

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.895 of 2025

Kasturi Sharma Son of Late Fulchand Sharma @ Fulchand Das, Resident of Village- Balia, Police Station- Rupouli, District- Purnea.

... .. Petitioner/s

Versus

1. The State of Bihar through Principle Secretary, Revenue and Land Reforms Department, Government of Bihar, Old Secretariat, Patna-800015.
2. The District Collector, Purnea.
3. The Sub Divisional Officer, At Dhamdaha within the District of Purnea.
4. The Circle Officer, Rupouli within the District of Purnea.
5. Praduman Sharma Son of Late Harihar Sharma @ Hari Sharma and Grandson of Late Laljee Sharma, Resident of Village- Balia, Police Station- Rupouli, District- Purnea- 854204.
6. Shri Sita Ram Sharma Late Laljee Sharma, Resident of Village- Balia, Police Station- Rupouli, District- Purnea- 854204.
7. Shri Parmanand Sharma Son of Late Ram Prasad Sharma, Resident of Village- Balia, Police Station- Rupouli, District- Purnea- 854204.
8. Shri Anil Sharma Son of Late Doman Prasad Sharma, Resident of Village- Balia, Police Station- Rupouli, District- Purnea- 854204.
9. Raghunandan Sharma @ Raghuni Sharma Son of Late Ohari Das Tatma @ Ohari Sharma @ Bahari Sharma, Resident of Village- Lalganj, Police Station- Rupouli, District- Purnea- 854303.
10. Chulhai Sharma Son of Late Ohari Das Tatma @ Ohari Sharma, Resident of Village- Lalganj, Police Station- Rupouli, District- Purnea- 854303.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Binay Kumar Sinha
For the Respondent/s : Mr. AC to AAG-12

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

- 2 03-03-2025 1. Heard learned counsel for the petitioner and learned AC to AAG-12 for the State.
2. The learned counsel appearing on behalf of the petitioner submits that land pertaining to Kaimi Khata No. 165, Plot No. 32, Area 18 decimal and plot no. 39, area 40 decimal, at village Balia, Thana No. 293/1, district-Purnea was recorded in the name of Patri Devi as raiyat (hereinafter referred as the land



in dispute). It is next submitted that Fulchand Sharma @ Fulchand Das was father of the petitioner and was an under raiyat under Patri Devi and in cultivating possession of the land in dispute, hence his name was recorded as under raiyat (Sikmidar) under Sikmi Khata Nos. 223 and 225. Patri Devi was married to Etwari Sharma, they had no male issue, hence Etwari Sharma adopted Ohari Sharma @ Bahari Sharma. It is submitted that Raghunandan Sharma (respondent no. 9) and Chulhai Sharma (respondent no. 10) are sons of Ohari Sharma. It is submitted that after the death of Etwari Sharma, a dispute arose in between Patri Devi and Ohari Sharma which led to filing of a title suit. It is submitted that at the stage of first appeal, Ohari Sharma died and in his place his son Raghunandan Sharma was substituted, further at the stage of second appeal, Patri Devi died and she was substituted by her daughter, Kari Devi. In the second appeal before this Court, it was decided that Raghunandan Sharma would have $\frac{3}{4}$ share in the land in dispute and remaining $\frac{1}{4}$ share would belong to Kari Devi. It is next submitted that Praduman Sharma (respondent no. 5), Sitaram Sharma (respondent no. 6), Parmanand Sharma (respondent no. 7) and Anil Sharma (respondent no. 8) are descendants of Kari Devi.

3. It is submitted that father of the petitioner remained in cultivating possession of the land till his death on 10.08.1985,



thereafter petitioner continued in cultivating possession of the land in dispute as an under raiyat and used to divide the crops with respondent nos. 5 to 10, but no receipt was issued. It is submitted that since father of the petitioner remained in cultivating possession of the land in dispute for a period of different 12 years, hence acquired the status of occupancy raiyat, similarly the petitioner also continued with cultivating possession of the land in dispute continuously for 12 years, hence acquired the status of occupancy interest by efflux of time. It is submitted that petitioner accordingly filed an application with affidavit dated 16.08.2004 (Annexure-1) under Section 48D of the Bihar Tenancy Act for getting his raiyati right declared before the Circle Officer, Rupouli, based on which Case No. 52 of 2004-2005 was registered. The respondent no. 5 to 10, who were opposite parties, in Case No. 52 of 2004-2005 were noticed and a report from the Halka Karmachari and the Circle Inspector was called by the Circle Officer. In response to the notice, Harihar Sharma, father of respondent no. 5 and Raghunandan Sharma (respondent no. 9) appeared, respondent no. 9 submitted his reply before the Circle Officer on 08.10.2004 (Annexure-2) acknowledging the continuous cultivating possession of the petitioner over the land in dispute, in his reply, the respondent no. 9 also admitted that Patri Devi held land more than 5 acres and



had also transferred 50 bigha of land to his father i.e. Ohari Sharma, further, this Court in second appeal had held that if Sikmidar is not present i.e. if he has died in that event his legal heirs will not have Sikmi rights, but also admitted that petitioner cultivates the land but then since 1969 i.e. after the death of Patri Devi, the crop has not been given by the Bataidar, further he had no concern with the land in dispute. The father of the respondent no. 5 did not file any reply and thus did not controvert the claim of the petitioner. The Halka Karmachari through the Circle Inspector submitted his report recording that Patri Devi is Jamabandi raiyat and opposite parties have no relation with Jamabandi raiyat and the land in dispute is in cultivating possession of the petitioner, son of Sikmidar in whose name Sikmi Khata Nos. 223 and 225 have been recorded, the report was submitted on 12.07.2005 (Annexure-3).

4. The learned counsel appearing on behalf of the State, at this stage, submits that it absolutely does not stand to reason that on what basis the Halka Karmachari and the Circle Inspector submitted their report recording that the opposite parties in Case No. 52 of 2004-2005 does not have any relation with Jamabandi raiyat Patri Devi.

5. The learned counsel for the petitioner next submits that the Circle Officer, accordingly, allowed Case No. 52 of



2004-2005 by an order dated 14.02.2006 (Annexure-4) conferring raiyati right on the petitioner.

6. It is submitted that Harihar Sharma, father of respondent no. 5, along with others filed Revenue Appeal No. 05 of 2006-2007 before the SDO, Dhamdaha (respondent no. 3) against the order dated 14.02.2006 in Case No. 52 of 2004-2005 passed by the Circle Officer in which the petitioner was impleaded as opposite party, but respondent no. 9 and 10 were not impleaded as opposite parties in the appeal, though they were necessary party, as opposite parties in Case No. 52 of 2004-2005.

7. The learned counsel for the petitioner submits that in the appeal, an issue was raised that the case filed by the petitioner under Section 48D of the Bihar Tenancy Act was not maintainable as the provision of Section 48C sub-clause 1 (a) (b) was not considered which incorporated that- no bataidari proceeding can be started against the raiyat who possesses less than 5 acres of irrigated land or 10 acres of non irrigated land. There is no finding that raiyat Ohari Sharma possessed more than 5 acres of irrigated land or more than 10 acres of non irrigated land.

8. The SDO, Dhamdaha allowed the appeal by an order dated 10.02.2007 (Annexure-5) and set aside the order passed by the Circle Officer in Case No. 52 of 2004-2005 on the



ground that issue of irrigated and non irrigated land was not taken into consideration by the Circle Officer, the Circle Officer had reserved the order on 15.07.2005 and the order was passed on 14.02.2006 without explanation for the delay and the Circle Officer conferred Kaimi rights to the petitioner on the ground that no revenue with regard to the land in dispute is being received. The petitioner challenged the order in appeal passed by the SDO in CWJC No. 6153 of 2008, but this Court transmitted the record of CWJC No. 6153 of 2008 to the BLT under Section 15 of the BLT Act, based on which BLT Case No. 416 of 2013 was instituted.

9. It is submitted that the Member (Administrative) BLT allowed the BLT Case No. 416 of 2013 by an order dated 01.03.2016 (Annexure-6) and set aside the order passed in appeal by the SDO, Dhamdaha and restored the order of the Circle Officer. The respondent nos. 6 to 8 herein, being aggrieved, by the order dated 01.03.2016 in BLT Case No. 416 of 2013, filed CWJC No. 201 of 2018 before this Court without impleading respondent nos. 5, 9 and 10 as respondents. The CWJC No. 201 of 2018 was filed on the ground that order dated 01.03.2016 was passed in BLT Case No. 416 of 2013 without hearing them, accordingly, this Court set aside the order dated 01.03.2016 passed in BLT Case No. 416 of 2013 by an order dated



24.08.2022 (Annexure-7) and remanded the matter back to the BLT to pass orders afresh after hearing the parties. It is submitted that the learned Chairman, BLT heard BLT Case No. 416 of 2013 on remand afresh and after hearing the parties dismissed the BLT Case No. 416 of 2013 by an order dated 29.10.2024 (Annexure-8) and restored the order of the SDO, Dhamdaha, the said order dated 29.10.2024 in BLT Case No. 416 of 2013 is impugned in the instant writ application. The learned Chairman, BLT by his order dated 29.10.2024 in BLT Case No. 416 of 2013 affirmed the order in revenue appeal dated 10.02.2007 passed by the SDO on the ground that, in the order of the Circle Officer there is no finding that petitioner had acquired the right of occupancy raiyat under Section 48C of the Act, further this Court in the case of Baleshwar Jha Vs. Kamlakant Jha (2016) 1 PLJR 115 held that according to provision, an under raiyat gets a right of occupancy in the land which he has held for the prescribed period, subject to the restriction laid down under clauses a and b of Sub-Section I and II of the proviso to Section 48C of the BT Act, if the land held by the landlord under his cultivation does not exceed 5 acres of irrigated land or 10 acres of other land or in certain other circumstances as mentioned in the proviso to Section 48C of the BT Act and under raiyat does not get a right of occupancy irrespective of the period for which he holds the land in that



capacity, further in the instant case there is no any finding of the Circle Officer that petitioner had acquired right of occupancy under raiyat under Section 48C of the BT Act, only occupancy under raiyat can file the petition under Section 48D of the BT Act for conferment of Kaimi rights with respect to the land in question, the Circle Officer passed the order conferring the Kaimi right to the petitioner only on the ground that no revenue is being received with respect to the land in question, in the event Kaimi right is granted to the petitioner, State will receive revenue and rent receipt will be granted to the petitioner. The Tribunal, thus, held that the Circle Officer while passing the order declaring Kaimi right to the petitioner under Section 48D of the BT Act in Case No. 52 of 2004-2005 completely failed to appreciate that there is a procedure prescribed under Section 48D of the BT Act as well as the rules which has to be followed by the revenue authority before conferring the Kaimi rights under Section 48D of the BT Act as Section 48D (1) of the BT Act incorporates, an occupancy under raiyat shall if he makes an application in this behalf in the prescribed manner, be entitled to acquired the right of raiyat subject to the payment to be made as may be prescribed by the State Government and the right of the land holder in such land shall extinguish. The Tribunal further held that there was no compliance of mandatory provision of



Section 48D (1) of the BT Act and without notice to the land holder and giving finding whether petitioner had acquired right of occupancy under raiyat under Section 48C of the BT Act, the order of the Circle Officer dated 14.02.2006 in Case No. 52 of 2004-2005 granting Kaimi status to the petitioner was held to be bad.

10. The Court is in complete agreement with the findings given by the learned Chairman, BLT, as such, **the writ application is dismissed.**

(Satyavrat Verma, J)

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