

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.16994 of 2018**

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Bihari Prasad Kushwaha S/o- Hari Prasad Kushwaha R/o Village- Kathkuya,  
P.S.-Semra, District- West Champaran.

... .. Petitioner

Versus

1. The State Of Bihar
2. The Chief Secretary, Govt. of Bihar, Patna.
3. The District Magistrate, West Champaran, Bettiah.
4. The Sub-Divisional Officer, Bagaha, District- West Champaran, Bettiah.
5. The Circle Officer, Bagaha-2, District- West Champaran, Bettiah.
6. Nagendra Jha S/o late Kedar Jha R/o Village- Kathkuya, P.S. Semra,  
District- West Champaran.

... .. Respondents

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**Appearance :**

|                           |   |                                                                      |
|---------------------------|---|----------------------------------------------------------------------|
| For the Petitioner        | : | Mr. Ashutosh Tripathy, Advocate<br>Mr. Sanjay Kumar Pandey, Advocate |
| For the Respondent State: |   | Mr. Rakesh Kumar Shrivastava, AC to GP-15                            |
| For Respondent No. 6      | : | Mr. Aditya Nath Jha, Advocate<br>Mr. Arvind Kumar, Advocate          |

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH**

ORAL ORDER

8      25-07-2019                      An order, passed by the learned Member (Administrative), Bihar Land Tribunal, dated 25.07.2018, in B.L.T. Case No. 401 of 2015, is under challenge in the present writ application, whereby he has set aside an order, dated 26.09.2008, passed by the Sub Divisional Officer, Bagaha, in Batai Appeal Case No. 395 of 2007. By the said order, dated 26.09.2008, the Sub Divisional Officer, Bagaha, had allowed an appeal filed by the petitioner against an order, dated 17.07.1995, passed by the Circle Officer, Bagaha-2 in Batai Case No. 18 of 1995-96.



The dispute relates to the lands of following description, which was, admittedly, held by one Saroj Sharma :-

| Khata No. | Khesra No. | Rakba   |
|-----------|------------|---------|
| 111       | 215        | 0-9-10  |
|           | 224        | 0-6-06  |
| 62        | 860        | 0-8-06  |
| 128       | 222        | 0-8-17  |
|           |            | 1-12-19 |

Respondent No. 6 had filed an application under Section 48D of the Bihar Tenancy Act, 1885 (hereinafter referred to as 'the Act'), claiming that he was entitled to acquire the right of the occupancy raiyat on the ground that he had held the land continuously as an under-raiyat for a period of more than 12 years. The Circle Officer, by order dated 17.07.1995, allowed the application, which is there on record as Annexure-1 to the writ application. It is evident that the *raiyat*, Saroj Sharma, did not appear in the proceeding before the Circle Officer, though notice was received by her brother and maternal uncle.

After the order of the Circle Officer was passed in 1995, allowing the case of respondent No.6 under Section 48D of the Act, the petitioner is said to have purchased the land from said Saroj Sharma on 26.11.2007. It is the petitioner's case that



he learnt from respondent No.6 on 03.12.2007 about the order of the Circle Officer on 17.07.1995, whereafter he filed Batai Appeal Case No. 395 of 2007 on 12.12.2007. The appeal was allowed by the Sub Divisional Officer, Bagaha, holding that without a declaration under Section 48E of the Act, respondent No. 6 could not have maintained his application under Section 48D of the Act. He accepted the case of the petitioner that the appeal was filed within time after the petitioner had acquired knowledge of the order dated 17.07.1997 passed by the Circle Officer. He also held that the petitioner had acquired title over the land in question by virtue of the sale deed dated 26.11.2007. The said order of the Sub-Divisional Officer came to be challenged before the Bihar Land Tribunal, Patna, giving rise to B.L.T. Case No. 401 of 2015, which has been allowed by the impugned order on various grounds including the ground that said Saroj Sharma did not file any appeal against the order of the Circle Officer and the order of the Circle Officer passed against her had attained finality. Learned Member (Administrative) of the Tribunal, in his impugned order, has further held that though vendor of the petitioner did not have any *locus* to transfer the land after the order of the Circle officer, which remained unchallenged, she transferred the lands to the



petitioner.

Mr. Ashutosh Tripathy, learned counsel appearing on behalf of the petitioner, has submitted that in no circumstance the Circle Officer ought to have entertained application under 48D of the Act without any adjudication under Section 48E of the Act, declaring respondent No. 6 a bataidar. He has also submitted that the petitioner did not have any knowledge about the order passed by the Circle Officer in the proceeding under Section 48D of the Act and, therefore, the appeal, preferred by him before the Sub Divisional Officer, could not be said to be time barred, which was filed immediately after the petitioner learnt about passing of the order by the Circle Officer.

Mr. Tripathy has placed reliance on the decision of this Court, in case of *Mohan Lal Jamadar and Another Vs. State of Bihar and Others*, reported in **2000(2) PLJR 387**, in support of his submission that without any determination under Section 48E of the Act, respondent No. 6 could not have maintained his application under Section 48D of the Act. Reliance has also been placed on decision of this Court in case of *Mridula Mishra and Another Vs. State of Bihar and Others*, reported in **2007(2) PLJR 700**, to contend that without any proper service of notice, the Circle Officer could not have



passed the order under Section 48D of the Act.

I must record, at this stage, that the decision in the case of *Mohan Lal Jamadar* (supra), relied on by learned counsel appearing on behalf of the petitioner has been specifically over-ruled by a Division Bench decision of this Court in case of *Dilip Goswami vs. State of Bihar & Others*, reported in **2003(2) PLJR 211**, paragraph 5 of which reads thus :-

“5. It may be clarified here that in any proceeding under Section 48-D where any objection is raised by the landlord as to the under-raiyat's status of the claimant the authority under the Act is obliged to make inquiry not only in respect of the question as to whether he was in possession of the land for a period of 12 years and acquired occupancy right but also the question as to whether his whether his claim of being under-raiyat is true. But he cannot be relegated to any proceeding under Section 48-E which contemplates an altogether different situation - applicable not only to under-raiyat who has professedly acquired occupancy rights by remaining in continuous possession of the land but also such under-raiyat who has not acquired such right, that is, who has been in possession for less than 12 years. As a matter of fact, for the purpose of proceeding under Section 48-E, the period is not relevant at all.”

In my opinion, the most fundamental issue, which the present writ application involves is as to whether the petitioner could maintain an appeal against the order passed by the Circle



Officer on the strength of having purchased the land from the *raiyat*, 22 years after the order by the Circle Officer was passed.

It is evident from the appellate order of the Sub Divisional Officer that the petitioner's vendor was not made a party. The petitioner can claim to have acquired the right on the basis of the sale deed, which his vendor had. It has not been stand the petitioner's vendor in any of the proceedings that she did not have knowledge about the proceeding under Section 48D of the Act.

Lack of knowledge of the petitioner about the proceeding under Section 48D of the Act, which was filed against his vendor, cannot be, in my view, a ground to question the correctness of the order of the Sub Divisional Officer. Learned Member (Administrative) of the Tribunal has correctly recorded that when the petitioner's vendor did not choose to challenge the order of the Circle Officer on the ground of absence of knowledge or any other ground, the petitioner could not have questioned the same. The decision in case of ***Mridula Mishra*** (supra) has no application at all. Once the petitioner's vendor chose not to question the correctness of the order of the Circle officer in the proceeding under Section 48D of the Act, the petitioner could not have taken exception to the said order,



without even impleading the vendor as party.

In the facts and circumstances of the present case, as noted above, in my view, the impugned order does not require any interference.

Before I part with, I must record that any observation made by me in the present order shall not amount to approving the order passed by the Circle officer, which could have been questioned by the petitioner's vendor on the ground of absence of knowledge or any other legally permissible ground.

This application is accordingly dismissed.

**(Chakradhari Sharan Singh, J)**

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