

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4210 of 2016

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1. Pramod Kumar Singh son of Yogendra Singh resident of village Jahangirpur, Police Station - Shyampur Bhathahan, District - Sheohar.

.... Petitioner/s

Versus

1. The State of Bihar through its Secretary, Land Reforms Department, Govt. of Bihar, Patna.
2. The Collector, Sheohar, District - Sheohar.
3. Deputy Collector, Land Reforms, Sheohar, District - Sheohar.
4. Circle Officer, Shyampur Bhataha Block, District Sheohar.
5. Mahanth Rajeev Ranjan Das son of Late Mahanth Shyam Sunder Das resident of village Jahangirpur, Police Station - Shyampur Bhataha, District - Sheohar.
6. Budhan Ram son of Late Jahir Ram resident of village Janhangirpur, P.S. Shyampur Bhataha, District Sheohar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bimal Kumar
Mr. Birendra Kumar
For the Respondent/s : Mr. Binay Kumar Singh
Mr. Avinash Shekhar, A.C. to S.C.6

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER

5 27-03-2018 Heard Mr. D.K.Sinha, learned senior counsel for the petitioner and Mr. Arun Prasad Ambastha, respondent No.6.

The petitioner has filed this writ petition to quash the order dated 16.12.2015 passed by Member Administration, B.L.T. in Case No.183 of 2015 and further to quash the order dated 09.12.2014 passed in Bataidari Case No.14 of 2014 by the Collector, Sheohar by which he set aside the order passed by D.C.L.R. on 30.05.2014 in Bataidari Case No.6 of 2013-14.

The facts requisite and relevant for the disposal of this



writ petition are that the petitioner filed Bataidari Case No.3 of 2013-14 before the Dy. Collector Land Reforms(Collector under the Act) against Mahanth Rajeev Ranjan Das with regard to land of Khata No.498 Khesra No.606, area 2 acres 20 decimals. The D.C.L.R. sent the matter to Circle Officer for constitution of Board. The petitioner filed Bataidari Case No.3 of 2013-14 on 16.04.2013. One Budhan Ram filed Bataidari Case No.6 of 2013-14 on 17.04.2013. The D.C.L.R. informed the Circle Officer for constitution of Board but when the petitioner came to know about filing of another Bataidari Case being Bataidari Case No.6 of 2013-14, the petitioner filed petition before the D.C.L.R. that on the same land, he earlier filed petition under Section 48(E) of the B.T. Act for declaring him to be under raiyat and from prevention for his ejectment. The D.C.L.R. vide order dated 30.05.2014 stayed the proceeding of Bataidari Case No.6 of 2013-14 till the submission of report of Bataidari Case No.3 of 2013-14. The respondent No.6, Budhan Ram filed Misc. Case No.14 of 2014 before the Collector, Sheohar against the order dated 30.05.2014 passed by D.C.L.R. and the Collector vide order dated 09.12.2014 vacated the stay order passed by D.C.L.R. staying the further proceeding in Bataidari Case No.6 of 2013-14 and directed the D.C.L.R. to pass order on merit. Against the order passed by



Collector in Bataidari Case No.14 of 2014, the petitioner filed B.L.T. Case No.183 of 2015. The Member Administration vide order dated 16.12.2015 dismissed the petition on the ground that the same is not maintainable because the same was not filed against the final order.

Mr. D.K.Sinha, learned senior counsel for the petitioner submits that under Section 48(E) of the B.T. Act, the entire procedure for determination of the status of under raiyat is prescribed if the Collector under the Act pass order under sub-section (7) and (8) of Section 48(E), there is a provision of appeal before the Collector of the district. If any interim order is passed by the Collector under the Act, no appeal is provided. The order passed by the Collector setting aside the order of stay passed by D.C.L.R. in Bataidari Case No.6 of 2013-14 is without jurisdiction. The Collector passed the final order in Bataidari Case No.14 of 2014, therefore, the B.L.T. has also committed illegality in dismissing the petition of the petitioner on the ground of non-maintainability.

On the other hand, Mr. Arun Prasad Ambastha, learned counsel for the respondent No.6 submitted that so far as the order of D.C.L.R. staying the proceeding of Bataidari Case No.6 of 2013-14 is concerned, the same is without jurisdiction. Of course,



there is no provision of appeal against such order under Section 48(E) of the B.T. Act either under Section 48(E) or 48(F) of the Act but according to Rule 3 of The Bihar Board's Miscellaneous Rules, 1958 which deals with the relation of higher to lower authority.- a higher authority has all the powers of any lower authority and, further may, with or without appeal, modify or reverse any orders passed by a lower authority, in a matter primarily within the competence of the lower authority, unless, by any law, the order of the lower authority are final. Mr. Ambastha further submits that the order of B.L.T. is not without jurisdiction. The order passed by the Collector is within the jurisdiction of the Collector who has simply directed the D.C.L.R. to pass order on merit after vacating the order staying the further proceeding of Bataidari Case No.6 of 2013-14.

So far as the contentions with regard to the provisions as contained in Rule 3 of The Bihar Board's Miscellaneous Rules, 1958, on bare perusal of the aforesaid rules, it is apparent that the rule defines the relation of higher to lower authority. Rule itself says that a higher authority has all the powers of any lower authority and, further may, with or without appeal, modify or reverse any orders passed by a lower authority, in a matter primarily within the competence of the lower authority unless, by



any law, the order of the lower authority are final. This provision itself says that if a lower authority by any Act or Rules is authorized to deal with any matter and the procedure which is prescribed in the concerned Rules and Act, the provision of appeal or revision is provided and it also provides that the order passed by the authority shall be final on such and such terms and conditions. In that event, merely because the Collector is the superior authority in the district, the Collector cannot have the power to set aside or modify the order passed by an authority authorized to act under the Act in which full procedure is prescribed for disposal of a dispute. In the present case, the petitioner firstly filed petition under Section 48(E) of the B.T. Act on 16.04.2013. Section 48(E) prescribed the procedures and the authority to act according to the prescribed procedures. The rule has also been framed under Section 48(E) read with Section 189 of the B.T. Act, 1885. The rule also supplements the procedures with regard to disposal of a petition under Section 48(E) of the B.T. Act. Section 48(F) provides appeal against the order passed by the Collector under the Act under sub-section (7) of Section 48(E) of the Act otherwise the order passed by the Collector under the Act shall be final. Even if the Collector under the Act committed any illegality or jurisdictional error, the Collector in absence of any



statutory provision prescribed under the Act has got no jurisdiction to set aside or nullify the order passed by a competent authority under the Act. Therefore, I find that the order of the Collector vacating stay of the further proceeding in Bataidari Case No.6 of 2013-14 is without jurisdiction. Against this order, there is no provision in the B.L.T. but since the order of the Collector is without jurisdiction and the same is not sustainable in the eye of law and the order dated 09.12.2014 passed by the Collector in Bataidari Case No.14 of 2014 as well as the order dated 16.12.2015 passed by B.L.T. in B.L.T. Case No.183 of 2015 are not sustainable.

Accordingly, this writ petition is allowed with a direction to the D.C.L.R. that if any such petition is filed by respondent No.6 for vacating the stay which was passed without hearing him, the D.C.L.R. shall pass order on merit. The order dated 09.12.2014 passed by the Collector in Bataidari Case No.14 of 2014 and the order dated 16.12.2015 passed by B.L.T. in B.L.T. Case No.183 of 2015 are set aside.

(Prabhat Kumar Jha, J)

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