

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20722 of 2025

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Dukhi Dewan Son of Late Rahim Waqax Dewan, resident of Village-
Kaurihar, P.S. - Raxaul, District- East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Collector, East Champaran, Motihari.
3. The Sub-divisional Magistrate, East Champaran, Motihari.
4. The Circle Officer, Raxaul Block, East Champaran.
5. Madarsa Ahmadia Hanfia, At and P.O - Dariapur, P.S. - Sangrampur,
District- East Champaran through its Secretary-Aiyamul Haque Khan, Son
of Mazharul Haque Khan, At and P.O. - Dariapur, P.S.- Sangrampur,
District- East Champaran.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Binay Kant Mani Tripathi, Advocate.
For the Respondent/s : Mr.Government Pleader (18)

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

2 09-01-2026 Heard learned counsel appearing on behalf of the

petitioner and learned counsel for the State.

2. The petitioner in paragraph no. 1 of the present writ

petition has sought, *inter alia*, following relief(s), which is

reproduced hereinafter:-

*“That this is an application for issuance of writ
in nature of mandamus commanding the respondent No.4
for initiating a proceeding under section 48(D) of Bihar
Tenancy Act 1986 on an application filed by the petitioner
on 23.02.2022 and also for issuing direction to dispose of
proceeding by passing speaking order in accordance with
law on amongst other the following :-*

Grounds

*(i) For that the respondent No.4 is duty bound
to act in accordance with law under Bihar Tenancy Act
1986 on application dated 23.02.2022 (contained in
Annexure-I) filed by the petitioner.*



(ii) For that Khata No.271, Plot No.259, Area-14 katha 9 dhurs and Plot No.260, Area-3 katha 2 dhurs of land situated at Village Kaurihar, P.S.- Raxaul, District-East Champaran was recorded in the name of respondent No.5 and the respondent No.5 holds Raiyati interest over the aforesaid land R.S. Khata No.271 and the aforesaid land was let-out to Langar Dewan (fore Grandfather of the petitioner) for Sikmi cultivation.

(iii) For that Langar Dewan had three sons namely Bagar Dewan, Karamtoli Dewan and Rasul Dewan. Bagar Dewan had two sons namely Abdul Rahim Dewan and Lal Gani Dewan and one daughter namely Bibi Hafiyah. Abdul Rahim had one son namely Manir Dewan and widow, Most. Tetari Devi and Lal Gani Dewan died leaving behind him one son Nathu Dewan, Karamtoli Dewan died leaving behind him one son Rahim Baksa Dewan. Rahim Baksa Dewan died leaving behind him, two sons namely Gudar Dewan and Dukhi Dewan and two daughters namely Bibi Fulbani and Bibi Rehan Bari. Rasul Dewan died leaving behind him one daughter Bibi Hadishan.

(iv) For that the then Secretary of Madarsa (Respondent No.5) filed Title Suit No.254 of 1969 in the court of Munsif, East Champaran in which Abdul Rahim Dewan, the uncle of the petitioner, Nathu Dewan, cousin brother of the petitioner and others were defendant second set in the aforesaid suit.

(v) For that the aforesaid suit was filed for declaration, that the plaintiff is Raiyat and the defendants are under Raiyat with respect to the land of Khata No.271 and 272 of Village- Kaurihar, P.S.- Raxaul, District- East Champaran and the aforesaid suit was decreed on 15.07.1977 holding that plaintiff is a Raiyat and defendant 2nd and 3rd sets are under Raiyat and against which Title Appeal No.126/9 of 1977/1999 was filed by defendants 2nd set which was dismissed by 7th Additional District Judge, Motihari on 09.02.2000 against which Second Appeal No.174 of 2000 has been filed in this Hon'ble Court which was admitted by this Hon'ble Court on 29.11.2002 and the same is pending in this Hon'ble Court for adjudication.

(vi) For that admittedly the petitioner and his family are under Raiyat of the lands in question, as the land in question, came in the share of father of the petitioner vide Partition Suit No.210 of 1977.

(vii) For that the petitioner filed an application under section 48(D) B.T. Act before Circle Officer, Raxaul, East Champaran for declaration of Raiyati as petitioner had already been declared as under Raiyat with regard to lands in question, which was received in the office of Circle Officer, Raxaul on 23.02.2022 but till date no order has been passed by Circle Officer, Raxaul.

(viii) For that there is no dispute about petitioner and his ancestor being under Raiyat for period of more than 55 years and required period under section 48(C) or declaring Raiyat under 48(D) of B.T. Act, had



already expired and land in dispute are still under possession of petitioner as under Raiyat.

(ix) For that Second Appeal No.174 of 2000 has already been admitted and substantial question as to whether petitioner is entitled to be declared as Raiyat is involved in the Second Appeal, hence, there will be no legal difficulties for declaration of petitioner, as Raiyat by respondent No.4.

(x) For that respondent No.4 has not yet instituted any proceeding under section 48(D) B.T. Act and neither notice has been issued nor report has been called for from Halka Karamchari regarding possession over disputed land.

(xi) For that non taking steps by respondent No.4 on application received on 22.02.2022 and non action taken infringes legal and fundamental right of petitioner amounting to non-discharge of official duty by respondent No.4.”

3. The brief facts of the case is that the dispute relates to land appertaining to R.S. Khata No.271, Plot No.259 measuring 14 kathas 9 dhurs and Plot No.260 measuring 3 kathas 2 dhurs, situated at Village Kaurihar, P.S. Raxaul, District East Champaran. The said land stood recorded in the name of Respondent No.5, who was the Raiyat of the land. It is the admitted case of the parties that the land was settled with Langar Dewan, the grandfather of the petitioner, for Sikmi cultivation. After his death, the possession continued with his heirs, including the petitioner's predecessors-in-interest. The then Secretary of the Madarsa (Respondent No.5) instituted Title Suit No.254 of 1969 before the Court of Munsif, East Champaran, seeking declaration of Raiyati rights. By judgment and decree dated 15.07.1977, the suit was decreed holding the plaintiff as Raiyat and the defendants of the second and third set, including the ancestors of the petitioner, as under-raiyats.



Against the said judgment, Title Appeal No.126 of 1977/1999 was preferred, which came to be dismissed by the 7th Additional District Judge, Motihari on 09.02.2000. Thereafter, Second Appeal No.174 of 2000 was admitted by this Court on 29.11.2002 and is pending for adjudication. Pursuant to Partition Suit No.210 of 1977, the land in question fell to the share of his father and that the petitioner and his family have remained in continuous possession of the land as under-raiyats for more than five decades. On the basis of such possession, the petitioner filed an application under Section 48(D) of the Bihar Tenancy Act before the Circle Officer, Raxaul on 23.02.2022 seeking declaration of Raiyati rights. It is stated that no order has been passed on the said application and no enquiry has been initiated till date. Aggrieved by the inaction of the Circle Officer, the petitioner has approached this Court seeking appropriate directions.

4. Learned counsel appearing on behalf of the petitioner informs this Court that the petitioner is the under Raiyat and respondent no.5 is the Raiyat and this issue has already been decided in Title Suit No. 254 /1969 on 15.07.1977. The concerned Circle Officer by not exercising his jurisdiction as per the provision of Section 103 of the Bihar Tenancy Act has harassed the petitioner.

5. Heard the parties.



6. For proper adjudication of the case, I find it apt to reproduce Section 48 C and 48 D of the Bihar Tenancy Act, 1885, which are reproduced as under:

48C. Acquisition of right of occupancy by under-raiyats :

Every person who, for a period of twelve years, whether wholly or partly before or after the commencement of the Bihar Tenancy (Amendment) Act, 1938 (Bihar Act 11 of 1938), has continuously held land as an under-raiyat in any village, whether under a lease or otherwise, shall be deemed to have acquired, on the expiration of that period a right of occupancy in the land which he has so held for the said period:

1[Provided that an under-raiyat shall not, irrespective of the duration of his holding any land as an under-raiyat acquire any right of occupancy--
(i) in such area of the land to be selected and declared by his landlord in the prescribed manner as together with the area of land already held by the landlord under his cultivation does not exceed the following limits, namely:--

(a) five acres of land irrigated by flow irrigation work, lift irrigation work or tube well owned, constructed, maintained, improved or controlled by the Central or the State Government or by a body corporate constituted under any law or by tube well owned or maintained by the landlord or;

(b) ten acres of other land; or

(ii) in the land within the ceiling area fixed by law of a landlord who is a widow or a person suffering from blindness, leprosy or paralysis or is a person of unsound mind or a person on the service of the Army, Navy or Air Force of the Union of India during the period the landlord remain a widow or suffers from blindness, leprosy or paralysis or remains of unsound mind or remain in the service of the Army, Navy or Air Force of the Union of India.

Explanation 1.--A land shall be deemed to be irrigated by such flow irrigation work, lift irrigation work or tube well if it is ordinarily capable of being irrigated from such source notwithstanding that such irrigation is not enjoyed owing to any action or inaction on the part of the landlord of such land.

Explanation 2.--For the purpose of this section one acre of land mentioned in clause (i) (a) shall be deemed to be equivalent to two acres of land mentioned in clause (i) (b).

Explanation 3.--If there are more than one under-raiyat under a landlord, the area of land to be



selected and declared by the landlord in the prescribed manner shall be in preparation to the area of land held by different under-raiyats.

Explanation 4.--A member of an undivided Hindu family having or being entitled to a share in land shall be deemed to be a landlord for the purpose of this section as if there has been partition in the family.]

48D. Acquisition of raiyati right by occupancy under-raiyat :-

1[(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 land-holder 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 in the manner prescribed in this behalf.

7. Before deciding the acquisition of the *raiya*ti right of the occupancy under- raiyat under Section 48D, the competent authorities are required to follow the procedure prescribed under Section 48C of the Act.

8. The courts inherently have the power of **judicial review** in cases involving a fundamental **jurisdictional infirmity**, as an action taken without proper jurisdiction is considered a nullity or void ab initio as held by the Hon'ble Supreme Court in case of ***T.C Bassappa v. T. Nagappa***, reported



in *AIR 1954 SC 440*, laid down that *certiorari* is granted when the Court has acted without jurisdiction or in excess of its jurisdiction. It was also held that a writ of *certiorari* may also be issued if the Court or Tribunal acted in flagrant disregard of the rules or procedure or in violation of principles of natural justice where no particular procedure is prescribed. It has also been held that an error in the decision or determination may also be amenable to a writ of *certiorari* subject to the fact that the error is manifest and apparent on the face of the proceedings *i.e* when it is based on clear ignorance or disregard of the provisions of law but a mere wrong decision is not amenable to a writ of *certiorari*.

9. The authority vested with power is required to follow the statutory provisions prescribed under the Act. In the present case, I find that there is complete abrasion of the procedure prescribed calling this Court to interfere with the action, inasmuch as not taking any action in accordance with law.

10. The issue whether the petitioner is a protected *Raiyat* is also required to be decided in the background of the pending Second Appeal No. 174 of 2000 after issuing notice to the respondent no.5 Madarsa Ahmadia Hanfia, P.O. - Dariapur, P.S.-Sangrampur, District – East Champaran through its duly appointed Secretary and also to the Chairman, Bihar State



Madarsa Education Board, Patna and other interested parties,
within one week from the date of communication of this order.

11. The writ petition, accordingly, stands disposed of.

(Purnendu Singh, J)

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