

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5473 of 2007

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Ram Bachan Singh son of Late Ghughuli Singh, resident of village Jai Nagar,
Gobardhanpur, PO-Chandi, PS-Akorhigola, District-Rohtas. Petitioner/s
Versus

1. The State of Bihar.
 2. The Collector, Rohtas at Sasaram
 3. The Deputy Collector Land Reforms, Dehri, PS-Dehri, District-Rohtas.
 4. Ram Chandra Singh son of Late Babu Nand Singh
 5. Ashok Singh son of Late Balrup Singh
 6. Ram Bali Singh son of Late Manik Chand Singh
 7. Ram Bachan Singh son of Sheo Pujan Singh
- Respondent nos. 4 to 7 are residents of village-Jainagar, PS-Akhorigola,
District-Rohtas.
8. Anand Singh son of Dukhan Mahto,
 9. Ram Naresh Mahto son of Ram Belahs Singh,
- Respondent nos. 8 and 9 are residents of village-Sri Rampur, PS-Sasaram,
District-Rohtas.
10. Sukhari Ram son of Munsii Ram
 11. Faudar Ram son of Sukhari Ram
 12. Laljee Ram son of Late Sheo Prasad Rajwar
 13. Mangal Ram son of Bira Ram
 14. Aganu Ram son of Late Lotan Ram
 15. Krishna Ram son of late Lotan ram
 16. Ram Nath Ram son of Suchit Ram
 17. Sri Ram son of Suchit Ram
 18. Arvind Kumar son of Munshi Ram
 19. Swami Nath Ram son of Suchit Ram
 20. Raja Ram son of Suchit Ram
 21. Hari Rajwar son of Late Dahin Rajwar
 22. Basanti Devi wife of Mukhlal Paswan
 23. Alagu Ram son of Late Lotan Ram
 24. Sheo Nath Ram son of Suchit Ram
 25. Sri Bhagwan Ram son of Hari Nath Ram
 26. Sheonandan Ram son of Halkhori Ram
 27. Dasarath Ram son of Late Tribhuwan Ram.
 28. Jawahar Ram son of Tribhuwan Ram
- Respondent Nos. 10 to 28 are residents of village-Bahoranpur, PS-Ankorhigola,
District-Rohtas.
29. Sri Chhotalal Paswan son of late Sri Ram Paswan
 30. Brij Nandan Paswan son of Late Soi Ram Paswan
 31. Laljee Ram son of Late Bharathari Ram
 32. Vakil Singh son of Motilal Singh
 33. Bilash Pasi son of Late Ram Briksha Pasi
 34. Deomuni Ram son of Late Rupa Ram
 35. Chandrama Ram son of late Jhagaru Ram
 36. Bhagi Ram son of Late Dasai Ram
 37. Sheo Muni Paswan son of late Suchit Paswan,
- Respondent Nos. 29 to 37 are residents of village-Bishun Bigha, PS-
Ankorhigola, District-Rohtas.

38. Guru Charan Singh son of Late Jurawan Mahto
39. Chhotelal Sharma son of late Bal Kishun Sharma
40. Narain Kumhar son of late Thaga Kumhar
41. Mahendra Kumhar son of late Kanhaiya Kumhar
42. Sahendra Kumhar son of late Kanhaiya Kumhar,
Respondent Nos. 38 to 42 are residents of village-Gobardhanpur, PS-
Ankorhigola, District-Rohtas.
43. Sarju Singh son of Thakur Singh, resident of village –Bagen, PS-Ankorhigola,
District-Rohtas.
44. Gobardhanpur Diaries and Allied Industries Co. Pvt. Ltd. through its Chairman
Madhuri Devi daughter of Lakshmeshwar Dayal wife of late Shambhu Nath of
Mohalla-Lower Bazar Taxi Stand, PS & District-Ranchi.
45. Parmeshwar Dayal son of late Lakshmeshwar Dayal at present resident of I.T.I.
Bagh Rurohi, Kanpur(UP). Respondent/s

Appearance :

For the Petitioner/s : Mr. Subash Kumar 1, Adv.
For the Respondent/s : Mr. U.S. Singh, AC to GA-2
Mr. Ray Saurabh Nath, Adv.

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 22-05-2015

In the present case, the petitioner is challenging the order of District Magistrate, Rohtas at Sasaram passed in Bataidari Appeal Case No. 26 of 2001 by which the Collector in exercise of power under Section 48-F of the Act, set aside the order of LRDC and directed to constitute a Settlement Board, obtain the report within one month and decide the case in accordance with law.

In the present case, there are three parties to the dispute, one is claiming to be Managing Director of Gobardhanpur Dairy Private Limited, another is claiming to be bataidar and third is claiming to have purchased the land in question from one of the co-sharers, namely, Jagdishwar Dayal.

The land in dispute is situated in Mauza-

Gobardhanpur, appertaining to Khata nos. 107/276, C.S./R.S. plot nos. 50/35, 50/282, 50/280 and 50/98, area 23.56 acre.

Ram Bachan Singh and 22 others filed an application under Section 48'E' of the B.T. Act for threatened ejectment. Vishwanath Singh son of Ghughuli Singh intervened in the matter and raised objection about the maintainability of the case itself. During the pendency of the case, Vishwanath Singh died and in his place, his brother Ram Bachan Singh pursued the matter before the LRDC. In the objection application inserted names of their parents, namely, Ghughuli Singh and Bedama Devi.

The LRDC, vide order dated 3rd January 1996, directed the Circle Officer to furnish the enquiry report. Accordingly, vide order no. 572 dated 28th October 1996, the Circle Officer submitted his enquiry report.

Respondents are claiming that Gobardhanpur Dairy and Allied Industries Company Pvt. Ltd. was incorporated in the year 1956 by three brothers, namely, Jagdishwar Dayal, Laxmeshwar Dayal and Akhileshwar Dayal and all of them transferred their land to the Company on 9th March 1959 and accordingly, the mutation was done.

First Managing Director of the Company was Jagdishwar Dayal, later on replacing him, Laxmeshwar Dayal had taken rein of the Company and after the death of Laxmeshwar

Dayal, Madhuri Devi daughter of Laxmeshwar Dayal became the Managing Director of the Company.

Claim has been made that the land in question was given for cultivation to 23 persons who have been cultivating the same for last 20 years.

In order to substantiate his claim, he has mentioned that a proceeding under Section 145 of the Criminal Procedure Code was initiated which was challenged by Jagdishwar Dayal in Criminal Revision Case No. 1777A/1974, the order was passed in favour of the Company.

The matter with regard to fixation of irrigation tax arose before the Board of Revenue in Case No. 122 of 1969 and the Board of Revenue fixed the tax shows the possession of the land by the aforesaid Dairy.

In Survey Settlement case, vide MJC nos. 396 and 397 of 1969, was filed which was decided in favour of the Company.

Akhileshwar Dayal and others filed T.S. No. 113 of 1984 before the Civil Court, Sasaram includes disputed property in question in which the disputed land was also part and parcel of the adjudication before the Civil Court and ultimately, the same was rejected vide order dated 5th August 1992.

Thereafter, Akhileshwar Dayal and others filed

Title Suit, vide Title Suit No. 113 of 1984, with respect to lands of Dayal Family including the disputed land which was rejected vide order dated 5/8/92. Akhileshwar and others filed T.S. No. 149/1983 against Sobhago Devi in which vide order 4/2/1986 the direction was given to withdraw the same.

Further to substantiate the claim, the Bataidar has stated that the Managing Director of the Company transferred the land of the Company to Subhago Devi wife of Balroop Singh vide sale deed no. 15756 dated 28.9.83, Laxmeshwar Dayal also transferred the land to Manikchand Singh son of Deepa Singh vide sale deed 8881 dated 23.9.75 and the land was also transferred to Sukar Singh and Ram Prasad Singh, all those persons got their land mutated and are getting revenue receipts. Survey of Goverdhan Mauza has not been finalized. Director, Consolidation in exercise of power u/s 35 of Consolidation Act in Revision Case No. 790/94 set aside the order of Consolidation Officer, directed for fresh proceeding. It has further been submitted, Land Reforms Deputy Collector passed the order dated 20/2/88, 6/5/92 and 13/9/93 in Revenue Case No. 789/74-75 which have not been challenged shows the genuineness of Company. In 144 Cr.PC proceeding in 596(M)/93 submitted report showing land sold to Subhago Devi is in possession of her husband, Bal Rup Singh.

It has further been claimed by the Bataidar that



the Circle Officer submitted a table report, vide report no. 572 dated 28.10.96 and on that score, claim has been made that the Company is not a company on paper. Claim has been made, Bataidars are cultivating land for last 20 years. The ground assigned by Bataidar for initiation of proceeding, Laxmeshwar Dayal in his six letters has shown his intention to evict them from the land in dispute.

The claim of the objector-petitioner is that the Company is a paper and a bogus Company giving reasons with the details of fact. Saraswati Devi was the original land holder of 302.81 ½ acre of the land and after her death, her three sons succeeded to her property and on partition, their names were recorded in the revenue record and the disputed lands were purchased from one of the share holder. The objector has claimed that late Vishwanath Singh was Manager of Dayal Family later on land was purchased by him.

To substantiate the claim that the Company was/is a farji Company, the plea has been taken in CWJC No. 290/73 and this Court, vide order dated 5th April 1976, has declared Company being bogus and non-existence Company. The fact is, in order to save their land for ceiling proceeding, three brothers created forged and fabricated Company.

It further appears that transfer of land was affected by Madhuri Devi to Subhago Devi, declared to be null

and void by the Collector and the Registrar was directed not to register any land of the bogus Company.

The Board of Revenue, in Case No. 280 of 1977, in a proceeding under Section 32 of the Bihar Ceiling Act, declared that the Company was completely a fraud company and did not allot any land to the Company under the Ceiling Act.

Member Board of Revenue in Revision Case No. 280 1977 vide order dated 31/3/78 show that Commissioner of Division and Collector in the ceiling proceeding recorded finding of fraud company and company cannot be allotted any land as the Company not being possession of any piece of land.

The L.R.D.C. vide orders dated 20.2.1988, 6.5.1992 and 13.9.1993 did not allot the land of any unit to the Company rather Dayal family was allotted 10 units of land.

A ceiling proceeding was initiated in which 22.81 ½ acre of land was declared surplus which was distributed to the landless persons. Person aggrieved did not file any appeal or revision against the declaration of surplus land.

The Consolidation Officer in Case no. 12/88-89, declared the land of three brothers, not of Company. Resistance has been has been made by the objector-petitioner that the details of land have not been given as to when the bataidar started cultivating and the land is missing in details of description as well as not given boundary of land in the

application for initiation of proceeding and claim has been made by the objector that the land in dispute is in their possession and they have been cultivating the same from the day of purchase.

It appears that on the basis of the report, the DCLR decided the case in favour of the objector having not found a prima facie case to proceed with the matter which was challenged before the Collector under Section 45-F of the B.T. Act who decided the appeal against the appellant.

Grievance of the petitioner is that the appeal itself was not maintainable on account of the fact that the appeal only lies in case the order is passed in sub-sections (7) and (8) of Section 48-E of the B.T. Act but in the present case, the order was not passed under those sub-sections and on that basis, he has claimed that the appeal was not maintained and the order passed by the Collector be set aside and consigned.

The counsel for the Bataidar refuted the claim of the appellant, he has submitted that the land in question was under their possession, they are bataidar of Gobardhanpur Dairy. Still Madhuri Devi is the Managing Director and the procedure adopted by the DCLR is not permissible in law, as in the name of finding of the case, prima facie, he was not required to go for a trial or a mini trial, de hors to the provisions of law as provided in Section 48-E of the B.T. Act. He has further submitted that in terms of Section 48-E of the B.T. Act, on

receipt of the complaint, the Collector was required to constitute a Board and refer the matter for settlement. The Collector was required to ask the parties affected to choose their Panches and the Board was required to take steps for amicable settlement. In failure, the Board will make an enquiry, record the finding on the dispute and transmit the entire records of the proceeding to DCLR and DCLR would take step in accordance with law.

The Collector disposed of the proceeding in accordance with law by directing the DCLR to constitute Board for amicable settlement, set aside the order of DCLR dehors to the provisions of law.

The Collector has rightly rectified the step and remanded back the matter for consideration.

The counsel for the Managing Director, namely, Madhuri Devi has also supported the case of the Bataidar and has submitted that the Collector under the Act, ought to have constituted a Board for amicable settlement and its failure, he could have enquired into the matter and decided the dispute, has placed reliance on judgment reported in **2003 (3) PLJR 187 SC (Ram Narain Sharma v. State of Bihar)**.

The Resolution of the dispute under Section 48-E of the B.T. Act, has been considered by this Court on different occasions.

The Full Bench in **Dhanji Singh Vs. State of**



Bihar, reported in **AIR 1979 Patna 259**, has occasioned to consider in what manner the Collector will proceed with the matter and dispose of the same. In the said judgment, the Court has provided the steps to be taken by the Land Reforms Deputy Collector. The Court has arrived to a conclusion that while exercising the power under Section 48-E of the Act, he acts as a quasi-judicial body while dropping the proceeding, the Land Reforms Deputy Collector will record that the prima facie case is not made out, while doing so will not embark to hold trial or mini trial. It will be relevant to quote certain paragraphs of the judgment, are as follows:-

Para 6 Sub-Sec. (1) to Sub-Sec. (3) of S.48E of the Act, as substituted by Bihar Act VIII of 1970, which are relevant for the purpose of this case, are as follows :-

"(1) If an under raiyat is threatened with unlawful ejectment from his tenancy or any portion thereof by his landlord or if there is a dispute between them over the possession of land, crop or produce thereof, either on the ground of non-existence of relationship of landlord and tenant between them or otherwise or if an under raiyat is or has been ejected from his tenancy or any portion thereof within twelve years before the commencement of proceedings under this Section in contravention of the provisions of S.89, the Collector may, of his own motion or on application made in this behalf by the under raiyat, initiate a proceeding for

preventing the landlord from ejecting the under-raiyat or for settlement of the said dispute or for restoration to possession under raiyat unlawfully ejected from his tenancy or portion thereof :-

(2) The Collector may, after hearing the parties, about which due notice shall have been given to them or ex parte, in cases of emergency, by an order in writing, prevent the landlord from ejecting the under-raiyat until disposal of the proceeding or until further orders and if he is of opinion that any crop or produce of the land which is subject matter of dispute in the proceeding under this Section, is liable to speedy and natural decay, he may, if the situation so warrants and in a similar manner as aforesaid direct the proper custody or harvesting or sale as the case may be, of such crop or produce or the sale proceeds thereof.

(3) When a proceeding is initiated under Sub-Sec. (1) the collector may refer the matter (hereinafter referred to as 'dispute') to a Board to be appointed by him, for promoting the settlement of the dispute between the under raiyat and the landlord."

On a plain reading of the aforesaid Sub Sections it appears that the Collector may, of his own motion, or on application made in this behalf by the under raiyat, initiate a proceeding under Section 48-E, (i) if an under raiyat is threatened with unlawful ejectment from his tenancy or any portion thereof by his landlord, (ii) if there is a dispute between them over the possession of the land, crop or produce thereof, either on the



ground of non-existence of relationship of landlord and tenant or otherwise, (iii) if an under-raiyat is or has been ejected from his tenancy or any portion thereof within 12 years before the commencement of the proceeding under said Section in contravention of the provisions of S. 89. Sub-sec. (2) vests power in the Collector to prevent the landlord from ejecting an under raiyat till the disposal of the proceeding or until further orders. This power is analogous to the power of granting injunction.

Sub-Sec. (2) says that such orders can be passed only after hearing the parties, it can be passed ex parte, only in cases of emergency. Sub-Sec. (3) provides that once a proceeding is initiated under Sub Sec. (1), the Collector may refer the dispute to the Board to be appointed by him for promoting the settlement of the dispute between the parties. Sub-Sec. (4) of S.48-E says that the Board shall consist of a Chairman and two members to represent two parties to be appointed on the recommendation of the parties concerned. Thereafter, in view of Sub-Section (6), the Chairman has to give written notice to both the parties and then the Board has to make endeavours to bring about an amicable settlement of the dispute. If the Board does not succeed in bringing about an amicable settlement of the dispute, in view of Sub-Sec. (7), it has to "make enquiry into the same, receive such evidence as it considers necessary, record its findings on the disputes and transmit the entire record of the proceeding forthwith to the

Collector who may dispose of the proceeding in accordance with the terms of the finding."

In case of disagreement with the report or findings of the Board, the Collector, under Sub-Sec. (8), after giving the parties concerned a reasonable opportunity of being heard, can make enquiry and he can pass orders restraining the landlord from interfering with the possession of the under-tenant or declaring the possession of the under-tenant or restoring the possession to the under tenant. Sub-Sec. (10) provides that if the Board fails to record its finding or transmit the records within a period of six months from the date of its appointment, the Collector may withdraw the proceeding from the Board and decide the dispute himself. Sub-Sec. (12) says that the Board shall have the same power regarding the summoning and attendance of witnesses and compelling the production of documents as a Civil Court has under the Code of Civil Procedure, and "the Collector shall have general control and superintendence over the Board.

Para 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-Sec. (1) of S.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-Sec. (3) says that when a proceeding is initiated under Sub-Sec. (1) the Collector 'may' refer the matter to a Board to be appointed by him, it has to be interpreted that after initiating the proceeding he has to refer the matter to the Board. It was pointed out, in the aforesaid Ram Narain Singh's case in connection with Sub-Sec. (1) of S.48-E that, no doubt, the legislature has used the word 'may' which is generally understood as enabling and not mandatory, but "when the power conferred by the statute is coupled with the duty of the person to whom it is given to exercise it, then even though the word 'may' is used, it has to be construed as imperative.

Para 8. Being faced with this situation, the learned counsel for the respondent submitted that the impugned order does not amount to deciding the dispute finally, but it only amounts to refusal to initiate a proceeding under Sub-Sec. (1) of that Section. Learned counsel further



urged that the Collector is not bound to initiate a proceeding, no sooner an application is filed on behalf of the under-tenant, he has to apply his judicial mind and in appropriate cases he may reject the prayer of the under-tenant. What is the scope of Sub-Sec. (1), can be determined only after it is ascertained as to whether under Sub-Sec. (1) the Collector has to exercise an administrative power or a quasi judicial one.

Is the Collector bound to initiate a proceeding under Sub-Sec. (1), if an allegation has been made in the petition of the under-tenant, that he had been dispossessed on a date which is beyond 12 years from the date of the filing of this application ? Similarly, is he bound to initiate a proceeding if the allegation or information is that the under-tenant has been dispossessed not by his landlord but by a third person ? The answer in both the cases shall be in the negative. Therefore, it cannot be said that at the time of initiating a proceeding, the Collector has not to apply his judicial mind for the purpose of ascertaining as to whether the requisite conditions for initiating the proceeding exist or not.

Para 11. In my opinion, from the scheme of S.48-E it is clear that it does not conceive two enquiries, one preliminary and other the final. If the applicant satisfies 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 S.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.

Para 17. It has been held that a proceeding under S.48-E can be initiated only after the Collector is satisfied that one of the three requisite conditions mentioned in the Section exists. It has been further held that the Collector while initiating a proceeding under Section 48-E has to apply his judicial mind and at this stage he acts in exercise of the quasi-judicial power. According to Webster, third new International Dictionary, the word 'initiate,' among other things, means "to begin or set going; make a beginning of; perform or facilitate the first actions, steps, or stages or to bring about the initial formation of, originate, to mark the beginning of, to begin the instruction of in some field, lead to knowledge of elements or rudiments, foster the first steps or beginning

progress of, aid in becoming familiar or knowing.

This indicates that before a proceeding is initiated and the Collector decides to go further or make a beginning, he has to form an opinion. Once this is conceded, he cannot refuse to hear the landlord in proper cases. It is true that at the stage of initiating a proceeding the Collector has only to find out a prima facie case and he is not required to have a mini trial. In a criminal proceeding when a complaint is filed, under S.200 of the Code of Criminal Procedure, a Magistrate is required to examine the complainant on solemn affirmation and examine the witnesses present, before issuing process. He must be satisfied on the materials disclosed in the petition of complaint, the statement of the complainant made on oath and the result of an enquiry under S.202 of the Code of Criminal Procedure, about the existence of a prima facie case. There is no statutory bar for an accused person to come before the Magistrate at this stage and show that there is no prima facie case against him. But, according to the judicial pronouncements, it has been held that the accused has no locus standi before a process has been issued. That rule in my opinion, cannot be applied in a case under S.48-E of the Bihar Tenancy Act."

The main thrust has been given in the judgment that before initiating a proceeding, the Collector has to satisfy about the existence of prima facie case, in case of prima facie

case, next step has been given for appointment of the Board for amicable settlement.

In **Rasik Lal Singh case vs. State of Bihar**, reported in **AIR 1979 Patna 172**, it has been provided that when a complaint is received, the effort should be made to bring the amicable settlement to resolve the dispute between the parties and if the Board fails to amicable settlement, it will proceed with the record under sub-section (7) and (10) of Section 48-E of the Act. The Collector shall also follow all provisions of the sections.

In this case, emphasis has been given about making endeavour and amicable settlement.

Similar view has been taken in the case of **Brijendra Kumar Narain Singh & Ors. Vs. the State of Bihar & Ors**, reported in **1992 (2) PLJR 747**. This judgment has basically placed reliance on different paragraphs of the Dhanji Singh's case where the Court has held that Section 48-F of the Act will only apply in a case when the order is passed under sub-sections (7) and (8) of Section 48-E of the Act.

The Hon'ble Supreme Court in the case of **Ram Narain Sharma Vs. State of Bihar**, reported in **2003 (3) PLJR 187 SC** has held that when a complaint is received, the matter should have been placed before the Board by the DCLR as provided under Section 48-E of the Act and the Board will

make endeavour for amicable settlement and act in accordance with law after giving opportunity to those parties. It will be appropriate to quote paragraph 4 of the judgment, is as follows:-

"Having perused the order passed by the D.C.L.R. we find that he has considered the respective contentions in detail and has examined the evidence and recorded a finding thereon. In our view, for the purpose of initiating proceedings, it was not required to be done. The collector, in the order passed in appeal filed by Respondents 4 to 45, remanded the case to the D.C.L.R. for passing afresh order. While doing so, he found that no local inspection was done and the D.C.L.R. did not refer the matter to the Board, as required under Section 48-E of the Act. the learned Single Judge of the High Court, through found that the appeal filed by Respondents 4 to 45 was not maintainable, set aside the original order passed by the D.C.L.R. without examining whether the original order passed could be sustained having regard to the reasons recorded therein. The learned Single Judge did not also examine whether the



consideration by the D.C.L.R. was prima facie made or it was made in the nature of a regular enquiry. The Division Bench of the High Court did not examine the matter in any greater detail, except affirming the order passed by the learned Single Judge. The proceedings were initiated in the year 1991. having regard to the facts and circumstances of the case and looking to the reasons recorded in the order of the D.C.L.R., we are of the view that it is appropriate that the matter is placed before the Board by the D.C.L.R., as contemplated under Section 48-E of the Act, and the Board shall examine the same in accordance with law, after affording opportunity of hearing to both the parties. We do not think it necessary to direct the D.C.L.R. to examine afresh whether to initiate proceedings or not. Since the matter is pending since 1991, we direct the D.C.L.R. to refer the matter to the Board within a period of two weeks from the date of the receipt of the copy of this order and the Board shall pass orders in accordance with law within a period of three months from the date of receipt of the order of reference by the Collector.”



In view of the judgments aforesaid, the question would arise whether this Court will interfere with the order of Collector, it is a fact that the Collector does not have a jurisdiction to entertain the appeal, as appeal would lie only in a case when the order is passed under sub-sections (7) and (8) of Section 48-E of the Act so this Court has no iota of doubt, the Collector should not have entertained the appeal, and ought to have asked the respondents to approach the appropriate forum. It will not be end of the matter, the question will further arise whether the DCLR has committed an error of law in view of guideline provided in Dhanji Singh case (supra). The DCLR, as Collector under the Act as a quasi- judicial body was required to make enquiry about existence of having a prima facie case, for that he was not required to make extensive enquiry. In Dhanji Singh case (supra), Full bench has said that before initiation of proceeding prima facie is to be enquired into by the Collector, mere filing an application will not be sufficient, in the event of prima facie case, Land Reforms Deputy Collector would constitute a Board and sent the matter for settlement but in the present case the nature of enquiry that has been conducted, the manner the evidence has been dealt with and the documentary evidences gone into for finding out prima facie is more than the enquiry countenanced in Dhanji Singh case (supra), as DCLR struggled hard for arriving into finding of non-existence of

relationship of Bataidar as if he had gone for trial for arriving to the finding.

In a fraudulent proceeding, the Collector can drop the proceeding and will not proceed further but for that he was not required to hold any trial or mini trial if the order of LRDC will continue, it will be against the principle of Dhanji Singh.

In such view of the matter, the order of Collector and the order of DCLR are set aside and the matter is remanded back to hold an enquiry and decide the matter in accordance with law. The Board will have liberty to examine all aspects of the matter including existence of Gobardhanpur Dairy and not granting of any unit of land in a ceiling proceeding that has been raised by the objector in the present proceeding.

With the above observation/direction, this petition is disposed of.

(Shivaji Pandey, J)

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