

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8564 of 1998

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1. Aziz Mazhor, son of Late Md. Mazher Hussain
 2. Shamim Mazher, son of Late Md. Mazher Hussain
 3. Md. Mobin son of Late Md. Moinuddin
 4. Md. Mohiuddin son of Late Md. Moinuddin
 5. Md. Moizuddin son of Late Md. Moinuddin
 6. Anjum Ariz wife of Late Md. Suleman
 7. Ariza Khatoon wife of Late Md. Moinuddin
 8. Rooh Afza wife of Late Md. Naimuddin
 9. Jawed Naim son of Late Md. Naimuddin
 10. Arshad Naim son of Late Md. Naimuddin

All resident of village-Jaipur, P.S. Katoria, District-Banka

.... Petitioner/s

Versus

1. The State of Bihar
2. The Collector, Banka
3. The Additional Collector, Banka
4. The Deputy Collector, Land Reforms, Banka
5. The Circle Officer, Barahat, District-Banka
6. Sitaram Rai, son of Late Kalroo Rai, resident of village-Pipra P.S. Barahat District-Banka
7. Subash Rai, son of Late Bhutku Rai, resident of village-Pipra P.S. Barahat, District-Banka
8. Bishwanath Rai, son of Late Banarsi Roy, resident of village-Ganesagora, P.S. Barahat, District-Banka
9. Sahdeo Rai, son of Late Nago Rai, resident of village- Ganesagora, P.S. Barahat, District-Banka
10. Pairu Rai son of Late Nago Rai, resident of village- Ganesagora, P.S. Barahat, District-Banka
11. Sarju Rai son of Late Banarsi Rai, resident of village- Ganesagora, P.S. Barahat, District-Banka
12. Santlal Rai, son of Late Tapsi Rai, resident of village- Ganesagora, P.S. Barahat, District-Banka
13. Suresh Patar, son of Bhutku Patar, resident of village-Pipra P.S. Barahat, District-Banka
14. Chunnu Rai, son of Sudan Rai, resident of village Pipra P.S. Barahat, District-Banka
15. Kapildeo Rai son of Kamo Rai resident of village Pipra P.S. Barahat, District-Banka
16. Naresh Rai son of Late Bhutki Rai resident of village Pipra, P.S. Barahat, District-Banka
17. Kari Devi, wife of Late Sargun Thakur, resident of village Ganeshagora P.S. Barahat, District-Banka
18. Narayan Rai, son of Late Godo Rai, resident of village-Ganeshagora, P.S. Barahat, District-Banka
19. Lakhan Rai, son of Late Tapasi Rai, resident of village-Ganeshagora, P.S. Barahat, District-Banka
20. Dilip Rai son of Late Kaleshwar Rai resident of village-Ganeshagora P.S. Barahat, District-Banka
21. Prasadi Rai, son of Late Bhutku Rai, resident of village-Pipra, P.S. Barahat,

District-Banka

22. Dhanesar Rai son of Kishun Rai, resident of village Ganeshagora, P.S. Barahat, District-Banka

23. Mofil Rai, son of Late Katki Rai, resident of village-Ganesagora, P.S. Barahat, District-Banka

24. Sahdeo Rai son of Late Katki Rai resident of village-Ganeshgora, P.S. Barahat, District-Banka

25. Sudam Rai, son of Late Pardesi Rai

26. Basu Rai son of Late Suddin Rai

27. Arun Rai son of Yogendra Rai

28. Jagdish Rai son of Late Sabir Rai

29. Pradeep Rai son of Late Bhutku Rai

30. Shyamlal Rai, son of Muneshwar Rai

31. Mahendra Rai @ Chhota son of Late Nago Patar

32. Gurudeo Singh son of Late Birju Singh

33. Ram Lakhan Singh, son of Gurudeo Singh

34. Haleshwar Rai son of Late Ganouri Rai

35. Murari Rai, son of Late Ganouri Rai

All residents of village-Pipra P.S. Barahat, District-Banka

.... Respondent/s

Appearance:

For the Petitioner/s : Mr. Vijay Anand Singh, Advocate

Mr. Neeraj Kumar, Advocate

For the Respondent/s : Mr. Rajiv Kumar Singh, GP-2

For the Respondent no. 5: Mr. Vinod Shankar Modi, Advocate

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 25-06-2015

Heard Mr. Vijay Anand Singh, learned counsel for the petitioners and learned counsel for the State and Mr. Vinod Shankar Modi for the respondent no. 5.

The petitioners by invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India have prayed for issuance of a writ in the nature of certiorari for quashing the order dated 26.8.1997 passed by the Collector, Banka in Bataidari Appeal No. 12 of 1996-97, whereby the Collector acting as a second appellate authority under the Bihar Tenancy Act (hereinafter referred to as 'the



Act') has set aside the order dated 21.6.1996 passed by the Additional Collector, Banka in Case No. 3 of 1995-96 whereby the Additional Collector, Banka has affirmed the order dated 04.6.1995 passed by the Deputy Collector Land Reforms, whereunder the application filed by the private respondents seeking protection under Section 48E of 'the Act' has been dismissed in absence of supporting evidence.

Facts of the case briefly stated is that an application under Section 48E of 'the act' was filed on behalf of the private respondents before the District Magistrate-cum-Collector, Banka who got the matter enquired by the Circle Officer, Banka. The Circle Officer submitted his report vide letter no. 75 dated 09.2.1994, a copy of which is placed at Annexure-1 to the writ application. The C.O. found no definite papers in possession of the private respondents who were the applicants under Section 48E of 'the Act' which supported their claim of being an under raiyat in cultivable possession of the land belonging to the petitioners. Upon submission of the report the matter was transferred by the District Magistrate-cum-Collector before the Deputy Collector Land Reforms, Banka for consideration of the matter and a formal case was registered bearing Case No. 13 of 1994-95. Necessary to mention here that vide S.O. No. 1210 the Deputy Collector Land Reforms have also been notified to function as Collector under Section 48E of 'the Act'. The Deputy Collector Land



Reforms considered the matter in issue in the backdrop of the materials on record and was of the opinion that the matter was not fit enough to be referred to the Board for adjudication in absence of evidence supporting the claim made by the applicants who are the private respondents herein. The application so filed by the private respondents under Section 48E of 'the Act' was rejected by the Deputy Collector Land Reforms, Banka by order passed on 4.6.1995 and was appealed against by the private respondents before the Additional Collector giving rise to Case No. 3 of 1995-96 which again was dismissed by the Additional Collector on 21.6.1996 placed at Annexure-3. The private respondents preferred a second appeal before the Collector, Banka giving rise to Bataidari Case No. 12 of 1996 *inter alia* complaining that the order passed by the Additional Collector was ex parte and without opportunity of hearing to the appellants who are the private respondents herein and the Collector, Banka without applying his mind as to the statutory provisions governing Section 48E of 'the Act' and without appreciating whether any appeal would lie against an order dropping such proceedings, has mechanically, vide order passed on 26.8.1997 set aside the order passed by the Additional Collector in Appeal No. 3 of 1995-96 on grounds that it was an ex parte order and that the private respondents were entitled to an opportunity of hearing. Being aggrieved the land

owners are before this Court.

Mr. Vijay Anand Singh, learned counsel has appeared for the petitioner while the State is represented by the State counsel. The private respondents have registered their appearance through Mr. Vinod Shankar Modi.

I have heard learned counsel for the parties and I have perused the records. Both the learned counsels contesting have relied upon a Full Bench decision of this Court reported in ***A.I.R. 1979 Patna page 259 (Dhanji Singh vs. State of Bihar & ors.)***. While Mr. Singh appearing on behalf of the petitioners with reference to the Full Bench judgment and the statutory provisions underlying Section 48E and 48F of 'the Act' has submitted that no appeal lies against an order dismissing an application filed under Section 48 of 'the Act' and that it is only in circumstances where an order is passed under sub-section (7) and (8) of Section 48E of 'the Act' that an appeal would lie under Section 48F of 'the Act', it is the contention of Mr. Modi relying upon the same judgment more particularly paragraph-7 to submit that even if the order passed by the appellate authority is an exercise in excess of jurisdiction, in view of the position recorded in paragraph-7 of the judgment, the Deputy Collector Land Reforms was duty bound to refer the matter to the Board and could not have rejected the application at the very inception.



A second issue has been raised by Mr. Vijay Anand Singh to support the order passed by the Deputy Collector Land Reforms relying upon Section 48C of 'the Act' and to submit that since the land owners were holding the lands within 10 acres hence they were protected under the provisions of Section 48C(i)(b) and no proceedings could have been initiated under Section 48E of 'the Act' by the private respondents. It is further argued by Mr. Singh that the application filed by the private respondents was a mala fide attempt to usurp the lands of the petitioner and which attempt has been thwarted by the Deputy Collector Land Reforms who has not found the application to be a bona fide one. He further submits that apart from the fact that the proceedings was sought to be initiated against a dead person, there was nothing on record to support the claim of the private respondents of being in cultivable possession of the land in question since more than 12 years. It is thus the submission of Mr. Singh that in absence of any evidence supporting the claim and there being a conclusive finding of fact by the Deputy Collector Land Reforms regarding absence of evidence with nothing in record of the proceedings before this Court to render the same perverse, it required no interference.

The argument of Mr. Singh has been contested by Mr. Modi on grounds that not only the report of the Circle Officer was collusive,



even the Deputy Collector Land Reforms has perpetuated the illegality when it has not taken note of the evidence led by the private respondents to support their claim. He thus submits that in the circumstances prevailing where the order of the Deputy Collector Land Reforms is not in tune with the statutory duty enshrined upon the Collector under 'the Act', the matter would require a re-consideration at his level.

I have heard learned counsel for the parties and I have perused the records. Insofar as the order passed by the Collector, Banka acting as a second appellate authority to set aside the order of the first appellate authority i.e. the Additional Collector, Banka impugned at Annexure-4 is concerned, the same is unsustainable on more than one count. Firstly, there is no provision under 'the Act' for entertaining a second appeal and secondly no appeal lies against an order dropping a proceedings under Section 48E of 'the Act'. The invalidity of the order is manifest from the statutory provision of Section 49F of 'the Act' itself which provides for a forum of appeal but nowhere provides for a second appeal. Insofar as the issue of appeal against an order of dropping the proceedings under Section 48E of 'the Act' is concerned, the law stands well settled in the judgment of this Court and reference is made to a judgment reported in **1992(2) PLJR 747 (Brijendra Kumar Narain Singh vs. State of**



Bihar) where the Division Bench has held that no appeal lies under Section 48F of 'the Act' against an order of the Collector refusing to initiate a proceeding under Section 48E of 'the Act'. The writ petition has to succeed on grounds of absence of jurisdiction in the Collector, Banka to either entertain a second appeal or to interfere with an order passed by a Collector under 'the Act' in refusing to initiate proceedings under Section 48E of 'the Act'.

In view of the legal position so settled, the order passed by the Collector, Banka dated 26.8.1997 in Bataidari Appeal No. 12 of 1996-97 impugned at Annexure-4 cannot be upheld and is accordingly set aside and for the same reasons even the order dated 21.6.1996 passed by the Additional Collector in Case No. 3 of 1995-96 also cannot be upheld and is accordingly set aside.

This would bring this Court to the legality and the validity of the order dated 4.6.1995 passed by the Deputy Collector Land Reforms placed at Annexure-2 to the writ petition and whether it would require any interference in the backdrop of the contentions advanced by Mr. Modi that the Deputy Collector Land Reforms acting as a Collector under 'the Act' was duty bound to refer the matter to the Board for exploring a settlement as mandated under Section 48E (3) of 'the Act'. Though Mr. Modi has relied upon the Full Bench decision of this Court rendered in the case of Dhanji Singh



(supra) to support his submissions but such submissions are unsustainable in view of the findings recorded by the Full Bench in paragraph-9 and paragraph-12 of the judgment in which the Full Bench has held that a reference to the Board on an application made by a person claiming to be a Bataidar under Section 48 E of 'the Act' is not a mechanical function rather until such time that the Collector is satisfied that a case has been made out by the applicant for initiation of such proceedings, the reference under Section 48E (3) of 'the Act' would not be mandated meaning thereby it is not in all cases that a Collector under 'the Act' is required to refer the matter to the Board for settlement rather he has to be first satisfied that the conditions precedent for invoking the relief available to a person claiming to be a bataidar under Section 48E of 'the Act' are existing and only then that the matter can be referred to the Board for a possible settlement.

Insofar as the case at hand is concerned, since there is a conclusive finding of fact by the Deputy Collector Land Reforms that there was complete absence of evidence to support the claim of the applicants raised under Section 48E of 'the Act' to result in the order passed by the Deputy Collector Land Reforms, I am of the considered opinion that in such circumstance there was no requirement for the matter to be referred to the Board.

I would lastly consider the issue raised by Mr. Modi

regarding perversity in the order of the Deputy Collector Land Reforms requiring a remand as according to him the issues raised by the applicants have not been considered. This writ petition was filed in the year 1998 and has been taken up for consideration almost 17 years thereafter and when this Court finds that there is not even a counter affidavit on behalf of the private respondents to challenge the findings recorded or to demonstrate any perversity in the findings of the Deputy Collector Land Reforms. In such situation I find no reason to interfere with the findings recorded by the Deputy Collector Land Reforms placed at Annexure-2.

For the findings recorded by me hereinabove, the writ petition is allowed and this Court while upholding the order dated 4.6.1995 passed by the Deputy Collector Land Reforms in Case No. 13 of 1994-95 would set aside the orders passed by the Additional Collector as well as the Collector as the 1st and 2nd appellate authority impugned at Annexures 3 and 4 respectively.

The writ petition is allowed.

(Jyoti Saran, J)

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