

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6576 of 1992

=====

Jagdish Yadav, resident of village- Singrahi Panchayat Secretary
Laukahi, district Madhubani Petitioner

Versus

1. State of Bihar
2. The Additional Collector, Madhubani
3. The Deputy Collector, Land Reforms, Jhanjharpur
4. The Anchal Adhikari, Laukahi
5. Ramakant Suman, S/o Late Gaya Prasad Sahu
6(a) Rajib Kr. Suman
7. Kripa Shankar Suman S/o Ramakant Suman
8. Jiwan Kumar Suman S/o Ramanand Suman.... Respondents
- =====

Appearance :

For the Petitioner : Mr. Yogendra Kumar, Advocate
Dr. Mrityunjay Kr. Gautam, Advocate
For the State : Mr. Sushant Praveer, AC to SC 27

=====

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH
ORAL ORDER

7 16-02-2015 The petitioner is aggrieved by an order dated 18.02.1992 passed in Appeal case No. 348/87-88/ 134/89-90 by learned Additional Collector, Madhubani whereby, he has set aside an order dated 23.02.1987 passed in Bataidari case No. 5/76-77 by learned Deputy Collector, Land Reforms, Jhanjharpur (hereinafter referred to as the DCLR). By the said order dated 23.02.1987 learned DCLR had granted *purcha* to the petitioner with respect to the land in question, particularly, described as Khata No. 98 appertaining to Khesra No. 316 admeasuring 1 bigha 4 katha 16 dhoor as also Khata No. 102 appertaining to Khesra No. 390 admeasuring 11 katha and 7 dhoor.

The main contention on behalf of the petitioner is

that for certain procedural lapses committed in course of proceeding before learned DCLR, before granting *purcha* in favour of the petitioner, learned Additional Collector, Madhubani has set aside the order and has dropped the entire *Bataidari* case.

Learned counsel for the petitioner has submitted that the appellate authority, while passing the impugned order, did not deal with merits of the petitioner's claim as *Bataidar* of land in question. He submitted that merely because certain technical formalities, statutorily required under section 48E of the Bihar Tenancy Act, 1885, could not be applied, the Appellate Authority has set aside the order passed by DCLR which is illegal and bad. He further submits that the Appellate Authority ought to have remanded the matter back to the DCLR after setting aside the order in *Bataidari* case.

I find force in the submission made on behalf of the petitioner. From the order of the Appellate Authority, i.e., the Additional Collector, I find that he has set aside the order passed by the DCLR in *Bataidari* case No. 5/76-77 for non compliance of certain provisions under section 48E of the Bihar Tenancy Act, 1885 (hereinafter referred to as the Act). I also find that the Appellate Authority did not go into the merits of the petitioner's claim of being *Bataidar* over the land in question.

On the one hand, I do not find any infirmity with order of the Appellate Authority, while setting aside the order passed by learned DCLR in *Bataidari* case No. 5/76-77 for non compliance of certain provisions of the Bihar Tenancy Act, 1885 as in my view compliance of the said provision under section 48(E) of the Act was mandatory and the Additional Collector, therefore, rightly set aside the order but at the same time, I am of the view that the Additional Collector, in the facts and circumstances of the case, ought to have remanded the matter back to the DCLR after setting aside his order as he had not decided the merits of the petitioner's claim as *Bataidar*.

This application is, accordingly, allowed and the order impugned is modified to the extent that the matter stands remanded back to learned DCLR, Jhanjharpur to pass an order afresh in strict compliance with the provisions of section 48E of the Act.

This application is allowed to the extent, as indicated above.

Till disposal of the case by learned DCLR, Jhanjharpur, the parties shall maintain status quo as regards possession over the land in question.

(Chakradhari Sharan Singh, J)

BKS/-

U			
---	--	--	--