.... Petitioner/s

Versus

1. The State of Bihar
2. The Collector, Madhubani District, Madhubani
3. The Deputy Collector, Land Reforms, Benipatti, District-Madhubani
4. The Sub-Divisional Officer, Benipatti, District-Madhubani
5. The Anchal Adhikari, Bisfi, District-Madhubani
6. Sri Pitambar Kamat son of Late Achchalal Kamat @ Baun Kamt
7. Sri Mitran Mukhia son of Late yadunandan Mukhia

Respondent nos. 6 and 7 are resident of village-jafara, P.O. Jafara, P.S. Bisfi, District-Madhubani

.... Respondent/s

with

Civil Writ Jurisdiction Case No.11989 of 2005

1. Shambhu Sahu son of Sri Laxmi Sahu
 2. Raj Kumar Sahu son of Sri Shiv Lal Sahu
 3. Mahendra Kamat son of Sri Barish Kamat
- All are resident of village-jafara, P.O. Jafara, P.S. Bisfi, District-Madhubani

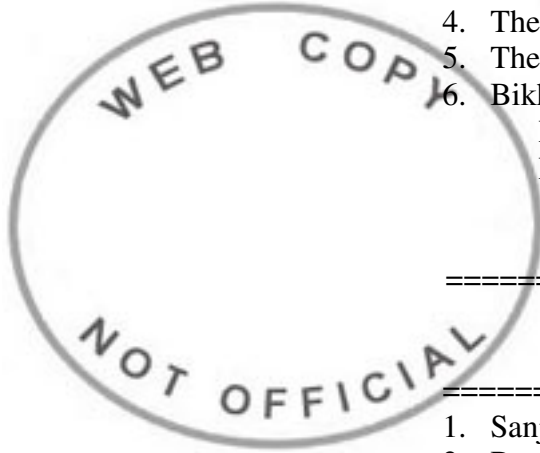
.... Petitioner/s

Versus

1. The State of Bihar
2. The Collector, Madhubani District, Madhubani
3. The Deputy Collector, Land Reforms, Benipatti, District-Madhubani
4. The Sub-Divisional Officer, Benipatti, District-Madhubani
5. The Anchal Adhikari, Bisfi, District-Madhubani
6. Sri Jasodhar Mukhiya son of Late Phushi Mukhia
7. Sri Parmeshwar Sadai son of Late Subansh Sadai
8. Sri Dular Chand Sadai son of Late Subnash Sadai

Respondent nos. 6 to 8 are resident of village-Jafara, P.O. Jafara, P.S. Bisfi, District-Madhubani

.... Respondent/s



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with

Civil Writ Jurisdiction Case No.11999 of 2005

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Ram Chandra Mukhia son of late Manohar Mukhia, resident of village-Jafara, P.O. Jafara, P.S. Bisfi, District-Madhubani

.... Petitioner/s

Versus

1. The State of Bihar
2. The Collector, Madhubani, District-Madhubani
3. The Deputy Collector, Land Reforms, Benipatti, District-Madhubani
4. The Sub-Divisional Officer, Benipatti, District-Madhubani
5. The Anchal Adhikari, Bisfi, District-Madhubani
6. Laxmi Sadai son of Late Sone Sadai
7. Binod Sadai son of Shri Laxmi Sadai

Both respondent nos. 6 and 7 are resident of village-Jafara, P.O. Jafara, P.S. Bisfi, District-Madhubani

.... Respondent/s

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with

Civil Writ Jurisdiction Case No.12790 of 2005

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Pramod Yadav son of Late Nathuni Yadav, resident of village-Jafara, P.O. Jafara, P.S. Bisfi, District-Madhubani

.... Petitioner/s

Versus

1. The State of Bihar
2. The Collector, Madhubani District, Madhubani
3. The Deputy Collector, Land Reforms, Benipatti, District-Madhubani
4. The Sub-Divisional Officer, Benipatti, District-Madhubani
5. The Anchal Adhikari, Bisfi, District-Madhubani
6. Sri Mahesh Mukhia son of Rupan Mukhia
7. Sri Ramprit Mukhia son of Charitar Mukhia

Both respondent nos. 6 and 7 are resident of village-Jafara, P.O. Jafara, P.S. Bisfi, District-Madhubani

.... Respondent/s

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with

Civil Writ Jurisdiction Case No.814 of 2007

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Birendra Sahu son of Sri Ram Sahu, resident of village + P.O. Jafara, P.S. Bisfi, District-Madhubani

.... Petitioner/s

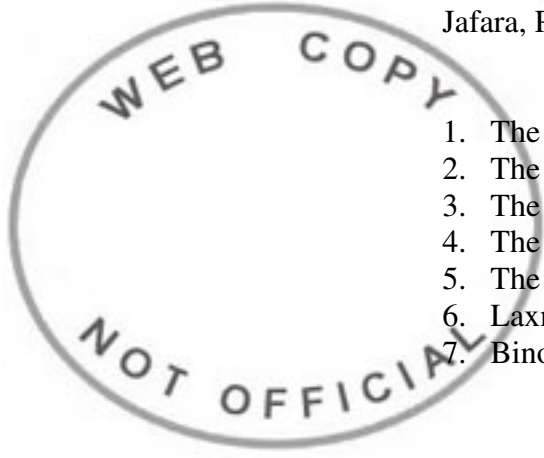
Versus

1. The State of Bihar
2. The Collector, Madhubani District, Madhubani
3. The Deputy Collector, Land Reforms, Benipatti, District-Madhubani
4. The Sub-Divisional Officer, Benipatti, District-Madhubani
5. The Anchal Adhikari, Bisfi, District-Madhubani
6. Tejan Mukhia son of Late Mathura Mukhia

Respondent no. 6 is resident of village-Jafara, P.O. Jafara, P.S. Bisfi, District-Madhubani

.... Respondent/s

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Appearance:

(In CWJC No.507 of 2007)

For the Petitioner/s : Mr. Vishwanath Prasad Sinha, Sr. Adv.
Mr. Yugal Kishore
Mr. Nand Kishor Singh

For the Respondent/s : Mr. (GA 4)

(In CWJC No.761 of 2007)

For the Petitioner/s : Mr. Vishwanath Prasad Sinha, Sr. Adv.
Mr. Yugal Kishore
Mr. Nand Kishore Singh

For the Respondent/s : Mr. (AAG 11)

(In CWJC No.849 of 2007)

For the Petitioner/s : Mr. Vishwanath Prasad Sinha, Sr. Adv.
Mr. Yugal Kishore
Mr. Nand Kishor Singh

For the Respondent/s : Mr. (AAG 7)

(In CWJC No.10629 of 2005)

For the Petitioner/s : Mr. Vishwanath Prasad Sinha, Sr. Adv.
Mr. Nand Kishor Singh
Mr. Iqbal Asif Niazi

For the Respondent/s : Mr. (AAG 3)

(In CWJC No.11796 of 2005)

For the Petitioner/s : Mr. Vishwanath Prasad Sinha, Sr. Adv.
Mr. Nand Kishore Singh
Mr. Yugal Kishore

For the Respondent/s : Mr. (AAG 3)

(In CWJC No.11989 of 2005)

For the Petitioner/s : Mr. Vishwanath Prasad Sinha, Sr. Adv.
Mr. Nand Kishore Singh
Mr. Yugal Kishore

For the Respondent/s : Mr. (AAG 3)

Mr. Manoj Kumar Mishra

Mr. Sanjay Kumar "Ghosarvey"

(In CWJC No.11999 of 2005)

For the Petitioner/s : Mr. Vishwanath Prasad Sinha, Sr. Adv.
Mr. Nand Kishore Singh
Mr. Yugal Kishore

For the Respondent/s : Mr. (AAG 3)

Mr. Manoj Kumar Mishra

Mr. Sanjay Kumar 'Ghosarvey'

(In CWJC No.12790 of 2005)

For the Petitioner/s : Mr. Vishwanath Prasad Sinha, Sr. Adv.
Mr. Nand Kishore Singh
Mr. Yugal Kishore



For the Respondent/s : Mr. (AAG 3)
(In CWJC No.814 of 2007)

For the Petitioner/s : Mr. Vishwanath Prasad Sinha, Sr. Adv.
Mr. Yugal Kishore
Mr. Nand Kishore Singh

For the Respondent/s : Mr. (AAG 6)

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

05. 23-12-2013 Mr. Vishwanath Prasad Sinha, learned Senior Counsel has appeared on behalf of the petitioners in each of the writ petitions while the State is represented by the respective counsels in each of the writ petitions.

The petitioners in each of the writ petitions have questioned the order passed by the Collector, Madhubani, whereby he has dismissed the appeal preferred by the petitioners questioning the order passed by the Sub Divisional Officer, Benipatti-cum-Bataidari Magistrate, Benipatti in the set of 19 Bataidari cases which was allowed by him.

A set of 19 bataidari cases were filed by a set of person which was allowed vide order dated 08.07.2004 passed by the Sub-Divisional Officer, Benipatti cum Bataidari Magistrate and affirmed by the Collector, Madhubani vide order passed on 24.06.2005 / 27.06.2005 whereby all the appeals preferred by the land owners some of whom are petitioners before this Court, were rejected. Details of the bataidari cases and the appeals arising therefrom are mentioned as under:

(1) C.W.J.C. No. 507 of 2007

Impugned order passed in Bataidari Case No. 50 of 1993-94 and affirmed in Appeal Case No. 27 of 2004.

(2) C.W.J.C. No. 761 of 2007

Impugned order passed in Bataidari Case No. 44 of 1993-94 / 25 of 2003-04 and affirmed in Appeal Case No. 31 of 2004.

(3) C.W.J.C. No. 849 of 2007

Impugned order passed in Bataidari Case No. 45 of 1993-94 and affirmed in Appeal Case No. 30 of 2004.

(4) C.W.J.C. No. 10629 of 2005

Impugned order passed in Bataidari Case No. 42 of 1993-94 and affirmed in Appeal Case No. 26 of 2004.

(5) C.W.J.C. No. 11796 of 2005

Impugned order passed in Bataidari Case No. 288 of 1997-98 and Bataidari Case No. 30 of 1993-94 and affirmed in Appeal Case No. 14 of 2004-05 and 17 of 2004-05 respectively.

(6) C.W.J.C. No. 11989 of 2005

Impugned order passed in Bataidari Case No. 27 of 1993-94 / 20 of 1993-94 / 21 of 1993-94 and affirmed in Appeal Case No. 23 of 2004 / 16 of 2004 / 15 of 2004

(7) C.W.J.C. No. 11999 of 2005

Impugned order passed in Bataidari Case No. 289 of 1997-98 / 290 of 1997-98 and affirmed in Appeal Case No. 21 of 2004 / 22 of 2004

(8) C.W.J.C. No. 12790 of 2005

Impugned order passed in Bataidari Case No. 16 of 1993-94 / 29 of 1993-94 and affirmed in Appeal Case No. 24 of 2004 / 25 of 2004; and

(9) C.W.J.C. No. 814 of 2007

Impugned order passed in Bataidari Case No.47 of 1993-94 and affirmed in Appeal Case No. 29 of 2004.

I have heard Mr. Sinha, learned Senior Counsel appearing for the each of the petitioner while the State has been represented by different set of counsel(s).

Since the issues raised in all the writ petitions were common and the order(s) impugned in the writ petitions were identical hence Mr. Sinha chose to refer to the pleadings made in CWJC No. 12790 of 2005 for the sake of convenience as also due to the filing of counter affidavit in the said writ petition.

A short question of law has been raised by Mr. Sinha by placing reliance on the statutory provisions underlying Section 48E of the Bihar Tenancy Act, 1885 (hereinafter referred to as 'the Act') to contest the impugned orders. He submits that following the institution of the case under Section 48E of the Act, the Board was constituted consisting of two 'panches' nominated by the land owners, namely, Gangadhar Sah son of B. Lal Sah and Pawan Yadav son of Munshi Yadav. In a similar manner two 'panches' were also nominated by the bataidars, namely, Rabi Mukhia son

of Late Basudeo Mukhia and Parmanand Yadav son of Juge Yadav as is manifest from the order dated 28.12.1999 of the Sub Divisional Officer, Benipatti placed at Annexure-1. It is stated that the Circle Officer, Benipatti was appointed the Chairman of the Board.

Mr. Sinha next with reference to the order dated 28.03.2003 present at Annexure-2 has submitted that the first report was submitted by the Board under the exclusive signature of the Chairman and in which it was mentioned that upon the land owners refusal to accept notice, he himself inspected the plots in question in presence of the 'panches' and the bataidars and according to him, the bataidars were entitled to settlement. On the objection raised by the land owners, another inspection was conducted by the Circle Officer in the capacity of the Chairman of the Board so constituted, on 20.11.2003 in presence of the land owners, the bataidars as well as their respective nominated 'panches' and following which a report was submitted placed at Annexure-3, rejecting the claim of the bataidars and the said report together with the recommendation was forwarded to the Sub Divisional Officer. The said report was followed by a third report on 04.03.2004 by the Chairman with identical recommendations of rejecting the claim of the Bataidars.

Mr. Sinha, learned Senior counsel making a very short



submission has contended that whereas the first report dated 28.03.2003 was not in accordance with the statutory stipulations, inasmuch as the 'panches' nominated by the land owners were not present, the subsequent two reports submitted on 20.11.2003 and 4.3.2004, was after due compliance of the statutory requirements. It is submitted that for the reasons best known, the Sub Divisional Officer, Benipatti relying upon the first report, upheld the claim of the bataidars and thus allowed their cases vide a common order passed on 08.07.2004 in 19 bataidars cases, some of which are subject matter of the present proceedings. It is contended that the land owners being aggrieved by the order passed by the Sub Divisional Officer, Benipatti preferred their respective appeals and which has been dismissed by a common order dated 24.6.2005 / 27.6.2005 and hence these batch of writ petitions.

It is the contention of Mr. Sinha that the provisions underlying Section 48E are self eloquent and no sooner a case is instituted by a batiadar claiming bataidari rights, a duty is cast upon the Collector to constitute a Board consisting of a Chairman and 'panches' nominated by the respective parties with a view to promote settlement of the dispute as is manifest from Sub-Section (3) and (4) of Section 48E of the Act. It is submitted that upon failure of any of the member of the Board to attend the meeting on two consecutive dates in absence of satisfactory cause shown, the



Collector may appoint a suitable person in the prescribed manner to take his place and reconstitute the Board. It is contended that the Board under Sub-Section (6) is to endeavour to bring about an amicable settlement and if it succeeds in the same, it shall report the matter to the Collector for its disposal and the same procedure is to be adopted even if the Board fails to bring about a settlement. While admitting to the fact that following the constitution of the Board, a proceeding being taken to its logical conclusion under the provisions of the Act would not be rendered void merely on the members not signing thereon, it is however contended that the presence of the parties and their respective 'panches' during the meeting, is a mandatory feature. He further submits that it is the duty of the Chairman to either obtain the signature of each member or obtain the reasons from such member concerned, as to his non signing on the report and any infraction in such mandatory procedure would invalidate the proceedings. It is thus with reference to the statutory provisions submitted that since the orders impugned in the writ petitions is based on an invalid report dated 28.3.2003 as contained in Annexure-2 which neither refers to the presence of the 'panches' nominated by the land owners nor contains any modes of agreement or disagreement, the orders cannot be upheld. He further submits that the said lacuna was sought to be removed by the Chairman by

conducting a fresh inspection in presence of the Bataidars, the land owners and the 'panches' as is manifest from the second and third report placed at Annexure-3 collectively but which has been illegally ignored.

The State has contested the matter by filing a counter affidavit in the batch of writ petitions except C.W.J.C. No. 507 of 2007, C.W.J.C. No. 761 of 2007, C.W.J.C. No. 10629 of 2005 and C.W.J.C. No. 814 of 2007. Though this issue has been specifically raised by the petitioners in the writ petitions but it has not been responded to by the State and except for making a sweeping assertion that the matter has proceeded in accordance with law, there is no categorical rebuttal to the averments regarding invalidity of the report of the Board which forms the basis for the impugned orders.

I have heard learned counsel for the parties and have perused the materials on record. The facts are not in dispute. By a common order 19 bataidari cases were allowed and in a similar manner by a common order the appeals preferred by the land owners were dismissed. It is again not in dispute that the impugned orders passed by the S.D.O. Benipatti and the Collector, Madhubani lay their foundation on the first report of the Board dated 23.03.2003. According to the statutory authorities under the Act there was no occasion for the Board to submit the



subsequent report(s). It is thus to be seen whether Mr. Sinha has made out a case for indulgence and whether the first report satisfies the statutory requirement underlying Section 48E of the Act. As is manifest, the Board was constituted under the order dated 28.12.1999 by the Sub Divisional Officer, Benipatti as contained in Annexure-1. Thus the procedural requirements of Sub-Section (3) and (4) of Section 48E stands satisfied. The Board i.e. the Chairman alongwith the 'panches' were required to endeavour for a settlement between the parties and upon failure to do so, to submit their report in either case. The first report dated 28.03.2003 placed at Annexure-2 which is the foundation for the impugned order(s) reflects no such endeavour by the Board to bring about a settlement rather is a unilateral opinion of the Chairman expressed simply on the basis of the statement made by the persons present. Even while noticing the refusal by the land owners to accept notice, there was no endeavour by the Chairman to ensure the presence of the 'panches' nominated by them. Clearly the quorum lacking, the Board was incompetent to submit any report on 28.3.2003. It is perhaps considering this serious lacuna and the legal infirmity prevailing that the Chairman decided to conduct a second inspection on 20.11.2003 as is manifest from the order present at Annexure-3. The contesting parties alongwith their 'panches' were present on the said date and



a report was submitted. Thus any lacuna whatsoever was existing in the first report, stood removed in the second report. Perusal of the order passed by the Sub Divisional Officer, Benipatti reflects that although he has taken note of the subsequent reports but has assigned no reasons to reject the same and for preferring the first report. He has also not bothered to delve into the matter to ascertain as to what led to the subsequent report. Merely because the report dated 28.3.2003 was first in the line of the reports that the Sub Divisional Officer, Benipatti without realizing that it was an invalid report, prepared in absence of the 'panches' nominated by the land owners and thus could not have been acted upon, has mechanically accepted the same.

Whether the subsequent report dated 20.11.2003 followed by the third report dated 28.2.2004 were in consonance with the statutory provisions, is a matter this Court would not express any opinion because this Court is considering the sustainability of the impugned order(s) in the backdrop of the first report dated 23.08.2003 and is fully satisfied that the foundation of the impugned order(s) itself, was illegal inasmuch as the first report dated 28.3.2003 was prepared contrary to the statutory requirements and in absence of any endeavour of the Board to an attempted settlement between the parties and in absence of the 'panches' nominated by the land owners. The legal infirmity is so

serious that it cannot be ignored.

In consequence the orders impugned in the writ petitions cannot be upheld and are accordingly set aside. The matters which are subject matter of the writ petitions, are remitted back to the Sub Divisional Officer, Benipatti to constitute the Board afresh and who shall proceed to dispose of the Bataidari cases in question, in accordance with law after hearing the contesting parties.

The writ petitions are allowed with the directions and observations aforementioned.

(Jyoti Saran, J)

S.Sb/-