

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10663 of 2018

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Naresh Jha @ Gunanath Jha Son of Late Kalanath Jha, resident of Village and
P.O.- Kamrail, Tola- Bhagbait, P.S.- Marauna, District- Supaul.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principle Secretary, Revenue and Land Reforms Department,
Government of Bihar, Patna.
3. The Collector, Supaul District Supaul.
4. The Deputy Collector Land Reforms Nirmali, Supaul.
5. The Circle Officer, Marauna, Supaul.
6. Kishundeo Yadav, Son of Late Bhagwan Dutt Yadav, Resident of Village and
P.O.- Kamrail, Tola- Bhagbait, P.S.- Marauna, District- Supaul.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. P.N.Shahi, Sr. Advocate Mr. Kaushalesh Choudhary, Advocate
For the Respondent/s	:	Ms. Nutan Sahay, A.C. to AAG 12 Mr. Nagendra Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT

Date : 29-03-2023

Heard Mr. P.N. Shahi, learned Senior counsel for the
petitioner, Ms. Nutan Sahay, learned A.C. to A.A.G-12 for the
State and Shri Nagendra Kumar Singh, learned counsel for the
respondent no. 6

The petitioner has filed the instant application for the
following reliefs:

*“i. For issuance of an appropriate writ (s)/
rule(s) / direction (s) in the nature setting of
mandamus for quashing / aside the order dated
10.03.2017, passed by learned member*



administrative of the Bihar Land Tribunal, Patna, in B.L.T. Case No. 807 of 2016, by which the said B.L.T. Case has been dismissed.

ii. For issuance of appropriate writ (s)/ rule(s) / direction (s) in the nature of mandamus dated for quashing of Order 06.05.2015, passed by the Deputy Collector Land Reform, Nirmali (Respondent No. 4) in Bataidari Case No. 01 of 2013-14.

iii. For issuance of appropriate writ (s)/ rule (s)/ direction (s) in the nature of mandamus for quashing of the order dated 03.07.2016, passed by the Collector, Supaul in Batai Appeal Case No. 01 of 2015.

iv. For issuance of appropriate direction to the concerned respondents for removal of unauthorized possession of respondent no. 6, upon Land of the petitioner.

AND/ OR

V. For which entitled grant the of other relief petitioner on the may facts (s) to found and to, circumstances of the case.”

The subject matter of instant application is a total area of 1 bigha 16 kathas of land in Mauza Kamrail. 1 bigha land is situated under Mauza Kamrail, Khata no. 28 (old) and 84 (new), khesra no. 1859 (old) and 2848 (new), Thana no. 129 and Tauzi no.434 while 16 kathas of land is situated under Mauza Kamrail, khata no. 38, khesra no. 1856(old) and 2863 (new).



The case of the petitioner is that being in urgent need of money for the treatment of his wife, he borrowed a sum of Rs. 90,000/- from the respondent no.6 and in lieu thereof orally mortgaged 1 bigha 16 kathas of land with respondent no.6. It was agreed upon that respondent no.6 will cultivate the land and will keep all the food grains grown on the said land with himself as interest on the loan amount.

It is the case of the petitioner that on his retirement, the petitioner decided to settle in his village and planned to do cultivation work on his land. As such, he requested the respondent no.6 to return his 1 bigha 16 kathas of land after receiving the loan amount of Rs. 90,000/-, however, the respondent no.6 refused to handover possession. A *panchayati* was held and it was agreed upon that the respondent no.6 will handover physical possession of the land to the petitioner in lieu of Rs.1,13,000/-. Accordingly, the petitioner paid the said amount on 27.4.2013. On the same day a *panchnama* was prepared on which both the petitioner and respondent no.6 put their signatures.

It is the case of the petitioner that the respondent no.6 having the intention to grab the petitioner's land by hook or crook, fabricated a false story of bataidari and filed a Bataidari



Case no. 1 of 2013-14 against the petitioner on 30.4.2013 under section 48E of the Bihar Tenancy Act (hereinafter referred to as the 'B.T. Act') before the Deputy Collector Land Reforms, Nirmali, Supaul ('D.C.L.R.' in short).

By order dated 6.5.2015 (Annexure-P/9) passed in Bataidari Case no. 1 of 2013-14 the D.C.L.R. allowed the Bataidari case.

Being aggrieved by the order of the D.C.L.R. allowing the Bataidari case, the petitioner preferred Bataidari Appeal Case no. 1 of 2015 before the Collector, Supaul ('Collector' in short). By order dated 3.7.2016 (Annexure-10) the Collector was pleased to dismiss the appeal.

Against the order dated 3.7.2016 of the Collector dismissing the appeal, the petitioner moved the Bihar Land Tribunal, Patna in B.L.T. Case no. 807 of 2016. The learned Tribunal by its order dated 10.3.2007 was pleased to dismiss the case preferred by the petitioner and as such, the instant writ application for the prayer made, as quoted herein above.

A counter affidavit has been filed on behalf of the State-respondents to which the petitioner has filed his reply. No counter affidavit has been filed on behalf of the respondent no.6.

It is submitted by learned Senior counsel appearing for



the petitioner that besides the petitioner having a good case on merits, the orders impugned are not sustainable in law and fit to be set aside on the ground of the provisions of section 48E of the B.T. Act not having been followed in its letter and spirit in so far as the Collector did not refer the matter/dispute to the Board for settlement of the dispute between the parties as has been mandated under section 48 (3) of the B.T. Act. It was submitted that the same had to be done strictly as per provisions of the B.T. Act and not having been done, the orders impugned are in teeth of the judgment of this Court in the case of **Dhanji Singh vs. State of Bihar & Ors. (1979 PLJR 247)**.

In response, it was submitted by learned counsel appearing for the State of Bihar as also learned counsel appearing for the respondent no.6 that Board was constituted under the Chairmanship of the Circle Officer and it made endeavours to bring about an amicable settlement of dispute between the parties. It was submitted that the mandate of law has been followed, there is no illegality in the orders impugned and there being no merit in the writ application, the same be dismissed.

Having heard learned counsel for the parties and having gone through the materials on record, it would be relevant to



mention that section 48E of the B.T.Act mentions about prevention of threatened ejectment of under raiyat and restoration to possession of under raiyat unlawfully ejected. Relevant part of section 48E is being quoted hereinbelow for the ready reference:-

“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 port in thereof within twelve years before the commencement of proceedings 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 under raiyat unlawfully ejected from his tenancy or portion thereof.

[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.

(5) If at any time before the Board has completed its work, the service of the Chairman or any member of the Board ceases to be available, or any member of the Board fails to attend the meeting of the Board on two successive dates without showing cause to the satisfaction of the Chairman, the Collector may appoint any suitable person in the prescribed manner to take his place and the proceeding shall be continued before such Board as so reconstituted.

(6) The Chairman of the Board to which a dispute is referred shall give written notice to the under raiyat and his landlord in the prescribed manner and the Board shall make endeavours to bring about an amicable settlement of the dispute and when an amicable settlement of the dispute is brought about, the Board shall forthwith submit a report containing the terms on which settlement had been brought about, to the Collector, who may dispose of the proceeding



in accordance with the terms of the report: Provided that failure on the part of any member of the Board to sign the report shall not affect the validity of the same.

(7) Where a Board does not succeed in bringing about an amicable settlement of the dispute, it shall make enquiry into the same, receive such evidence as it considers necessary, record its findings on the dispute and transmit the entire record of the proceeding forthwith to the Collector who may dispose of the proceeding in accordance with the terms of the findings: Provided that failure on the part of any member of the Board to sign the finding shall not affect the validity of that finding: Provided further that if any member does not want to sign the findings of the Board he will submit his disagreement on the findings in writing failing which the Chairman will submit his notes on the subject.

(8) In case of disagreement with the report or the findings of the Board, the Collector shall, after recording his reasons for such disagreement and after giving the parties concerned a reasonable opportunity of being heard, make such enquiry, if any, as he thinks necessary and on being satisfied that-

(i) the person threatened with ejectment is an under raiyat the Collector shall declare the threatened ejectment illegal and direct that the landlord shall not interfere with the possession



of the under raiyat in his tenancy or any portion thereof;

(ii) the land under dispute is in the tenancy of the under raiyat the Collector shall declare possession of the under raiyat and order the crop or produce or the sale-proceeds thereof, as the case may be, to be divided between the under raiyat and his landlord in accordance with the provisions of Sections 69 to 71 of the Act;

(iii) the person alleged to have been ejected was an under raiyat of the disputed land on the date of ejection and was ejected within twelve years before the commencement of proceeding under this Section in contravention of Section 89, the Collector shall order that the landlord, or, where any other person, is in possession of the land comprised in the under raiyat tenancy or portion thereof under any claim derived from the landlord such person shall restore the under raiyat to possession of the tenancy or portion from which he was so ejected.

.....

(9) The order of the Collector under sub-sections (6), (7) or (8) shall be in writing and shall state the grounds on which it is made and specify the period which shall not exceed six months from the date of the order within which his order shall be carried out.

(10) If the Board fails to record its finding or



transmit the records as required under sub-section (7) within a period of six months [which shall be reckoned from the date of its appointment under sub-section (3)] the Collector may withdraw the proceeding from the Board and decide the dispute himself according to the provisions of this Section.

.....”

(emphasis supplied)

From perusal of the relevant portion of section 48E of the B.T. Act as quoted hereinabove, it would transpire that the same provides for a detailed procedure for appointment of Board by the Collector in the prescribed manner under sub-section (3). It further prescribes as to how the Board will make an attempt to bring about an amicable settlement between the parties, as also the steps it will take in case it does not succeed in bringing about the settlement of the disputes.

Here itself it may be pointed out that the question as to whether the appointment of the Board by the Collector was mandatory or not came up for consideration before a special bench of this Court in **Dhanji Singh vs. State of Bihar and Ors. (1979 PLJR 247)** wherein this Court held as follows:-

“(3) When a proceeding is initiated under Sub-section (1) the Collector may refer the matter (here- inafter 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.

.....

7. In view of the aforesaid provisions, there should not be any difficulty in holding that although the Collector has been vested with general control and superintendence over the proceedings in connection with the dispute between the land- lord and the under-raiyat, still, at the first instance, after having initiated the proceeding under Sub-section (1) of Section 48E, the Collector has to refer the dispute to the Board. The Board has first to make end-eavour for an amicable settlement, failing which it has to make enquiry and has to receive such evidence as it considers necessary, and, thereafter to record a finding in respect of the dispute. The Collector can decide that dispute only under two contingencies, if he differs with the findings and report of the Board, or, If the Board fails to record its finding within a period of six months from the date of its appointment. But, there is no question of Collector deciding the dispute before the Board constituted by him has an occasion to apply its mind. The purpose appears to be obvious. Sub-section (3) Itself says in so many words that after initiating the proceeding under Sub-section (1) the Collector may refer the matter to a Board for promoting



settlement of the dispute between the parties. The Board which consists of one representative of both the parties, shall be in much better position to make endeavour about the amicable settlement of the dispute. In the case of (1) Ram Narain Singh and others V. State of Bihar and others (1973 P. L. J. R. 81-AIR 1973 Patna 275), a Bench of this Court has considered the scope of this Section, 48E, and it was pointed out that the function of the Board was similar to arbitrators, the only difference being that in case of a proceeding under Section 48E there is a provision of compulsory reference to arbitration. In my view, although Sub-section (3) says that when a proceeding is initiated under Sub-section (1) the Collector may refer the matter to a Board to be appointed by him, it has to be interpreted that after initiating the proceeding he has to refer the matter to the Board. It was pointed out in the aforesaid Ram Narain Singh's case in connection with Sub-section (1) of Section 48 E that, no doubt, the legislature has used the word 'may' which is generally understood as enabling and not mandatory, but 'when the power conferred by the statute is coupled with the duty of the person to whom it is given to exercise it, then even - though the word 'may' is used, it has to be construed as imperative'. In the case of (2) Frederic Cuildar Julius V. The Right Rev. The Lord Bishops of Oxford



(1880 5 AC 214), the Lord Chancellor's (Earl Cairns) observed-

"that where a power is deposited with a public officer for the purpose of being used for the benefit of persons who are specifically pointed out, and with regard to whom a definition is supplied by the Legislature of the conditions upon which they are entitled to call for its exercise, that power ought to be exercised, and the court will require it to be exercised".

It was further observed by the Lord Chancellor :

"There may be something in the nature of the thing empowered to be done, something in the object for which it is to be done. Something in the conditions under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and to make it the duty of the person in whom the power is reposed, to exercise that power when called upon to do so".

In my view, although Sub-section (3) of Section 48 E uses the expression 'may' it has to be held that once a proceeding is initiated under Sub-section (1) of the Section, the dispute has to be referred to the Board to be constituted by the Collector. A bench of this Court in the case of (3) Lakshmi Prasad Bhagat and another V. The State of Bihar and others (1979 P. L. J. R. 82-1978 Bihar Bar Council Journal 750) has held



that the Collector after initiating the proceeding has no jurisdiction to decide the dispute without reference to the Board. I am in respectful agreement with the said view. If the impugned order amounts to deciding the dispute itself, then it has to be held that the Subdivisional Officer had no such power before it had been referred to the Board.' (emphasis supplied)

Thus in the case of **Dhanji Singh** (supra) it was clearly held by this Court that although in section 48E(3) of the B.T. Act the expression 'may' has been used, however, once a proceeding is initiated under section 48(1), the dispute has to be referred to the Board to be constituted by the Collector.

So far as the facts of the instant case is concerned, it transpires from the record that pursuant to filing of Bataidari Case no. 1 of 2013-14 under the B.T. Act, on 30.4.2013 an order was passed to issue notice to the parties and to call for an inquiry report from the Circle Officer, Marauna. On perusal of the entire order sheet and the materials available on records, the Court does not find that any Board has been constituted by the Collector as mandated by section 48E(3) of the B.T. Act nor has the matter been referred to the Board for promoting settlement of the dispute between the parties.

What has been done is that by order dated 30.4.2013, only



an inquiry report was called for from the Circle Officer. Even the said Circle Officer has not submitted any report instead has sent a letter dated 31.10.2015 addressed to the D.C.L.R. stating therein that he got the application of the applicant (respondent no.6 herein) examined by the revenue *karamchari* and incharge Circle Inspector and is sending the same enclosed with his said letter.

Thus there remains no doubt that not only no Board was constituted by the Collector as mandated under section 48E(3) of the Act, in fact no inquiry report (as asked for by the D.C.L.R.) was submitted by the Circle Officer also.

The Court finds that this illegality committed by the D.C.L.R. was not appreciated either by the Collector in the appeal nor by the learned tribunal while considering the B.L.T. case. As stated above, the action of the D.C.L.R. not constituting the Board is also in teeth of the judgment of the special Bench of this Court in the case of **Dhanji Singh** (supra) and as such the orders impugned are illegal, not sustainable and fit to be set aside.

In view of the facts and circumstances stated hereinabove, the orders impugned dated 6.5.2015 (Annexure-P/9) passed in Bataidari Case no.1 of 2013-14 by the Deputy Collector Land



Reforms, Nirmali, the order dated 3.7.2016 (Annexure-P/10) passed in Bataidari Appeal Case no.1 of 2015 by the Collector, Supaul and the order dated 10.3.2017 (Annexure-P/11) passed in BLT Case no. 807 of 2016 by the learned Member, Administrator, Bihar Land Tribunal are all set aside.

The respondent authorities specially the DCLR, Nirmali, Supaul (respondent no.4) is directed to proceed afresh in accordance with the provisions of section 48E of the BT Act in view of the observations made hereinabove.

The application stands allowed with above observations and directions.

Let the original records of Bataidari Case no. 1 of 2013-14 be returned to learned counsel appearing for the State in the case.

(Partha Sarthy, J)

Bibhash

AFR/NAFR	AFR
CAV DATE	
Uploading Date	29.03.2023
Transmission Date	

