

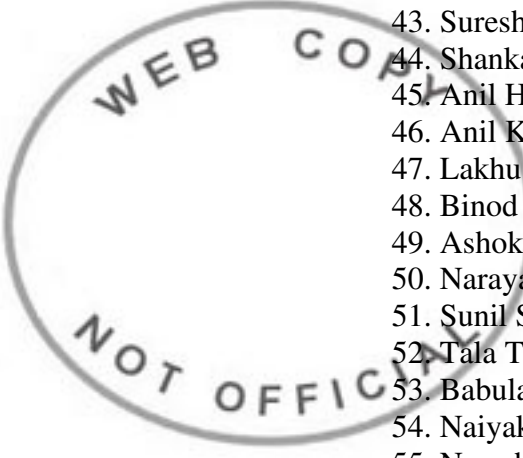
# IN THE HIGH COURT OF JUDICATURE AT PATNA

## Civil Writ Jurisdiction Case No.12388 of 2013

- 
1. Shambhu Nath Roy, son of late Baidya Nath Roy
  2. Anjani Kumar Roy, son of Shambhu Nath Roy
  3. Rajeeva Roy
  4. Sudeep Roy
  - 3 and 4 son of late Uday Nath Roy
  5. Bidhan Chandra Roy
  6. Prafulla Chandra Roy
  - 5 and 6 sons of late Muktinath Roy
  - All residents of village-Chunapur, Police Station-K. Nagar, District- Purnia
  - .... .... Petitioners

Versus

1. The Collector Araria
2. The Collector, Purnia
3. The Additional Collector (Ceiling), Purnia
4. The Deputy Collector Land Reforms (DCLR), Araria.
5. The Sub Divisional Officer, Araria
6. The Circle Officer, Raniganj, District- Araria
7. Lootan Rishidev, Son of late Buchi Rishidev
8. Berdhan Murmu, son of late Barku Murmu
9. Chhotelal Basuki, son of Narayan Basuki
10. Tallu Tuddu, son of late Durga Tuddu
11. Ramlal Murmu, son of late Naika Murmu
12. Babulal Murmu, son of late Naika Murmu
13. Anup Murmu father's name not known to the petitioners
14. Parmanand Mandal son of Anup Mandal
15. Suppat Tuddu son of late Sushil Tuddu
16. Souma Kishku son of late Rashi Kishku
17. Anuplal Kishku son of late Suraj Narayan Kishku
18. Mallick Kishku son of Rishun Kishku
19. Bhumlal Marandi son of late Munshi Marandi
20. Opendra Rishidev son of Nakchhedi Rishidev
21. Baiznath Rishidev son of late Dhana Rishidev
22. Bachhru Rishidev son of late Ajodhi Rishidev
23. Nandu Rishidev son of Harku Rishidev
24. Dhoulan Rishidev son of Kare Rishidev
25. Guneshwar Rishidev son of Baldev Rishidev
26. Mahendra Ram son of late Tapeswar Ram
27. Shrilal Sharma son of Anup Sharma
28. Ramlal Sourain son of late Debu Sourain
29. Laxman Sourain son of late Debu Sourain
30. Sonailal Hansda son of Nathuki Hansda
31. Shambhu Marandi son of Bhevalal Marandi
32. Chhotela Sourain son of Satal Sourain
33. Atwari Sourain son of Chhotelal Sourain
34. Narayan Basuki son of Kinnu Basuki
35. Suresh Tuddu son of Sira Sinath Tuddu
36. Babulal Marandi son of late Jaitha Marandi
37. Gangalal Murmu son of Somai Murmu
38. Jagdev Marandi son of Khudu Marandi

- 
39. Chhotelal Tuddu son of late Ramu Tuddu
  40. Rashik Tuddu son of late Talwa Tuddu
  41. Sikandra Rishidev son of late Mittu Rishidev
  42. Phoolchand Rishidev son of Jhabru Rishidev
  43. Suresh Rishidev son of Lakhan Rishidev
  44. Shankar Rishidev son of Akali Rishidev
  45. Anil Hansda son of late Chapa Hansda
  46. Anil Kishku son of Sundar Kishku
  47. Lakhu Sorain son of Chatur Sorain
  48. Binod Sorain son of Munshi Sorain
  49. Ashok Basuki son of Lakhand Basuki
  50. Narayan Marandi son of Kanhu Marandi
  51. Sunil Sorain son of Bhouru Sorain
  52. Tala Tuddu son of Mangal Tuddu
  53. Babulal Tuddu son of Jaitha Tuddu
  54. Naiyaka Tuddu son of Bishwanath Tuddu
  55. Naresh Tuddu son of Bihar Tuddu
  56. Sanjoy Marandi son of Parmeshwar Marandi
  57. Vaidka Tuddu son of Sounai Lal Tuddu
  58. Juge Sourain son of Baijnath Sourain
  59. Shiblal Murmu son of late Jaitha Murmu
  60. Babu Tuddu son of Talwa Tuddu
  61. Devi Sourain son of Shri Guru Sourain
  62. Dinesh Murmu son of late Chaitan Murmu
  63. Munshi Tuddu son of Prdhan Tuddu
  64. Pintu Baishra son of Jisha Baisra
  65. Ajit Hembram son of Rashiklal Hembram
  66. Sanjoy Sourain son of Masanga Sourain
  67. Kadamlal Sourain son of Vidyanand Sourain
  68. Chhotelal Kishku son of Jaitha Kishku
  69. Sanjoy Sourain son of Pradhan Sourain
  70. Bahulal Hemdram son of Anuplal Hembram
  71. Manjula Kishku son of Belou Kishku
  72. Anil Rishidev son of Sakru Rishidev
  73. Mahendra Rishidev son of Jagdish Rishidev
  74. Prabhu Das Rishidev son of late Bhattan Rishidev
  75. Mangal Rishidev son of Rattu Rishidev
  76. Asin Rishidev son of Mahrangi Rishidev
  77. Sikandra Rishidev son of Daredi Rishidev
  78. Jogi Rishidev son of Munshi Rishidev
  79. Gulabi Rishidev son of Munshi Rishidev
  80. Marilal Rishidev son of late Buddhu Rishidev
  81. Chand Roy Tuddu son of late Ganga Tuddu
  82. Vidyanand Rishidev son of Tatra Rishidev
  83. Shibu Rishidev son of late Hari Rishidev
  84. Sanjay Rishidev son of Durga Rishidev

All residents of village- Majhuwa, P.S. Raniganj, District, Araria

.... Respondents

=====

**Appearance :**

For the Petitioner/s : Mr. Makardhwaj Upadhyay, Advocate  
For the Respondent/s : Ms. Ratna Kumari, A.C. to S.C. 13

=====

**CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN**  
**ORAL JUDGMENT**  
**Date: 13-05-2015**

I have heard the parties and have perused the records of this case.

This application has been filed by the petitioners *inter alia* for grant of following reliefs:

“i. For quashing of the order dated 20.07.2012 passed by the Deputy Collector Land Reforms, Araria (hereinafter to be referred as the DCLR) in case No.33/2009-10 filed by the Respondent Nos.6 to 84 under Section 48(E) of the BT Act in respect to the lands of the petitioners and their family members as mentioned in Para-4 of the writ petition whereby and whereunder on wrong assumptions of facts and law the DCLR, Araria without application of mind and in most mechanical manner has referred/sent the matter to the Board.

A copy of the order dated 20.07.2012 is attached herewith and marked as Annexure-1, which forms part of this application.

ii. For quashing of the entire proceeding of Case No.33/2009-10 filed by the Respondent Nos.6 to 84 against the petitioners and their co-sharers under Section 48(E) of the BT Act in respect to the lands in question being malafide, against the law, unsustainable and illegal.

iii. For holding that a proceeding under Section 48(E) of the BT Act in respect to a vast chunk of land of landlords by a group of large persons joining a single petition is non-maintainable, malafide and illegal.

iv. For holding that the application under Section 48(E) of the BT Act joined by all the private Respondents (Respondent Nos.6 to 84 herein) has been filed with ulterior motive and with an intention to grab the lands of the petitioners and their family members as such is malafide and cannot be allowed to continue.

v. For restraining the official respondents from proceeding with the Case No.33/2009-10 during the pendency of this writ application.

vi. For any other appropriate relief or reliefs to which the petitioner may be deemed entitled.”

Petitioners claim that Ceiling Case No.13/73-74 was



initiated against one Baidya Nath Roy, father of Uday Nath Roy, Shambhu Nath Roy, Kukti Nath Roy and Dina Nath Roy. After the death of Baidya Nath Roy, the heirs were served with notices in the ceiling proceeding. They filed objection under Section 19(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961. Two writ petitions came to be filed one by Dina Nath Roy claiming to have separated from other brothers and one by Uday Nath Roy and others. Petitioner no.1 is the son of Baidya Nath Roy, petitioner no.2 is the son of Shambhu Nath Roy, petitioner nos.3 and 4 are sons of Uday Nath Roy whereas petitioner nos.5 and 6 are sons of Muktinath Roy.

Both writ applications i.e., the C.W.J.C. No.4926 of 1984 and C.W.J.C. No.4744 of 1984 were heard analogous and were disposed of by a Single Bench of this Court vide order dated 12.09.1995, a copy of which has been appended as Annexure 2. It appears from the decision of this Court that the matter was remitted back to the original authority i.e., the Additional Collector (Ceiling) Purnea for re-consideration of the grievance with respect to the classification of the land so far petitioners of C.W.J.C. No.4744 of 1984 were concerned and the petitioner of C.W.J.C. No.4926 of 1984 was allowed to raise objection for allowing two units in favour of his two sons, namely, Abash Chandra Roy and Subhash Chandra Roy and



also for raising objection related to classification of the land. The original order, the appellate order and the revisional order were quashed to the extent the objections were directed to be re-considered and rest part of the impugned order was upheld. The authority concerned was directed to hear the matter and expeditiously dispose of the same. It was further directed that, till the matter is finally disposed of, the petitioners should not be dispossessed from the lands which are in their possession. The petitioners claim that much time has elapsed thereafter but no order could be passed in Misc. Case No.1/2010 after the petitioners got filed their application before the Additional Collector, Land Ceiling, Purnia upon the remand of the matter as aforesaid. In the meantime on 29.12.2007 the private respondents, under the leadership of Lootan Rishidev and others, trespassed the lands of the petitioners and started erecting huts etc. by use of force. The petitioner no.4, Sudeep Roy lodged FIR before the Raniganj Police Station, Araria against the aforesaid persons which was registered as Raniganj P.S. Case No.353/2007 under sections 147/148/149/341/323 and 379 of the Indian Penal Code. The private respondents were arrested and put on trial which, according to the petitioners, is still pending. It has further been stated that Superintendent of Police, Araria, by his letter as contained in memo no.22C dated 05.01.2008 (Annexure 3), had informed the District



Magistrate regarding the occurrence stating that investigation is going on and requesting him to let an enquiry be also held through the Anchal Adhikari, Raniganj regarding the occurrence of forcible dispossession of the petitioners. It appears that the Circle Officer, after making enquiry, had submitted a report to the Sub-Divisional Officer, Raniganj vide Annexure 4 dated 11.01.2008 in which he has stated that about 150 scheduled tribes persons fully armed with bow and arrow have grabbed the land and have erected huts over it. He has also stated regarding the appointment of executive Magistrate as this Court had already directed vide Annexure 2 that possession of the petitioners should not be disturbed during the pendency of the case. Upon that, the Sub-Divisional Officer, Raniganj appears to have written to the Sub-Divisional Officer, Araria stating that one meeting between the unauthorized encroachers and the landholders was convened. In the aforesaid meeting, the encroachers Lootan Rishidev and others had stated that, in view of the notification dated 25.04.2004, settlement parcha and red card should be issued in their favour whereas the landholders had stated that the matter is still under consideration of the Additional Collector in view of the decision of the this Court in C.W.J.C. No.4744 of 1984 and C.W.J.C. No.4926 of 1984 in which possession of the landholders has been directed to be protected. However, the encroachers have taken the law in their hand



and grabbed the concerned land of about 60 acres. It is alleged by the petitioners that till then not a single word has been uttered by the private respondents before any authority regarding their batidari claims. The District Magistrate had written to Superintendent of the Police, Araria vide Annexure 5 dated 15.01.2008 for taking steps for removal of the illegal encroachment in view of the direction of this Court, so that the land could be freed from the land grabbers. The administration took action against the land grabbers including the respondent nos.7 to 84 and on 19.06.2008 with the help of the police as a result of which they were evicted and possession of the land was restored to the petitioners. However, respondent nos.7 to 84 continued to create problems to the petitioners and their managers which was time to time reported to the police. It is alleged that when the private respondents could not succeed in grabbing the lands then they took novel method and jointly filed a case under Section 48(E) of the Bihar Tenancy Act, 1885 (hereinafter referred to be as “the Act”) against the petitioners before the DCLR, Araria with respect to the lands mentioned in paragraph no.4 of the writ petition which was registered as case no.33/2009-10. It is further stated in the writ petition that when the petitioners came to know that the case under Section 48(E) of the Act is pending before the Circle Officer, Raniganj then one of the petitioners, Anjani Kumar Roy, went to the office of the Circle



Officer, Raniganj and came to know that one application under Section 48(E) of the Act had been jointly filed by 78 persons before the D.C.L.R., Araria and has been registered as case no.33/2009-10. Thereafter, the petitioners, after obtaining the certified copy of the order, came to know that vide order dated 20.07.2012 passed by the DCLR, Araria, the matter has been referred to the Board. Petitioners claim that no notice was ever served upon them and without recording his satisfaction regarding any prima facie case or dispute, the DCLR has referred the matter before the Board for conciliation only on the request of the first party, i.e., the private respondents. It has further been contended that the matter has been sent to the Board for conciliation even without constituting a Board and appointing its Chairman and nominating the punches of the respective parties.

Learned counsel appearing for the State has submitted that it is well settled that a detailed order is not required to be passed by the Collector and, in fact, he has passed the order after being satisfied with the existence of *bona fide* dispute and he has referred the dispute before the Board for conciliation. Therefore, no wrong has been done. It is also submitted on behalf of the State that in fact notice was served upon the petitioners before initiation of the proceeding but when they did not appear, the matter has been sent for conciliation before the Board.



A counter affidavit has been filed on behalf of the respondent nos.7 to 84. It has been urged on behalf of the respondent nos.7 to 84 that the petitioners have directly come before this Court challenging the order of initiation of proceeding under Section 48(E) of the Act in place of approaching the Land Tribunal constituted under the Bihar Land Tribunal Act, 2009 and, thus, since they have come without exhausting the alternative remedy, the matter is fit to be dismissed on ground of its maintainability itself. It has been submitted that though the land ceiling proceeding, which was initiated in year 1973-74 against the ancestors of the petitioners, has not attained finality as yet and is pending only for exercise of option before the competent authority, however, if the dispute arises with respect to the bataidari claim then the authority concerned has to proceed in accordance with law for resolving the same by constituting a Board and referring the matter to the Board for amicable settlement. It is further urged that the Collector under the Act is required to be subjectively satisfied with regard to the existence of *bona fide* dispute of bataidari. Since the petition filed by the private respondents under Section 48(E) of the Act undoubtedly discloses a *bona fide* dispute with respect to the bataidari claim, the Collector under the Act was duty bound to refer the matter to the Board. The petitioners will get an opportunity to rebut the claim of the answering private respondents

but in place of participating or contesting before the Board, they have rushed to this Court with a sole motive to delay the disposal of bataidari case.

On the aforesaid rival submissions having been made by the parties, this Court has directed the entire records of the proceeding to be produced before it. The records have been produced which show that the Collector under the Act had issued notice upon the landlords and, thereafter, the order impugned has been passed.

Having considered the rival claims of the parties, this Court finds following issues for determination in this matter:

(i) Whether the notice issued by the Collector under the Act to the landlords (petitioners) before passing the impugned order was served upon them?

(ii) Whether the impugned order shows regarding the satisfaction of the Collector under the Act regarding the existence of the *bona fide* dispute with respect to the bataidari claim?

(iii) Whether about more than 74 persons could have jointly filed one application making their respective claim of bataidari by filing joint petition under Section 48(E) of the Act?

**Issue Nos. i and ii:**

It appears from the records of this case that on 14.10.2009, the Collector under the Act has recorded an order



regarding filing of the application by one Lootan Rishidev and other 78 persons in total under Section 48 (E) of the Act. He has given description of the lands involved in the dispute and after hearing the petitioners he has further recorded that, for reaching to a conclusion as to whether there is a *bona fide* dispute regarding bataidairi claim or not, the matter requires to be enquired and for that purpose notice was directed to be issued under the registered cover to the opposite parties. Thereafter, on 15.11.2009 and 19.11.2009 the order appears to have been recorded stating that the report with regard to the service of notice was yet to be received. However, on 29.12.2009 he records that first party is present and second party is absent but, surprisingly, there is no note regarding service of notice upon the opposite parties. Thereafter, some orders appear to have been passed but on none of the occasions second party was shown to be present. On 22.06.2010 again an order has been recorded that notice to both the sides be issued. However, thereafter, no where it has been recorded that the notice has been validly served. Again on 04.01.2011, it has been recorded that second party should be noticed under registered cover. On 18.01.2011, it is recorded that report regarding the service of notice has not been received. On several dates, thereafter, it has been recorded that either the first party is present or both of the parties are absent. On 20.07.2012 he records that the first party is present and



second party is absent and since the advocate appearing for the first party has requested for sending the matter to the Board, that has been sent accordingly. I have also perused the records of the case which nowhere discloses that notices have been validly served upon the petitioners before passing of the impugned order dated 20.07.2012. In fact, in one of the notices it is stated that it is apparent from the witnesses that noticee resides in Chunna Pur Thana and, thus, notice is being returned without service. There is not a single receipt available on record showing that notice was issued upon the petitioners under registered cover also prior to passing of the impugned order. It is further clear that the notice appears to have again been sent upon them after the constitution of the Board which was served.

It is clear from the aforesaid that the Collector under the Act was satisfied that before coming to a conclusion that there exists a *bona fide* dispute or bataidari claim, an enquiry is required to be held and for that purpose he had directed for issuing notice upon the second parties but such notice was never served. The aforesaid order was passed on 14.10.2009 and, thereafter, matter was adjourned on several dates and suddenly after about three years, without ascertaining as to whether the notice was actually served upon the opposite party or not, the matter appears to have been sent to the Board on the request of the counsel for the first party. Now the



question arises as to whether in the facts and circumstances of the case the order impugned is liable to be held to be unsustainable in law or whether it appears that subjective satisfaction of the Collector under the Act appears to be there. Learned counsel appearing for the respondent State as well as private respondents have submitted that it is well settled that the notice is not required to be sent to the landholders for reaching to a conclusion regarding the existence of *bona fide* dispute. On the aforesaid issue reliance has been made upon a decision of the Special Bench of this Court in **Dhanji Singh Vs. State of Bihar and Others** [1979 (27) B.L.J.R. 711]. Learned counsel has also placed reliance upon a decision of a Single Bench of this Court rendered in **Dinesh Murmu and others Vs. The State of Bihar & Ors.** [1998(1) PLJR 110] holding that the Collector has to merely satisfy himself that there are no malicious, frivolous or vexatious claims and that a genuine bataidari dispute exists between the parties before constituting a board and referring the dispute to it. However, it would not be open to the Collector in the threshold enquiry to examine the claim and counter claim of the parties in depth and to appraise the evidence led on their behalf.

Learned counsel appearing for the petitioners has also placed reliance upon the decision of the Special Bench rendered in **Dhanji Singh (Supra)**. Apart from the aforesaid decision, he also



places reliance upon a decision of the Division Bench of this Court in **Brijendra Kumar Narain Singh, Raghunath Prasad Singh, Phulan Prasad Singh @ Phulan Pd. Vs. The State of Bihar & Ors. [1992 (2) PLJR 747]** holding that initiation of a proceeding under 48(E) of the Act being a quasi judicial matter and, thus, it would be open for a landlord to show to the Collector that the dispute raised is *mala fide* and baseless and to harass the party concerned. Learned counsel places reliance upon yet another decision rendered by a Division Bench of this Court in **Sukhdeo Paswan and others Vs. The State of Bihar & Ors. [1993(2) PLJR 211]** holding that in view of the fact that, at the time of inspection of the case, the Collector was required to consider large number of documents and cases involving similar points and, thus, he was entitled to give an opportunity of hearing to the landlord also before arriving at a finding as to whether the said application should be entertained or not.

Having considered the rival contentions in the facts and circumstances of the case, this Court finds substance in the submission made on behalf of the petitioners.

In **Dhanji Singh (Supra)**. the Special Bench has held as under:

“11. Learned counsel appearing for the respondent, however, submitted that there being no bar, if the landlord appears at his own and intervenes at the time of the initiation of the proceeding, he should be heard and it should be open to him to show that the information received by the Collector is false or that the application filed by the under-tenant is not



a *bona fide* one. In my opinion, from the scheme of Section 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. On 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 Section 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 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.”

The Special Bench has held that 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 regarding existence of *bona fide* dispute then he can initiate proceeding without waiting for the landlord. However, when the claim of under-tenancy has been made by suppressing the material facts 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 he cannot be permitted at the same time to convert the initiation of the proceeding into a mini trial. The Division Bench of this Court in **Brijendra Kumar Narain Singh (Supra)** after considering the decision of the Special Bench rendered in **Dhanji Singh (Supra)** has held as under:

“14. From the ratio laid down by different Judges

constituting the Special Bench, it is clear that the initiation of a proceeding under the Act is a quasi judicial matter and it is open for a landlord to show the Collector, *prima facie*, that the dispute raised is *mala fide* and baseless and to harass him though in appropriate cases, the Collector may refuse to hear the landlord.”

Another Division Bench of this Court in **Sukhdeo Paswan (Supra)** has held in the facts and circumstances of the case that the Collector under the Act was required to consider a large number of cases involving similar points and, thus, he was entitled to give an opportunity of hearing to the landlord also before arriving at a finding as to whether the said applications should be entertained or not. A Single Bench of this Court in **Pramanand Oraon (in 932) Ramdeo Oraon (in 935) Sant Lal Oraon (in 964) Vs. The State of Bihar & Ors. [1999 (2) PLJR 167]** placing reliance upon **Brijendra Kumar Narain Singh (Supra) and Sukhdeo Paswan (Supra)** has held that the Collector under the Act is not bound to constitute and refer all the cases to the Board rather he has to firstly satisfy himself and the claimant has to establish that *prima facie* case is made out and if it is found that the case has been initiated with *mala fide* intention in order to harass the landholder or to grab his land, the very initiation of proceeding would not be permissible. The same view has been taken by a Single Bench of this Court in **Shyam Sundar Yadav & Anr. Vs. The State of Bihar & Ors. [2005(3) PLJR 611]** holding that the satisfaction of the Collector regarding the *bona fide* of the

dispute is necessary for initiation of a proceeding and rejection of claim at the initial stage on such grounds cannot be said to be illegal.

Coming to the case in hand, the private respondents have miserably failed to counter the allegations made by the petitioners regarding forcible encroachment upon the land concerned and, thereafter, reports of different district authorities including the Anchal Adhikari, Superintendent of Police and the District Magistrate concerned, the claim of the petitioners that, after having been forcibly dispossessed, the district authorities with the help of police had restored possession in favour of the petitioners has not been answered anywhere in the counter affidavit. It is apparent from all the documents that have been appended as Annexures 2 to 6 that the claim of bataidari was never been raised by the private respondents on any earlier occasion before any authority. Thus, in the aforesaid background of the matter, in my considered opinion, the Collector has rightly recorded in the order dated 14.10.2009 that for reaching to a conclusion regarding existence of *bona fide* batidari claim, enquiry would be required and for that purpose he had issued notice to the landlords. The matter remained pending for about three years and no interim relief was ever granted to the private respondents. In the meantime several times notices were again issued to the second party. However, there is no material on record to show that such notices

were ever served upon the second party and suddenly on 20.07.2012, the Collector records as follows:

“अभिलेख उपस्थापित। प्रथम पक्ष उपस्थित  
द्वितीय पक्ष अनुपस्थित। प्रथम पक्ष के अधिवक्ता द्वारा बोर्ड में  
भेजने का अनुरोध किये है।

बोर्ड में भेजे।”

In my considered opinion, this order suffers from two apparent vices.

(a) After the notice having been issued to the opposite party, the order should not have been passed without valid service of notice upon them as the Collector under the Act has already recorded that the same was required to be issued.

(b) The order appears to have been passed upon the request of the learned counsel appearing for the first party i.e., the private respondents. It does not at all show that there was subjective satisfaction of the Collector regarding existence of the bataidari claim for dispute.

That apart Annexures 2 to 6 goes to show that there was some sort of other dispute between the parties as it is claimed by the petitioners that private respondents had forcibly grabbed the land and on 29.12.2007 under the leadership of Lootan Rishidev and others. They also claimed that their possession was restored by the district administration.



Counter affidavit filed on behalf of the respondent nos.7 to 84 is silent on the aforesaid allegations. The Special Bench also, in **Dhanji Singh (Supra)**, has held in clear terms that in the cases where claim of under-tenant has been made by suppressing the material facts including the recent delivery of possession having been effected in favour of the landlord over the lands in question or any other such materials then the landlord would have a right to bring to the notice of the Collector that the claim of the applicant lacks *bona fide*.

Thus, in my considered opinion, once notice having been issued to the opposite party, the impugned order could not have been passed without valid service of notice upon them and granting reasonable opportunity and that too without expressing any subjective satisfaction only in view of the request of the counsel appearing for the petitioners. Accordingly the issue nos. I and ii are decided in favour of the petitioners.

**Issue No. iii**

As I have discussed above, the respondent nos.7 to 84 in their counter affidavit have not rebutted the claim of the petitioners made in the writ application that they had forcibly grabbed the land on 29.12.2007 for which the first information report was lodged which has been registered as Raniganj P.S. Case No.353/2007 and in which they were taken into custody and the trial is still going on. That apart,



after taking forcible possession of the land, they were dispossessed by the district authority with the help of the police and possession of the lands concerned was restored in favour of the petitioners. Apart from the above, it appears that joint application has been filed on behalf of about 78 persons making out their bataidari claim upon the piece of land which has been described at the foot of application which has been appended as Annexure 7. It has not been stated that under what circumstances one petition is being filed by about 78 persons and how they are claiming bataidari claim upon it. It is nowhere stated in the application as to whether they are in joint possession as bataidari or they are separately in possession of different lands described in application. Merely bald statements have been made and it has not been stated anywhere that the petitioners are related with each other and, as such they are in joint possession of the land. A Single Bench of this Court in **Sheikh Haji Abdul Sattar Versus Deputy Collector Land Reforms, Purnea and others [1989 PLJR 310]** has considered the aspect of the constitution of the Batai Board on joint application of different persons claiming to be under-raiyat. It has been held that such application under Section 48(E) of the Act can be filed in different circumstances. Such an application is permissible when the under raiyats are threatened with unlawful ejectment from the tenancy or any portion thereof or if there is a dispute over (a)



possession of the land (b) crop (c) produce thereof either on the ground of non-existence of the relationship of landlord and tenant or otherwise. Since several plots are involved in the present case and the private respondents have nowhere claimed to be the joint under raiyats with respect to one parcel of land rather they are claiming different parcels of land, apparently, unless and until several persons can bring one action jointly in a case, such joint application would not be maintainable. In my considered opinion, this aspect was also required to be considered by the Collector under the Act which has obviously not been done. The issue no. (iii) stands decided accordingly.

Having regards to the aforesaid discussion, this Court is of the opinion that initiation of proceeding, in the facts and circumstances of the case, was without being subjective satisfaction of the Collector under the Act and without granting opportunity to the landlords to show that application lacks *bona fide*, would not be sustainable in law when a decision to issue notice to them was already taken and, accordingly, the same is quashed and set aside. As a consequence thereof, the entire further proceeding of constitution of Board etc. is also quashed and set aside. The matter is remitted back to the D.C.L.R., Araria under the Act to take a fresh decision in the matter after granting opportunity to all the concerned including the

landlords also to show that application lacks *bona fide*.

Accordingly, this application stands allowed to the extent as indicated above.

Let the records, which were produced by learned counsel for the State, be handed over to him at once.

**(Dr. Ravi Ranjan, J)**

Sanjay-II/- A.F.R.

|   |  |  |  |
|---|--|--|--|
| U |  |  |  |
|---|--|--|--|