

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6365 of 2014
With
Interlocutory Application No. 5559 of 2014

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1. Dwarika Prasad Agrawal, Son Of Late Rameshwar Prasad Agrawal, Resident of Mohalla- Sonar Toli, Ward No. 27, Sasaram, P.S.- Sasaram, District- Rohtas.
 2. Thakur Awadh Bihari Lall Jee through its Sebait Dwarika Prasad Agrawal S/O Late Rameshwar Pd. Agrawal, Resident of Mohalla- Sonar Toli, Ward No. 27, Sasaram, P.S.- Sasaram, District- Rohtas.

.... Petitioner/s

Versus

1. The State of Bihar
2. District Magistrate, Rohtas At Sasaram.
3. Deputy Collector, Land Reforms, Sasaram, District- Rohtas
4. Anchal Adhikari, Shiv Nagar, District- Rohtas
5. Pargan Ram, S/O Chandrika Ram
6. Sanmukh Ram, S/O Late Narayan Ram
7. Chotan Ram, S/O Late Ramadhar Ram
8. Ramashish Paswan, S/O Late Darashi Paswan
9. Mahesh Paswan, S/O Late Dalsigar Paswan
10. Sri Kabal Paswan, S/O Late Hari Paswan
11. Sri Bhagwan Paswan, S/O Late Sardar Paswan
12. Babu Ram S/O Late Indradev Ram
13. Vijay Paswn, S/O Bagadan Paswan
14. Chote Lal Ram, S/O Late Subhag Ram
15. Sajjan Paswan, S/O Late Dalsingar Paswan
16. Umesh Paswan, S/O Ram Ekbal Paswan
17. Jamindar Thakur, S/O Naresh Thakur
18. Ajay Paswan, S/O Bagedan Paswan
19. Bharat Paswan, S/O Shiv Pujan Paswan
20. Mosafir Paswan, S/O Ganga Paswan
21. Krishna Paswan, S/O Ganga Paswan
22. Birendra Paswan, S/O Late Tengar Paswan
23. Satya Narayan Paswan, S/O Tengar Paswan
24. Butai Paswan, S/O Late Darasi Paswan
25. Rajeshwar Sah, S/O Shiv Pujan Sah
26. Dadan Paswan S/O Late Shadhu Paswan
27. Ganga Paswan, S/O Ali Paswan
28. Uday Paswan, S/O Late Sardar Paswan
29. Bhaiya Ram Paswan, S/O Late Sardar Paswan
30. Arjun Paswan, S/O Shiv Ratan Paswan
31. Ramchandra Paswan, S/O Late Narayan Paswan Null
32. Shanti Kuber, Wife Of Late Bigu Paswan
33. Ram Singhasan Paswan, S/O Jalu Paswan
34. Jagan Yadav, S/O Basropan Yadav
35. Nandlal Sah, S/O Late Jhapsi Sah
36. Mohan Ram, S/O Janki Ram
37. Ramdev Yadav, S/O Basropan Yadav
38. Yamuna Yadav, S/O Late Bali Paswan
39. Suraj Paswan, S/O Late Hari Paswan
40. Chandrika Paswan, S/O Late Subhag Paswan
41. Agnu Paswan, S/O Late Hari Paswan
42. Sudama Paswan, S/O Late Sita Ram Paswan
43. Sri Kant Paswan, S/O Late Sita Ram Paswan

44. Chandrama Kahar, S/O Late Isari Kahar
45. Sipahi Kahar, S/O Late Jatan Kahar
46. Umrawati Kuer, Wife Of Late Ram Pyara Paswan, All Are Residents Of Village- Joi, P.O.- Kirhindi, P.S.- Shivsagar, District- Rohtas
47. Prem Lal Agrawal
48. Badri Lal Agrawal Both Are Sons Of Late Rameshwar Prasad Agrawal
49. Jagdish Prasad @ Mannu
50. Lakhn Prasad
51. Krishan Prasad All Are Sons Of Saligram Prasad @ Salik Prasad
52. Radha Shaym Lal Agrawal, Son Of Mahavir Lal Agrawal, All are residents of Mohalla- Mahajan Toli (Sonar Toli), P.O. & P.S.- Sasaram, District- Rohtas
.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Jitendra Prasad Singh, Adv.

For the Respondent Nos.1 to 4 : Mr. Sushant Praveen, AC to G.P. 12

For the Respondent Nos. 5 to 46: Mr. T.N. Maitin, Sr. Adv.

Mr. Ravi Shankar Sahay, Adv.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 25-10-2016

Heard the learned counsel appearing on behalf of the petitioners, the learned AC to G.P. 12 appearing on behalf of the respondent nos. 1 to 4 and the learned Senior counsel appearing on behalf of the respondent nos. 5 to 46, who are the main contesting respondents. However, the respondent nos. 47 to 52 are the proforma respondents, supporting the case of the petitioners, which have been noticed in the order dated 9.5. 2014 passed by a co-ordinate Bench of this Court. Therefore, they are not appearing in this case.

2. The petitioners have filed the present writ petition assailing the validity and correctness of the order dated 8.7.2013 passed in Land Dispute Case No. 188 of 2012-13 by the respondent D.C.L.R., Sasaram, as contained in Annexure-6 to the writ petition, whereby petition filed on behalf of the respondent nos. 5 to 46 under the provisions of The Bihar Land Disputes Resolution Act, 2009 (in short 'Act, 2009) with respect to the lands in question has been entertained and the report has been called for from the Circle Officer, Shiv Sagar. The petitioners have also challenged the validity of the consequential notice dated 28.2.2014, as contained in Annexure-7 to

the writ petition, issued by the respondent D.C.L.R., Sasaram to the petitioners as also to the private respondent Nos. 47 to 52 asking them to appear in the aforesaid case.

3. The learned counsel appearing on behalf of the petitioners submits that the petitioner no.1 is the sebaite of the petitioner no.2, the deity. However, during the pendency of the writ petition, the petitioner no.1 has passed away; and therefore, I.A. No. 5559 of 2014 has been filed by the respondent no. 47 for his substitution in place of the petitioner no.1. In the aforesaid interlocutory application, it has been averred that after death of the petitioner no.1, the respondent no.47- Prem Chand Agrawal @ Prem Lal Agrawal has become a sebaite of the deity.

4. The learned senior counsel appearing on behalf of the respondent nos. 5 to 46 has not disputed the averments made in the aforesaid interlocutory application. Therefore, the prayer for substitution is being allowed.

5. The learned counsel appearing on behalf of the petitioners submits that though, the private respondent nos. 5 to 46 claim to be the bataidars over the lands in question, but at no point of time they have been declared bataidars/ under-raiyat under the provisions of The Bihar Tenancy Act, 1885. It is pleaded by the learned counsel that unless and until the private respondent nos. 5 to 46 are declared as under-raiyats over the lands in question under the provisions of the B.T. Act, they cannot seek relief under the provisions of the Act, 2009. Therefore, according to him, at this stage, initiation of the impugned proceeding by the respondent D.C.L.R., “the competent authority” under the provisions of the Act, 2009 is wholly illegal and not maintainable. He further submitted that if there is any threat of unlawful ejectment to the private respondent nos. 5 to 46 from the lands in question, as they claim to be under-raiyat, then they ought to have filed an appropriate application under the

provisions of Section 48E of the B.T. Act, and only after their declaration as Bataidars over the lands in question under the provisions of the B.T. Act, they could have approached the “competent authority” under the provisions of the Act, 2009 for grant of appropriate relief(s) to them, but admittedly, they have not been declared bataidars over the lands in question till date, and therefore, the impugned proceeding cannot be allowed to continue.

6. The learned Senior counsel appearing on behalf of the respondent no. 5 to 46, submits that though the private respondent nos. 5 to 46 filed a petition before the respondent D.C.L.R., as contained in Annexure-3 to the writ petition, under the provisions of the Act, 2009, but essentially they wanted their declaration as bataidars over the lands in question in view of their threatened ejectment by the landholder from the lands in question. He further submitted that if this Court is inclined to interfere with the impugned proceeding pending before the “competent authority” under the provisions of the Act, 2009, then the private respondent nos. 5 to 46 may be granted liberty to file their separate batai petitions under Section 48E of the B.T. Act before the respondent D.C.L.R., Sasaram, who may be directed to initiate proper batai proceedings for consideration of their claims, which may be directed to be taken to their logical conclusions in accordance with law.

7. After having heard the parties and in view of the fair stand taken by the learned counsel appearing on behalf of the petitioners as also the learned Senior counsel appearing on behalf of the respondent nos. 5 to 46 and in view of the fact that till date the respondent nos. 5 to 46, though claim to be under-raiyats over the lands in question, but have not been declared as such under the provisions of the B.T. Act, this Court is of the considered opinion that the impugned proceeding in Land Dispute Case No. 188 of 2012-13 under the provisions of the Act, 2009 cannot proceed. Accordingly,

the impugned order dated 8.7.2013, as contained in Annexure-6 and the impugned notice dated 28.02.2014, as contained in Annexure-7 and the entire proceeding of Land Dispute Case No. 188 of 2012-13 pending before the respondent D.C.L.R., Sasaram, are hereby set aside and quashed. However, in the factual matrices of the case, noticed above, this Court grants liberty to the respondent nos. 5 to 46 to file their separate applications under the provisions of Section 48E of the B.T. Act and the Rules made thereunder before the respondent D.C.L.R., Sasaram, who shall, accordingly, be obliged to initiate batai cases under the provisions of the B.T. Act and shall refer the matter to the duly constituted Batai Board for being taken to their logical conclusions in accordance with law, but before passing any final order, reasonable opportunity of hearing must be given to the respondent nos. 5 to 46 and other concerned persons, if any, as also the present petitioners, being the landlords.

8. In the result, the writ petition stands allowed to the extent indicated above, but with the observations and directions made above. I.A. No. 5559 of 2014 stands accordingly disposed of. However, the parties are left to bear their own costs.

(Birendra Prasad Verma, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	29-10-2016
Transmission Date	