

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1440 of 2013
In
Civil Writ Jurisdiction Case No.9088 of 2005

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Lakhan Rishi S/O Late Buthu Mushar Resident Of Village- Bari Bhanshdiara,
P.S.- Barari, District- Katihar

... .. Appellant

Versus

1. The State Of Bihar Through The Collector, Katihar, Collectorate, Mirchaibari, Katihar
2. The Deputy Collector Land Reforms, Katihar, Sub-Divisional Office, Mirchaibari, Katihar
3. The Circle Officer, Barari At Barari, District- Katihar
4. Sunil Choudhary S/O Late Ganga Choudhary Resident Of Village- Panchma, P.S.- Korha, District- Katihar
5. Md. Safiuddin @ Md. Suffu S/O Abdul Salam Resident Of Village- Panchma, P.S.- Korha, District- Katihar

... .. Respondents

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Appearance :

For the Appellant	:	Mr. P.K.Jaipuriyar, Advocate Ms. Anukriti Jaipuriyar, Advocate Mr. Anshuman Jaipuriyar, Advocate
For the Respondent State:		Mr. Anshuman Singh, AC to AG
For the Respondent No.4 :		Mr. Rakesh Chandra, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 08-12-2017

Heard learned counsel for the appellant, learned counsel representing respondent No.4 as well as learned counsel representing the State.

The learned single Judge has refused to interfere with the order passed by the Deputy Collector, Land Reforms, Katihar,



(hereinafter referred to as 'the DCLR') in Bataidari Case No.84 of 1998-99, by which the claim of the petitioner-appellant under Section 48E of the Bihar Tenancy Act, 1885 (hereinafter referred to as 'the Act') with respect to a plot of land bearing Khata No.28, Khesra No.55, area 55 decimals was rejected. Being aggrieved by the order passed by the learned single Judge in the writ application, the petitioner has preferred the present appeal.

Learned counsel for the appellant submits that it is the same authority, i.e. the 'DCLR', who had earlier referred the matter to the Board finding it a *prima facie* case, but when the Board could not come to a finding and conclusion as respect right of the bataidar, the proceeding was recalled in exercise of power under Section 48E(10) of the Act by the 'DCLR' and he himself decided the same. So far as the power of the 'DCLR' to recall the proceeding if the Board failed to record a finding as respect bataidari within a period of six months is concerned, the same is not under challenge. The only contention on behalf of the appellant is that the 'DCLR' has decided the matter without taking any evidence afresh or an independent view in the whole matter has not been taken.

On the other hand, learned counsel representing the private respondent and the State submits that a bare perusal of the order



passed by the 'DCLR' would show that the same is a well speaking and reasoned order. The 'DCLR' has found that in fact the very possession of sikmi under-raiyat was not proved and one Buthu Mushar through whom the present petitioner is claiming was not found in possession of the land in question. It is further pointed out that the petitioner-appellant had earlier moved under Section 48D of the Act but his application was dismissed. The order passed therein has attained finality.

In the aforementioned background of the submission advanced before us, we have considered the rival submission and perusal the materials available on the record.

The learned single Judge has taken note of the earlier proceeding particularly that upon recall of the proceeding under Section 48E(10) of the Act, the 'DCLR' has considered the bataidari claim of the petitioner-appellant and found that it was lacking in bonafide. The parties were heard and only thereafter the impugned order was passed by the 'DCLR'. We are of the view that the finding of fact which has emerged as respect possession of Buthu Mushar is a clinching fact which would negate the claim of the present petitioner-appellant. The finding to that respect recorded by the 'DCLR' has rightly not been interfered with by the learned single Judge.



We do not find any merit in the appeal. Appeal is accordingly dismissed.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

Pawan/-

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