

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12647 of 1996

=====

Lal Narayan Singh, Son of Late Bachcha Prasad Singh, Resident of Village-
Pahleza, P.S.-Mehendia, District-Jehanabad. **Petitioner.**

Versus

1. The State of Bihar.
2. The Sub-Divisional Officer, Jehanabad.
3. The Sub-Divisional Officer, Arwal.
4. Ram Das Ram, Son of Tulsi Ram.
5. Kamlesh Ram, Son of Late Bhola Ram.
6. Kameshwar Ram, Son of Yadunandan Ram.
7. Chandraloki Ram, Son of Dhanpat Ram.
8. Raghunath Ram, Son of Lakhan Ram.

Respondent Nos.4 to 8 are the residents of village- Pahleza tola Madhu
Sharma Chowki, P.O.-Jaipur, P.S.-Mehendia, District-Jehanabad.

.. **Respondents.**

=====

Appearance :

For the Petitioner/s : Mr. Siya Ram Shahi, Adv.

For the Respondent/s : Mr. M.Nasrul Huda Khan, S.C.-18.
Mr. Md. Irshad, A.C. to S.C.-18

=====

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 19-05-2015

V.Nath, J.

Heard Mr Siyaram Sahi, the learned counsel for the
petitioner. No body has appeared on behalf of the respondent nos.4 to 8.

Assailing the order dated 24.02.1996 passed in
B.T.Case Act Nos.5/94-95/5/95-96, 6/94-95/6/95-96, 7/93-94/18/95-
96 ,5/93-94/16/95-96 and 6/93-94/17/95-96 and other analogous cases
whereby the respondent no.2 after prima facie finding the respondent

nos. 4 to 8 to be 'bataidars' over the land in dispute has directed to initiate proceeding under Section 48(e) of the Bihar Tenancy Act, the petitioner has filed this writ application for quashing the same.

Mr. Sahi, the learned counsel for the petitioner, has made a limited submission that as the claim of the respondent nos. 4 to 8 to be bataidars over the land of the petitioner stood rejected, in the earlier round of litigation, up to this Hon'ble court, the order for initiation of the proceeding on the prayer of the same respondents for the same land, after prima facie finding them to be bataidars, is clearly illegal, without jurisdiction and vexatious and cannot be sustained in law. The learned counsel has also relied on the decision of this Court in CWJC No. 11277/96 and 7129/1996 (copy of the judgment has been produced by the learned counsel for the petitioner) arising out of the analogous cases wherein this Court has quashed the order dated 24.02.1996 after concluding that the proceeding stood barred by res judicata.

From perusal of the materials on record and submissions on behalf of the petitioner, it transpires that earlier altogether 23 petitions were filed by the respondent nos.4 to 8 and other person claiming Bataidari rights over the lands of the petitioner and his cosharer and alleging threat of forcible ejectment. The B.T.Act Case No.1 to 23 of 1990-91 were instituted out of which the

B.T.Act Case No. 4,10,14,16 and 19 of 1990-91 related to the petitions filed by the respondent nos.4 to 8 against the land of the petitioner. After hearing the parties, the Deputy Collector Land Reforms, by common order dated 15.03.1991, rejected all the 23 cases after holding that the claim of bataidari by the petitioner of those cases was not bonafide and prima facie could not be established. In appeal, however, the Collector overturned the findings and directed for initiation of proceeding under Section 48(e) B.T.Act after constituting Board as provided. The order of the Collector was questioned by the present petitioner and other persons by filing several writ applications. The respondent-Bataidars also filed CWJC No. 5971 of 1992 challenging the order dated 15.03.1991 passed by the D.C.L.R. rejecting their claim of Bataidari. By common order dated 03.08.1992 passed in CWJC No. 7103 of 1991 and analogous cases (reported in 1992 (2) PLJR 747), a bench of this Court allowed the writ applications and quashed the orders passed by the Collector. By another order dated 03.08.1992, the CWJC No. 5971 of 1992 filed by the respondent- Bataidars was also dismissed. It would be pertinent to mention that the bench of this Court while allowing the CWJC No. 7103 of 1991 and other analogous case has also recorded the finding in paragraph-13 of the judgment that the respondent-Bataidars have failed to prima facie show the requirements for initiating the

proceeding as prayed.

The respondent nos.4 to 8, thereafter, again filed similar petitions for the same land of the petitioner alongwith other persons who claimed similar rights against the land of the cosharers of the petitioner. By the impugned order, the respondent- S.D.O. has found the claim of the respondent-Bataidars to be prima facie tenable and has directed for initiation of the proceeding under Section 48(e) of the B.T.Act in all the cases including the cases instituted upon the petitions of the respondent nos. 4 to 8.

In the backdrop of the aforesaid facts, it is manifest that by passing the impugned order the respondent-Sub Divisional Officer has overreached the order passed in the earlier proceeding between the same parties for the same land even after the said order had attained finality.

The identical issue questioning the sustainability of the fresh proceeding by way of second round of litigation has been settled by this Court in the two writ applications CWJC No. 11277/1996 and CWJC No.7129/1996 (filed by the cosharers of the petitioner) wherein this Court has held that the order directing for initiation of fresh proceeding after its final conclusion cannot be legally sustained. The aforesaid two writ applications have arisen out of the same order passed in other analogous cases. This Court,

therefore, aligns with the order passed in the above two writ applications and finds substance in the submission of the learned counsel for the petitioner that the impugned order directing for initiation of proceeding under Section 48(e) of the Bihar Tenancy Act by way of second round of litigation cannot be legally sustained.

For the aforesaid facts and reasons, this writ application is allowed and the impugned order dated 24.02.1996 passed by the respondent-Sub Divisional Officer, Jehanabad passed in the aforesaid five cases i.e. B.T.Case Nos.5/94-95/5/95-96, 6/94-95/6/95-96, 7/93-94/18/95-96 ,5/93-94/16/95-96 and 6/93-94/17/95-96 is hereby quashed.

The writ application is, accordingly, allowed.

(V. Nath, J)

Nitesh/-

U			
---	--	--	--