

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10659 of 2004

- =====
1. Md.Darban
 2. Md. Mikaile
- Both sons of Md. Jafijul
3. Shyamlal Tuddu, son of Bagnoo Tuddu (expunged vide order dated 30.08.2012 and substituted by his following heirs and legal representatives:)
 - (i) Talamaya Devi, widow of late Shyamlal Tuddu
 - (ii) Sonelal Tuddu, son of late Shyamlal Tuddu, under the guardianship of his mother Talamaya Devi.
 4. Deo Narayan Mirdha, son of Musharu Mirdha
- All resident of village-Ranipatti Singhiyoun, P.O.-Amarapura, P.S.&Anchal-Murliganj, District-Madhepura.

.... Petitioner/s

Versus

1. The Collector Madhepura
 2. Land Reforms Deputy Collector, Madhepura.
 3. Anchal Adhikari, Murliganj, District-Madhepura.
 4. Shiv Narayan Mirdha, son of Musham Mirdha (expunged vide order dated 30.08.2012 and substituted by his following heirs and legal representatives:)
 - (i) Champa Devi, widow of late Shiv Narayan Mirdha
 - (ii) Bitaka Mirdha
 - (iii) Shailendra Mirdha
 - (iv) Munna Mirdha
 - (v) Bichchu Kumar
- All are minor sons of late Sheo Narayan Mirdha under the guardianship of their mother Champa Devi.
- (vi) Pano Devi, daughter of late Sheo Narayan Mirdha
 - (vii) Fulo Devi, daughter of late Sheo Narayan Mirdha
 - (viii) Rajmuni Devi, daughter of late Sheo Narayan Mirdha
- All resident of village-Rampatti Singhiyaoun, P.O.-Amarapura, P.S. & Anchal Murliganj, District-Madhepura.
5. Badri Chaudhary
 6. Krishna Kumar Chaudhary
 7. Rajendra Chaudhary, sons of Ayodhya Chaudhary, resident of village-Kharik Bazar, P.O.& P.S.-Kharik Bazar, District-Bhagalpur.

.... Respondent/s

With

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Civil Writ Jurisdiction Case No. 11300 of 2004

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1. Md.Mustaque Alam
 2. Md. Halim
 3. Md. Anawar Alam
 4. Md. Mumtaj Alam
- All sons of Md. Yusuf
5. Bibi Jamila Khatun, wife of Ynus
 6. Md.Ibrahim
 7. Md.Kalam
- Sons of Azizur Rahman
8. Md.Darwan

9. Md.Mikail
Sons of Rajajul

10. Md.Zubair

11. Md.Zakir

Sons of Gyaus

12. Md.Mannan

13. Md.Sadaul

Sons of Md.Sabram

All resident of village-Ranipatti Singhiyoun, P.S.& Anchal-Murliganj, District-Madhepura.

.... Petitioner/s

Versus

1. The Collector, Madhepura

2. Land Reforms Dy. Collector, Madhepura.

3. Anchal Adhikari, Murliganj, District-Madhepura.

4. Mangal Hembram, son of Hanish Hembram (expunged vide order dated 10.03.2006 and substituted by his following heirs and legal representatives:)

(i) Haricharan Hembram

(ii) Nimchand Hembram

(iii) Phool Chand Hembram

(iv) Anup Lal Hembram

All sons of late Mangal Hembram

5. Chhotelal Hembram, son of Hanish Hembram

6. Lal Hembram, son of Hanish Hembram (expunged vide order dated 10.03.2006 and substituted by his following heirs and legal representatives:)

(i) Babu Lal Hembram

(ii) Dinesh Hembram, both sons of late Lal Hembram

7. Suraj Hembram, son of Hanish Hembram

All resident of village-Ranipatti Singhiyoun, P.O.-Amarpura, P.S.& Anchal-Murliganj, District-Madhepura.

8. Nityanand Chaudhary

9. Pradeep Chaudhary

Sons of late Ganga Chaudhary sons of late Chandi Chaudhary, resident of village-Chulharia, P.S.-Mohanpur, District-Deoghar (Jharkhand).

.... Respondent/s

With

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Civil Writ Jurisdiction Case No. 16397 of 2004

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1. Md.Sabir Alam

2. Md. Zakir

3. Md. Zuber

Sons of Md.Gyasuddin

4. Md. Azilat, son of Md. Ismile

5. Md.Nasud, son of Kasim

6. Md.Zabbar, son of Md.Ibrahim

7. Md.Mozim

8. Md.Murtaja @ Bibbi

9. Md. Salmuddin, sons of Md.Islam

10. Md. Mumtaj

11. Md. Imtaj

12. Md.Mozib

Sons of Md.Afabul

13. Md.Mannan

14. Md.Sadrul

15. Md.Mazlum

Sons of Md.Suleman

All resident of village-Ranipatti Singhiyoun, P.O.-Amarpura, P.S.& Anchal-Murliganj, District-Madhepura.

.... Petitioner/s

Versus

1. The Collector, Madhepura

2. The Land Reforms Dy. Collector, Madhepura.

3. Anchal Adhikari, Murliganj, District-Madhepura.

4. Lakhman Manjhi, son of late Haricharan Manjhi (expunged vide order dated 10.03.2006 and substituted by his following heirs and legal representatives:)

(i) Haricharan Manjhi, son of late Lakhman Manjhi(expunged vide order dated 30.08.2012 and substituted by his following heirs and legal representatives:)

(a) Mostt. Malti Devi, widow of late Hari Charan Manjhi

(b) Bablu Murmur, minor son of late Hari Charan Manjhi

(c) Deelip Kumar, minor son of late Hari Charan Manjhi

(d) Meena Devi, wife of Sanjay Marandi, daughter of late Haricharan Manjhi

(e) Veena Devi, wife of Nand Kumar Tuddu, daughter of late Haricharan Manjhi

(f) Shanti Kumari, minor daughter of late Haricharan Manjhi

(g) Sushila Kumari, minor daughter of late Haricharan Manjhi

(ii) Sheo Charan Manjhi, son of late Lakhman Manjhi,

All resident of village-Ranipatti Singhiyoun, P.O.-Amarpura, P.S.& Anchal-Murliganj, District-Madhepura.

5. Rameshwar Chaudhary, son of Ram Bihari Chaudhary, resident of village-Katarmala, P.S.-Nimachaurpur, District-Begusarai.

.... Respondent/s

With

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Civil Writ Jurisdiction Case No. 16419 of 2004

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1. Shiv Kumar Das

2. Sita Ram Das

3. Vidya Nand Das

Sons of Sahdeo Das

4. Shyam Lal Tuddu, son of Badasakal Tuddu (expunged vide order dated 30.08.2012 and substituted by his following heirs and legal representatives:)

(iii) Talamaya Devi, widow of late Shyamlal Tuddu

(iv) Sonelal Tuddu, son of late Shyamlal Tuddu, under the guardianship of his mother Talamaya Devi.

All resident of village-Ranipatti Singhiyoun, P.O.-Amarpura, P.S.& Anchal-Murliganj, District-Madhepura.

.... Petitioner/s

Versus

1. The Collector Madhepura

2. The Land Reforms Dy. Collector, Madhepura.

3. The Anchal Adhikari, Murliganj, District-Madhepura

4. Bindeshwari Mirdha
 5. Deo Narayan Mirdha
 Sons of Mishari Mirdha
 All resident of village-Ranipatti Singhiyoun, P.O.-Amarapura, P.S.& Anchal-Murliganj, District-Madhepura
 6. Badri Chaudhary
 7. Krishna Kumar Chaudhary
 8. Rajendra Chaudhary
 Sons of Ayodhya Chaudhary, resident of village-Khanik Bazar, P.O.+P.S.-Khanik Bazar, District-Bhagalpur.

.... Respondent/s

With

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Civil Writ Jurisdiction Case No. 553 of 2005

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1. Manoj Das
 2. Ashok Kumar Das
 3. Vijay Kumar Das
 Sons of Sri Basudeo Das
 4. Md. Zafir, son of Md.Iliyas
 5. Bivi Sakun, wife of late Md.Muhiuddin
 All resident of village-Ranipatti Singhiyoun, P.O.-Amarapura, P.S.& Anchal-Murliganj, District-Madhepura.

.... Petitioner/s

Versus

1. The Collector Madhepura
 2. Land Reforms Deputy Collector, Madhepura
 3. Anchal Adhikari, Murliganj, District-Madhepura.
 4. Nand Kumar Tuddu, son of late Mohan Tuddu (expunged vide order dated 30.08.2012 and substituted by his following heirs and legal representatives:)
 (i) Sumitra Devi, widow of late Nand Kumar Tuddu
 (ii) Pradeep Kumar
 (iii) Babu Ram Kumar
 (iv) Kanhaiya Kumar (minor)
 (v) Prithavi Kumar (minor)
 Sons of late Nand Kumar Tuddu, both minors under the guardianship of their mother Sumitra Devi
 (vi) Arati Kumari (minor)
 (vii) Bitiya Kumari (minor)
 Both minor daughters of late Nand Kumar Tuddu under the guardianship of their mother Sumitra Devi.
 All resident of village-Ranipatti Singhiyoun, P.O.-Amarapura, P.S.& Anchal-Murliganj, District-Madhepura.
 5. Nitya Nand Chaudhary
 6. Pradeep Chaudhary
 Sons of late Ganga Chaudhary, resident of village-Chulharia, P.S.-Mohanpur, District-Deoghar (Jharkhand).

.... Respondent/s

With

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Civil Writ Jurisdiction Case No. 10694 of 2004

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- =====
1. Kamleshwari Das
 2. Bindeshwari Das
 3. Chandeshwari Das
 - Sons of Sri Sukhdeo Das
 4. Manoj Das
 5. Ashok Das
 6. Vijay Kumar Das

Sons of Basudeo Das, resident of village-Ranipatti Singhiyoun, P.O.-Amarapura,
P.S.& Anchal-Murliganj, District-Madhepura

.... Petitioner/s

Versus

1. The Collector Madhepura
2. Land Reforms Dy. Collector, Madhepura.
3. Anchal Adhikari, Murliganj, District-Madhepura
4. Kinu Mirdha, son of Durga Mirdha (expunged vide order dated 03.02.2015 and substituted by his following heirs and legal representatives:)
- (i) Jagdish Mirdha,
- (ii) Rajendra Mirdha
- (iii) Mahindra Mirdha
- (iv) Ram Chandra Mirdha
- All are sons of late Kinu Mirdha, resident of village-Ranipatti Singhiyoun, P.O.-Amarapura, P.S.& Anchal-Murliganj, District-Madhepura.
- (v) Smt. Koeli Devi, wife of Bhukhana Mirdha, daughter of late Kinu Mirdha, resident of village+P.O.-Bharasiya, P.S.-Falaka, District-Katihar.
- (vi) Pawani Devi, wife of Chamaklal Mirdha, daughter of late Kinu Mirdha, resident of village-Mahila Asthan, P.O.-Dibara Bazar, P.S.-Barahara Kothi, District-Purnea.
- (vii) Nunia Devi, wife of Kalicharan Mirdha, daughter of late Kinu Mirdha, resident of village+P.O.-Kapasiya, Chachar (West Bengal)
- (viii) Akali Devi, wife of Khhantar Sah, daughter of late Kinu Mirdha, resident of village+P.O.-Karahha Gola, District-Katihar.
5. Badri Chaudhary
6. Krishna Kumar Chaudhary
7. Rajendra Chaudhary
- Sons of Ayodhya Chaudhary, resident of village-Kharik Bazar, P.O.+P.S.-Kharik Bazar, District-Bhagalpur

.... Respondent/s

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Appearance :

(In CWJC No.10659 of 2004)

For the Petitioner/s : Dr. Umashankar Prasad, Sr.Adv.
Mr. Bhuneshwar Pandey, Adv.
Mr.Kamala Kant Tiwary, Adv.

For the Respondent nos.1to3 : Mr. Vikas Ratan Bharati, AC to GP-9

For the Respondent no.4 : Mr.Dinesh Prasad Verma, Adv.

(In CWJC No.11300 of 2004)

For the Petitioner/s : Dr. Umashankar Prasad, Sr.Adv.
Mr. Bhuneshwar Pandey, Adv.
Mr.Kamala Kant Tiwary, Adv.

For the Respondent nos.1to3 : Mr. Prabhakar Jha, GP-27

For the Respondent no.4 : Mr.Dinesh Prasad Verma, Adv.

(In CWJC No.16397 of 2004)

For the Petitioner/s : Dr. Umashankar Prasad, Sr.Adv.
Mr. Bhuneshwar Pandey, Adv.
Mr.Kamala Kant Tiwary, Adv.
For the Respondent nos.1to3 : Mr. Prabhakar Jha, GP-27
For the Respondent no.4 : Mr.Dinesh Prasad Verma, Adv.

(In CWJC No.16419 of 2004)

For the Petitioner/s : Dr. Umashankar Prasad, Sr.Adv.
Mr. Bhuneshwar Pandey, Adv.
Mr.Kamala Kant Tiwary, Adv.
For the Respondent nos.1to3 : Mr. Vikas Ratan Bharati, AC to GP-9
For the Respondent no.4 : Mr.Dinesh Prasad Verma, Adv.

(In CWJC No.553 of 2005)

For the Petitioner/s : Dr. Umashankar Prasad, Sr.Adv.
Mr. Bhuneshwar Pandey, Adv.
Mr.Kamala Kant Tiwary, Adv.
For the Respondent nos.1to3 : Mr. Umesh Narayan Dubey, AC to GP-27
For the Respondent no.4 : Mr.Dinesh Prasad Verma, Adv.

(In CWJC No.10694 of 2004)

For the Petitioner/s : Dr. Umashankar Prasad, Sr.Adv.
Mr. Bhuneshwar Pandey, Adv.
Mr.Kamala Kant Tiwary, Adv.
For the Respondent nos.1to3 : Mr. Vikas Ratan Bharati, AC to GP-9
For the Respondent no.4 : Mr.Dinesh Prasad Verma, Adv.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL JUDGMENT
Date: 25-10-2016

In all the above six writ petitions, the issues of facts and issues of law are almost common and identical; therefore, on the request of the parties, all the above six writ petitions have been heard together and are being disposed of by this common judgment.

The aforesaid six writ petitions arise out of six separate batai proceedings filed under Section 48-E of The Bihar Tenancy Act, 1885 (in short 'B.T. Act').

The petitioners of all the six writ petitions claim to be the purchasers of the lands in question from the original land holder namely, Ayodhya Chaudhary. They all claim to have purchased their

respective areas of land through different sale deeds executed on the same date i.e. on 17.11.1999. However, in none of the writ petitions, the copies of the sale deeds, allegedly executed in favour of the petitioners by the original land owner Ayodhya Chaudhary, have been brought on the record.

It is not in dispute that, on the basis of separate petitions filed on behalf of the claimants, separate batai cases were registered under Section 48-E of the B.T. Act giving rise to Batai Case Nos.2 of 1996-97, 4 of 1996-97, 5 of 1996-97, 6 of 1996-97, 7 of 1996-97, 9 of 1996-97, 12 of 1996-97, 14 of 1996-97 and 15 of 1996-97. In all those batai cases original land holder Ayodhya Chaudhary was impleaded as opposite party. It is also not in dispute that, after initiation of the aforesaid batai cases by the respondent D.C.L.R., Madhepura, the matter was referred to the Batai Board. The Batai Board by its order/recommendation dated 02.01.1998 (Annexure-1) made its recommendation in favour of the under raiyats (claimants), whereafter by final order dated 23.10.1998 all the aforesaid batai cases were allowed by the respondent D.C.L.R., Madhepura. The aforesaid order dated 23.10.1998 has been brought on the record as Annexure-2 in CWJC no.10659 of 2004 and in other analogous writ petitions.

As indicated above, the petitioners claim to have purchased the lands in question from the original land holder Ayodhya Chaudhary on 17.11.1999 i.e. after more than one year from the date of passing of the final order by the respondent D.C.L.R., Madhepura declaring the contesting respondents or their heirs as bataidars under Section 48-E of the B.T. Act.

The learned senior counsel appearing on behalf of the petitioners submits that once these petitioners came to know that over the lands purchased by them the contesting private respondents have



been declared as bataidars, they filed six Bataidari Appeals giving rise to Bataidari Appeal Nos.1 of 2000, 2 of 2000, 3 of 2000, 4 of 2000, 5 of 2000 and 6 of 2000. All the aforesaid appeals were filed separately under Section 48-F of the B.T. Act before the District Collector, Madhepura, and all the aforesaid six appeals were heard analogously, and by a common order dated 21.04.2003 all the aforesaid six bataidari appeals filed on behalf of these petitioners were dismissed and the order passed by the respondent D.C.L.R., Madhepura has been affirmed. The aforesaid order dated 21.04.2003 has been brought on the record as Annexure-3 to CWJC No.10659 of 2004. Similarly, in other writ petitions also, the aforesaid appellate order is subject matter of challenge.

In the aforesaid backgrounds, the petitioners have filed these writ petitions assailing the validity and correctness of the order dated 23.10.1998 passed in Batai Case No.7 of 1996-97 and other analogous batai cases, as contained in Annexure-2, allowing the batai claims of the private respondents, and the appellate order dated 21.04.2003 passed in Bataidari Appeal Case No.1 of 2000 and other analogous cases by the respondent District Collector, Madhepura, as contained in Annexure-3, whereby the aforesaid Bataidari Appeals have been dismissed and the order passed by the respondent D.C.L.R., Madhepura have been affirmed.

The learned senior counsel appearing on behalf of the petitioners has essentially raised three issues. According to him, no notice was issued to the land holder Ayodhya Chaudhary before passing the final order by the D.C.L.R., Madhepura; secondly, panches were not appointed on the recommendation of the parties or the land holder, and thirdly, no effort was made for amicable settlement of batai disputes between the parties. Therefore, according

to him, the order passed by the respondent D.C.L.R., Madhepura is not sustainable and the consequential appellate order is also fit to be set aside.

Per contra, the learned GP-27 appearing on behalf of the State of Bihar and its functionaries in some of the writ petitions and the learned AC to GP-9 appearing on behalf of the State of Bihar and its functionaries in remaining other writ petitions, as also the learned counsel appearing on behalf of the respondent no.4, the claimant, in some of the writ petitions, have contested the matter and have supported the impugned orders. They are unanimous in their submissions that when the final order under Section 48-E of the B.T. Act was passed in favour of the contesting respondent no.4 i.e. the claimant, then at that time, the petitioners were nowhere in picture and, therefore, they have no legal right to assail the validity and correctness of the order passed by the respondent D.C.L.R., Madhepura or the recommendation made by the Batai Board. According to them, the land holder Ayodhya Chaudhary was issued notice, but despite service of notice, he did not choose to appear and contest the matter. Therefore, the matter proceeded and Batai Board was constituted according to the provisions of the B.T. Act. It is the case of the respondents that once the effort for amicable settlement had failed, the Batai Board made its recommendation in favour of the claimants, whereafter the respondent D.C.L.R., Madhepura passed his final order on 23.10.1998. The learned counsel appearing on behalf of the respondents also submitted that, in fact, the petitioners have purchased a bag of litigations knowing full well that in fact over the lands in question the contesting respondents have been declared bataidars and, therefore, on the same day i.e. on 17.11.1999 they claim to have purchased the lands in question, but the copies of



registered sale deeds have not been brought on record in any of the writ petitions. It is also contended that the respondent District Collector, Madhepura, as an appellate authority, has taken into consideration the entire issues raised on behalf of the parties and, thereafter, by his final order dated 21.04.2003, dismissed all the aforesaid bataidari appeals filed on behalf of the petitioners. It is pleaded by them that there is absolutely no merit in the writ petitions filed on behalf of the petitioners and the same are fit to be dismissed by this Court, and the orders passed by the authorities concerned are fit to be affirmed.

After having heard the parties at great length and taking into consideration all the materials available on the record, this Court finds that there is no dispute that when batai cases were filed by the contesting private respondent no.4, Ayodhya Chaudhary was the land holder and in all the batai cases aforesaid Ayodhya Chaudhary was impleaded as opposite party. It is also apparent from the order-sheet that the notices were issued to the land holder, but he did not appear and did not contest the matter. Thereafter, as per the mandate of Section 48-E of the B.T. Act and the Rules made thereunder, Batai Board was constituted and the Batai Board vide its order dated 02.01.1998 (Annexure-1) submitted its recommendation to the respondent D.C.L.R., Madhepura in favour of the claimants/bataidars, whereafter final order was passed on 23.10.1998 (Annexure-2). From the reading of the Annexure-2 it also appears that the notices were issued to the land holder, but he did not appear to contest the claim of the private respondents. Indisputably, when the final order was passed, the petitioners were nowhere in picture. They purchased the lands in question subsequently after more than one year on 17.11.1999. Unfortunately, in none of the writ petitions, copies of the

sale deeds have been brought on the record by these petitioners. It appears that they purchased a bag of litigations after knowing full well that the private respondents have been declared bataidars over the lands in question.

The learned senior counsel appearing on behalf of the petitioners, while arguing the matter, has not pointed out any legal infirmity in the order passed by the respondent District Collector, Madhepura save and except that the issues raised on behalf of the petitioners were not properly considered by the appellate authority.

In the present case, this Court finds that by the order dated 06.04.2005, while issuing the notices to all the private respondents, a Bench of this Court had formulated an issue as to whether in view of the purchases made by these petitioners after the final order was passed by the respondent D.C.L.R., Madhepura, the grounds which were available to the land holder are available to these petitioners also and whether they can challenge the final order passed by the respondent D.C.L.R., Madhepura.

It is not in dispute that when the final order was passed by the respondent D.C.L.R., Madhepura on 23.10.1998, Ayodhya Chaudhary, the land owner, was still alive, but he did not challenge the final order dated 23.10.1998 either before the appellate authority or before this Court. After death of aforesaid Ayodhya Chaudhary, his heirs have been brought on the record, who are the respondent nos.5 to 7. It is also evident that when the petitioners filed Bataidari Appeals before the District Collector, Madhepura, then also neither the original land holder Ayodhya Chaudhary nor his heirs and legal representatives have joined them as co-appellants. After dismissal of the aforesaid Bataidari Appeals, when these writ petitions were filed the heirs of land holder have chosen not to join them as co-petitioners,

though, admittedly, they were the real aggrieved persons by the final order dated 23.10.1998 passed by the respondent D.C.L.R., Madhepura. In all these cases, notices were issued to the land holders; but they have chosen not appear and not to support the case of these petitioners by filing any counter affidavit either about non-issuance of notice or about non-following the procedure prescribed under the B.T. Act. In absence of land holder joining them as co-petitioners or in absence of a counter affidavit filed by them supporting the case of the petitioners, this Court is of the opinion that the issues of facts, which ought to have been raised by the land holder, which have not been raised, cannot be permitted to be raised by these petitioners, who are the subsequent purchasers and had admittedly no legal right when the final order was passed on 23.10.1998 (Annexure-2).

For the reasons recorded above, this Court does not feel persuaded to interfere with the impugned order dated 23.10.1998 passed by the respondent D.C.L.R., Madhepura, as contained in Annexure-2, allowing the batai claim of the contesting private respondents as also the appellate order dated 21.04.2003 passed by the respondent District Collector, Madhepura, as contained in Annexure-3, dismissing the batai appeal filed on behalf of the petitioners. All these writ petitions are devoid of merit and are, accordingly, dismissed. However, there shall be no order as to costs.

Arvind/-

(Birendra Prasad Verma, J)

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	29.10.2016
Transmission Date	N/A