

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16805 of 2008

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1. Md.Mahjul
 2. Md. Taibur Rahman both sons of Md. Suleman resident of village Banser PS
Kritya Nand Nagar District Purnea
 3. Md. Nazir Hussain son of Md. Sukruddin
 4. Bibi Sajnoor wife of Nazir Hussain both are resident of village Ikda PS
Raniganj District Araria

.... Petitioner/s

Versus

The State of Bihar & Ors

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Shashi Nath Jha

For the State: Mr. Harish Kumar GP 8

For Respondent no. 6 : Mr. Sarangdhar Jha

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

ORAL JUDGMENT

Date: 07-02-2017

1. Heard the parties.

2. Petitioners have challenged the order dated 16.1.2008 passed by the Collector, Araria in Bataidari Appeal no.01 of 2004-05/54 of 2005-06 (annexure 5) by which and whereunder the Collector, Araria dismissed the aforesaid appeal.

3. The case of the petitioners is that they purchased disputed plot from respondent no. 7, namely, Ajit Prasad Sah but prior to their purchase, respondent no. 6, namely, Abdul Rauf filed a petition under section 48 E of the Bihar Tenancy Act on 2.1.1991 for declaration of his Bataidari right and on the basis of his claim, Bataidari Case no.510 of 1990-91 was registered. The aforesaid claim was made against Satya Narain Prasad Sah and others. The aforesaid Satya Narain Prasad Sah happens to be father of respondent no. 7. The aforesaid Bataidari Case was allowed by the DCLR, Araria on 6.10.1993



passing ex parte order (annexure 2). Subsequently, respondent no. 6 filed a petition under section 48 D of the Bihar Tenancy Act for declaration of his raiyatship right and his case was registered as Case no. 08 of 2003-04. Petitioners' claim is that respondent no. 7 got disputed plot in his share in partition of his family and subsequently, on 17.11.2003, respondent no. 7 transferred the disputed land in favour of the petitioners by executing three registered sale deeds. However, petition under section 48 D of the Bihar Tenancy Act was allowed by the Circle Officer, Araria in favour of the respondent no. 6. Petitioners filed appeal against the order of the Circle Officer, Araria and in the meantime, respondent no. 7 and petitioners also filed Bataidari Appeal no.01 of 2004 against the order dated 6.10.1993 by which Bataidari right of respondent no. 6 had been allowed but the learned Collector rejected Bataidari Appeal no.01 of 2004 filed by respondent no. 7 and the petitioners passing the impugned order dated 16.1.2008 against which present writ petition has been filed. However, it is pertinent to note here that appeal filed by the petitioners against the order of the Circle Officer, Araria passed under section 48 D of the Bihar Tenancy Act is still pending.

4. During the pendency of this writ petition, petitioners filed I.A. no. 6259/2016 praying therein for amendment of para 1 as well as relief portion of writ petition on the ground that the Collector has got no power to hear appeal against the order passed under section 48 E of the Bihar Tenancy Act and, therefore, the petitioners want to challenge the order dated 6.10.1993 passed by DCLR, Araria under section 48 E of the Bihar Tenancy in Bataidari Case no.510 of 1990-



91 and for challenging the aforesaid order, amendment in para 1 as well as relief portion of the writ petition is essential.

5. Learned counsel appearing for the petitioners submitted that, as a matter of fact, respondent no. 6 filed petition under section 48 E of the Bihar Tenancy on the basis of which Bataidari Case no.510 of 1990-91 was registered against Satya Narain Prasad Sah and others and in that case Ajit Prasad Sah (respondent no. 7) was not party and the aforesaid fact goes to show that Bataidari Case no.510 of 1990-91 was disposed of in absence of Ajit Prasad Sah from whom the petitioners had purchased the land in question. It is further submitted on behalf of the petitioners that in the aforesaid circumstance, petitioners want to challenge the order dated 6.10.1993 passed by DCLR, Araria in Bataidari Case no.510 of 1990-91 as the aforesaid order was passed behind the back of vendor of the petitioners.

6. On the other hand, learned counsel appearing for private respondent no. 6 refuted the above stated submissions arguing that now, petitioners want to introduce a new cause of action in the present writ petition and if they want to challenge the order dated 6.10.1993 passed in Bataidari Case no.510 of 1990-91, they may take legal recourse in accordance with law.

7. However, in course of hearing, learned counsel for the petitioners seeks permission to withdraw this writ petition with liberty to challenge the order dated 6.10.1993 passed in Bataidari Case no.510 of 1990-91.

8. In view of the aforesaid facts as well as submissions, this



writ petition stands disposed of as withdrawn giving liberty to the petitioners to challenge order dated 6.10.1993 passed by learned DCLR, Araria in Bataidari Case no.510 of 1990-91 in accordance with law before appropriate forum and so far as point of limitation in challenging the aforesaid order is concerned, the same shall be considered by the concerned court.

Shahid

(Hemant Kumar Srivastava, J)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.2.2017
Transmission Date	13.2.2017

