

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2511 of 2015

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Madhukar Yadav @ Triveni Yadav, son of Late Punai Yadav, resident of
Village-Purushottampur, P.S. & Anchal-Asarganj, Dist.-Munger

... .. Petitioner/s

Versus

1. The State of Bihar through the Collector, Munger.
 2. The Land Reforms Deputy Commissioner, Tarapur, Munger.
 3. The Circle Officer, Tarapur, Munger.
 4. Baida Singh, son of Late Mathura Singh
 5. Baua Singh, son of Late Mahesh Singh
 6. Manoranjan Singh, son of Late Nandan Singh
 7. Niranjan Singh, son of Late Nandan Singh
 8. Bindeshwari Yadav, son of Late Paran Yadav,
- All residents of Village and P.O.-Ganganiya, P.S. and Anchal-Sultanganj,
Dist.-Bhagalpur

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Abdul Mannan Khan, Adv. Mr. Binay Kumar, Adv. Mr. Shive Kumar, Adv.
For the State	:	Dr. Mankeshwar Tiwari, AC to AAG-3 Ms. Divya Verma, AC to AAG-3
For the Respondent/s	:	Mr. Sudhir Kumar Mishra, Adv. Mr. Subhash Kumar Jha, Adv.
For the Private Respondent/s:	:	Mr. Sudhir Kumar Vishnu, Adv.

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CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

7 07-04-2026 Heard learned counsel for the petitioner, learned
counsel for the State and learned counsel for respondent
nos. 4 to 8.

2. The petitioner is aggrieved by the order dated
01.12.2014 passed in Tenancy Case No. 01 of 2013-14 by



the respondent-D.C.L.R., Tarapur, Munger, as contained in Annexure-1 to the writ petition, whereby, the petition filed on behalf of the petitioner under Section 48(E) of the Bihar Tenancy Act, 1885 (in short B.T. Act) for his declaration as *Raiyat* for the land in question, has been rejected without referring the matter to the Board under Section 48(E)(3) of the B.T. Act.

3. Learned counsel appearing on behalf of the petitioner submits that the petitioner filed a petition under Section 48(E) of the B.T. Act for his declaration as under-*Raiyat (Bataidar)* over the land in question and also for preventing the land holders from unlawful ejection from his tenancy over the land in question on the basis of which Tenancy Case No. 01 of 2013-14 was instituted. Upon considering the aforesaid application, the learned D.C.L.R., Tarapur, Munger, initiated a proceeding for preventing the landlord from ejecting the petitioner under-*Raiyat* of the land in question. Accordingly, the notices were issued to the land holders (*Raiyat*). It is further pleaded that there was a *bonafide Batai* dispute between the parties. It is further stated that the petitioner has been cultivating the land in



question for more than 55 years since the lifetime of the petitioner's father and was giving half share of the crops to the land holders-respondent nos. 4 to 7. In the year 2013-14, he had sown and grown the aforesaid land, but the D.C.L.R., Tarapur, Munger had illegally seized the entire paddy crops through the C.O., Asarganj, which were being harvested by the petitioner. The crops are lying in the 'Khaliyan'(where harvested crops are stored), which is in the custody of C.O., Asarganj. It is further contended that respondent nos. 4 to 7 are trying to disturb the peaceful possession of the petitioner over the land in question and threatened with unlawful ejectment from the said land.

4. Learned counsel for the petitioner submitted that the learned D.C.L.R. without constituting the Board as provided under Sub-section (3) of Section 48(E) of the B.T. Act rejected the application filed under Section 48(E) of the Act and further held that the claim of the petitioner as 'Bataidar' has not been proved by the petitioner.

5. Reliance has been placed by the learned counsel for the petitioner in the case of ***Dhanji Singh Vs. The State of Bihar & Ors.*** reported in ***1979 PLJR 247***, wherein, a



Special Bench of this Court has held that a proceeding under Section 48E can be initiated only after the Collector is satisfied that one of the three requisite conditions mentioned in the section exists. On what material and in what manner the Collector shall be satisfied about existence of one or the other requisite conditions for initiation of the proceeding, no hard and fast rule can be laid down. It will depend on the facts and circumstances of each case and also he must refer the matter to the Board and the Board shall be constituted under the provision of the Act. Therefore, the Collector under the B.T. Act ought to have referred the matter to the duly constituted *Batai* Board in terms of Section 48 (E) (3) and (4) of the B.T. Act and only after recommendation of the *Batai* Board, final order could have been passed by the respondent-D.C.L.R. either accepting the claim raised on behalf of the petitioner or rejecting his claim, but at that stage, the respondent-D.C.L.R. could not have converted the aforesaid proceeding in a mini trial and could not have decided the *Batai* claim of the petitioner on merits at the stage of Section 48(E)(1) of the B.T. Act. According to him, the impugned order passed by the



respondent-D.C.L.R. is in the teeth of the Special Bench Case on the basis of judicial pronouncement made by the Special Bench of this Court.

6. On the other hand, learned counsel for respondent nos. 4 to 8 submits that writ application is not maintainable. According to them after rejection of the order passed under Section 48(E), the petitioner has to file appeal before the competent authority and there is no relationship between the land holder (raiyat) and *Bataidar* (under-raiyat) and denied the claim of the petitioner as *Bataidar*.

7. Having heard the learned counsel for the parties and on analysis of the averments in the writ application as well as the impugned order passed by the D.C.L.R., Tarapur, Munger as contained in Annexure-1, this Court is of the opinion that the impugned order dated 01.12.2014 passed by the respondent-D.C.L.R., Tarapur, Munger cannot be sustained in the eye of law. The Special Bench of this Court in the case of *Dhanji Singh (supra)* has laid down the principle in paragraph nos. 7, 8 and 11 that once a petition under Section 48 (E) of the B.T. Act is filed by any claimant, then the Collector under the B.T. Act is required



to find out only *prima facie* case of *bonafide Batai* dispute between the parties. If the Collector under the B.T. Act finds that there is *prima facie* case of *bonafide Batai* dispute between the parties then the matter is required to be referred to duly constituted Board and only after recommendation of *Batai* Board after following the procedure prescribed under, the final order can be passed but at that stage the landlord cannot be permitted to convert the initiation of proceeding in a mini trial or a parallel inquiry and without constitution of *Batai* Board, the order passed by the D.C.L.R., Tarapur, Munger is not tenable in the eye of law.

8. Having regard to the discussions made hereinabove, the impugned order dated 01.12.2014 passed in Tenancy Case No. 01 of 2013-14 by the respondent-D.C.L.R., Tarapur, Munger as contained in Annexure-1 to the writ petition is, hereby, set aside and the matter is remitted to the respondent-D.C.L.R., Tarapur, Munger with a direction to refer the matter to a duly constituted *Batai* Board, whereafter, the matter shall be decided in accordance with law after following the procedure prescribed under B.T. Act and rules made thereunder after due notice to the



parties.

9. In order to expedite the matter, the petitioner is directed to appear before the respondent-D.C.L.R., Tarapur, Munger, within a period of six weeks from today along with a certified copy of this order, whereafter, the respondent-D.C.L.R., Tarapur, Munger shall call upon the parties to nominate their *Panches* and thereafter, the matter shall be referred to duly constituted *Batai* Board for deciding in accordance with law.

10. In the result, the writ application is allowed to the extent indicated above.

(Khatim Reza, J)

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