

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.824 of 2015

Arising out of

Civil Writ Jurisdiction Case No. 10186 of 2004

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Md. Mustaque, son of Sk. Ziyaul, Resident of village- Urlaha, Tola Dhanphar,
Police Station- Palasi, District- Araria.

.... (Petitioner) - Appellant

Versus

1. The State of Bihar.
2. The Collector, Araria.
3. The Addl. Collector, Araria.
4. The Deputy Collector, Land Reforms, Araria.
5. Dindayal Prasad Sah
6. Lalan Prasad Sah
7. Nageshwar Sah
8. Narayan Pd. Sah
9. Shiv Narain Sah
10. Ashok Prasad Sah

Nos. 5 to 9 sons of Late Parmanand Sah, Resident of village- Kankhudia, Police
Station- Palasi, District- Araria.

11. Tara Devi wife of Nandlal Sah, Resident of village- Bhikha, Police Station-
Palasi, District- Araria.

12. Parbati Devi wife of Dorik Lal Sah, Resident of village- Dehti, Police Station-
Palasi, District- Araria.

13. Bhagwanti Devi, wife of Kanhaiya Prasad Sah, Resident of village- Dehti,
Police Station- Palasi, District- Araria.

.... Respondent/s

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Appearance:

For the Appellant/s : Mr. Atif Inam, Advocate.

For the Respondent/s : Mr. Md. Khurshid Alam, AAG 12 with
Mr. Fakhruddin Ali Ahmad, AC to AAG 12.

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 28-07-2017

Heard counsel for the appellant and counsel for the State.

The Writ Application was filed for quashing of the order

dated 15.05.2004 passed by the learned Additional Collector, Araria



in Case No. 2 of 2002-03 whereby the appeal preferred by the private respondents was allowed and the order passed by the Deputy Collector Land Reforms in Case No. 1 of 1999-2000 was set aside. A claim was made by the appellant, who was the petitioner in the court below, that he was in cultivating position of the land of the father of the private respondents since 1985 as Bataidar. Since he was threatened of being ousted after the death of the original land lord, the petitioner filed a petition under Section 48E of the Bihar Tenancy Act in the court of the DCLR. The DCLR declared that the petitioner / appellant was a Bataidar. That order came to be assailed before the court of the Additional Collector, Araria. The private respondents appeared and seriously contested the stand of the appellant of being declared a Bataidar.

The learned Single Judge has had this to say for dismissing the Writ Application.

“Besides hearing learned counsel for the parties, I have also perused the materials available on record. Fact remains that while filing petition before the D.C.L.R. under Section 48E of the Bihar Tenancy Act the petitioner has not bothered to indicate as to whether he had purchased some portion of the land in question in the year 1994 itself or not. Moreover, the Conciliation Board had submitted report after expiry of six months which is statutory period as prescribed under Section



48E – 10 of the B.T. Act. Of course a division bench of this Court in Awadhesh Kumar Singh Case (Supra) has indicated that on that said sole ground the case may not be rejected, fact remains that in respect of the said land itself in the year 1993-94 a Bataidari Case was filed by one Lakshman Mandal which was rejected and finally approved by the appellate court in the year 2004 itself. This admitted fact creates reasonable doubt regarding the claim of the petitioner as Bataidar.”

The submission of the counsel for the appellant is that merely because the appellant became a purchaser of a major portion of land that cannot become a ground for rejecting the claim of the Bataidar.

On perusal of the orders and the decision of the learned Single Judge it is evident that the case has not been dismissed merely on the ground of purchase, but it is also significant circumstantial background to show that it was a dishonest effort on the part of the appellant to grab the left over portion of the land in the name of Bataidari after he acquired a right and title by virtue of the sale deed to the extent of 1.43 acres of land.

It is a clear case where an abuse of the provisions of law meant for the landless was sought to be invoked for obvious reason.

The Additional Collector, therefore, rightly decided the



matter and the learned Single Judge again rightly affirmed that order in the interest of justice.

Appeal has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

Dilip, AR

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