

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14468 of 2013

=====

Naresh Mandal S/O Sri Baldeo Mandal, resident of Village - Maroucha, P.S.
Pranpur, District - Katihar

.... Petitioner/s

Versus

1. The State of Bihar through Collector, Katihar, Collectorate, District Katihar
2. The Chairman, The Bihar Land Tribunal, Patna, Off Polo Road, Patna
3. The D.C.L.R. Katihar, S.D.O. Office Katihar, District Katihar
4. Shambhu Pd. Das S/O Late Dhananjay Prasad Das, H/O Bhagwati Mayee Devi,
resident of Mohalla - Baniatola, Katihar, District - Katihar
5. Sukumar Pd. Das S/O Late Dhananjay Prasad Das, H/O Bhagwati Mayee Devi,
resident of Mohalla - Baniatola, Katihar, District - Katihar
6. Binod Kr. Das S/O Late Dhananjay Prasad Das, H/O Bhagwati Mayee Devi,
resident Of Mohalla - Baniatola, Katihar, District - Katihar
7. Jitu Kr. Das S/O Late Dhananjay Prasad Das, H/O Bhagwati Mayee Devi,
resident of Mohalla - Baniatola, Katihar, District - Katihar
8. Keshav Kr. Das S/O Late Dhananjay Prasad Das, H/O Bhagwati Mayee Devi,
resident of Mohalla - Baniatola, Katihar, District - Katihar

.... Respondent/s

=====

Appearance :

For the Petitioner/s	: Mr. P.K.Jaipuriyar, Advocate Mr.Anshuman Jaipuriyar, Advocate Miss Anukriti Jaipuriyar, Advocate
For the Respondent Nos. 1 to 3	: Mrs. Binita Singh, AC to GP 31
For the Respondent Nos. 4,6,7 & 8	: Mr. Najeeb Ahmad, Advocate Mr.Md.Sufiyan, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 04-12-2015

Heard the parties.

2. The petitioner has filed the present writ petition under Article 226 of the Constitution of India assailing the validity and correctness of the order dated 26.06.2013 passed in BLT Case No. 34 of 2013 by the learned Bihar Land Tribunal, Patna, as contained in Annexure-1, whereby the aforesaid case filed on behalf of the petitioner has been dismissed and the original impugned order dated 06.03.2009 passed in B.T.Act Case No. 432 of 2008-09 under Section 48 E of the Bihar Tenancy Act, 1885 (in short, "B.T Act") has been

affirmed.

3. Learned counsel appearing on behalf of the petitioner submits that the petitioner claiming to be the under raiyat with respect to the lands under dispute mentioned in the impugned original order, as contained in Annexure-2, filed a petition under Section 48 E of the B.T.Act before the respondent DCLR, Katihar for his declaration as under raiyat over the lands under dispute, which gave rise to B.T.Act Case No. 432 of 2008-09. According to him, the petitioner produced the materials before the respondent DCLR, Katihar to show therein that there is a bona fide bataidari dispute between the parties and therefore, the respondent DCLR, Katihar was obliged to refer the bataidhari dispute to the duly constituted Batai Board in terms of Section 48 E (3) of the B.T.Act, but the respondent DCLR, Katihar at that stage itself held a mini trial and by the impugned order dated 06.03.2009 (Annexure-2) rejected the bataidari claim of the petitioner without referring the same to the duly constituted Batai Board. It is contended that the original impugned order dated 06.03.2009 is in the teeth of a judicial pronouncement of a special Bench of this Court in the case of **Dhanji Singh Vs. The State of Bihar & Ors.[1979 BBCJ 521]** as also a judicial pronouncement of the Hon'ble Apex Court in the case of **Ram Narain Sharma Vs. State of Bihar & Ors. [2003 (3) PLJR (SC) 187]**. It is further contended that the appeal preferred before the District Collector, Katihar was rejected on 03.10.2012, whereafter the petitioner moved before the learned Bihar Land Tribunal, Patna, but by the impugned order dated 26.06.2013 (Aannexure-1) the learned Tribunal without considering the scheme and scope of Section 48 E of the B.T.Act has arbitrarily rejected the aforesaid case and has affirmed the patently illegal order passed by the respondent DCLR, Katihar.

4. By an order dated 09.07.2014 passed by a Bench of this Court, notice was issued to the private respondent nos. 4 to 8, in response thereof, private respondent nos. 4 to 8, excepting respondent no.5, have entered appearance through their counsel. However, no counter affidavit has been filed on their behalf.

5. Learned counsel appearing on behalf of the private respondents has contested the matter and has submitted that since the respondent DCLR did not find a prima facie case; therefore, by taking into consideration the relevant materials has rightly rejected the batai claim of the petitioner which has been affirmed by the learned Bihar Land Tribunal, Patna. Therefore, according to him, the writ petition is liable to be dismissed.

6. Learned State counsel appearing on behalf of the respondent nos. 1 to 3 has simply adopted the arguments advanced on behalf of the private respondents.

7. After having heard the parties and on consideration of the materials available on the record, this Court is of the opinion that the impugned original order dated 06.03.2009 passed by the respondent DCLR, Katihar (Annexure-2) as also the impugned order dated 26.06.2013 passed by the learned Bihar Land Tribunal, Patna (Annexure-1) cannot be sustained in law. Under the scheme of the B.T.Act, once a claimant files a petition under Section 48 E of the B.T.Act, the Collector under the Act namely, DCLR is required to find out a prima facie case of bona fide bataidari dispute between the parties and thereafter, the matter is required to be referred to Conciliation Board to be constituted in terms of Section 48 E (3) of the B.T.Act, but at that stage, the Collector under the Act cannot convert the proceeding in a mini trial by calling upon the parties to produce all their evidence and materials for deciding the bataidari

case itself on merits. Fortunately, exactly for the same purposes, a special Bench of the Patna High Court was constituted, particularly for consideration of the scheme, scope, mandate and procedure to be followed under Section 48 E of the B.T.Act and the judgment was rendered by the Special Bench in the case of **Dhanji Singh.Vs. The State of Bihar (supra)**. The scheme and the principles for deciding the Bataidari case under Section 48 E have been noticed in paragraphs 7 and 11 of the aforesaid judgment by the Special Bench. For better appreciation, the relevant portions of paragraphs 7 and 11 of the aforesaid judgment are re-produced herein below:

“ 7. In view of the aforesaid provisions, there should not be any difficulty in holding that although the Collector has been vested with general control and superintendence over the proceedings in connection with the dispute between the landlord and the under raiyat still, at the first instance, after having initiated the proceeding under sub-section (1) of section 48 E, the Collector has to refer the dispute to the Board. The Board has first to make endeavour for an amicable settlement, failing which it has to make enquiry and has to receive such evidence as it considers necessary, and, thereafter, to record a finding in respect of the dispute. The Collector can decide that dispute only under two contingencies, if he differs with the findings and report of the Board, or, if the Board fails to record its finding within a period of six months from the date of its appointment. But there is no question of Collector deciding the dispute before the Board constituted by him has an occasion to apply its mind.....

.....
.....

In my view although sub-section (3) of section 48 E uses the expression ‘May’, it has to be held that once a proceeding is initiated under sub-section (1) of that section, the disputes has to be referred to the Board to be constituted by the

Collector.”
.....
.....

“11. In my opinion, from the scheme of section 48 E it is clear that it does not conceive two inquiries, one preliminary or other the final. If the applicant satisfied the Collector on the basis of the materials produced before him or the Collector is satisfied on the information received by him, then without waiting for the landlord he can initiate the proceeding. Of course, in some cases where the claim on behalf of the under tenant has been made by suppressing the material facts, like an order under Section 145 of the Code of Criminal Procedure between the same parties, upholding the claim of the landlord and negating the claim of possession made by the under tenant, or a recent delivery of possession having been effected in favour of the landlord over the lands in question, then the landlord may bring to the notice of the Collector that the claim of the applicant lacks bona fide. But, the landlord cannot be permitted at that stage to convert the initiation of the proceeding, a mini trial or a parallel enquiry. He has to wait till the matter is placed before the Board.”

8. The views expressed by the Special Bench of our own High Court, the relevant portions of which have been re-produced hereinabove, have been affirmed by the Hon’ble Apex Court in the case of **Ram Naraian Sharma Vs.State of Bihar (supra)**.

9. In the present case, unfortunately, the respondent DCLR, Katihar while passing the impugned original order dated 06.03.2009 has converted the whole bataidari proceeding into a mini trial and he has taken into consideration the points raised on behalf of the claimants and all the defence raised on behalf of the landlord and, thereafter he rejected the bataidari claim of the petitioner. The order passed by the respondent DCLR, Katihar is in the teeth of the ratio



laid down by the Special Bench of our own High Court in the case of **Dhanji Singh Vs.The State of Bihar (supra)**. The appeal preferred against that order was rightly rejected by the District Collector, Katihar as the appeal does not lie against the order passed in terms of Section 48 E (1) of the B.T.Act. Unfortunately, the learned Bihar Land Tribunal, Patna has failed to take into account the ratio laid down by the Special Bench in the case of **Dhanji Singh Vs.The State of Bihar (supra)**, which finds approval by the Hon'ble Apex Court in the case of **Ram Narain Sharma Vs.State of Bihar (supra)**, and has come to a patently wrong conclusion for rejecting the case filed on behalf of the petitioner.

10. In the factual matrix of the case, this Court is of the considered opinion that the respondent DCLR, Katihar ought to have referred the bataidari dispute of the petitioner to the Conciliation Board, after arriving at a conclusion that a prima facie case of bona fide bataidari dispute between the parties is made out and the Batai Board was required to make enquiry and record evidence of the parties as per procedure laid down, whereafter the respondent DCLR, Katihar, after hearing the parties, was required to pass final order in accordance with law, which has not been done in the present case.

11. For the reasons recorded above, the impugned original order dated 06.03.2009 passed in B.T.Case No. 432 of 2008-09 by the respondent DCLR, Katihar (Annexure-2) as also the impugned order dated 26.06.2013 passed in B.L.T. Case No. 34 of 2013 by the learned Bihar Land Tribunal, Patna (Annexure-1) are hereby set aside and quashed and the matter is remitted back to the respondent DCLR, Katihar with a direction to constitute a Batai Board for deciding the Bataidari case of the petitioner afresh strictly in accordance with law.

12. In order to expedite the matter, the petitioner as also

the private respondents are hereby directed to appear before the respondent DCLR, Katihar with a certified copy of the present order within a period of one month from today, whereafter the respondent DCLR, Katihar shall fix a firm date directing the parties to appear and nominate their respective Panches and thereafter Batai Board shall be duly constituted in terms of Section 48E (3) and (4) of the B.T.Act and the matter shall be taken to its logical conclusion in accordance with law.

13. In the result, the writ petition stands allowed to the extent indicated, but with the observations and directions made above. However, the parties are left to bear their own costs.

(Birendra Prasad Verma, J)

Tahir/-

AFR

U			
---	--	--	--