

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4094 of 1993

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Harilal Mandal, Son of Late Ranjit Mandal, resident of Village-Supauli Diyara,
P.s.-Bhawanipur, District-Purnia.

.... **Petitioner/s**

Versus

1. The State of Bihar.
2. The Commissioner, Purnia Division, Purnia.
3. The Collector, Purnia.
4. The Additional Collector, Purnia.
5. The Deputy Collector, Land Reforms, Sadar, Purnia.
6. Surendra Mandal, Son of Late Bachchi Mandal, resident of Village-
Bramhaganyi, P.S.-Bhawanipur, District-Purnia.

.... **Respondent/s**

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Appearance :

For the Petitioner/s : Mr. Sunil Srivastava, Advocate

For the Intervenor-Respondent : Mr. Arun Prasad Ambastha, Advocate

For the Respondent-State : Mr. Praveen Kumar, Advocate (AC to GP-27)

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT

Date: 27-04-2015

Heard the parties.

2. This is an application seeking quashing of an order
dated 31.01.1991 passed by the Additional Collector, Purnia
in R.A. No. 90/89-90 (Annexure-3), whereby, he has set aside
an order dated 30.08.1988 passed by the Deputy Collector



Land Reforms, Sadar Purnia, in Case No. 3/87-88 (Annexure-2). It seems that the petitioner had approached the Commissioner, Purnia Division against the order of the Additional Collector, dated 31.01.1991, by filing Revision Case No. 92/90-91, who dismissed the said revision case by an order dated 18.03.1993/21.03.1993, on the ground that no revision petition was maintainable against the order of the Additional Collector, Sadar Purnia. The order of the Divisional Commissioner, Purnia has also been assailed in the present writ application.

3. At the very outset, I must record that I do not find any illegality in the orders of the Divisional Commissioner, Purnia dated 18.03.1993/21.03.1993, and I find that he has rightly rejected the petition, as the same is not maintainable. There is no provision for such remedy under the Bihar Tenancy Act, 1885 (**hereinafter referred to as the 'Act'**).

4. From the facts asserted in the writ application, it appears that the petitioner had filed an application under Section 48 (E) of the Act in the Court of Deputy Collector Land Reforms, Sadar Purnia, claiming that he had been cultivating the land measuring 1.80½ acres of Plot No. 207 appertaining to Khata No. 140 of Mauza-Babhani Chakka,



under the district of Purnia for last 40 years. The respondent no. 6, who was the Raiyat of the said land, is said to have created trouble over peaceful cultivation and possession of the land in question and tried to evict him. This itself compelled the petitioner to approach before the Collector, under Bihar Tenancy Act, 1885, seeking prevention of threatened ejectment from the land in dispute. It is the case that after following the formalities, required under Section 48 (E) of the Act and after issuing notice to the respondent no. 6, a Board was constituted under Section 48 (E) (4) of the Act. The Circle Officer, who happens to be the Chairman of the Board, submitted his report to the Court of Deputy Collector Land Reforms, Sadar Purnia, recommending that the petitioner should be declared as Batayidar of the land in question. Thereafter, the Deputy Collector Land Reforms, Sadar Purnia, by his order dated 30.08.1988, confirmed the report of the Board submitted by the Circle Officer and declared the petitioner to be the Batayidar of the land in question.

5. The respondent no. 6 preferred an appeal before the Additional Collector, Purnia, who, by his order dated 31.01.1991, set aside the order of the Deputy Collector Land



Reforms, Sadar Purnia, mainly on the ground that it was not manifest from the records of the case as to whether any spot verification was done by the Board, and if so, on which date and in whose presence. He also found on the basis of the records of the Board, constituted for the purpose of reconciling the dispute, that it was not clear from the records whether the name suggested by respondent no. 6 to a Member of the Board was approved by the Collector under the Act while constituting the Board under Section 48 (E) (4) of the Act. Noticing these infirmities and the fact that the respondent no. 6 was not found to be participating in the proceedings before the Board, learned Additional Collector was of the view that constitution of the Board was completely illegal and contrary to the provisions of Section 48 (E) (4) of the Act.

6. The Additional Collector, Purnia, accordingly, quashed the order of the Deputy Collector by an impugned order dated 31.01.1991.

7. I do not find any infirmity in the order and the reasons assigned for quashing the order of the Deputy Collector, as recorded in the impugned order, are sound and cogent. However, I am of the view that after having held the



constitution of the Board to be illegal and after having found that respondent no. 6 could not participate in course of reconciliation proceedings before the Board; after quashing the order of the Deputy Collector Land Reforms, he ought to have remanded the matter back to the original Court for the purpose of deciding the issue in accordance with law under the provisions of Section 48 (E) of the Act.

8. An interlocutory application, bearing no. 2967 of 2015, has been filed on behalf of one Hari Mandal, S/o Late Musaharu Mandal, wherein, he has claimed that, in fact, he was the Batayidar of the land and he was found to be so in another proceeding under Section 48 (E) of the Act and, subsequently, he was declared as Raiyat of the land, invoking Section 48 (D) of the Act by an order dated 05.10.1999. It has been submitted on behalf of said Hari Mandal, pressing Interlocutory Application No. 2967 of 2015, that he should be allowed to intervene in the present matter, he being a necessary party. He has submitted that the writ application deserves to be dismissed on the ground of non-impleadment as necessary party. I do not wish to comment upon non-impleadment of said Hari Mandal, S/o Late Musaharu Mandal, in the present proceeding.

9. I am of the considered opinion that the entire dispute must be adjudicated upon afresh by the Deputy Collector Land Reforms, Sadar Purnia, his earlier orders dated 06.04.1988/25.04.1988, having been set aside by the order of the Additional Collector, Purnia, dated 31.01.1991. This matter is, accordingly, remitted back to the Court of Deputy Collector Land Reforms, Sadar Purnia or any other Deputy Collector, having jurisdiction over the dispute. He will be required to decide the matter with utmost expedition after strictly following the provisions as contemplated under Section 48 (E) of the Act, 1885 and other provisions of the Rules framed therein. The final decision must be taken within a period of six months from the date of receipt/production of a copy of this judgment. If the said Hari Mandal, S/o Late Musaharu Mandal, intends to appear in the such proceeding before the Deputy Collector Land Reforms, Sadar Purnia, he will give him due opportunity of hearing and will proceed accordingly.

10. This application is, thus, disposed of.

(Chakradhari Sharan Singh, J)

Praveen-II/-

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