

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17439 of 2018

1. Md. Habib and Anr
2. Abdul Jalil, Both Sons of Late Ismail Mian, Resident of Village- Nandana, P.S.- Jadia, Distt- Supaul.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Collector of the District, Supaul.
3. Deputy Collector Land Reforms, Supaul.
4. Anchal Adhikari, Triveniganj, Supaul.
5. Nawal Kishore Choudhary, Wife of Late Ziya Lal Choudhary,
6. Arun Kumar Jaiswal, Son of Late Baijnath Singh,
7. Shiv Kumar Jaiswal, Son of Baijnath Singh, All residents of Village-Chainpur, P.S.- Kumar Khand, Distt- Saharsa.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Kumar Malendu, Adv.
For the Respondent/s : Mr. Raj Kishore Roy- GP-18

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

2 03-03-2025 Heard Learned Counsel for the petitioners and
Learned Counsel for the State.

2. The present writ petition has been filed for the following reliefs:-

i. For directing the state respondents especially respondent no.4 to dispose of the petitioner's application (Anx-6) which is pending before him since long under section 48 D of the Bihar Tenancy Act (in short B.T. Act), within framed time.

ii. Subsequently directing the



respondents to open of Zamabandi in the name of the petitioners, to grant rent receipt in their favour according to the provision of the B.T. Act after holding the petitioners as occupancy raiyat as provided under section 48D of the Bihar Tenancy Act.

iii. Directing the respondents to grant/hold the status of raiyat to the petitioners as provided u/s 48 D of the B.T. Act.

iv. Any other relief and reliefs which the petitioners may be found entitled to

3. Learned Counsel for the State raised preliminary objection and submits that the petitioners' case is not maintainable under Section 48D of the Bihar Tenancy Act, 1885 [Act VIII of 1885]. Counsel further submits that the petitioners' father, namely, Late Md. Ismail Miyan, had already contested and raised objection against the landlord. The petitioners' father had moved before this Court in CWJC No. 102 of 1979, challenging the order of the District Collector, Supaul, as well as the consequential order passed by the S.D.O., Supaul. The landlord also approached before this Court in CWJC No. 1590 of 1979. Both cases were heard together, and *vide* Judgment dated 07.10.1985, CWJC No. 102 of 1979 was allowed, whereas the CWJC No. 1590 of 1979 was dismissed. Thereafter, the



landlord challenged the said order before the Hon'ble Supreme Court of India in Civil Appeal Nos. 244-45 of 1993, but it was again dismissed vide order dated 05.04.2000. Subsequently, the brothers of the petitioners filed an application under Section 48D of the Bihar Tenancy Act, as a result of which, Case No. 6 of 2014 and other analogues cases have been registered by the respondent Anchal Adhikari, Triveniganj. Counsel further submits that the Late Md. Ismail Miyan has five sons. Three of the sons later moved in CWJC No. 22097 of 2014 before this Hon'ble Court and did not make the petitioners party to the said case. In that case, the writ petition was allowed supporting the petitioners' claim that their *bataidari* rights under Section 48E of the Bihar Tenancy Act, 1885, was allowed by the respondent, DCLR, Supaul.

4. Counsel for the petitioners submits that the three brothers of the petitioners were matured and they had intentionally not included the petitioners as a parties to the case, even though that petitioners are also sons of Late Md. Ismail Miyan. Currently, all the sons of the Late Md. Ismail Miyan are involved in agricultural work on the said land, as per the decision passed by this Hon'ble Court, which was affirmed by the Hon'ble Supreme Court of India. However, in the record,



only the names of three sons have been added, while the remaining two sons have filed an application before the Circle Officer requesting that their names be added to the record, as they are also legal heirs of Late Md. Ismail Miyan. Counsel further submits that the rights that accrued to the three sons in the said land should automatically accrue to them as well. However, the Circle Officer is sitting tight over the matter, the petitioners file application before Circle Officer but due to inaction, they moved before this Hon'ble Court.

5. In light of the submissions made by the parties, it transpires to this Court that whatever be the rights vested in Late Md. Ismail Miyan have now been vested in all his heirs and legal representatives, i.e., his five sons, including the present petitioners and three brothers who previously moved before this Court. Therefore, this Court is of the view that the grievances of the petitioners are not against the landlord but rather against their brothers, as they were not included in the earlier litigation.

6. It is directed that the petitioners shall approach before the concerned authority, i.e., Circle Officer by filing a representation, detailing their grievances. They shall clearly state that their grievances is not with the landlords but against their three brothers, as the civil right accrued to them in the



same manner as those have accrued to their three brothers. The Circle Officer (respondent No. 4) shall take a decision in this matter within 90 days from the date of filing their representation, after hearing all five sons of Late Md. Ismail Miyan, and shall pass a reasoned and speaking order.

7. With these directions, the writ petition stands disposed off.

(Dr. Anshuman, J.)

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