

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16696 of 2004

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Anup Narayan Singh, son of Late Harendra Narayan Singh, resident of
village-Maina Nagar, Police Statin-Pranpur, District-Katihar

.... Petitioner/s

Versus

1. The State of Bihar
2. The Collector, Katihar.
3. The D.C.L.R., Katihar.
4. The Circle Officer, Pranpur, katihar.
5. Dinesh Chandra Paswan son of Ramc Chandra Paswan, resident of
village-Nath Nagar, Police statin-Pranpur, District-Katihar.
6. Peter Paul Das @ Pritam Paul Das @ Hare Peter Paul Das son of Late
Dharam Paul Das resident of P-29, MissionRoad, Extention Saha Court
6th Floor, Calcutta-13.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. MAKARDHWAJ UPADHYAY
Mr. Rajendra Pd.Sah
Mr. Akhouri K.K.Sahay
Mr. Ratnakar Ambastha

For the Respondent/s : Mr. (GP3)
Mr. Bholad Prasad
Mr. Swapnil Kumar Singh
Mr. Tarun Prasad Mandal

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 18-01-2018

Heard both sides.

The petitioner filed this writ petition to set aside the order dated 24.12.1996 passed by Deputy Collector Land Reforms, Katihar in Batia Case No.74 of 1996-97 (Annexure-4) and the order dated 01.09.2004 passed by Addl. Collector in Bataidari Appeal No.531 of 1996-97 (Annexure-6).

The facts in briefs is that the petitioner filed Case No.128M of 1980



under Section 145 of the Cr.P.C. for declaration of his possession and to restrain the landlord respondent No.6 from interfering into the possession of the petitioner. The petitioner stated that the landlord took Rs.30,000/- from the father of the petitioner for opening a factory but the landlord never returned the money and gave possession of the land to the petitioner. Thereafter, the father of the petitioner paid the rent of the land. The Executive Magistrate vide order dated 30.05.1987 found the land in possession of the petitioner and accordingly directed the second party, respondent No.6 (landlord) not to interfere into the peaceful possession of the petitioner.

The respondent No.5, Dinesh Chandra Pawan, filed a petition before the DCLR to declare him as Batiadar, under Raiyat, of land bearing Plot No.765 of Khata No.166 area 14 acre 13 decimal. The DCLR constituted a Board under the Chairmanship of Circle Officer who reported that respondent No.5 is Bataidar (under Raiyat) of plot No.675 Khata No.166 area 6.75 decimal. The petitioner filed a petition before Deputy Collector Land Reforms to implead him as respondent. The petitioner filed the order of Executive Magistrate passed in Case No.128M of 1980 and stated that petitioner have been coming in peaceful possession over the disputed land but he was not given notice, therefore, the petitioner is necessary party but the DCLR rejected the petition of the petitioner and declared respondent No.5 as under Raiyat of the land of



plot No.765 khata No.166 area 6.75 acre vide order dated 24.12.1996. Thereafter, the petitioner preferred appeal before the Collector but the Collector in Batiadari Appeal No.531 of 1996-97 vide his order dated 1.9.2004 dismissed the appeal holding that the petitioner did not produce any chit of papers with regard to the ownership of land save and accept the order passed under 145 Cr.P.C.

The learned counsel for the petitioner submits that admittedly a proceeding was initiated under Section 145 Cr.P.C. vide case No.28M of 1980. The landlord appeared and after hearing the parties, the Executive Magistrate found the petitioner in possession of 14.13 acre of land of Khesra No.765 of khata No.166 vide order dated 13.5.1987. After about 10 years, Dinesh Chandra Paswan, respondent No.5, filed petition being Bataidari Case No.74/1996-97 (Annexure-2) for declaration of Batiadar (under raiyati) under Section 48E of the Bihar Tenancy Act over 6.75 decimal of land and the DCLR vide order dated 24.12.1996 declared him as Bataidar over 6.75 acres of land, without affording opportunity to hear the petitioner although petitioner filed petition to intervene and without considering the order passed by the Executive Officer in the year 1987 in a proceeding under Section 145 Cr.P.C. by which the petitioner has been found in possession of the entire land of Khesra No.765 of khata No.166 measuring area of 14.13 acre. It is submitted that both the orders of the DCLR and Addl. Collector are illegal and not sustainable.



The learned counsel for the respondent No.5 on the contrary submitted that since the petitioner did not produce any chit of papers to show the title over the land, the DCLR and the Collector have rightly rejected the claim of the petitioner. I find no force in the submission of the learned counsel for respondent No.5. It is admitted that the proceeding under Section 145 Cr.P.C. was initiated vide Case No.128M of 1980, the parties appeared and after hearing the parties, the Executive Magistrate vide Order dated 30.5.1987 found petitioner in possession of the land. The respondent No.5 filed petition under Section 48E of the Bihar Tenancy Act on 29.6.1996 but he did not make the petitioner as a party and claimed under raiyat right over 6.7 decimal of land of plot No.675 khata No.166. The DCLR sent the matter to the Circle Officer for report and after hearing the parties, a Board was constituted under the Chairmanship of Circle Officer, Prampur. The Circle Officer issued notice to Pritam Pal but notice was not served on Pritam Pal and ex.-parte hearing was held. The Circle Officer according to the report of Board reported that respondent No.5 is in continuous possession of the land as Bataidar (under *raiyat*). The petitioner filed a petition to implead him as O.P. and petitioner also filed the order dated 30.05.1987 passed in Case No.128M of 1980 by which the petitioner was declared in possession of the land and the landlord Pritam Pal was restrained from interfering into the peaceful possession of the petitioner. But the DCLR did not take



notice of the fact and rejected the intervener petition of the petitioner, vide Annexure 4 and declared respondent No.5 as under raiyat. The Collector also dismissed the appeal of the petitioner without taking into consideration that petitioner was found in possession by a competent Court. I find that the DCLR as well as Collector should have heard the petitioner as he was duly declared in possession over the land.

Considering the aforesaid fact, I find that the order dated 24.12.1996 passed by Deputy Collector Land Reforms, Katihar in Batia Case No.74 of 1996-97 as Annexure ‘4’ and the order dated 01.09.2004 passed in Bataidari Appeal No.531 of 1996-97, as Annexure-6 are illegal and not sustainable. Accordingly, the order 24.12.1996 and 01.09.2004 as contained in Annexure-4 and 6 respectively are set aside and the matter is remanded back to the DCLR to hear the petitioner and respondent No.5 and pass order in accordance with law.

Accordingly, this writ petition is allowed with the aforesaid direction.

(Prabhat Kumar Jha, J)

Sanjeev/-

AFR/NAFR	NAFR
CAV DATE	-
Uploading Date	21.02.2018
Transmission Date	21.02.2018

