

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10186 of 2004

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Md.Mustaque, son of sk. Ziyaul of village Uslaha Tola Dhaphar, P.S.
Palasi District Araria

.... Petitioner/s

Versus

1. The State of Bihar
 2. the Collector Araria
 3. the addl. Collector Araria
 4. the Deputy Collector Land Reforms Araria
 5. dindayal Prasad Sah
 6. Lalan Prasad Sah
 7. nageshwar Sah
 8. narayan pd. Sah
 9. Shiv Narain Sah
 10. Ashok Prasad Sah
- No. 5 to 10 son of late parmanand Sah, residents of village kankhudia,
P.S. Palasi District Araria
11. Tara Devi, wife of Nandlal Sah, resident of village Bhikha, P.S.
Palasi, District Araria
12. parbati Devi wife of Dorik Lal Sah residents of village Dehti, P.s.
Palasi District Araria
13. bhagwanti Devi wife of Kanhaiya Prasad Sah resident of village
Dehti, P.S. Palasi District Araria

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Uday Bhanu Roy

For the Respondent/s : Mr. Raj Krishna Jha

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

13 09-03-2015 Heard Sri Uday Bhanu Roy, learned counsel for the

petitioner, learned AC to GP No. 26 as well as Sri Raj Krishna

Jha, learned counsel, who has appeared on behalf of respondent

no. 5 to 10.

The petitioner, invoking writ jurisdiction of this court

under Article 226 of the Constitution of India has prayed for

quashing of an order dated 15.5.2004 passed by learned Additional Collector, Araria in Case No. 2 of 2002-03 whereby the appeal preferred by private respondents was allowed and order passed by learned Deputy Collector Land Reforms in Case No. 1 of 1999-2000 was set aside.

The petitioner has claimed that he was cultivating the land of the father of private respondents since 1985 as Bataidar. Since he was threatened for being ousted from the said land after the death of original land lord, the petitioner filed a petition under Section 48E of the Bihar Tenancy Act in the court of D.C.L.R. which was numbered as Case No. 1 of 1999-2000 for declaring him as Bataidar of the land in question. The said petition was filed on 5.2.1999. Thereafter, the matter was referred to the Conciliation Board for settlement. Subsequently, report was submitted vide Annexure - 2 to the writ petition dated 18.8.2001. The report suggested that from the last 4 ½ years the petitioner was cultivating the land in question as Bataidar and as such, the learned D.C.L.R. by its order dated 28.1.2002 passed in Case No. 1 of 1999-2000 allowed the petition under Section 48(E) of the Act and declared the petitioner as Batiadar of the private respondents. The said order was assailed by the private respondents before the Collector and the learned Additional

Collector, Araria by its order dated 15.5.2004 allowed the case and set aside the order of the D.C.L.R.

Sri Uday Bhanu Roy, learned counsel for the petitioner assailing the order of the Additional Collector submits that the impugned order is liable to be set aside on the grounds the Additional Collector has interfered with the order of the D.C.L.R. mainly on the ground that report of the Board was received after expiry of six months. He submits that it is true that under the provisions of 48E of the Bihar Tenancy Act the statutory period has been prescribed as six months for submitting report. However, the said matter was examined by a division bench of this court and division bench of this court in a case reported in **1984 BLJ 128 Awadesh Kumar Singh and others versus The State of Bihar and others** has held that even in case of receipt of report after six months a case can be decided in favour of the Bataidar. He further submits that the learned Additional Collector has interfered with the order of the D.C.L.R. also on the ground that prior to filing of the present case one Bataidari Case vide Case No. 560 of 1992-93 was filed by one Lakshman Mandal for declaring him as Bataidar of the said land, which was dismissed and even the appellate court rejected the appeal filed by the said Lakshman Mandal. According to learned counsel for the petitioner

rejection of the earlier Bataidari Case can be a ground to infer that the petitioner was Bataidar of the said land. Accordingly, it has been prayed to set aside the impugned order of the Additional Collector.

Learned counsel, who has appeared on behalf of private respondents as well as learned State Counsel have opposed the prayer of the petitioner.

In this case a counter affidavit has been filed on behalf of respondent no. 5 to 10 and in paragraph no. 3 of the counter affidavit a specific stand has been taken that prior to filing of the present Bataidari Case which was filed in the year 1999 the petitioner had purchased major portion of the land from the father of the private respondents i.e. Respondent No. 5 to 10 long back in the year 1994 through two sale deeds and total land measuring 1.42 acres were purchased by the petitioner and over the remaining land i.e. 1.46 acres, the petitioner was trying to grab the same, and as such, the petitioner in a calculated way has filed a petition under Section 48E of the Bihar Tenancy Act which was incorrectly allowed by the D.C.L.R. However, the learned Additional Collector has rightly set aside the same.

The petitioner has filed reply to the counter affidavit of respondent no. 1 to 10 and in the reply he has accepted

regarding purchase of land in the year 1994. However a plea has been taken that even though the petitioner had purchased some land i.e. about 1.43 acres through registered sale deed, he was continuing as Bataidar in remaining portion of the land.

Besides hearing learned counsel for the parties, I have also perused the materials available on record. Fact remains that while filing petition before the D.C.L.R. under Section 48E of the Bihar Tenancy Act the petitioner has not bothered to indicate as to whether he had purchased some portion of the land in question in the year 1994 itself or not. Moreover, the Conciliation Board had submitted report after expiry of six months which is statutory period as prescribed under Section 48E - 10 of the B.T. Act. Of -course a division bench of this court in Awadhesh Kumar Singh Case (Supra) has indicated that on that said sole ground the case may not be rejected, fact remains that in respect of the said land itself in the year 1993-94 a Bataidari Case was filed by one Lakshman Mandal which was rejected and finally approved by the appellate court in the year 2004 itself. This admitted fact creates reasonable doubt regarding the claim of the petitioner as Batdaidar.

Keeping in view the fact that petitioner himself had purchased some portion of the land in question in the year 1994

and the fact that earlier also a Bataidari Case was filed by some other persons which was rejected, the Court is of the opinion that the learned Additional Collector while setting aside the order of the D.C.L.R. has committed no error. I do not find any ground to interfere with the matter.

The writ petition stands dismissed.

(Rakesh Kumar, J)

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