

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.130 of 2014
Arising out of
Civil Writ Jurisdiction Case No. 1802 of 2008

Sanjit Singh, S/o Jai Krishna Singh, Resident of Village- Bhorha, P.S- Kursa Kanta,
District- Araria.

.... Appellant

Versus

1. The State of Bihar
2. The Collector, Araria.
3. The Deputy Collector, Land Reforms, Araria.
4. Sodhan Singh,
5. Deepak Singh,
6. Tuntun Singh,
7. Sameer Singh,
8. Niranjana Singh, All at Sl. Nos. 4 to 8 are sons of Late Tripurari Mohan Singh.
9. Gopal Singh,
10. Ramu Singh,
11. Shyam Singh, All at Sl. Nos. 9 to 11 are sons of Late Ripusudan Singh.
12. Jitendra Singh,
13. Dharmendra Singh,
14. Rajeev Singh,
15. Sanjeev Singh, All at Sl. No. 12 to 15 are sons of Late Parasuram Singh. All at
Sl. Nos. 4 to 15 are residents of Village- Shyam Nagar, P.S- Bathnaha, Block-
Narpatganj, District- Araria.
16. Uma Devi, D/o Late Mahavir Singh and Late Dukhani Devi, Resident of
Village- Shyam Nagar, P.S- Bathnaha, Block- Narpatganj, District- Araria.
17. Krityanand Mandal, S/o Late Phatkan Mandal,
18. Ram Prasad Mandal, S/o Late Phatkan Mandal,
19. Gandeo Mandal, S/o Late Suryanand Mandal,
20. Tilkanand Mandal, S/o Late Suryanand Mandal,
21. Pramod Mandal, S/o Kartik Mandal,
All at Sl. Nos. 17 to 21 are residents of Village- Bhorha, P.S- Kursa Kanta,
District- Purnia.

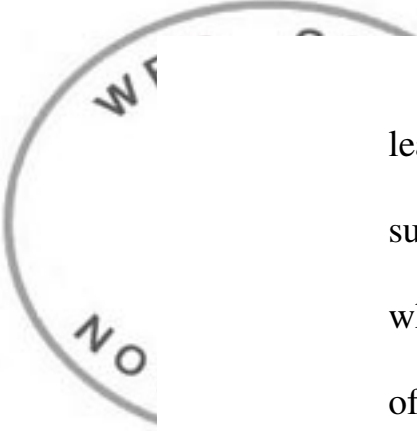
.... Respondents

Appearance :

For the Appellant : Mr. Dhirendra Kumar Jha, Advocate.
Mr. Krishna Chand Jha, Advocate.
For the Respondents : Mr. Yogendra Prasad Sinha, A.A.G. 15
Mr. Rakesh Ambastha, A.C. to A.A.G. 15
Mr. R.S. Singh, A.C. to A.A.G. 15
Amicus Curiae : Mr. Devendra Kumar Sinha, A.A.G. 2

**CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
and
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH**

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)
Date: 13-05-2016



The order dated 8th of August, 2013 passed by the learned Single Bench of this Court in C.W.J.C. No. 1802 of 2008 is subject matter of challenge in the present Letters Patent Appeal wherein, the claim of an under *raiyat* challenging the order dated 11th of December, 2007 passed by the Deputy Collector Land Reforms, Araria (for short the Collector) in Batai Case No. 37 of 2007-08 was dismissed.

2. The appellant filed a petition under Section 48-E of the Bihar Tenancy Act, 1885 (hereinafter referred to as “the Act”) apprehending threatened eviction by the landlord. Such petition was dismissed at the threshold, though after hearing the landlord. The Collector under the Act came to the conclusion that there is no *prima facie* dispute between the appellant and the landholders.

3. The challenge to the said order remained unsuccessful before the learned Single Bench.

4. The argument of learned counsel for the appellant is that once a petition is filed under Section 48E (1) of the Act, the Collector under the Act is bound to refer the matter to the Reconciliation Board in terms of sub-section (3) of Section 48E of the Act. He has no jurisdiction to decide the questions arising between the

parties. Reliance is placed upon Special Bench judgment reported as Dhanji Singh Vs. The State of Bihar & Ors., 1979 PLJR 247 and also the Supreme Court judgment reported as Ram Narain Sharma Vs. State of Bihar & Ors., 2003 (3) PLJR 187.

5. On the other hand, Mr. D.K. Sinha, Senior Advocate, *Amicus Curiae*, pointed out that the Collector under the Act is bound to refer the dispute to the Reconciliation Board only if he is satisfied that the dispute raised is not *mala fide*. The Satisfaction of the Collector under the Act that there is a dispute is a precondition for referring the dispute to the Reconciliation Board. He refers to two Division Bench judgments reported as Brijendra Kumar Narain Singh & Os. Vs. The State of Bihar & Ors., 1992(2) PLJR 747 and Sukhdeo Paswan and others Vs. The State of Bihar and others, 1993 (2) PLJR 211, apart from another Single Bench judgment reported as Shashi Kant Mishra Vs. The State of Bihar & Ors., 1991 (1) PLJR 686 after examining the judgment of the Special Bench in Dhanji Singh's case (Supra).

6. We have heard learned counsel for the parties and find no error in the order passed by the learned Single Bench.

7. To appreciate the arguments raised by the parties, firstly the relevant provisions, i.e., Section 48E,(1) (2) and (3) of the Act needs to be extracted, which is reproduced herein below:-



“48E. Prevention of threatened ejectment of under raiyat and restoration of possession of under-*raiyat* unlawfully ejected- (1) If an under-*raiyat* is threatened with unlawful ejectment from his tenancy or any portion thereof by his landlord or if there is a dispute between them over the possession of land crop or produce thereof either on the ground of non-existence of relationship of landlord and tenant between them or otherwise or if an under-*raiyat* is or has been ejected from his tenancy or any portion thereof within twelve years before the commencement of proceeding under this section in contravention of the provisions of section 89 the Collector may, of his own motion or on application made in this behalf by the under-*raiyat*, initiate a proceeding for preventing the landlord from ejecting the under-*raiyat* or for settlement of the said dispute or for restoration of possession to under-*raiyat* unlawfully ejected from his tenancy or portion thereof.

Subs. by Act 8 of 1987[Explanation.- If in the midst of the proceeding it is found that the landlord has during or before the initiation of the proceeding transferred the land to any other person who is not a party to the proceeding initiated under sub-section (1), the Collector shall make such transferee a party to the proceeding.]

(2). The Collector may, after hearing the parties, about which due notice shall have been given to them or *ex-parte*, in cases of emergency by an order in writing prevent the landlord from ejecting the under-*raiyat* until disposal of the proceeding or until further orders and if he is of opinion that any crop or produce of the land which is subject-matter of dispute in the proceeding under this section is liable to-speedy and natural decay, he may, if the situation so warrants and in similar manner as aforesaid direct the proper custody or harvesting or sale, as the case may be, of such crop or produce or the sale proceeds thereof.

(3). When a proceeding is initiated under sub-section (1) the Collector may refer the matter (hereinafter referred to as

“dispute”) to a Board to be appointed by him, for promoting the settlement of the dispute between the under-*raiyat* and the landlord.”

8. A perusal of sub-section (1) of Section 48E gives liberty to an under-*raiyat* to invoke the jurisdiction of the Collector under the Act if there is a dispute between the landlord and the under-*raiyat* over the possession of land, crop or produce thereof or the under-*raiyat* is or has been ejected from his tenancy or any portion thereof within twelve years before commencement of the proceeding under this Act. Therefore, the precondition is that there has to be dispute between the under-*raiyat* and the landlord or the under-*raiyat* is or has been ejected from his tenancy or any portion thereof. Therefore, it is a question of fact which has to be arrived at by the Collector under the Act in terms of sub-section (1) of Section 48E of the Act to record satisfaction of existence of dispute or existence of the threatened ejectment as that alone will make it mandatory for him to refer the matter to a Board for settlement of the dispute between the under-*raiyat* and the landlord in terms of sub-section (3) of Section 48E of the Act.

9. The Special Bench in Dhanji Singh's case (supra) held to the following effect:-

“8. In my opinion, it is difficult to accept this contention. Sub-section (1) prescribes three contingencies, mentioned above, under which the Collector has to initiate a



proceeding. The Collector, before initiating the proceeding has to be satisfied on the materials produced before him or on the basis of the information received by him that one of those three requisite conditions exists. Is the Collector bound to initiate a proceeding under Sub-section (1) if an allegation has been made in the petition of the under-tenant, that he had been dispossessed on a date which is beyond 12 years from the date of the filing of this application? Similarly, is he bound to initiate a proceeding if the allegation or information is that the under-tenant has been dispossessed not by his landlord but by a third person? The answer in both the case shall be in the negative. Therefore, it cannot be said that at the time of initiating a proceeding, the Collector has not to apply his judicial mind for the purpose of ascertaining as to whether the requisite conditions for initiating the proceeding exist or not.

9. Learned Government Advocate submitted that Sub-section (1) does not say in so many words that the Collector should be satisfied about the existence of the dispute. According to me, merely because of the absence of expression like “if the Collector is satisfied”, it cannot be held that the reference to the Board is an automatic action, without any application of mind. It is well settled that where a particular statute vests power in a particular authority to initiate or not to initiate a proceeding on its own opinion, it can be shown that those circumstances do not exist or that they are such that it is impossible for any one to form an opinion therefrom suggestive of the aforesaid things. In other words the opinion can be challenged on the ground of non-application of mind or perversity or on the ground that it was formed on collateral grounds and was beyond the scope of the statute.”

10. Still later, the Special Bench examined the question whether Collector under the Act is required to hear the landlord. It

was held that by merely initiating a proceeding, no final order is passed affecting any of the rights of the landlord. Therefore, the landlord is not required to be heard. However, it was held that there is no bar if the landlord appears on his own and intervenes at the time of initiation of proceedings. The Court observed as under:-

“11. Learned counsel appearing for the respondent, however, submitted that there being no bar, if the landlord appears at his own and intervenes at the time of the initiation of the proceeding, he should be heard and it should be open to him to show that the information received by the Collector is false or that the application filed by the under-tenant is not a bona fide one. In my opinion, from the scheme of section 48E it is clear that it does not conceive two inquiries, one preliminary and other the final. If the applicant satisfies the Collector on the basis of the materials produced before him or the Collector is satisfied on the information received by him, then without waiting for the landlord he can initiate the proceeding. Of course, in some cases where the claim on behalf of the under tenant has been made by suppressing the material facts, like an order under section 145 of the Code of Criminal Procedure between the same parties, upholding the claim of the land lord and negating the claim of possession made by the under tenant, or a recent delivery of possession having been effected in favour of the land lord over the lands in question, then the land lord may bring to the notice of the Collector that the claim of the applicant lacks bona fide. But, the landlord cannot be permitted at that stage to convert the initiation of the proceeding, a mini trial or a parallel enquiry. He has to wait till the matter is placed before the Board.”

11. A perusal of Paragraph 11 of the judgment shows



that the landlord can show that the information received by the Collector is false or that application filed by the under-*raiyat* is not a *bona fide* one. It necessarily implies that the Collector is required to conduct a limited inquiry as to whether the application received from the under-*raiyat* is false or not or that it is *bona fide* or not. It is thereafter, when the Collector decides to initiate a proceeding, the matter has to be referred for settlement to the Board.

12. In Ram Narain Sharma's case (supra), the Court was considering the situation where the Collector has considered the evidence after issuing notice and going deep into the matter in appreciation of the evidence as if he was deciding the main dispute finally. The said judgment is of no help to the learned counsel for the appellant in the facts of the present case. Though the Collector has passed an order running into 18 pages but the order was passed not after recording the evidence. It was an order passed in which both the parties assisted the Collector under the Act to decide whether there exist a *bona fide* dispute or not. Such order is in tune with the judgment of the Special Bench in Dhanji Singh's case (supra).

13. The judgment of Dhanji Singh has been examined by the Division Bench in Brijendra Kumar Narain Singh's case (supra), wherein it has been held that it is for the Board concerned to arrive at satisfaction as to whether a *prima facie* case for entertaining

the application under sub-section (1) of Section 48E existed or not.

The Court said to the following effect:-

“14. From the ratio laid down by different Judges constituting the Special Bench, it is clear that the initiation of a proceeding under the Act is a *quasi* judicial matter and it is open for a landlord to show the Collector, *prima facie*, that the dispute raised is *male fide* and baseless and to harass him though in appropriate cases, the Collector may refuse to hear the landlord.”

14. In Sukhdeo Paswan's case (supra), again the Division Bench examined the judgment in Dhanji Singh's case. The Court concluded as under:-

“9. In **Dhanji Singh Vs. State** reported in AIR 1979 Patna 259: 1979 BBCJ 521: 1979 PLJR 247 it has been held that it is for the Collector under the Act to satisfy himself on the basis of the information received by him or on the materials brought on records for arriving at a finding as to whether the dispute is *bonafide* one so as to warrant, initiation of a proceedings under Section 48E (1) of the said Act.”

15. In view of the judgments referred to by learned counsel for the parties, we find that the landlord is entitled to appear before the Collector under the Act to assert that the dispute is not a *bona fide* dispute. However, for such purpose, the Collector under the Act is not required to give any notice to the landlord to appear but the landlord can put in appearance without notice.

16. In view of the reasons recorded by the Collector

that the dispute raised is not *bona fide*, we do not find any error in the order passed by the Collector under the Act in not referring the matter to the Board for settlement in terms of sub-section (3) of Section 48E of the Act.

17. The Letters Patent Appeal is, thus, dismissed.

18. We acknowledge the valuable assistance provided by Mr. D.K. Sinha, learned Senior Advocate to decide the question of law arising in the present appeal.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

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