

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6485 of 2000

1. Bishwanath Jhunhunwala.
2. Om Prakash Jhunhunwala.
Both sons of Late Ishwari Prasad Jhunhunwala, Residents of Lal Bazar
Bettiah Town, P.S.-Bettiah, District-West Champaran.
... .. Petitioner/s

Versus

1. The State of Bihar
2.Sub-Divisional Officer, Narkatiaganj, District-West Champaran.
3.Land Reforms Deputy Collector, Narkatiaganj, West Champaran.
4.Sk. Sanaullah, Son of Sk. Zahoor, R/o village-Rampur Tola, Ammaghaud,
P.S.-Shikarpur, District-West Champaran.
... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 6486 of 2000

1. Bishwanath Jhunhunwala.
2. Om Prakash Jhunhunwala.
Both sons of Late Ishwari Prasad Jhunhunwala, Residents of Lal Bazar
Bettiah Town, P.S.-Bettiah, District-West Champaran.
... .. Petitioner/s

Versus

1. The State of Bihar
2.Sub-Divisional Officer, Narkatiaganj, District-West Champaran.
3.Land Reforms Deputy Collector, Narkatiaganj, West Champaran.
4.Jainuddin, Son of Md. Majid, R/o village-Rampur Tola, Ammaghaud, P.S.-
Shikarpur, District-West Champaran.
... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 6490 of 2000

1. Bishwanath Jhunhunwala.
2. Om Prakash Jhunhunwala.
Both sons of Late Ishwari Prasad Jhunhunwala, Residents of Lal Bazar
Bettiah Town, P.S.-Bettiah, District-West Champaran.
... .. Petitioner/s

Versus

1. The State of Bihar
2.Sub-Divisional Officer, Narkatiaganj, District-West Champaran.
3.Land Reforms Deputy Collector, Narkatiaganj, West Champaran.
4.Sk. Mannan, Son of Sk. Sadique, R/o village-Rampur Tola, Ammaghaud,
P.S.-Shikarpur, District-West Champaran.
... .. Respondent/s



with
Civil Writ Jurisdiction Case No. 6492 of 2000

1. Bishwanath Jhunhunwala.
2. Om Prakash Jhunhunwala.
Both sons of Late Ishwari Prasad Jhunhunwala, Residents of Lal Bazar
Bettiah Town, P.S.-Bettiah, District-West Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar
2.Sub-Divisional Officer, Narkatiaganj, District-West Champaran.
3.Land Reforms Deputy Collector, Narkatiaganj, West Champaran.
4.Sk. Soib, Son of Sk. Azim, R/o village-Rampur Tola, Ammaghaud, P.S.-
Shikarpur, District-West Champaran.

... .. Respondent/s

with
Civil Writ Jurisdiction Case No. 6493 of 2000

1. Bishwanath Jhunhunwala.
2. Om Prakash Jhunhunwala.
Both sons of Late Ishwari Prasad Jhunhunwala, Residents of Lal Bazar
Bettiah Town, P.S.-Bettiah, District-West Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar
2.Sub-Divisional Officer, Narkatiaganj, District-West Champaran.
3.Land Reforms Deputy Collector, Narkatiaganj, West Champaran.
4.Sk. Mojjamil, Son of Sk. Fazle Haque, R/o village-Rampur Tola,
Ammaghaud, P.S.-Shikarpur, District-West Champaran.

... .. Respondent/s

with
Civil Writ Jurisdiction Case No. 6503 of 2000

1. Bishwanath Jhunhunwala.
2. Om Prakash Jhunhunwala.
Both sons of Late Ishwari Prasad Jhunhunwala, Residents of Lal Bazar
Bettiah Town, P.S.-Bettiah, District-West Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar
2.Sub-Divisional Officer, Narkatiaganj, District-West Champaran.
3.Land Reforms Deputy Collector, Narkatiaganj, West Champaran.
4.Sk. Gaffar, Son of Sk. Thag, R/o village-Rampur Tola, Ammaghaud, P.S.-
Shikarpur, District-West Champaran.



... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 6511 of 2000

1. Bishwanath Jhunhunwala.
2. Om Prakash Jhunhunwala.

Both sons of Late Ishwari Prasad Jhunhunwala, Residents of Lal Bazar
Bettiah Town, P.S.-Bettiah, District-West Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Sub-Divisional Officer, Narkatiaganj, District-West Champaran.
3. Land Reforms Deputy Collector, Narkatiaganj, West Champaran.
4. Aras, Son of Sk. Roj, R/o village-Rampur Tola, Ammaghaud, P.S.-
Shikarpur, District-West Champaran.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 6512 of 2000

1. Bishwanath Jhunhunwala.
2. Om Prakash Jhunhunwala.

Both sons of Late Ishwari Prasad Jhunhunwala, Residents of Lal Bazar
Bettiah Town, P.S.-Bettiah, District-West Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Sub-Divisional Officer, Narkatiaganj, District-West Champaran.
3. Land Reforms Deputy Collector, Narkatiaganj, West Champaran.
4. Sk. Rashid Ali, Son of Sk. Wajid Ali, R/o village-Rampur Tola,
Ammaghaud, P.S.-Shikarpur, District-West Champaran.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 6534 of 2000

1. Bishwanath Jhunhunwala.
2. Om Prakash Jhunhunwala.

Both sons of Late Ishwari Prasad Jhunhunwala, Residents of Lal Bazar
Bettiah Town, P.S.-Bettiah, District-West Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Sub-Divisional Officer, Narkatiaganj, District-West Champaran.
3. Land Reforms Deputy Collector, Narkatiaganj, West Champaran.



4.Mumtaj Alam, Son of Sri Hafijullah, R/o village-Rampur Tola,
Ammaghaud, P.S.-Shikarpur, District-West Champaran.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 6542 of 2000

1. Bishwanath Jhunhunwala.

2. Om Prakash Jhunhunwala.

Both sons of Late Ishwari Prasad Jhunhunwala, Residents of Lal Bazar
Bettiah Town, P.S.-Bettiah, District-West Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar

2.Sub-Divisional Officer, Narkatiaganj, District-West Champaran.

3.Land Reforms Deputy Collector, Narkatiaganj, West Champaran.

4.Sk. Imam Hassan, Son of Sk. Murtuza Ali, R/o village- Ammaghaud, P.S.-
Shikarpur, District-West Champaran.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 6485 of 2000)

For the Petitioner/s : Mr.Ganpati Trivedi, Sr. Adv

For the Respondent-State : Mr.Aditya Nath Jha, A.C. to S.C.18

(In Civil Writ Jurisdiction Case No. 6486 of 2000)

For the Petitioner/s : Mr.Ganpati Trivedi, Sr. Adv

For the Respondent-State : Mr.Aditya Nath Jha, A.C. to S.C.18

(In Civil Writ Jurisdiction Case No. 6490 of 2000)

For the Petitioner/s : Mr.Ganpati Trivedi, Sr. Adv

For the Respondent-State : Mr.Aditya Nath Jha, A.C. to S.C.18

(In Civil Writ Jurisdiction Case No. 6492 of 2000)

For the Petitioner/s : Mr.Ganpati Trivedi, Sr. Adv

For the Respondent-State : Mr.Aditya Nath Jha, A.C. to S.C.18

(In Civil Writ Jurisdiction Case No. 6493 of 2000)

For the Petitioner/s : Mr.Ganpati Trivedi, Sr. Adv

For the Respondent-State : Mr.Aditya Nath Jha, A.C. to S.C.18

(In Civil Writ Jurisdiction Case No. 6503 of 2000)

For the Petitioner/s : Mr.Ganpati Trivedi, Sr. Adv

For the Respondent-State : Mr.Aditya Nath Jha, A.C. to S.C.18

(In Civil Writ Jurisdiction Case No. 6511 of 2000)

For the Petitioner/s : Mr.Ganpati Trivedi, Sr. Adv

For the Respondent-State : Mr.Aditya Nath Jha, A.C. to S.C.18

(In Civil Writ Jurisdiction Case No. 6512 of 2000)

For the Petitioner/s : Mr.Ganpati Trivedi, Sr. Adv

For the Respondent-State : Mr.Aditya Nath Jha, A.C. to S.C.18



(In Civil Writ Jurisdiction Case No. 6534 of 2000)

For the Petitioner/s : Mr.Ganpati Trivedi, Sr. Adv

For the Respondent-State : Mr.Aditya Nath Jha, A.C. to S.C.18

(In Civil Writ Jurisdiction Case No. 6542 of 2000)

For the Petitioner/s : Mr.Ganpati Trivedi, Sr. Adv

For the Respondent-State : Mr.Aditya Nath Jha, A.C. to S.C.18

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 02-12-2021

In all the above writ applications, the petitioners have sought for issuance of a writ in the nature of certiorari quashing entire orders passed subsequent to order dated 07.01.1999 at Annexure-3 in different Bataidari cases.

2. A brief fact of this case is that father of the petitioners, namely, Late Ishwari Prasad Jhunjhunwala was admitted “Proprietor” as defined in Section 3(2) of the Bihar Tenancy Act, 1885. He was owner with possession in respect of lands in Mauja-Rampur Tola, Ammaghaud, P.S.-Shikarpur, District-West Champaran fully detailed in para-4 of the writ petitions. The private respondent No.4, in different writ petitions referred above, brought separate Bataidari cases under Section 48-D of the Bihar Tenancy Act, claiming to be Sikmidar (Bataidar) in respect of different plots or its portions which are detailed in para-4 of the writ applications. Respondent No.4 of CWJC No.6485 of 2000 had filed Bataidari Case No.89 of 1998-99, respondent No.4 of CWJC No.6486 of 2000 had filed Bataidari Case No.85 of 1998-99,



respondent No.4 of CWJC No.6490 of 2000 had filed Bataidari Case No.90 of 1998-99, respondent No.4 of CWJC No.6492 of 2000 had filed Bataidari Case No.80 of 1998-99, respondent No.4 of CWJC No.6493 of 2000 had filed Bataidari Case No.83 of 1998-99, respondent No.4 of CWJC No.6503 of 2000 had filed Bataidari Case No.87 of 1998-99, respondent No.4 of CWJC No.6511 of 2000 had filed Bataidari Case No.84 of 1998-99, respondent No.4 of CWJC No.6512 of 2000 had filed Bataidari Case No.82 of 1998-99, respondent No.4 of CWJC No.6534 of 2000 had filed Bataidari Case No.86 of 1998-99.

Besides the aforesaid, one Seikh Imam Hassan had filed Bataidari Case No.81 of 1998-99, Seikh Saiful Hasan had filed Bataidari Case No.88 of 1998-99, Seikh Anwar had filed Bataidari Case No.91 of 1998-99, Seikh Arman had filed Bataidari Case No.92 of 1998-99 and Seikh Wasi Ahmad had filed Bataidari Case No.93 of 1998-99. Total 14 Bataidari cases were filed claiming Bataidari right on the property of the petitioners mentioned in para-4 of the writ applications. All the Bataidari cases were heard by the Sub Divisional Magistrate, Narkatiaganj, "Collector" under Section 3(16) of the Bihar Tenancy Act and the Collector passed operative order in Bataidari Case No.88 of 1998-99 Saiful Hasan Vs. Ishwhari



Prasad Jhunjhunwala whereby all the Bataidari cases were dismissed. A copy of the order is at Annexure-2. It would be relevant to reproduce English translation of the said order.

“07.01.1999:-

Attendance has been filed by the petitioner.

Attendance has been filed through lawyer by the opposite party.

Heard learned counsels for both the parties.

Applicant-Saiful Hasan, son of Seikh Noor Hasan of village Rampur Tola Ammaghaud, P.S.-Shikarpur and other 13 persons, in their applications, have claimed that they are Bataidars on the land of Ishwari Prasad Jhunjhunwala. The land owner wants to dispossess them from their respective land. Hence, the applicants claimed for protection from their dispossession. The opposite parties were noticed to file show cause and they have filed show cause. (I) The defence of opposite party is that applicants have wrongly placed claim of Bataidari. The land on which they claim to



be Bataidar are under cultivating possession of the opposite party through their own labour. (II) The defence of opposite party is that the applicants have no evidence of sharing of crop or ploughing the field. On the same property, Md. Ayub and Abdul Qaum also claim to be Bataidars vide Bataidari Case No.98 of 1998-99 and 99 of 1998-99. Further defence of opposite party is that the land on which the applicants claim to be Bataidar were subject matter of Bataidari cases bearing No.1370 of 1975-76, and 1379 of 1975-76 but the court dismissed the wrong claim of the Bataidars at that time. In the year 1997-98 also, a Bataidari case was instituted but was dismissed by the court.

Heard learned counsels for both the parties and perused the documents available on record, which revealed that the land on which applicants claim Bataidari, were the same for which Md. Ayub and



Abdul Qyum had brought Bataidari Case No.98 of 1998-99 and Bataidari Case No. 99 of 1998-99 which are pending before the same court.

In Bataidari Case No.1370 of 1975-76, the then Deputy Collector Land Reforms, Bettiah, by order dated 20.12.1977, had constituted a Batai Board under Chairmanship of Circle Officer, Narkatiaganj and on their report, all the Bataidari cases of year 1975-76 were dismissed.

In Bataidari Case No.09 of 1997-98 Sheikh Bijali Vs. Ishwari Prasad Jhunjhunwala, the Land Reforms Deputy Collector, Narkatiaganj passed order on 11.09.1997 dismissing the claim of Sheikh Bijali on the basis of compromise on which the present applicant and 13 other applicants have claimed their Bataidari right.

On the basis of aforesaid materials and discussions, the claim of the applicants of



Bataidari appears to be wrong and baseless and just to harass the opposite party and grab his land.

In the result, application of all the applicants stands dismissed. The same order would be applicable in the matter of other 13 Bataidari cases.”

3. In the individual records of other Bataidari cases referred above, order was recorded, as follows:

“07.01.1999:-

Attendance has been filed on behalf of the applicant. Learned counsel for opposite party is present, as per order passed in Case No.88 of 1998-99.

(Sd/-)

S.D.O.

Since the operative order was passed in Bataidari Case No.88 of 1998-99, Saiful Hassan Vs. Ishwari Prasad Jhunjhunwala, Saikh Saiful Hassan remained silent, however, applicants of other Bataidari cases filed a petition before Deputy Collector Land Reforms, Narkatiaganj purportedly under Section 48-E of the Bihar Tenancy Act stating therein



that since order was not signed on their respective records. Hence, no order would be deemed to be passed by the S.D.O. in their matters. The Land Reforms Deputy Collector by order dated 23.12.1999, ordered for constitution of a Board in exercise of power under Section 48-E of the Bihar Tenancy Act and further directed that the said order would be applicable in the matter of other Bataidari cases, as referred above. The petitioners herein on being noticed appeared and filed petition dated 31.05.2000 stating therein that in fact all the Bataidari cases were dismissed on merit and that order got finality. Hence, order dated 23.12.1999 is not according to law. The prayer of the petitioners to review was rejected on 14.06.2000 on the ground that the authority had no power to review the order dated 23.12.1999. Hence, these writ applications.

4. Mr. Ganpati Trivedi, learned senior counsel appearing for the petitioners in all the writ applications, contends that the petitioners have stated in para-4 of the petition that their father Ishwari Prasad Jhunjhunwala was owner with possession of the referred land. The respondents No.4 have filed their separate counter affidavits in separate writ applications but all have admitted that statement made in para-4 of the writ petition are correct. Therefore, by necessary



implication, they have admitted possession of the petitioners on the land on which they claimed to be Bataidars. Unless the Bataidars are in possession, they cannot get any protection under Section 48-E of the B.T.Act. Moreover, the impugned order has been passed without hearing the petitioners and in arbitrary manner without application of judicial mind that records of all Bataidari cases would show that the individual case was disposed of in the light of detailed and reasoned order passed in Bataidari Case No.88 of 1998-99 on 07.01.1999 by the competent authority.

5. The private respondents No.4 have filed their counter affidavits but no one appears at the time of hearing of these writ applications.

6. The private respondents does not deny in their counter affidavits that order dated 07.01.1999 was passed in Case No.88 of 1998-99 and other Bataidari cases after hearing them on the same day rather they had raised a technical issue that since order drawn in other Bataidari cases does not bear signature of the S.D.O. it cannot be said that any order has been passed in those cases and only on that ground, the private respondents sought for interference by the Land Reforms Deputy Collector who ventured to proceed under Section 48-E



of the B.T.Act. Provision reads as follows:

“48-E. Prevention of threatened ejectment of under raiyat and restoration to possession of under-raiyat unlawfully ejected:-*(1) if an under-raiyat is threatened with unlawful ejectment from his tenancy or any portion thereof by his landlord or if there is a dispute between them over the possession of land crop or produce thereof either on the ground of non-existence of relationship of landlord and tenant between them or otherwise or if an under-raiyat is or has been ejected from his tenancy or any portion thereof within twelve years before the commencement of proceeding under this section in contravention of the provisions of section 89 the Collector may, of his own motion or on application made in this behalf by the under-raiyat, initiate a proceeding for preventing the landlord from ejecting the under-raiyat or for settlement of the said dispute or for restoration of possession to*



under-raiyat unlawfully ejected from his tenancy or portion thereof.

Added by Act 8 of 1987[**Explanation.**--*If in the midst of the proceeding it is found that the landlord has during or before the initiation of the proceeding transferred the land to any other person who is not a party to the proceeding initiated under sub-section (1), the Collector shall make such transferee a party to the proceeding.*]

(2) The Collector may, after hearing the parties, about which due notice shall have been given to them or ex-parte, in cases of emergency by an order in writing prevent the landlord from ejecting the under-raiyat until disposal of the proceeding or until further orders and if he is of opinion that any crop or produce of the land which is subject-matter of dispute in the proceeding under this section is liable to-speedy and natural decay, he may, if the situation so warrants and in similar manner as aforesaid direct the



proper custody or harvesting or sale, as the case may be, of such crop or produce or the sale proceeds thereof.

(3) When a proceeding is initiated under sub-section (1) the Collector may refer the matter (hereinafter referred to as "dispute") to a Board to be appointed by him, for promoting the settlement of the dispute between the under-raiyat and the landlord.

(4) A Board to be appointed by the Collector in the prescribed manner under sub-section (3) shall consist of a Chairman; who shall be unconnected with the dispute referred to such Board or with any party directly affected by such dispute and two members to represent the parties to the dispute and the person appointed as a member to represent any party shall be appointed on the recommendation of that party:

Provided that if any party does not nominate any person to represent him in the Board or nominates a person who is not available



within such time as the Collector considers reasonable, the Collector may appoint such person as he thinks fit to represent that party.”

Rest provisions of the Section are not relevant.

7. Under B.T. Act, there is no alternative remedy to the petitioners against order passed under Section 48-E. The order has been passed without giving any opportunity of hearing to the petitioners in whose favour earlier order in different Bataidari cases were there. Hence, there is violation of principles of nature justice. The Land Reforms Deputy Collector has acted in defiance of the fundamental principles of judicial procedure as he failed to go through the main order passed in respect of all the Bataidari cases in Bataidari Case No.88 of 1998-99 on 07.01.1999 because records of individual Bataidari cases show that they have been disposed of in the light of order dated 07.01.1999. Moreover, the Land Reforms Deputy Collector was conscious that such common order can be passed in one case because he had also passed similar order while constituting Boards under Section 48-E in different Bataidari cases by passing a single order in Bataidari case No.89 of 1998-99 on 23.12.1999 and making it applicable in



the matter of other Bataidari cases also.

8. Mr. Aditya Nath Jha, learned A.C. to S.C.-18 appearing for the State-respondents, does not dispute the legal issue that the order dated 23.12.1999 passed by Deputy Collector Land Reforms, Narkatiaganj was without hearing the petitioners and without examining the main order passed in Bataidari Case No.88 of 1998-99 whereby all the 14 Bataidari cases stood dismissed on merit.

9. Since the impugned order dated 23.12.1999 has been passed in flagrant violation of the principles of natural justice as well as in arbitrary manner without applying ordinary judicial prudence leading to miscarriage of justice, hence, the same is fit to be quashed. Consequently, all orders passed in different Bataidari cases referred above after 07.01.1999 contrary to the effect of order dated 07.01.1999 stands hereby quashed and all the writ applications stand allowed. However, no costs in the facts and circumstances of the case.

(Birendra Kumar, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
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