

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10280 of 2007

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Pradhan Kisku son of Late Baiju Kisku, resident of Hridayganj (Santhali Tola) P.S.
Katihar, District- Katihar.

.... Petitioner/s

Versus

1. The State of Bihar
2. The District Collector, Katihar, Distt. Katihar.
3. The Deputy Collector, Land Reforms, Katihar, Distt. Katihar.
4. Kailash Manjhi son of Nathulal Manjhi, resident of Mohalla Gami Tola, P.S.
and District Katihar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Jitendra Mishra, Adv.

For the Respondent Nos. 1 to 3: Dr. Anand Kumar, AC to AAG-3

For the Respondent No. 4 : None.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 06-09-2016

Heard the learned counsel appearing on behalf of the petitioner and the learned AC to AAG-3, appearing on behalf of the respondent nos. 1 to 3. However, despite valid service of notice, none appears on behalf of the respondent no. 4.

The petitioner is aggrieved by the order dated 18.4.2007 passed in Bataidari Case No. 417 of 2006-07 by the respondent D.C.L.R., Katihar, as contained in Annexure-2, whereby the aforesaid Batai case filed on behalf of the petitioner with respect to the lands in question, fully detailed in paragraph-4 of the writ petition, has been rejected basically on the ground of res judicata.

The learned counsel appearing on behalf of the petitioner, while assailing the validity and correctness of the impugned order dated 18.4.2007 (Annexure-2), submits that it is true that with respect to same plots of land the petitioner had filed Bataidari Case No. 341 of 2005-06, but on account of certain defects with respect to description of lands, the aforesaid batai case was disposed of by the



respondent D.C.L.R., Katihar by order dated 3.11.2006, as contained in Annexure-1 to the writ petition, but with a liberty to the petitioner to file a fresh Batai case in the same subject matter. To buttress his aforesaid submissions, he has read out the aforesaid order dated 3.11.2006. It is contended that in view of the liberty granted by the then D.C.L.R., Katihar, the petitioner filed his fresh case u/s 48E of the B.T.Act, giving rise to Batai case No. 341 of 2006-07 before the respondent D.C.L.R., Katihar, but he, without considering the observations made in the order dated 3.11.2006 (Annexure-1), rejected the batai claim of the petitioner at the very threshold purportedly on the ground of res judicata. He next submitted that the impugned order is contrary to the judicial pronouncements of the Special Bench of this Court in the case of **Dhanji Singh vs. State of Bihar** [1979 PLJR 247= 1979 BBCJ 521].

Though, the learned State counsel has opposed the prayer made in the present petition, but he has not been able to dispute the aforesaid submissions made by the learned counsel appearing on behalf of the petitioner. As noticed above, none is appearing on behalf of the respondent no.4, despite valid service of notice upon him.

After having heard the parties and taking into consideration the materials available on the records, this Court is of the opinion that the impugned order as contained in Annexure-2 cannot be sustained in law. Once the petitioner was granted liberty by the respondent D.C.L.R., Katihar to file a fresh batai case under Section 48E of the B.T. Act by order dated 3.11.2006 (Annexure-1), then the subsequent batai case filed on behalf of the petitioner under Section 48E of the B.T. Act could not have been rejected on the ground of the principles of res judicata. The order impugned on the face of it is bad in law and cannot be sustained.

For the reasons recorded above, the impugned order dated 18.4.2007 passed in Bataidari Case No. 417 of 2006-07 by the respondent D.C.L.R., Katihar, as contained in Annexure-2 to the writ petition is hereby set aside and quashed, and the matter is remitted back to the respondent D.C.L.R., Katihar with a direction to refer the aforesaid batai case filed on behalf of the petitioner to a duly constituted Batai Board, whereafter the matter shall be taken to its logical conclusion in accordance with the provisions of Section 48E of the B.T. Act and the rules made thereunder.

In the result, the writ petition stands allowed to the extent indicated, but with the observations and directions made above. However, there shall be no order as to costs.

(Birendra Prasad Verma, J)

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