

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3195 of 2019

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1. Ajit Kumar Singh and Anr Son of Late Raghubansh Prasad Singh, Resident of Dr. Rajendra Prasad Path, Mohalla- Durga Asthan Gami Tola, Katihar, P.S. and District- Katihar.
 2. Amit Kumar Singh Son of Late Raghubansh Prasad Singh, Resident of Dr. Rajendra Prasad Path, Mohalla- Durga Asthan Gami Tola, Katihar, P.S. and District- Katihar.

... .. Petitioner/s

Versus

1. The State of Bihar and Ors through Principal Secretary, Department of Revenue and Land Reforms, Govt. of Bihar, Patna.
2. The District Magistrate-cum-Collector, District- Katihar.
3. The Sub Divisional Officer, Sub Division-Katihar, District- Katihar.
4. The Deputy Collector, Land Reforms, Katihar, District- Katihar.
5. The Circle Officer, Katihar Block, District- Katihar.
6. Ram Kumar Singh (Retd. Engineer) Son of Late Manmohan Singh. resident of Flat No. 105, Ashiyana Bihar, Near C.D.A. Building, Patna.
7. Nishant Mohan Singh S/o Ram Kumar Singh, resident of Flat No. 105, Ashiyana Bihar, Near C.D.A. Building, Patna.
8. Smt. Raka Rani Singh W/o Ram Kumar Singh, resident of Flat No. 105, Ashiyana Bihar, Near C.D.A. Building, Patna.

... .. Respondent/s

Appearance :

For the Petitioners	:	Mr.Dhananjay Kumar, Advocate
For the Respondents	:	Mr.Mukul Prasad, AC to GP-18

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

5 27-02-2019 This writ application has been filed seeking quashing of the order dated 05.11.2018 passed by the Deputy Collector Land Reforms, Katihar, in Batai Case No.745 of 2011-12, whereby an application under Section 48E of the Bihar Tenancy Act, 1885 (hereinafter referred to as ‘the Act’), has been



dismissed.

It is the case of the petitioners that their application under Section 48E of the Act has been dismissed on the point of admission itself though the matter was earlier admitted and a Conciliation Board was constituted. It is the petitioners' case that dismissal of the Batai Case No.745 of 2011-12 amounts to review of the earlier order, whereby a Conciliation Board was constituted. It is also the petitioners' case that respondent No.6 was an Engineer and while posted at Katihar in 1986, he had purchased certain piece of land in the name of his son and wife, respondent Nos. 7 and 8, description of which has been given in paragraph 5. It is their further case that their father was having good relations with respondent No.6 and, therefore, he was cultivating the land so purchased as a bataidar. At the same time, it has been stated that father of these petitioners was registered as a contractor with the help of respondent No.6 and in that capacity he used to execute contract work as dummy/proxy contractor as directed and financed by respondent No.6. It is also the case of the petitioners that after the said land was entrusted to the petitioner's father, the petitioners have been cultivating over the land peacefully, but after death of father of the petitioners, respondent Nos. 6 to 8 attempted to evict the



petitioners from the land in question, compelling these petitioners to file the said Batai Case No.745 of 2011-12 before the Deputy Collector Land Reforms under Section 48E of the Act seeking a declaration that they are the bataidars.

This is to be noted that respondent Nos. 6 to 8 appeared in the proceeding before the Deputy Collector Land Reforms and raised preliminary objection over maintainability of the proceeding under Section 48E of the Act. It is the case of the petitioners that upon an oral direction given by the Deputy Collector Land Reforms, they had submitted mutation receipts as well as certificates showing the age of the petitioners. They also filed their notes of written argument. The Deputy Collector Land Reforms, however, by order dated 25.06.2012, refusing to accept the plea of these petitioners, disposed of their application, which was challenged before this Court by filing writ application giving rise to C.W.J.C. No. 21216 of 2012. The said writ application was disposed of by order dated 11.12.2014 remanding the matter back to the Deputy Collector Land Reforms to decide the case on merits within a period of one month. It was in the light of remand made by this Court for passing an order afresh, the order impugned has been passed by the Deputy Collector Land Reforms. This is also to be noted that



a Letters Patent Appeal was preferred against the order dated 11.12.2014 passed in C.W.J.C. No. 21216 of 2012 giving rise to L.P.A. No. 697 of 2015, which too was dismissed by an order dated 26.07.2017.

Mr. Dhananjay Kumar, learned Counsel for the petitioners states that father of these petitioners was not a bataidar in respect of the land, in question. The age of petitioner no. 1 is, admittedly, not more than 49 years and that of petitioner no. 2 not more than 44 years, as indicated in the present writ application itself. The petitioners claim that they were bataidars of the respondents since 1986. As is evident from the age of the petitioners, as mentioned in the writ application itself, petitioner no. 1 would have been 17 years old; whereas petitioner no. 2 would have been 12 years old in 1986.

It is also submitted on behalf of the petitioners that petitioners' father was working as proxy contractor, associated with respondent no. 6, when respondent no. 6 was Executive Engineer, and respondent no. 6 had purchased the land in the names of respondent nos. 7 and 8.

The only legal question, which the petitioners have raised in the present writ application, is that whereas the Deputy Collector Land Reforms proceeded to constitute a conciliation



board in terms of Section 48E of the Bihar Tenancy Act, 1885, subsequently, by the impugned order, the Collector could not have rejected the petitioners' application under Section 48E of the Act without waiting for the report of the Board.

He contends that the earlier order of the Deputy Collector Land Reforms, directing for constitution of a Board, amounts to admission of the case and subsequently the Collector could not have rejected the application.

He has relied on a decision of this Court, in the case of **Vidyanand Biswas and Another v. The State of Bihar and Others**, reported in **2013 (3) PLJR 392**, which lays down that it is incumbent upon the Collector to see the bonafide of the claim of the bataidar which cannot be done without referring the matter to the Bataidari Board.

Reliance has also been placed on Supreme Court's decision, in the case of **Ram Nath Sharma v. The State of Bihar and Others**, reported in **2003 (3) PLJR (SC) 187**, which has been relied on by this Court, in the case of **Vidyanand Biswas** (supra).

An argument has also been made that subsequent order of the Deputy Collector Land Reforms amounts to review of the previous order, which is not permissible either under the



Bihar Tenancy Act, 1885, or under the Bihar Land Disputes Resolution Act, 2009.

It is evident from the submission advanced on behalf of the petitioners that the petitioners were 17 years and 12 years of age in 1986. There cannot be any dispute in respect of the legal issue that bataidari is an agreement between a landlord and a bataidar. Even if what is asserted in the writ application is accepted, the claim of the petitioners deserves to be rejected on the fundamental premise that they could not have entered into any agreement as bataidar when they were, admittedly, minors in 1986.

The submission advanced on behalf of the petitioners that dismissal of the batai case amounts to review of the earlier order, whereby Conciliation Board was constituted, in my view, is not acceptable for the reason that the petitioners could not make out a bonafide case for reference to Conciliation Board. The judgment of this Court in the case of **Vidyanand Biswas** (supra) is of no consequence in the facts and circumstances of the case inasmuch as on the basis of facts asserted, the petitioners appear to have not established even *prima facie* their bonafide claim, as bataidar.

Situated thus, I do not find any merit in this



application. This application is accordingly rejected.

(Chakradhari Sharan Singh, J)

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