

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1490 of 1992

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1. Birendra Singh @ Birendra Prasad Singh, son of Ishwari Prasad Singh
2. Kamleshwari Prasad Singh, son of Ishwari Prasad Singh
3. Anand Lal Singh, son of Kisun Singh
All residents of village Paropra, Police Station Krityanand Nagar, District Purnia.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Additional Collector, Purnia
3. Shri R. N. Matte, Deputy Collector, Sadar Purnia.
4. Anchal Padadhikari, Krityanand Nagar within the district of Purnia
5. Akali Prasad Singh, son of Late Mahadeo Singh
6. Nawal Kishore Chaudhary son of Late Yogendra Narain Choudhary
7. Kaushal Kishore Choudhary son of Late Yogendra Narain Chaudhary.
8. Awadh Kishore Choudhary son of Late Yogendra Narain Choudhary
9. Kishore Choudhary son of Late Yogendra Narain Choudhary
10. (i) Lata Devi wife of Late Nand Kishore Chaudhary
(ii) Sanjeev Kr. Chaudhary son of Late Nand Kishore Chaudhary
11. (i) Asha Choudhary wife of Late Braj Kishore Chaudhary
(ii) Bikram Kishore Choudhary
(ii) Vishal Kr. Choudhary
Both are sons of late Braj Kishore Choudhary
12. Sandhya Devi, widow of Late baijnath Choudhary
Respondents No. 4 to 12 are residents of Village Parora, Police Station Krityanand Nagar, District-Purnea

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arun Prasad Ambastha
For the Respondent/s : Mr. Sushant Praveer, A.C. to S.C.-27

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 16-02-2015

1. This is an application seeking quashing of the order dated 14.06.1990 passed by the Deputy Collector, Sadar, Purnea in Case No. 53 of 87-88 (Annexure-4) under Section 48E of the Bihar Tenancy Act, 1885 (hereinafter referred to as the 'Act') whereby he has disposed of a proceeding under Section 48E in terms of the



provision of the Board constituted under the said provision. The petitioners have challenged the order passed by the Additional Collector, Purnea also dated 25.01.1991 passed in Revenue Appeal No. 49/90-91 (Annexure-5) whereby he dismissed the petitioners' appeal and affirmed the order passed by the Deputy Collector, Sadar, Purnea.

2. Apart from relying upon the pleadings in the writ application, learned counsel appearing on behalf of the petitioners, has vehemently argued that it was mandatorily required for the Board constituted under Section 48E(2) of the Bihar Tenancy Act, 1885 to have made endeavors for promoting settlement of the dispute between the parties i.e. in the present case landlord and the under-raiyat. The petitioner in the present case is landlord whereas Respondent No. 5 claims to be under-raiyat. There is specific averment in paragraph No. 11 and 12 of the writ application that the Board, before submitting its report in favour of Respondent No. 5 declaring him to be under-raiyat, did not made any effort for settlement of the disputes amicably. This is to be noted that the Board in its report dated 09.03.1990 had recommended declaration of under tenancy in favour of the Respondent No. 5. Despite objections having been raised by the petitioner before the Deputy Collector on this count, he disposed of the proceeding under Section 48E of the Act in accordance with the report of the Board.

The petitioners' appeal also came to be rejected by the Additional Collector vide order dated 25.01.1991, as has been noted above. Hence, this application under Article 226 of the Constitution of India.

3. Despite service of notice, the private respondents have not appeared. No counter affidavit has been filed. The writ application is, accordingly being disposed of on the basis of uncontroverted averments made in the writ application. The dispute relates to lands situated in Mauza Ganeshpur, Thana No. 36, Police Station-Krityanand Nagar, District-Purnea appertaining to Khata No. 1279, Khesra No. 1451 measuring an area of 1.95 acres. It is the petitioners' case that the land in question originally belonged to Respondent No. 6 to 12 as raiyats and father of the petitioners were recorded as under-raiyats. After death of the petitioners' father, the petitioners stepped into the shoes of their father and are in actual possession over the said property. It is further case that ancestors of Respondent No. 6 to 12 had filed a Title Suit No. 256 of 1956 against the father of the petitioners for declaration of their right, title and possession over the land in question, which was decreed. The petitioners preferred Appeal No. 47 of 1960 which too was dismissed. A Second Appeal No. 488 of 1974 was, thereafter, preferred before this High Court which was allowed and by an order dated 05.12.1979, the judgment and decree passed by the Appellate Authority below was



set aside and the matter was remanded back to the Appellate Court. By that time, the notification under of Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956, with respect to the village in question came to be issued and thus, judgment and decree of the Title Suit abated. Respondent No. 5 is said to have filed a petition under Section 48E for his declaration as under-tenant in respect of the land in question whereupon, a Board was constituted under Section 48E (4) of the Act. The Board, without making any attempt to reconcile the matter through amicable settlement, submitted its report in favour of Respondent No. 5.

4. Section 48E of the Bihar Tenancy Act, 1885 deals with the procedure for extending protection to a under-raiyat in case of his threatened ejectment. A person claiming to be under raiyat can approach the Collector if he is threatened with unlawful ejectment from his tenancy or any portion thereof by his landlord or if there is a dispute between them over the possession of land crop or produce thereof either on the ground of non-existence of relationship of landlord and tenant between them or otherwise.

5. Sub-section 3 of Section 48E confers upon the Collector, jurisdiction to refer the matter to a Board to be appointed by him for promoting the settlement of the dispute between under raiyat and the landlord. Section 48E (3) reads thus:-

“48E(3) When a proceeding is initiated under sub-section (1) the Collector may refer the matter (hereinafter referred to as “dispute”) to a Board to be appointed by him, for promoting the settlement of the dispute between the under-raiyat and the landlord.”

6. Sub-section (4) of Section 48E of the Act lays down the manner in which a Board is to be appointed and it reads thus:

“48E(4) A Board to be appointed by the Collector in the prescribed manner under sub-section (3) shall consist of a Chairman; who shall be unconnected with the dispute referred to such Board or with any party directly affected by such dispute and two members to represent the parties to the dispute and the person appointed as a member to represent any party shall be appointed on the recommendation of that party.

Provided that if any party does not nominate any person to represent him in the Board or nominates a person who is not available within such time as the Collector considers reasonable, the Collector may appoint such person as he thinks fit to represent that party. ”

7. Section 7 deals with the situation where the Board fails to succeed in bringing about an amicable settlement of the dispute between the contesting parties and reads thus:-

“Where a Board does not succeed in bringing about an amicable settlement of the dispute, it shall make enquiry into the same, receive such evidence as it considers, necessary, record its findings on the disputes and transmit the entire record of the proceeding forthwith to the Collector who may dispose of the proceeding in accordance with the terms of the findings:

Provided further that if any member does not want to sign the findings of the Board he will submit his disagreement on the findings in writing failing which the Chairman will submit his notes on the subject.”

8. It is in the background of these legal provisions, learned counsel appearing on behalf of the petitioners has submitted that it was mandatory for the Board to have first made endeavour to settle the dispute amicably. He has submitted that the said provision is mandatory.

9. I find force in submission made on behalf of the petitioners and which is evident from the statutory provisions also, as have been quoted above. A bare reading of sub-section (3) of Section 48E of the Act will show that it confers jurisdiction upon the Collector to refer the dispute to a Board to be appointed by him for promoting the settlement of the dispute between under-raiyat and landlord.

10. Evidently, the primary object of referring the dispute to the Board is for promoting settlement between the parties. Sub-section (7) of Section 48E re-enforces the legislative intent as it lays down the contingency when the Board fails to succeed in bringing about the amicable settlement. In my opinion, the Board is required to proceed to make an enquiry, as indicated above in sub-section (7) of Section 48E, only after it has failed in bringing about amicable settlement of the dispute. It is explicit under Section 48E(7) read with sub-section

(3) that attempt to make amicable settlement of the dispute between the under-tenant and landlord is a condition precedent for the Board constituted under sub-section 4 to proceed for enquiry by receiving evidence, etc. There is no denial of the assertion made in the writ application that the Board did not make such effort before submitting its report based upon which the Deputy Collector and the Collector passed the impugned order. The impugned order, therefore, are not sustainable, being in breach of Section 48E(3) and 48E(7) of the Act.

11. The impugned orders dated 14.06.1990 passed by the Deputy Collector, Sadar, Purnea as well as the Additional Collector, Purnea are set aside, the matter is remanded back to the Collector with a direction to appoint a Board afresh and refer the matter firstly for amicable settlement and, thereafter, in accordance with the provisions of the Act.

12. This application is allowed.

13. Learned counsel for the petitioners has submitted that the application before the Collector was not maintainable. Without recording any opinion over such submission, it is made clear that the petitioner shall have the liberty to raise such points before the Collector at appropriate stage.

(Chakradhari Sharan Singh, J.)

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