

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13274 of 1993

- =====
1. Ashok Sah, son of Ramautar Sah
 2. Tijarat Mian, son of Kari Mian
 3. Yogendra Sah, son of Guletan Sah
 4. Hamid Mian, son of Abdul Mian
 5. Ramchandra Chaudhary, son of Ramashray Chaudhary
- All residents of Village Runni Saidpur, P.S. Runni Saidpur, District Sitamarhi

.... Petitioner/s

Versus

1. The State of Bihar
2. The Land Reforms Deputy Collector, Sitamarhi
3. Sri Ram Janki, through its Sevayat Shambhu Prasad and others, Sevayats of Village Bharthua, P.S. Orai, District Muzaffarpur

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Ashok Kumar Mishra, Advocate
For Respondent Nos. 1, 2 : Mr. Mrs. Nivedita Nirvikar, GA-10
Mr. Manoj Kumar, AC to GA-10
For Respondent No. 3 : Mrs. Sheela Sharma, Advocate
Mr. Shivendra Kumar Roy, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

ORAL JUDGMENT

Date: 21-04-2015

Sri Ashok Kumar Mishra has filed Vakalatnama on behalf of petitioner no. 3, which is taken on record.

2. Heard learned counsel for the petitioners and the State.

3. Petitioners claim themselves to be the share cropper of 01 acre 25 decimals of land bearing plot no. 5986 appertaining to khata no. 540 in village Saidpur. They have filed this writ petition assailing the order dated 15.07.1993, passed by Deputy Collector Land Reforms, Sitamarhi Sadar, in Bataidari Case Nos. 128, 129, 130,

131 and 185/1992-93 whereunder their claim for initiating a proceeding under Section 48E of the Bihar Tenancy Act has been rejected holding that no prima-facie dispute is raised by the petitioners for initiating any such proceeding.

4. It is submitted on behalf of the petitioners that perusal of impugned order would indicate that D.C.L.R., Sitamarhi Sadar having considered the evidence produced by the landlord that the portion of the land is being used for things other than agriculture i.e. brick-kiln and pond for rearing fish concluded that petitioners were not the share cropper of the lands in question. It is further submitted that the order passed by D.C.L.R., Sitamarhi Sadar is wholly without jurisdiction, as in terms of sub-section (1) of Section 48E of the Act the collector under the Act at the stage of initiation of the proceeding is required to consider the case put up by the share cropper under raiyat threatened with unlawful ejectment from his tenancy or any portion thereof by the landlord or dispute over the possession of land, crop or produce thereof on the ground of non-existence of relationship of landlord and tenant between them. At that stage the collector under the Act is to consider the claim of the under raiyat with reference to the materials produced by the under raiyat and not by the landlord. In this connection, learned counsel for the petitioners placed reliance on the judgment of the Special Bench of

this Court in the case of ***Dhanji Singh v. The State of Bihar & Ors.*** ***1979 BBCJ 521, Paragraph 11.***

5. Learned counsel for the respondents, on the other hand, has supported the impugned order and submitted that even if the materials produced by the landlord before the collector under the Act on the basis of which the impugned order was passed is ignored, still petitioners have not produced any material beyond their own statement that they are under raiyat of the lands in question and only on the basis of the statement if a Board is constituted then landlord will face unnecessary harassment. In support of the aforesaid submission learned counsel for the respondents has placed reliance on the judgment of the Single Judge of this Court in the case of ***Sheonath Sah & Anr. v. The State of Bihar & Ors.*** ***2006(3) PLJR 122.***

6. Having heard learned counsel for the parties and having perused the provisions contained in Section 48E of the Bihar Tenancy Act, I am satisfied that at the stage of initiation of the proceeding under Section 48E the collector under the Act i.e. D.C.L.R., Sitamarhi Sadar is to consider the materials placed on record by the so called under raiyat. While considering the material produced by the under raiyat the collector under the Act is not to be guided solely by the verbal statement. Beyond the statement there must be some material to show that the person, who claims himself to

be an under raiyat, produce some material beyond his verbal statement to indicate that he cultivated the lands in question and shared the produce grown over the lands in question with the landlord.

7. Accordingly, while setting aside the impugned order dated 15.07.1993 and remitting back the matter to the D.C.L.R., Sitamarhi Sadar, I direct the D.C.L.R. to consider the matter afresh in the light of the materials produced by the petitioners and pass appropriate order in the matter in accordance with law as early as possible, in any case, within three months from the date of receipt/ production of a copy of this order before the D.C.L.R., Sitamarhi Sadar.

8. Writ petition is, accordingly, disposed of.

(V.N. Sinha, J.)

Rajesh/-

U			
---	--	--	--