

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22014 of 2014

1. Ram Chandra Yadav S/o Late Rasuli Yadav, Resident of village- Chilmil, Police Station- Barahat, District- Banka.
2. Hare Krishna Yadav, S/o Late Rasuli Yadav, Resident of village- Chilmil, Police Station- Barahat, District- Banka.
3. Rabindra Yadav @ Arbind Yadav, S/o Late Rasuli Yadav, Resident of village- Chilmil, Police Station- Barahat, District- Banka.

... .. Petitioners

Versus

1. The State of Bihar
2. The Chairman, Bihar Land Tribunal at Patna.
3. The Sub-divisional Officer, Banka
4. The Anchal Adhikari-cum-Circle Officer, at Barahat within the district of Banka.
- 5.1. Most. Chinta Devi W/o Late Mahanand Choudhary, Resident of Village- Barahat, Police Station- Barahat, District- Banka.
- 5.2. Mahesh Prasad Choudhary S/o Late Mahanand Choudhary, Resident of Village- Barahat, Police Station- Barahat, District- Banka.
- 5.3. Ramesh Prasad Choudhary S/o Late Mahanand Choudhary, Resident of Village- Barahat, Police Station- Barahat, District- Banka.
- 5.4. Prasad Choudhary S/o Late Mahanand Choudhary, Resident of Village- Barahat, Police Station- Barahat, District- Banka.
- 5.5. Bandana Devi Wife of Nawal Kishore Choudhary, Resident of Village- Barahat, Police Station- Barahat, District- Banka.
6. Shri Bishwanath Choudhary, son of Late Dwarika Choudhary, Resident of Village- Barahat, Police Station- Barahat, District- Banka.
7. Shri Devendra Chandra Choudhary, S/o Late Nand Lal Choudhary, Resident of Village- Barahat, Police Station- Barahat, District- Banka.
8. Shri Mani Kant Choudhary, S/o Late Nand Lal Choudhary, Resident of Village- Barahat, Police Station- Barahat, District- Banka.
9. Shri Anand Prasad Choudhary, S/o Late Nand Lal Choudhary, Resident of Village- Barahat, Police Station- Barahat, District- Banka.
10. Shri Shyam Kishor Choudhary, S/o Late Nand Lal Choudhary, Resident of Village- Barahat, Police Station- Barahat, District- Banka.
11. Most. Prabhawati Devi W/o Late Ashish Kumar Choudhary @ Ashish Prasad Choudhary, Resident of Village- Barahat, Police Station- Barahat, District- Banka.
11. Om Prakash Choudhary S/o Late Ashish Kumar Choudhary @ Ashish Prasad Choudhary, Resident of Village- Barahat, Police Station- Barahat, District- Banka.
11. Jai Shankar Choudhary S/o Late Ashish Kumar Choudhary @ Ashish Prasad Choudhary, Resident of Village- Barahat, Police Station- Barahat, District-

Banka.

11. Krishna Kumar Choudhary S/o Late Ashish Kumar Choudhary @ Ashish
4. Prasad Choudhary, Resident of Village- Barahat, Police Station- Barahat, District- Banka.
12. Shri Niranjana Choudhary, son of Late Harihar Choudhary, Resident of Village- Barahat, Police Station- Barahat, District- Banka.
13. Shri Anil Choudhary, son of Late Harihar Choudhary, Resident of Village- Barahat, Police Station- Barahat, District- Banka.
14. Shri Binod Prasad Choudhary, son of Late Ram Prasad Choudhary, Resident of Village- Barahat, Police Station- Barahat, District- Banka.
15. Shri Amod Choudhary, son of Late Ram Prasad Choudhary, Resident of Village- Barahat, Police Station- Barahat, District- Banka.
16. Shri Pramod Choudhary, son of Late Ram Prasad Choudhary, Resident of Village- Barahat, Police Station- Barahat, District- Banka.

... ... Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Arun Prasad Ambastha, Advocate Mr. Ravindra Kumar Choudhary, Advocate
For the Private Respondent/s	:	Mr. Rajib Rajan Jha, Advocate

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 08-08-2023

Heard learned counsel for the petitioners and learned counsel for the private respondent.

2. The present writ petition has been filed for quashing the order dated 26th August, 2014 passed by the Chairman of Bihar Land Tribunal in BLT Case No. 411 of 2013 and further for setting aside the order dated 08.04.2013 passed by Sub-Divisional Officer, Banka allowing the Appeal Case No. 06 of 2010-11.

3. Learned counsel for the petitioners submits that the finding of order is bad in law due to the reason that the Deputy Collector Land Reforms has rightly directed the Circle

Officer to initiate proceeding in which he has not expressly indicated to initiate the proceeding under Section 48D of the Bihar Tenancy Act but it has been wrongly appreciated by the Tribunal. Counsel also submits that at the time of filing the initial appeal, the delay was not condone. He further admits that the private respondents have moved before this Hon'ble Court earlier in CWJC No. 11527 of 2011 in which vide order dated 29.08.2011 the writ petition was dismissed as withdrawn with liberty granted to them to file petition for recall/restoration of the appeal before the appropriate authority itself. Counsel further submits that in the said order the limitation was not condone and on these two grounds the order passed by Bihar Land Tribunal is bad in law.

4. counsel for private respondent submits that order passed by Bihar Land Tribunal is completely in accordance with law and there is no need of interference.

5. Upon hearing the parties, there are two legal questions which are necessary to be decided.

A. Whether the DCLR at the time of hearing a petition under Section 48E of the B.T. Act can direct the Circle Officer who is the competent authority to initiate the proceeding under section

48D of the B.T. Act to proceed?

B. Whether a liberty granted by High Court to avail remedy in appeal amounts to creates a binding effect on the appellate authority to entertain the appeal or not ?

6. To answer these questions, it is necessary to brought on record the content of Section 48D of the Bihar Tenancy Act, 1885 which reads as follows:-

“48D. Acquisition of raiyati right by occupancy under raiyat.-(1) An occupancy under raiyat shall if he makes an application in this behalf in the prescribed manner, be entitled to acquire the right of a raiyat subject to the payment to be made as may be prescribed by the State Government and the right of the landholder in such land shall extinguish:

Provided that the land on which he acquires such right along with other land held by him anywhere in the State does not exceed the area he may hold under the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (Bihar Act XII of 1962).

(2) The remaining area, if any, in which the under raiyat does not acquire the right of a raiyat shall continue to be held by the raiyat under whom the under raiyat held the land.

(3) The land owner in respect of whose land the under raiyat acquires the right of a raiyat under sub-section (1) shall be paid as compensation an amount equivalent to twenty-four times the rent of the holding the manner prescribed in this behalf.

7. From the bare reading sub-section (1) of Section 48D of B.T. Act it is clear that the process of declaration of occupancy raiyat has to be initiated if the person claiming occupancy raiyat shall make an application in this behalf in the prescribed manner (form) as prescribed in the B.T. Act and not otherwise and in this view of the matter, this Court completely agrees on the finding of Bihar Land Tribunal that the direction given by Deputy Collector Land Reforms to the Circle Officer to initiate proceeding under Section 48D of the B.T. Act is basically a favour and in the eye of law, it is completely illegal and without jurisdiction.

8. So far as to answer the second question, it is necessary to place the provision of Order XXIII of Code of

Civil Procedure which talks about the effect of withdrawal of suit or abandonment of part of claim.

9. According to the said provision laid down under Order XXIII of the Code of Civil Procedure withdrawal with liberty to prefer before the appropriate authority automatically means the authority shall entertain the petition and decide it on merit.

10. In this view of the matter, both the issues are decided against the petitioners and, therefore, this writ petition is dismissed and order passed by Bihar Land Tribunal in BLT Case No. 411 of 2013 dated 26th August, 2014 is hereby affirmed.

11. But the liberty granted under Bihar Land Tribunal shall still continue in favour of the petitioners that they have liberty to file an application afresh before the Circle Officer, Barahat in accordance with law (B.T. Act) for declaration of their Bataidari/occupancy raiyat.

(Dr. Anshuman, J.)

ravishankar/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	11.08.2023
Transmission Date	N.A.