

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4513 of 2012

- =====
1. Rajo Ram S/O Late Siya Saran Ram, R/O Village- Panchitara, P.O.- Punha, P.S.- Rahui, District- Nalanda At Biharsharif
 2. Brahmddeo Gope S/O Late Mahabir Gope, R/O Village- Panchitara, P.O.- Punha, P.S.- Rahui, District- Nalanda At Biharsharif
 3. Kishori Prasad S/O Late Parmeshwar Ram, R/O Village- Panchitara, P.O.- Punha, P.S.- Rahui, District- Nalanda At Biharsharif

.... Petitioner/s

Versus

1. The State Of Bihar Through Revenue Secretary Government Of Bihar, Patna
2. The Collector, Nalanda, District- Nalanda At Biharsharif
3. The Additional Collector, Nalanda, District- Nalanda At Biharsharif
4. The Land Reforms Deputy Collector, Nalanda At Biharsharif
5. The Circle Officer, Rahui, District- Nalanda
6. Naresh Yadav S/O Late Ram Prakash Yadav R/O Village- Anantpur, P.O.- Pessaur, P.S.- Rahui, District- Nalanda At Biharsharif
7. Rajo Yadav @ Hooku Yadav S/O Late Ram Prakash Yadav R/O Village- Anantpur, P.O.- Pessaur, P.S.- Rahui, District- Nalanda At Biharsharif
8. Umendra Yadav S/O Late Ram Prakash Yadav R/O Village- Anantpur, P.O.- Pessaur, P.S.- Rahui, District- Nalanda At Biharsharif
9. Shobhi Yadav S/O Late Ram Prakash Yadav R/O Village- Anantpur, P.O.- Pessaur, P.S.- Rahui, District- Nalanda At Biharsharif
10. Ashok Yadav S/O Late Ram Prakash Yadav R/O Village- Anantpur, P.O.- Pessaur, P.S.- Rahui, District- Nalanda At Biharsharif

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Nawal Kishore Singh
For the Respondent No. 1 to 5: Mr. AC to AAG-6
For the Respondent No. 6 to 10: Mr. Binod Kumar Singh

=====

CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 28-09-2015

Heard the parties.

2. The petitioners are aggrieved by the order dated 30.11.2011 passed in Bataidari Case No. 1 of 2011-12 by the respondent Additional Collector, Nalanda, as contained in Annexure-10, whereby the aforesaid Batai case filed on behalf of the petitioners has been rejected and the lands in question transferred by the settlees viz Ramjee Paswan, Kameshwar Manjhee, Chandu Manjhee and others, under the provisions of The Bihar Land Reforms (Fixation of



Ceiling Area and Acquisition of Surplus Land) Act, 1961 (in short Land Ceiling Act), either in favour of the petitioners or in favour of private respondent nos. 6 to 10 or their family members have been held to be illegal, and revenue authority i.e. the respondent Anchal Adhikari has been directed not to mutate the lands in question in favour of either party, or/and, if already mutated, then to cancel the same, as the transfer of the lands in question made by the settlees was not permissible under the land ceiling Act.

3. Learned counsel appearing on behalf of the petitioners submits that the petitioners were declared bataidars over the lands in question u/s 48E of the B.T. Act, 1885 (in short B.T. Act) by an order dated 28.7.1989 passed by the D.C.L.R., Bihar Sharif in Bataidari Case no. 5/190 of 1972-73 (Annexure-1), but when there was a threat of their dispossession from the lands in question at the behest of one Ram Prakash Yadav, father of the private respondents, they filed a petition on 27.11.2008, (Annexure-4), before the respondent District Collector, Nalanda, seeking protection from their dispossession from the lands in question. It is contended that once the petitioners had filed the aforesaid petition dated 27.11.2008 (Annexure-4), then the respondent District Collector could not have transferred the same to the respondent Additional Collector, Nalanda and he ought to have decided the same himself. Therefore, according to him, the impugned order dated 30.11.2011 (Annexure-10) passed by the respondent Additional Collector, Nalanda, is without jurisdiction, and is thus liable to be set aside.

4. Learned AC to AAG-6 appearing on behalf of the respondent nos. 1 to 5, on the other hand, has submitted that the impugned order dated 30.11.2011 (Annexure-10) has been passed under the provisions of The B. T. Act, which is final in nature,



therefore, if the petitioners are at all aggrieved, they have an alternative and efficacious remedy before the learned Bihar Land Tribunal, Patna, in view of the provisions contained in Section 9 of The Bihar Land Tribunal Act, 2009. It is further contended that from the plain reading of the impugned order it is apparent that the issues of facts raised on behalf of the petitioners regarding the lands in question can be effectively examined and considered by the competent authority/Tribunal or the Court only after impleading all the necessary parties including the original land holder and the settlees, in whose favour lands in question were settled under the provisions of the Land Ceiling Act, but none of them have been impleaded as party respondents in the present proceeding, and therefore, it is pleaded that on that ground alone the present proceeding filed under Article 226 of the Constitution of India is fit to be dismissed.

5. Learned counsel appearing on behalf of the respondents no. 6 to 10, while contesting the claims of the petitioners regarding the lands in question, submits that the lands in question was purchased by their father from the rightful owner; therefore, according to him, they have acquired legal right over the same and the impugned order passed by the respondent Additional Collector, cannot be legally faulted.

6. After having heard the parties and on consideration of the materials available on record, this Court finds that a petition was filed on behalf of the petitioners on 27.11.2008 (Annexure-4) before the respondent District Collector, Nalanda seeking protection from their dispossession from their alleged bataidari lands at the hands of one Ram Prakash Yadav, father of respondent nos. 6 to 10. It appears that the aforesaid petition filed on behalf of the petitioners was transferred by the respondent District Collector to the respondent



Additional Collector, Nalanda, whereafter Bataidari Case No. 1 of 2011-12 was registered. In the aforesaid proceeding before the respondent Additional Collector, the petitioners as also the private respondents were heard and their cases were considered, and finally by the impugned order, claim of the petitioners regarding the lands in question was rejected. From the plain reading of the impugned order dated 30.11.2011 (Annexure-10), it further appears that a Land Ceiling Case No. 3 of 1975-76 was started with respect to the lands in question against the original land holder and the final order was passed declaring the lands in question as surplus, which were finally acquired u/s 15(1) of the land ceiling Act, as a result of which it vested in the State of Bihar free from all encumbrances. Subsequently, the lands in question were settled in favour of the beneficiaries under the provisions of The Land Ceiling Act, who are said to have transferred the same by way of sale either in favour of the petitioners or the private respondents or their family members. However, in the present writ petition, neither the land holder nor the settlees have been impleaded as party respondents, in whose absence, issues/claims raised on behalf of the petitioners regarding the lands in question cannot be effectively considered and decided in the present proceeding filed under Article 226 of the Constitution of India.

7. It would further be relevant to mention here that in the petition vide Annexure-4 filed on behalf of the petitioners, no specific provision of law has been mentioned for approaching the respondent District Collector, Nalana. In spite of the repeated query made by this Court, learned counsel appearing on behalf of the petitioners could not show as to under which provisions of the B.T. Act, the aforesaid petition was filed on behalf of the petitioners. He merely submitted that by invoking the administrative powers of the respondent District



Collector, the aforesaid petition was filed by the petitioners. From reading of the impugned order dated 30.11.2011, it is apparent that the power was exercised by the respondent Additional Collector, Nalanda under the provisions of the B.T. Act for deciding the claims of the petitioners. Indisputably, the petitioners surrendered to the jurisdiction of the respondent Additional Collector and waited for a favourable order and once the order has gone against them, they have filed the present writ petition questioning the power/ jurisdiction of the respondent Additional Collector. Since the petitioners voluntarily surrendered to the jurisdiction of the respondent Additional Collector and waited for a favourable order in their favour, therefore, in view of well settled law, they now, can not be permitted to assail the impugned order on the ground of lack of jurisdiction/ power. Reference can be made to a Division Bench Judgment of this Court in the case of **Hari Prasad vs. Additional Collector, Monghyr (1978 BBCJ 575) (Para-4)**.

8. Otherwise also the impugned order being final in nature under the provisions of the B.T. Act and in view of the provisions contained in Section 9 of The Bihar Land Tribunal Act, 2009, the petitioners have an alternative and efficacious remedy before the learned Bihar Land Tribunal, where the issues of facts raised on behalf of the parties can be appropriately gone into, but before doing that all the necessary parties including the original land holder and parwana holders/ settlees u/s 27 of the Land Ceiling Act must be impleaded as party- respondents, as in the considered opinion of the Court, once the lands in question were declared surplus under the land ceiling Act and were acquired u/s 15(1) of the said Act, then only remedy available to them was to file a petition u/s 22 of the land ceiling Act for claiming raiyati rights over the lands in question, but

the petition filed u/s 48E of the B.T. Act was misconceived and the order dated 28.7.1989 (Annexure-1) passed by the respondent D.C.L.R., Biharsharif was wholly illegal.

9. For the reasons recorded above, this Court does not find any good ground to interfere with the impugned order dated 30.11.2011 (Annexure-10) passed in Bataidari Case No. 1 of 2011-12 by the respondent Additional Collector, Nalanda and accordingly the writ petition is dismissed. However, if so advised, the petitioners shall be at liberty to approach the learned Bihar Land Tribunal, Patna or any other competent authority/ court for grant of appropriate relief(s) with respect to the lands under dispute, after impleading all the necessary parties including the land holder and the settlees/ parwana holders. No costs.

(Birendra Prasad Verma, J)

BTiwary/-

U			
---	--	--	--