

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10786 of 1994

Dileep Kumar Mehta, S/o Late Bahadur Mehta, resident of
village Madhulata, P.O. Madhulata, P.S. Raniganj, District
Araria

.... Petitioner

Versus

1. The State of Bihar
2. The Circle Officer, Raniganj, at + Post- Raniganj, Dist.
Araria
3. The Sub-Divisional Executive Magistrate, Forbesganj, at
+ Post Forbesganj, District- Araria
4. Ram Chandra Paswan, son of Late Rasiklal Paswan,
resident of village- Madhulata, Post- Madhulata, P.S.
Raniganj, District- Araria.

.... Respondents

Appearance :

For the Petitioner/s : Mr. Parmeshwar Mehta, Adv.

For the Respondent/s : Mr. Kamlesh Kishore, A.C. to G.P.-2

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
ORAL JUDGMENT

Date: 31-07-2015

This is an application seeking quashing of the
order dated 04.10.1994 passed by the learned Sub-
divisional Executive Magistrate, Forbesganj in Bataidari
Case No. 20 of 1993 under Section 48 (d) of the Bihar
Tenancy Act, 1885 (hereinafter referred to as "the Act")
whereby he has confirmed an order dated 10.11.1992
passed by the Anchal Adhikari, Raniganj in Sikmi Dakhil
Kharij Case No. 9/92-93, declaring Respondent no. 4 as



a Bataidar. The land, in dispute, has been described in the writ application, as Kheshra No. 86 (0.26 decimals) and Kheshra No. 2694 (0.55 decimals) both of Khata No. 81 situate at Mauza Bishanpur, Thana No. 4, District Araria.

2. Notices were issued to Respondent no. 4 pursuant to an order of this Court dated 12.04.1999. In absence of any service report as regards actual service of notice upon the said Respondent no. 4, again notices were directed to be issued by an order dated 03.04.2013 upon the Respondent no. 4, which was thereafter validly served and a duly executed Vakalatnama has been filed on behalf of Respondent no. 4. No counter affidavit, however, has been filed on his behalf.

3. This Court has, thus, no other option than to proceed with the averments made in the writ application.

4. It is the petitioner's case that he is the land-owner of the said land, which was recorded at the revisional stage in the name of his ancestor Tilak Mahto and in the remark column, name of Rasiklal Paswan was



recorded as Sikmi Khata No. 81. Said Rasiklal Paswan was the father of Respondent no. 4. It has, however, been disputed in the writ application that father of respondent no. 4 was ever Bataidar of the ancestors of the petitioner and has been strongly contended that it was wrongly recorded in the remarks column that the land was in possession of the said Rasiklal Paswan. It is his plea that in the Year 1993, the respondents tried to dispossess the petitioner forcibly from the land in question, leading to an occurrence in the Year 1993 in which father of the petitioner was killed, giving rise to institution of Raniganj P.S. Case No. 169 of 1993. It is the further case of the petitioner that the lands, in question, were mutated in the name of the ancestor of the petitioner vide Jamabandi No. 369 and after the death of his father, the petitioner paid rent to the Siristha of the State of Bihar.

5. Respondent no. 4 filed a Bataidari Mutation Case No. 09 of 1992 before the Anchal Adhikari, Raniganj, District Araria, who, vide order dated 10.11.1992 directed to open Kayami Khata in the name of Respondent no. 4 under Section 48 (d) of the Act.



6. The father of the petitioner, Bahadur Mehta preferred appeal before the Sub-divisional Officer, Forbesganj against the said order dated 10.11.1992 passed by the Anchal Adhikari. The Sub-divisional Officer, Forbesganj rejected the appeal after recording that the Anchal Adhikari had found the possession of Respondent no. 4 over the land.

7. Learned counsel appearing on behalf of the petitioner has submitted that both the orders are illegal and beyond jurisdiction for the reason that before passing any order under Section 48(d) of the Act, the Anchal Adhikari and the Sub-divisional Officer were required to come to a definite conclusion that Respondent no. 4 was a Bataidar (under raiyat) within the meaning of Chapter VIII of the Act. He has submitted that for granting relief under Section 48(d) of the Act, the authorities were required to come to a finding that conditions under Section 48(c) of the Act were fulfilled. He has contended that there is absolutely no material worth evidence mentioned in the orders passed by the Anchal Adhikari and Sub-divisional Officer, which are



under challenge in the present writ application to show that there was a relationship of Bataidar between the petitioner and the Respondent no. 4. He has submitted that nothing has been mentioned in the two orders to show that Respondent no. 4 paid to the petitioner any amount or produce on the basis of his status as Bataidar.

8. I find substance in the submission made on behalf of the petitioner. The orders dated 10.11.1992 and 04.10.1994 passed by the Anchal Adhikari and the Sub-divisional Executive Magistrate do not refer to any evidence on the basis of which, they could have come to a conclusion that Respondent no. 4 was, in fact, a Bataidar of the petitioner or his ancestors. In absence of such finding recorded by the courts below, none of the orders can be sustained. I must indicate that a Sikmi right is not an inheritable right. Therefore, even on the ground that father of the said Respondent no. 4 was a Bataidar of the ancestors of the petitioner, Respondent no. 4 cannot be treated to be a Bataidar and he cannot be conferred status of under-raiyat under Section 48(d) of

the Act. Having held thus, both the orders dated 10.11.1992 passed by the Anchal Adhikari, Raniganj in Sikmi Dakhil Kharij Case No. 9/92-93 and 04.10.1994 passed by the Sub-divisional Executive Magistrate, Forbesganj in Bataidari Case No. 20/93 cannot be sustained and are accordingly quashed.

9. This application is, accordingly, allowed.

10. There shall, however, be no order as to costs.

(Chakradhari Sharan Singh, J.)

Vats/-

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