

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5436 of 2008

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Parash Nath Pathak, son of Late Harihar Pathak, resident of village & P.O. Neazipur, P.S. Simari, District- Buxar.

.... Petitioner/s

Versus

1. The State of Bihar through the Commissioner cum Secretary, Department of Revenue and Land Reforms, Patna
2. The Collector, Buxar
3. The Sub-divisional Officer, Dumraon
4. The Deputy Collector, Land Reforms, Dumraon, District Buxar
5. The Circle Officer, Simari, District-Buxar
6. Smt. Sobha Devi wife of Sri Vikash Chandra Mishra, resident of village Arjunpur, P.S. Simari, District Buxar
7. Sushil Bharti @ Sushil Upadhyay, son of Sahadeo Upadhyay, resident of village Ataon, P.S. Dumraon, District Buxar

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Gajendra Kumar
Mr. Amarendra Kumar Pathak
Mr. Sushil Kumar Jha
For the Respondent/s : Mr. Zaki Haider, A.C. to S.C.9
Mr. Nil Kamal

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER

9 11-12-2017 Heard both sides.

The petitioner has filed this writ petition for quashing the order dated 29.01.2008 passed by the Collector in Case No.94/03/7/06/48/2006-07(Bataidari) by which he set aside the order dated 09.07.2003 passed by D.C.L.R. in Bataidari Case No.1 of 1999-2000 by which the D.C.L.R. set aside the order of C.O. declaring late Vikash Chandra Mishra as occupancy raiyat under Section 48D of the B.T. Act in Case No.1 of 1998-99.

Mr. Gajendra Kumar Jha, learned counsel for the



petitioner submits that Circle Officer did not issue notice to the landlord. The petitioner purchased the land in auction sale in the year 1964. The sale was confirmed by the Civil Court in Case No.38 of 1964 and delivery of possession was also confirmed. Late Sheoji Mishra was residing in a house and the petitioner allowed him to remain in the hut who died issueless. Vikash Chandra Mishra filed a petition before the Circle Officer that Sheoji Mishra executed an unregistered deed of Will giving his property to him on the basis of which the Circle Officer declared Vikash Chandra Mishra as occupancy raiyat and directed him to deposit 24 time of the products. One Laxman Bharti filed appeal before the D.C.L.R. against the order dated 02.01.1999 of the Circle Officer. The petitioner intervened before the D.C.L.R. D.C.L.R. after hearing all the parties vide his order dated 09.07.2003 set aside the order of the Circle Officer holding that the Circle Officer did not pass the order in accordance with law as right of sikmidar is not heritable by any other person. Vikash Chandra Mishra is not the legal heir of Sheoji Mishra as Sheoji Mishra died issueless. Against the order of the D.C.L.R., Vikash Chandra Mishra filed appeal before the Collector in Case No.94 of 2003 and the Collector set aside the order of D.C.L.R. vide order dated 29.01.2008 and confirmed the order of the Circle Officer.



Learned counsel for the petitioner submits that according to Rule 1(a) of Bihar Tenancy Amendment Rule, 1992, application for occupancy under raiyat under Section 48(d) should be filed in form 'C'. Vikash Chandra Mishra is admittedly not a sikmi bataidar. Name of late Sheoji Mishra was recorded as sikmi bataidar but Vikash Chandra Mishra filed petition before the Circle Officer for declaring him occupancy raiyat under Section 48(d) of the B.T. Act. The Circle Officer without hearing the landlord declared him occupancy raiyat.

It appears from perusal of the order of the Circle Officer that no landlord was heard and Vikash Chandra Mishra did not file any petition in form 'C' as mandated under Rule 1(a) of the Bihar Tenancy Amendment Rules, 1992. The Rule (c) of the aforesaid Rules says that any order passed by the Circle Officer shall be appealable before the Sub Divisional Officer but Laxman Bharti preferred appeal before the D.C.L.R. who is not competent to hear appeal against the order passed by Circle Officer under Section 48(d) of the B.T. Act. Vikash Chandra Mishra filed appeal before the Collector against the order passed by D.C.L.R. and the Collector according to rule is not empowered to hear the revision or the appeal.

Therefore, it appears that the orders of the Collector as



well as D.C.L.R. are without jurisdiction as they are not competent authority under the Act and the Bihar Tenancy Amendment Rules, 1992. The order of the C.O. is also illegal as he has not followed the procedure prescribed under Rule 1(a) and, therefore, all three orders are liable to be set aside. Accordingly, the writ petition is allowed.

The order dated 02.01.1999 passed by Circle Officer and thereafter order dated 09.07.2003 passed by D.C.L.R. and the order dated 29.01.2008 passed by Collector are set aside. The matter is remitted to the Circle Officer to pass order in accordance with law after hearing the parties.

(Prabhat Kumar Jha, J)

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