

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5641 of 2006

Rameshwar Paswan, son of Late Kapuri Paswan, resident of Village- Barinagar, P.S. Barari, District- Katihar.

Petitioner/s

Versus

1. The State of Bihar through the Collector, Katihar.
2. The Sub-Divisional Magistrate, Katihar.
3. The Circle Officer, Barari, District Katihar.
4. Shiv Narayan Kumar, son of Bishwanath Kunwar.
5. Bholu Paswan, son of Late Kapuri Paswan.
6. Baldeo Paswan, son of Late Kapuri Paswan.
7. Sandeo Paswan son of Late Kapuri Paswan, all are resident of Village- Barinagar, P.S. Barari, District Katihar.

.... Respondent/s

Appearance :

For the Petitioner/s:	Mr. Abhay Kumar Singh I, Adv.
For the Respondent Nos.1 to 3:	Mr. Suryakant Kumar, AC to GA-8
For the Respondent No.4:	Mr. Vishwanath Prasad Sinha, Sr. Adv.
	Mr. Sanjay Kumar Singh, Adv

CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 23-08-2016

Heard the learned counsel, appearing on behalf of the petitioner, the learned AC to GA-8, appearing on behalf of the respondent nos. 1 to 3, and the learned Senior Counsel appearing behalf of the respondent no.4. However, none appears on behalf of the respondent nos. 5 to 7, though notices were issued to them way back by order dated 19.12.2007.

2. The petitioner is aggrieved by the order dated 16.12.2005 passed in 48D Case No. 10 of 2000 by the respondent S.D.O., Katihar, as contained in Annexure-8 to the writ petition, whereby the aforesaid case by way of an appeal preferred on behalf of the respondent no. 4 in terms of Section 48D of The Bihar Tenancy Act, 1885 (in short B.T. Act) and the Rules made thereunder has been allowed and the order dated 8.3.1996 passed in 48D B.T. Act Case

No.23 of 1994-95 by the respondent Circle Officer, Barari, as contained in Annexure-4, has been set aside and thereby claim raised on behalf of the petitioner u/s 48D of the B.T. Act for the lands in question has been rejected.

3. The learned counsel appearing on behalf of the petitioner submits that the lands in question, fully detailed in paragraph-3 of the writ petition, have been coming in possession of the petitioner and/or his father Late Kapuri Paswan. Even after death of aforesaid Kapuri Paswan, the petitioner remained in possession over the lands in question. According to him, even during the consolidation proceeding, the father of the petitioner was recorded as Sikmidar over the lands in question. It is contended that in the above background, the petitioner filed a petition in a prescribed form under Section 48D of the B.T. Act and the Rules made thereunder for granting him raiyati right over the lands in question, on the basis of which 48D B.T. Act Case No. 23 of 1994-95 was registered by the respondent Circle Officer, Barari, and after hearing the parties the claim raised on behalf of the petitioner as also his three brothers, who are respondent nos. 5 to 7, was allowed by order dated 8.3.1996 (Annexure-4). It is next contended that no appeal was filed against the final order passed by the respondent Circle Officer, Barari within the statutory period and therefore, the petitioner and his brothers acquired their raiyati rights over the lands in question by virtue of the order, as contained in Annexure-4 to the writ petition. It is also contended that after unusual delay of almost four years, an appeal was preferred on behalf of the respondent no. 4 giving rise to 48D Case No. 10 of 2000 in the Court of S.D.O., Katihar, but without condoning delay in filing the aforesaid appeal, the impugned final order was passed on 16.12.2005 and the order passed by the respondent Circle Officer, Barari has been set at naught.

It is pleaded that if the respondent S.D.O. was satisfied that the procedure was not followed by the Circle Officer before allowing the claim of the petitioner and/or his brothers, the matter ought to have been remanded back, but in no case the respondent S.D.O. could have finally rejected the claim of the petitioner on merits.

4. The matter has been contested by the respondent no. 4. The learned Senior counsel, appearing on behalf of the respondent no.4, by referring to the averments made in the counter-affidavit filed on his behalf, submits that while passing the final order by the respondent Circle Officer, the procedure prescribed under Section 48D of the B.T. Act and the Rules made thereunder was not followed. According to him, unless and until there was a declaration that the petitioner and/or his brothers have acquired the status of occupancy under raiyat over the lands in question, their claim could not have been allowed in terms of Section 48D of the B.T. Act. It is also contended that it is the specific case of the respondent no.4 that the petitioner and/or his father are/ were not the under raiyats over the lands in question. Therefore, according to him, the respondent S.D.O. has rightly set aside the order passed by the respondent Circle Officer, Barari. So far the limitation part is concerned, he submits that though no formal order for condonation of delay was passed by the S.D.O., but since the appeal preferred by the respondent no.4 was entertained and was finally allowed, the limitation would be deemed to have been condoned by him.

5. The learned AC to GA 8 appearing on behalf of the respondent nos. 1 to 4, submits that in the factual matrices of the present case, the entire matter may be remitted back to the respondent Circle Officer, Barari for fresh decision.

6. After having heard the parties and on consideration of the materials available on the record, this Court finds that though the



respondent Circle Officer, Barari allowed the claim of the petitioner and his brothers by order dated 8.3.1996 (Annexure-4), but all the procedures prescribed under the provisions of Section 48D of the B.T. Act and the Rules made thereunder were not strictly followed. No finding of fact has been recorded that the petitioner and his brothers have acquired the status of occupancy under raiyat over the lands in question and they are in possession over the same for more than 12 years. It has also not been recorded that the petitioner and his brothers are having lands, which are less than the prescribed ceiling limit. The appellate authority has also committed error of law. If the appellate authority was satisfied that the procedures prescribed under Section 48D of the B.T. Act and the Rules made thereunder have not been followed, then he ought to have remitted the matter back to the respondent Circle Officer, Barari for deciding the claim of the petitioner afresh under Section 48D of the B.T. Act in accordance with law. In fact, the power of adjudication of claim of raiyati right of a party is within the exclusive domain of the Circle Officer, but the respondent S.D.O. while setting aside the order passed by the Circle Officer, Barari, has dismissed the entire claim of the petitioner, which, in the considered opinion of this Court, could not have been done. In above view of the matter, this Court is of the opinion that the entire matter requires reconsideration and fresh decision right from beginning.

7. For the reasons recorded above, the impugned order dated 16.12.2005 passed in 48D Case No. 10 of 2000 by the respondent S.D.O., Katihar, as contained in Annexure-8, as also the order dated 8.3.1996 passed in 48D B.T. Act Case No. 23 of 1994-95 by the respondent Circle Officer, Barari, as contained in Annexure-4 to the writ petition, are hereby set aside and quashed, and the matter is remitted back to the respondent Circle Officer, Barari with a direction to decide the claim of the petitioner as also his brothers under Section 48D

of the B.T. Act afresh strictly in accordance with law, after following the procedures prescribed under Section 48D of the B.T. Act and the Rules made thereunder, but before passing any final order, opportunity of hearing must be given to all concerned including the petitioner and the other claimants as also the respondent no.4, besides others, if any.

8. It is clarified that the parties shall be at liberty to raise all the issues of facts and law with respect to the lands in question, which may be available to them, before the respondent Circle Officer, Barari.

9. In order to expedite the matter, the petitioner and the respondent nos. 4 to 7 herein are directed to appear before the respondent Circle Officer, Barari within a period of two months from today with a certified copy of the present order, whereafter the respondent Circle Officer, Barari shall proceed to decide the aforesaid case afresh strictly in accordance with law in the light of observations and directions made above.

10. In the result, the writ petition stands allowed to the extent indicated, but with the observations and directions made above. However, the parties are left to hear their own costs.

(Birendra Prasad Verma, J)

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CAV DATE	
Uploading Date	27-08-2016
Transmission Date	