

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8348 of 2008

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Md.Mahfooz Alam son of Late Sk. Rojid Ali, resident of village- Tirhut Bhita Tola
Choudhariya, Police Station- Araria, District- Araria.

.... Petitioner.

Versus

- 1.The State of Bihar
- 2.The Collector of the District of Araria
3. The Deputy Collector Land reforms at Araria
4. Md. Israil Son of Sk. Salimuddin
5. Md. Ismail Son of Sk. Salimuddin
6. Sk. Nasim @ Karia Son of Late Sk. Fatkan
7. Sk. Wajuddin @ Tippu Son of Late Sk. Fatkan
8. Sk. Shoukat Son of Late Sk. Fatkan
9. Sk. Nausar Son of Late Sk. Fatkan
10. Sk. Rihan Son of Late Sk. Fatkan
11. Bibi Husni widow of Late Sk. Fatkan

No. 6 to 11 all are residents of village- Bagnagar, police station- Mahalgaon
Anchal- Jokihat, District- Araria.

.... Respondents.

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Appearance :

For the Petitioner	:	Mr. Arun Kumar Ambastha Mr. Ajay Kumar Sinha
For Respondent no. 4 to 11		Mr. Anil Prasad Singh Mr. Vijay Kumar Bharti Mr. Ravindra Kr.Choudhary
For the State	:	Mr. Vivek Anand

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**
CAV JUDGMENT
Date: 18 -07-2017

This writ petition has been preferred for quashing the order
dated 12.06.2004, as contained in Annexure-5 to this writ petition,
passed by the Deputy Collector, Land Reforms, Araria, in Case No.
14 of 1999-2000 by which and whereunder the claim of the petitioner



under section 48 E of Bihar Tenancy Act was rejected and also for quashing the order dated 27.05.2007, as contained in Annexure-6 to this writ petition, passed by Collector, Araria in Appeal No. 10 of 2004-2005/61 of 2005-2006 by which the Collector, Araria, dismissed the appeal preferred by the petitioner, confirming the order passed by the Deputy Collector, Land Reforms, Araria in Case No. 14 of 1999-2000. The petitioner has also sought for some ancillary relief such as seeking protection of his possession the disputed land.

2. Petitioner filed a petition under section 48E of Bihar Tenancy Act 1885(for short B.T.Act) claiming himself as Bataidar of Khata No. 30, appertaining to plot no. 130 measuring an area 89 ½ decimals of land and Khata No. 131, appertaining to plot No. 95 measuring an area 85 ½ decimals of land of village Tirhut Bhita Dist- Araria, and on the basis of aforesaid petition, Case No. 14 of 1999-2000 was registered.

3. The petitioner claimed that the aforesaid lands belonged to Sheikh Fatkan, who along with Sheikh Rajid, had purchased the disputed lands through two registered sale deeds in the year 1956 from Darap Lal Biswas and his brothers and some where in the year 1962 through amicable partition, the disputed lands were allotted to the aforesaid Sheikh Fatkan. However, the aforesaid Sheikh Fatkan felt some difficulty in cultivation and proper management of the



disputed lands and, therefore, he inducted the petitioner as an under Raiyat of the said lands on the terms and conditions of dividing the produce with him. Since there was no custom of grant of receipt of division of crops in the aforesaid area, no land receipt of division of crops was granted to the petitioner by Sheikh Fatkan. The petitioner remained in cultivating possession over the disputed lands since the year 1962 but, subsequently, Sheikh Fatkan made an attempt to dispossess the petitioner from the aforesaid lands as he wanted to sell the lands in question to some other persons at higher price and, thereafter the petitioner filed the above stated petition under section 48E of B.T.Act..

4. On being receipt of the aforesaid petition, the learned DCLR, Araria, issued notice to Sheikh Fatkan, who subsequently, filed his objection and vide order dated 14.12.1999, the learned DCLR decided to proceed with the matter and ordered for constitution of Board for conciliation and appointed Circle Officer, Araria as Chairman of the aforesaid Board and also directed both the parties to nominate their respective punches before the chairman of the Board, who will seek approval of the same from the respondent no. 3.

5. The Circle Officer, Araria, having receipt of the record issued notices to the parties directing them to appear before him with their respective punches on 12.01.2000. The petitioner appeared with



his nominated punch but second party, the land- holder Sheikh Fatkan, did not appear nor nominated any person as punch and, thereafter, Circle Officer himself nominated one Md. Rafik as punch of opposite party Sheikh Fatkan.

6. It is pertinent to mention here that the name of nominated punch on behalf of the petitioner as well as aforesaid Md. Rafik was sent to DCLR for approval and in anticipation of the approval of their name as panches, the Circle Officer, Araria, proceeded with the matter. As the punches failed to reconcile the dispute, subsequently, having recorded the evidence as well as inspected the plots in question, he sent his recommendation to DCLR for declaring the petitioner as Bataidar vide his report dated 05.02.2000. Having got the report of conciliation Board, the DCLR, Araria, declared the petitioner as Bataidar of the lands in question.

7. It is also pertinent to note here that during the pendency of the aforesaid proceeding, the original land holder, Sheikh Fatkan, transferred the land in question to respondent nos. 4 and 5 by executing two registered sale deeds and, thereafter, respondent nos. 4 and 5 filed a petition before the DCLR to implead them as party to the aforesaid proceeding . The learned DCLR, Araria, impleaded the respondent nos. 4 and 5 as party to the aforesaid proceeding vide order dated 10.04. 2000. However, learned DCLR, Araria agreed with



the report of conciliation Board and declared the petitioner as Bataidar and also directed the petitioner to divide produce with the respondent nos. 4 and 5 passing the order dated 24.04.2000. However, the aforesaid order dated 24.04.2000 was challenged by the respondent nos. 4 and 5 petitioner before the Collector, Araria, who in his turn, set aside the order dated 24.04.2000 and returned back the proceeding to DCLR, Araria passing the order dated 03.12.2001 in Appeal No. 01/2001-2002 directing the DCLR, Araria to rehear the matter after giving opportunity to all the interested persons and to pass a fresh order in accordance with the provision under the B.T Act.

8. The proceeding came before the DCLR, Araria, who having heard all the parties rejected the claim of the petitioner passing the impugned order dated 12.06.2004 in Case No. 14 of 1999-2000 against which the petitioner preferred appeal before the Collector, Araria, but the Collector, Araria, also dismissed the appeal of the petitioner passing impugned order dated 25.07.2007 in Appeal No.10 of 2004-2005/61of 2005-2006. Being aggrieved by the aforesaid two orders, the petitioner has preferred this writ petition.

9. The contention on behalf of the petitioner is that no conciliation Board was constituted by the DCLR, Araria, before passing the impugned order, particularly, in the circumstance, when constitution of Conciliation Board was mandatory. He further submits



that apart from the aforesaid facts, no attempt for conciliation was made by the DCLR, Araria or the so called Board and, therefore, order passed by the DCLR, Araria is against the provision of B.T Act, and the learned Collector, Araria, also failed to take note of the aforesaid fact and dismissed the appeal preferred by him. Learned counsel for the petitioner further submits that after remand of the proceeding, it was the duty of the DCLR, Araria, to constitute a fresh Board for conciliation as the previous board had already been seized to function after submission of the report by the previous Board though the previous Board had also not been constituted in accordance with law. He also submitted that the DCLR, Araria had no power to delegate his power to Circle officer for constitution of the Board as the power for constitution of board could not have been delegated. He submitted that attempt for conciliation was also not made and there is nothing on the record of the DCLR to show that any attempt for conciliation was made. Learned counsel for the petitioner relied upon a decision of a Full Bench of this Court in the case of **Dhanji Singh v/s The State of Bihar and Ors, reported in 1979 Bihar Law Journal Vol. 2 623** in which at Para-7, their Lordships have held as follows:----

“7. In view of the aforesaid provisions, there should not be any difficulty in holding that although the Collector has been vested



with general control and superintendence over the proceedings in connection with the dispute between the landlord and the under raiyat, still, at the first instance, after having initiated the proceeding under sub section (1) of Section 48-E, the Collector has to refer the dispute to the Board. The Board has first to make endeavour for an amicable settlement, failing which it has to make enquiry and has to receive such evidence as it considers necessary, and, thereafter, record a finding in respect of the dispute only under two contingencies, if he differs with the findings and report of the Board, or, if the Board fails to record its finding within a period of six months from the date of its appointment. But there is no question of Collector deciding the dispute before the Board constituted by him has an occasion to apply its mind. The purpose appears to be obvious, sub section (3) itself says in so many words that after initiating the proceeding under sub section (1), the Collector may refer the matter to a Board for promoting settlement of the dispute between the parties. The Board, which consists of both the parties, shall be in much better position to make endeavour about the amicable settlement of the dispute. In the case Ram Narain and others Vs. The State of Bihar and others (AIR 1973 Patna 275), a Bench of this Court has considered the scope of this section 48-E and it was pointed out that the function of the Board was similar to arbitrators, the only difference being that in case of a proceeding under section 48E there is a provision of compulsory reference to arbitration. In my view, although sub section (3) says that when a proceeding is initiated under sub section (1) the Collector “may” refer the matter to a Board to be appointed by him, it has to be interpreted that after initiating the proceeding he has to refer the matter to the Board. It was pointed out in the aforesaid Ram Narain Singh’s case (supra) in connection with sub section (1) of Section



48E, that, no doubt, the legislature has used the word “may” which is generally understood as enabling and not mandatory, but “when the power conferred by the statute coupled with the duty of the person to whom it is given to exercise it, then even though the word “may” it used, it has to be construed as imperative”. In the case of *Frederic Coulider Julius v. The Right Rev. the Lordship Bishops of Oxford* [(1880) 5 AC 214]. The Lord Chancellor (Earl Cairns) observed:

“That where a power is deposited with a public officer for the purpose of being used for the benefit of persons who are specifically pointed out, and with regard to whom a definition is supplied by the Legislature of the conditions upon which they are entitled to call for its exercise, that power ought to be exercised, and the court will require it to be exercised.”

It was further observed by the Lord Chancellor:

“There may be something in the nature of the thing empowered to be done, something in the object for which it is to be done. Something in the conditions under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple with the power with a duty, and make it the duty of the person in whom the power is reposed, to exercise that power when called upon to do so.”

In my view, although sub-section (3) of Section 48-E uses the expression “may” it has to be held that once a proceeding is initiated under sub-section (1) of that section, the dispute has to be referred to the Board to be constituted by the Collector. A Bench of this Court in the case of *Laxmi Prasad Bhagat and another v. The State of Bihar and others* [1978 Bihar Bar Council Journal 750] has held that the Collector after initiating the proceeding has no jurisdiction to decide the dispute without reference to the Board. I am



in respectful agreement with the said view. If the impugned order amounts to deciding the dispute itself, then it has to be held that the Subdivisional officer had no such power before it had been referred to the Board.”

10. Learned counsel for the petitioner also referred the decision of **Niranjan Yadav @ Jhojho Yadav v/s. The of Bihar and others**, reported in **2006 (1) PLJR 142** in which a co-ordinate Bench of this Court has reiterated the same principle as laid down by their lordships in **Dhanji Singh’s case** (supra) and held that the DCLR should have constituted a Board and the Board should have made efforts for amicable settlement in between the parties, which are mandatory requirements of Section 48- E of Bihar Tenancy Act and in absence of even one of them, the entire proceedings of Section 48E of the B.T. Act can be vitiated.

11. Another decision as cited on behalf of the petitioner is of the case of **Miajan Khan v/s The State of Bihar and Ors**, reported in **1989 PLJR 389** in which a Bench of this Court held that Board is enjoined with a duty to make endeavour to bring about an amicable settlement and only in the event of failure to bring about a settlement, the Board is to proceed to initiate an inquiry in relation thereto and receive such evidence as it considers necessary in terms of Section 48E(7), after recording a finding that endeavour to bring about amicable settlement had resulted in a failure, unless this



mandatory procedure is followed all further proceedings become vitiated.

12. On the other hand, learned counsel appearing for private respondent nos. 4 and 5 submitted that the valid Conciliation Board was constituted and the Board had made efforts for amicable settlement between the parties and after failure of amicable settlement, the evidence was recorded and the learned DCLR, Araria, came to a definite finding that there was no relation of landlord and Bataidar between the original land holder Sheikh Fatkan and the petitioner. He submitted that to claim the right of under Raiyat, there must be an element of agreement and contract between the Raiyat and under Raiyat but in the present case, the original landholder Sheikh Fatkan flatly stated in his objection that there was no relationship between him and petitioner as Raiyat and under Raiyat and, therefore, the petition filed by the petitioner under section 48E of B.T.Act was not maintainable. In support of his contention, he referred the decision of Bench of this Court in the case of **Kartik Singh and another v/s State of Bihar and Ors.**, reported in **1987 PLJR 203**.

13. It is an admitted position that Sheikh Fatkan was original land holder of lands in question and petitioner claimed himself to be Bataidar of the aforesaid landlord Sheikh Fatkan. It is also an admitted position that petitioner filed a petition under section



48E of the B.T. Act for declaring himself as Batiadar over the disputed plots. The petitioner has brought the complete typed copy of order of circle officer, Araria on record which is Annexed as Annexure-2 to this petition and similarly, complete typed copy of order sheet of DCLR, Araria, which is annexed as Annexure-3 to the petition.

14. Annexure-3 to this petition goes to show that a petition under section 48E of the B.T. Act was filed by the petitioner on 12.05.1999 and, after that, vide order dated 14.12.1999, the DCLR, Araria decided to proceed with the claim of the petitioner and, accordingly, the DCLR, Araria initiated the proceeding by nominating the Circle Officer, Ariaria as Chairman of the Conciliation Board. However, he delegated his power to the Circle Officer, Araria, as Chairman of Board to nominate the panches of the parties as per their desire. The Anenxure-2 to this petition goes to show that on 05.02.2000, the petitioner submitted the name of his panch before Circle Officer, Araria but neither original land owner, namely, sheikh Phatkan nor respondent nos. 4 and 5 submitted the name of punch and, thereafter, Circle Officer, Araria, nominated Md. Rafik as Panch of the aforesaid opposite party. The circle officer, Araria, sent the name of both the panches to DCLR for approval and in anticipation of approval of the DCLR, he proceeded with the proceeding vide order



dated 27.01.2000. Annexure-2 to the petition` goes to show that panches took efforts for conciliation but failed in their attempt.

15. It is an admitted position that till today no order regarding the approval of the name of the punches by the Board has been brought on record and, therefore, it is obvious from the aforesaid fact that the name of pnaches as sent by circle officer for approval to DCLR, Araria was never approved, therefore, in my view, in absence of approval of name of the panches, no valid Board, was constituted. As it has already been held in the case of **Dhanji Singh's Case** (supra) that before entering into an inquiry, the constitution of Board and attempt for amicable settlement are prerequisite conditions and if the aforesaid conditions are not fulfilled, the entire subsequent proceedings shall be vitiated. Admittedly, the C.O entered into enquiry without getting any approval of constitution of Board and, moreover, even after receipt of the report of C.O, the D.C.L.R did not take any pain to approve the constitution of Board as sent by the C.O. therefore, in my view, no valid Board was constituted.

16. It is also an admitted position that respondent nos. 4 and 5 were impleaded as party to the petition during pendency of the said proceeding vide order dated 10.04.2000 and, after that the Board sent its finding to D.C.L.R, Araria who, in his turn, agreed with the report of Board vide order dated 24.04.2000 but the aforesaid order



dated 24.04.2000 was set aside by the Collector, Araria remitting the proceeding to D.C.L.R, Araria with direction to D.C.L.R, Araria to re-hear the matter after giving opportunity to all interested persons and to pass a fresh order in accordance with the provisions under the Bihar Tenancy Act. It is an admitted position that the Circle Officer, Araria, had already nominated the members of board prior to impleadment of respondent nos. 4 and 5 as party to the proceedings and when the matter was remitted back to the Board to re-hear the matter giving opportunity to all interested parties and pass a fresh order in accordance with law, no opportunity was given to the respondent nos. 4 and 5 to nominate their punch. Sub session (4) of Section 48E of Bihar Tenancy Act makes it mandatory that the Board shall consist of a Chairman and two members to represent the parties to the dispute and the person appointed as a member to represent any party shall be appointed on the recommendation of that party. In the present case, as soon as respondent nos. 4 and 5 were impleaded as party to the proceeding, a valuable right to appoint their punch accrued to them and they got right to appoint their Punch so that their Punch could represent to them as a member of Board but admittedly, the aforesaid right of respondent nos. 4 and 5 was snatched by the Circle Officer, Araria by not providing an opportunity to them to appoint their Punch as member of Board and, therefore, in my view, there was no valid



Board in the eye of law.

17. In the present case, as I have already held that there was no valid Board, therefore, in my view the DCLR, Araria had got no jurisdiction to proceed with the case and the aforesaid fact has not been noticed by the Collector while deciding the Appeal No. 10 of 2004-2005/ 61 of 2005-2006.

18. No doubt, petitioner participated in the proceeding before the circle officer as well as DCLR, Araria but he did not raise any objection regarding validity of constitution of Board but, in my view, it was duty of the concerned officials to constitute board in accordance with law before entering into inquiry and even if an objection regarding validity of constitution of Board was not raised on behalf of the petitioner, then also, it cannot be said that the DCLR, Araria had got jurisdiction to enter into inquiry even without constitution of valid Board.

19. The impugned orders have been challenged by the petitioner on this ground also that no attempt for amicable settlement was made before entering into inquiry and mere writing in order sheet regarding the failure of amicable settlement is not sufficient to show that attempt for amicable settlement was made. I do agree with the aforesaid contention because there is nothing either in Annexure-2 or Anenxure-3 to this petition to show that any attempt for amicable



settlement was made in this matter and it has only been written in report of Circle Officer, Araria, dated 05.02.2000 that an attempt for amicable settlement was made. However, it is an admitted position that respondent nos. 4 and 5 were impleaded as parties to the aforesaid proceeding, during pendency of the said proceeding, and when the matter was remitted back by the order of Collector passed in Appeal No. 01 of 2001-2002, directing the DCLR, to hear the matter afresh after giving opportunity of hearing to all the interested persons, no attempt for amicable settlement was made between the parties, therefore, in my view, the impugned order cannot be sustained in the eye of law.

20. On the basis of aforesaid discussions, this writ petition stands allowed and, accordingly, the impugned order dated 12.06.2004 passed by the Deputy Collector, Land Reforms, Araria, in Case No. 14 to 1999-2000 and the impugned order dated 25.07.2007 passed by the Collector, Araria in Appeal No. 10 of 2004-2005/ 61 of 2005-2006, are quashed and the matter is sent back to DCLR, Araria with a direction to him to pass a fresh order after constitution of Conciliation Board as well as making effort for amicable settlement between the parties in accordance with the provisions of Bihar Tenancy Act.

(Hemant Kumar Srivastava, J)



N.K/-

AFR/NAFR	NAFR
CAV DATE	30.01.2017
Uploading Date	26.07.2017
Transmission Date	NA

