

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.158 of 2014
Arising out of
Civil Writ Jurisdiction Case No. 8417 of 2006**

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1. Abdhesh Kumar Shukla, S/o Amiya Kumar Shukla, Resident of Chitragupta Nagar, Araria, P.S. and District- Araria
 2. Smt. Swornlata Devi, W/o Ramanand Thakur, Resident of Chitragupta Nagar, Araria, P.S. and District- Araria

.... Appellants

Versus

1. The State of Bihar
2. The Additional Collector, Araria
3. The Deputy Collector Land Reforms, Araria
4. Md. Ashraf, S/o Habib Mian, Resident of Village- Azam Nagar, P.S. & District- Araria

.... Respondents

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Appearance :

For the Appellants : Mr. Binod Kumar Singh, Advocate.
Ms. Vagisha Pragya, Advocate.

For the State : Mr. Ajit Pratap Singh, S.C. 15
Mr. S.K. Ranjan, A.C. to S.C. 15

For Respondent No. 4: Mr. Anil Prasad Singh, Advocate.

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**CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
and
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)
Date: 24-06-2016**

Heard learned counsel for the parties.

2. The order dated 17th of September, 2013 passed by



the learned Single Bench of this Court in C.W.J.C. No. 8417 of 2006 is subject matter of challenge in the present Letters Patent Appeal. By the aforesaid order, the learned Single Bench remitted the matter to the Deputy Collector Land Reforms (for short “the Collector”), Araria with a direction to refer the dispute to Board in terms of Section 48E(3) and (4) of the Bihar Tenancy Act, 1885 (hereinafter referred to as “the Act”).

3. The facts in brief are that Respondent No. 4 herein filed a petition under Section 48E of the Act before the Collector, Araria. The Collector issued notice to the land owners to find out as to whether there is sufficient material that calls for reference to the Board or not. After hearing the landlord, the Collector framed an opinion that the applicant has miserably failed to make out a *prima facie* case. Therefore, the application was rejected. An appeal was preferred against the said order which was dismissed on 22nd of May, 2006. Still aggrieved, a writ application was filed in which the impugned order has been passed.

4. The learned Single Bench recorded a finding that the Collector under the Act has failed to appreciate the flagrant violation of law as laid down by Special Bench of this Court in the case reported as Dhanji Singh Vs. The State of Bihar & Ors., A.I.R. 1979 Patna 259.



5. Learned counsel for the appellants has vehemently argued that the Collector issued notice for a limited purpose to find out as to whether proceedings are required to be initiated as contemplated under sub-section (1) of Section 48E of the Act. Once pre-conditions are not satisfied, the matter should not be referred to the Board for adjudication in terms of sub-section (3) of Section 48E of the Act. Though the learned Collector has given detailed reasons as to why there is no *prima facie* case made out to refer the matter to the Board but the learned Single Bench has directed the matter to be referred to the Board without giving any reason to set aside the findings recorded by the learned Collector.

6. We have heard learned counsel for the parties and find no merit in the present Letters Patent Appeal.

7. Though the Collector has issued notice for a limited purpose to find out as to whether any proceedings are to be initiated or not but the fact remains that the Collector has examined the respective contentions of the parties to return a finding that no case is made out. The Collector under the Act has the jurisdiction to return a finding that case is not made out for initiation of a proceeding but has no jurisdiction to return such finding after considering the respective contentions of the parties. It is a *prima facie* view which is required to be taken by the Collector under the Act and not a view after detailed

discussion on the issues arising between the parties as such issues can be adjudicated upon by the Board in terms of sub-section (3) of Section 48E of the Act.

8. Similar question has been examined in Letters Patent Appeal No.130 of 2014 - Sanjit Singh vs. The State of Bihar & Ors. decided on 13.05.2016 wherein it has been held that the Collector under the Act can take a view that proceedings are to be initiated or not and to determine such finding the landlord can appear *suo motu* for assistance but the detailed discussions on merits are not contemplated at that stage. The Court held as follows:-

“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.”

9. In the present case, the Learned Single Judge has held that the view of the Learned Collector is in flagrant violation of law. Such finding is in tune with the judgment of this Court as noticed

above. Thus, we do not find any error in the order passed by the learned Single Bench which may warrant interference in the present Letters Patent Appeal.

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

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

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