

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1275 of 2009
IN
Civil Writ Jurisdiction Case No. 1491 of 2008

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Bachu Prasad, S/O Jiut Pd., resident of Village- Ahirauliya Tola Rajepur, P.S.
Kotwa Distt.- E. Champaran

.... Appellant/s

Versus

1. The State of Bihar
2. The Addl. Collector Motihari, Distt. E. Champaran
3. L.R.D.C. Sadar Motihari, Distt.- E. Champaran
4. Manish Kumar, S/O Late Surendra Pd. Singh, resident of Vill.- Ahiraulia P.S.-
Kotwa, Distt.- E. Champaran

.... Respondent/s

With

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Letters Patent Appeal No. 1281 of 2009
IN
Civil Writ Jurisdiction Case No. 77 of 2008

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Mishari Rai, S/O Late Pargan Rai, R/O Vill-Rajepur, P.S-Kotwa, Distt- East
Champaran

.... Appellant/s

Versus

1. The State of Bihar
2. Additional Collector, Motihari, Distt- East Champaran
3. L.R.D.C. Sadar Motihari, Distt- East Champaran
4. Manish Kumar, S/O Late Surendra Pd. Singh, R/O Vill-Ahiraulia, P.S-Kotwa,
Distt- East Champaran

.... Respondent/s

With

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Letters Patent Appeal No. 1296 of 2009
IN
Civil Writ Jurisdiction Case No. 40 of 2008

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Chabila Pd. Yadav, S/O Late Bali Rai, Vill. Ahirauliya Tola Rajepur, P.S. Kotwa,
Distt. E. Champaran

.... Appellant/s

Versus

1. The State of Bihar
2. Addl. Collector Motihari, Distt. E.Champaran
3. L.R.D.C. Sadar Motihari Distt. E. Champaran

4. Manish Kumar S/O Late Surendra Pd. Singh Vill. Ahiraulia P.S. Kotwa Distt.
E.Champaran

.... Respondent/s

Appearance :

For the Appellants : Mr. Uma Kant Shukla, Advocate
Mr. Shakti Suman Kumar, Advocate
For the Respondents : Mr. Dr. Krishna Nandan Singh Sr. Advocate
Mr. Rakesh Kumar No. 1, Advocate
Mr. Sriram Krishna, Advocate
For the State : Mr. Neelam Prasad, AC to GP-25

CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)
Date: 23-06-2016

These three intra-court appeals under Clause 10 of the Letters Patent of the Patna High Court have a chequered history. The appellants, namely, Bachu Prasad, Chabila Prasad Yadav and Mishari Rai were the three writ petitioners and they claim to be bataidars (under-raiyats). Their claim has been rejected by the D.C.L.R, Motihari, which has not been interfered with by the Additional Collector, Motihari being Collector under the Bihar Tenancy Act (for short the Act) in appeal. Hence the writ petition.

The sole contention on behalf of the appellants was the same as before the learned Single Judge, that no sooner an application under Section 48E of the Act is filed by a person claiming to be an under-raiyat being threatened, inter alia, to be evicted by the landlord, the Collector immediately was obliged to refer the matter to

the Board for conciliation and then proceed on basis of the report of the Board in the matter.

The fact being that notwithstanding an application being made by the writ petitioner- appellants the D.C.L.R. dismissed the application and in the appeal such an action was not interfered with, thus, Section 48E(3) of the Act was not correctly followed. The learned Single Judge taking note of the facts by the authorities under the Act did not accept the claim or the submission of the writ petitioners and dismissed the writ petition.

Let it be noted that when these appeals were first taken up for hearing the Division Bench hearing the matter was of the view that in view of the Special Bench judgment of this Court in the case of Dhanji Singh Vs. The State of Bihar and others since reported in AIR 1979 Patna 259 = 1979 PLJR 247 reference of the dispute to Board was mandatory and considering the aforesaid appeals were allowed and the matter was remanded to the D.C.L.R. Against this judgment the landlord appealed to the Apex Court. The Apex Court holding that the Special Bench judgment was not properly appreciated set aside the Division Bench judgment in the appeal and remanded the matter for fresh hearing to this Court. It is under those circumstances we are rehearing this matter today.

We have heard learned counsel for the writ

petitioner- appellants and learned counsel appearing for the private respondent, the landlord.

The question which clearly comes up for our consideration is nothing but interpretation and understanding of the Special Bench judgment of this Court in the case of Dhanji Singh (supra). We have carefully gone through the aforesaid judgment. The submission of the writ petitioner- appellants is that the judgment lays down the law that the moment a dispute is raised by a bataidar, under-raiyat, the Collector must send the same to the Board for conciliation. We are afraid, the judgment is not as void or as narrow as submitted. A reference to the judgment would itself show that first their Lordships have held that the expression 'may' as used in Section 48E(3) of the Act has to be read and understood as 'shall', as it invests a duty upon the public authority to act. But then in paragraph 9 of the judgment their Lordships clearly held that the action is not to be a mechanical action. The Collector has to apply his mind. If what was being submitted by the writ petitioner- appellants, that the matter must immediately be referred to Board is taken to be correct then what is the purpose of application of mind. Any person can file a petition claiming to be bataidar and harass a landlord to no end by taking the matter before the Board and trying to get something as a matter of right. The Special Bench has taken note of such situation and clearly



held that the Collector is not obliged in all cases, muchless, to act mechanically and refer the matter to Board for conciliation. The application of mind presupposes consideration of facts. The Special Bench further noted that it was not obligatory to hear the landlord at that stage but if the landlord is heard that would not be an illegality. The purpose we may indicate is that the landlord may turn up and at the very threshold show that the dispute raised is not bonafide or it is a malafide dispute which has no foundation. It would save a lot of trouble, time and harassment. This we think is the import to the judgment of the Special Bench.

Now, to the facts. It is pertinent to note that this is not the first time the writ petitioner- appellants moved the Collector under Section 48E of the Act. They had earlier filed applications which were not entertained. Being aggrieved they had challenged the same before this Court in three writ petitions. When the landlord-respondent in those writ petitions appeared and objected pointing out that they had not made correct landlord a party to the proceedings they withdrew the writ petition with a liberty to file fresh applications before the authorities. What does this show? Clearly persons, who were claiming to be under-raiyat (under-tenants) and supposed to be enjoying the sub-tenancy rights for over 25 years, did not know who their landlord was. Then can such a proceeding be said to be bonafide.

The answer has to be no.

Accordingly, having withdrawn the writ petitions they once again filed fresh applications under Section 48E of the Act. This time the landlord was made a party and he appeared. He showed how malafide the claim was and why this wrong claim was being made. Both the authorities under the Act i.e. the D.C.L.R. and the Additional Collector having seen the facts held that the claim of the writ petitioners-appellants was not genuine nor bonafide and as such, rightly, in our view, dismissed the application.

In our view, the Special Bench has categorically held that before initiating the proceedings under Section 48-E of the Act the Collector under the Act has to apply his mind whether to initiate proceeding or not. The only meaning that we can get is that he has to find that the condition precedent to initiate the proceedings is there or not and the condition precedent is apart from others, the claim of bataidari right. If the Collector is to find that he is not a bataidar at all then the condition precedent for initiation of proceeding is absent. Of-course we must not be understood to be saying that he has to undertake elaborate enquiry in the matter. For, once, prima facie it is satisfied that the claim is by a bataidar, then to decide finally this matter. First the Board has to be constituted and then the Collector has to consider the record of the Board. In the present case, both the facts

finding authorities have consistently held that the claim is malafide.

We have also noticed that a person claiming the bataidari right which he alleges to have been enjoying for over 25 years, he does even know his landlord, speaks volume.

We, therefore, are unable to persuade ourselves to interfere in the matter. We find no merit in these appeals. The appeals are, accordingly dismissed.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Arjun/Rajesh

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