

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6723 of 2001

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Sone Lal Mahto son of Late Sheetal Prasad Mahto, resident of village- Kalyanpur,
P.S. K. Nagar, Distt. Purnea.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Collector, Purnea.
3. The Deputy Collector, Land Reforms, Sadar, P.S. Sadar, District Purnea.
4. Upendra Mahto son of Shyam Lal Mahto
5. Narayan Mahto son of Shyam Lal Mahto
6. Yogendra Mahto son of Shyam Lal Mahto.
7. Sudhir Mahto son of Narayan Mahto
8. Nalho Mahto son of Narayan Mahto
9. Manoj Mahto son of Narayan Mahto
10. Shambhu Mahto son of Narayan Mahto,
11. Akhilesh Mahto son of Yogendra Mahto,
All residents of Village Malyanpur, P.S. K.Nagar, Distt. Purnea.
12. Deo Narayan Mahto son of Ayodhyaya Prasad Mahto, resident of village
Sahara, P.O. Sahara, P.S. K. Nagar, District Purnea.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Vikram Singh, Adv.

For the Respondent Nos. 1 to 3 : Mr. Randhir Kumar, AC to SC-18

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 20-09-2016

Heard the parties.

The petitioner is aggrieved by the order dated 15.2.2001 passed in Case No. 15 of 1999-2000 by the respondent D.C.L.R., Sadar, Purnea, as contained in Annexure-4 to the writ petition, whereby the claim raised on behalf of the petitioner under Section 48E of The Bihar Tenancy Act, 1885 (In short 'B.T. Act) has been rejected.

The learned counsel appearing on behalf of the petitioner submits that the father of the petitioner was sikmidar over the lands in question; therefore, the respondent D.C.L.R., Sadar, Purnea ought to have referred the matter to the Batai Board and only on receipt of the report of the Batai Board, the matter could have been taken to its

logical conclusion. Therefore, according to him, the impugned order is not sustainable in law and the matter is fit to be remanded for fresh decision.

The learned AC to SC-18 appearing on behalf of the respondent nos. 1 to 3, on the other hand, submits that the order impugned is appealable and the petitioner has not filed any appeal, therefore, the writ petition is liable to be dismissed.

After having heard the parties and on consideration of the materials available on record, this Court finds that the respondent D.C.L.R. has rejected the petition filed on behalf of the petitioner under Section 48E of the B.T. Act in exercise of his powers under Section 48E(1) of the B.T. Act. Therefore, in the considered opinion of this Court, the order impugned is not appealable u/s 48F of the B.T. Act. The submission made by the learned State counsel is completely misconceived and is hereby rejected. However, so far the merits of the case are concerned, this Court finds that there is a difficulty for the petitioner to succeed in the matter. The respondent no.4, one of the contesting respondents, was reported to have died in the year 2002 itself, which is evident from the order dated 4.4.2002 and by that order, the petitioner was granted two weeks' time for taking steps for substitution of the deceased respondent no.4. Despite aforesaid indulgence granted by this Court, step for substitution was not taken by the petitioner and when the matter was placed for consideration on 22.10.2002 before a Bench of this Court [Coram: Aftab Alam, J, as His Lordship then was], again the petitioner was granted time till 2nd November, 2002 for filing substitution petition vice deceased respondent no.4, failing which it was directed that the writ petition shall stand abated against the heirs of the deceased respondent no.4.

From the office note dated 19.9.2016 it appears that despite

passage of more than 14 years, no substitution petition has been filed on behalf of the petitioner seeking substitution of deceased respondent no.4. The learned counsel appearing on behalf of the petitioner has not been able to dispute the aforesaid office note.

In above view of the matter, this Court is of the opinion that the present writ petition has become incompetent, as it has abated against the heirs and legal representatives of the deceased respondent no.4, one of the landholders. Therefore, issues raised in the writ petition can not be effectively considered, even on remand, by the authorities concerned. Hence, the writ petition cannot proceed further and it is, accordingly, dismissed.

(Birendra Prasad Verma, J)

BTiwary/-

AFR/NAFR	
CAV DATE	
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