

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11317 of 2006

Sanjay Tuddu son of Late Yaddu Tuddu, resident of Village Moglaha Rampur, P.S. Krityanand Nagar, District Purnia.

.... Petitioner/s

Versus

1. The State of Bihar
2. the Deputy Collector Land Reforms at Sadar, Purnia.
3. Md. Sagir son of Late Badrujjama
4. Md. Magra son of Late Badrujjama
5. Md. Salem son of Late Badrujjama.

No.3 to 5 residents of Village Moglaha Rampur, P.S. Krityanandnagar, District Purnia.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Arun Prasad Ambastha, Adv

For the Respondent/s : None.

CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 26-07-2016

Heard the learned counsel appearing on behalf of the petitioner. However, none appears on behalf of the respondent nos. 1 and 2, though the name of the learned State counsel is printed in the daily cause list. None appears on behalf of the private respondent nos. 3 to 5 as well, though notices were issued to them way back by order dated 18.03.2008.

The petitioner is aggrieved by the order dated 08.10.2005 passed in Case No. 9 of 2005-06 by the respondent D.C.L.R., Sadar, Purnia, as contained in Annexure-5 to the writ petition, whereby the petition filed on behalf of the petitioner under Section 48 E of The Bihar Tenancy Act, 1885 (in short B.T. Act) for his declaration as under-raiyat over the lands in question, fully detailed in paragraph-5 of the writ petition, has been rejected on the very threshold, but by a long order, running into more than 10 pages.

The learned counsel appearing on behalf of the petitioner



submits that the petitioner filed a petition under Section 48E of the B.T. Act for his declaration as under-raiyat over the lands in question on the basis of which Case No. 9 of 2005-06 was instituted. According to him, there was a bonafide batai dispute between the parties. Therefore, the Collector under the B.T. Act ought to have referred the matter to the duly constituted Batai Board in terms of Section 48E(3) & (4) of the B.T. Act and only after recommendation of the Batai Board, final order could have been passed by the respondent D.C.L.R. either accepting the claim raised on behalf of the petitioner or rejecting his such claim, but at that stage the respondent D.C.L.R. could not have converted the aforesaid proceeding in a mini trial and could not have decided the Batai claim of the petitioner on merits at the stage of Section 48E(1) of the B.T. Act. According to him, the impugned order passed by the respondent D.C.L.R. is in the teeth of the judicial pronouncement made by special Bench of this Court in the case of **Dhanji Singh v. State of Bihar & Ors.** [1979 B.B.C.J. 521 = 1979 (27) BLJR 711].

As noticed above, none is appearing on behalf of the respondents to contest the points raised by the learned counsel appearing on behalf of the petitioner. Furthermore, this case was filed way back on 13.09.2006, but till date no counter-affidavit has been filed either on behalf of the State authority or on behalf of the private respondents. In that view of the matter, the averments made in the writ petition have to be accepted.

After having heard the learned counsel appearing on behalf of the petitioner and on examination of the averments made in the writ petition as also on perusal of the impugned order, as contained in Annexure-5, this Court is of the opinion that the impugned order dated 08.10.2005 passed by the respondent D.C.L.R., Sadar, Purnia



cannot be sustained in law. The special Bench of this Court in the case of **Dhanji Singh v. State of Bihar & Ors. (supra)** has laid down the principles in paragraph-7, 8 and 11 that once a petition under Section 48E of the B.T. Act is filed by any claimant, then the Collector under the B.T. Act is required to find out only prima facie case of bonafide batai dispute between the parties. If the Collector under the B.T. Act finds that there is prima facie case of bonafide batai dispute between the parties, then the matter is required to be referred to a duly constituted Batai Board and only after recommendation of Batai Board after following the procedure prescribed therein, the final order can be passed, but at that stage the landlord cannot be permitted to convert the initiation of proceeding in a mini trial or a parallel enquiry. The landlord has to wait till the matter is referred to the duly constituted Batai Board. The impugned order dated 08.10.2005 passed in Case No. 9 of 2005-06 by the respondent D.C.L.R., Sadar, Purnia, is evidently in violation of the aforesaid principles laid down by the Special Bench of this Court. In that view of the matter, it cannot be sustained in law.

For the reasons recorded above, the impugned order dated 08.10.2005 passed in Case No. 9 of 2005-06 by the respondent D.C.L.R., Sadar, Purnia, as contained in Annexure-5 to the writ petition, is hereby set aside and quashed, and the matter is remitted back to the respondent D.C.L.R., Sadar Purnia with a direction to refer the matter to a duly constituted Batai Board, whereafter the matter shall be decided in accordance with law, after following the procedure prescribed under the B.T. Act and the rules made thereunder, but before passing any final order, reasonable opportunity of hearing must be given to all concerned including the petitioner and the private respondent no. 3 to 5, besides others, if any.

In order to expedite the matter, the petitioner is directed to appear before the respondent D.C.L.R., Sadar Purnia within a period of two months from today with a certified copy of the present order, whereafter the respondent D.C.L.R., Sadar Purnia shall call upon the parties to nominate their panches, and thereafter the matter shall be referred to the duly constituted Batai Board for being decided in accordance with law.

In the result, the writ petition stands allowed to the extent indicated, but with the observations and directions made above. However, there shall be no order as to costs.

(Birendra Prasad Verma, J)

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CAV DATE	
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