

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4330 of 1992

Kameshwar Prasad Singh son of Sri Achak Lal Mandal resident of village and P.O. Bhangha P.S. Falka, Katihar

.... Petitioner/s

Versus

1. The State of Bihar through Collector, Katihar
2. Jagdeo Mistri son of Lata Atma Ram
3. Sukhdeo Mistri son of do
4. Bouku Misytry son of do all resident of village and P.O. Bhangha P.S. Falka, Katihar
5. D.C.L.R. Katihar at Sub Divisional Officer, P.O. Mirchaibari, Katihar

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. PRAVEEN KUMAR JAIPURIYAR
For the State None
For the private respondent None

**CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
ORAL JUDGMENT**

Date: 30-11-2012

K. K.Mandal, J Petitioner claims himself to be Bataidar/under tenant in respect of 1.46 acres of land appertaining to R.S. Khata No.5, R.S. Plot No.194 situate in mauza Turki within Falka police station in the district of Katihar. He raises a grievance with respect to the order dated 13.6.1989 passed by the Respondent-Deputy Collector, Land Reforms in Case No. 65/88-89 (Annexure-3) whereby the application (Annexure-2) filed by him seeking protection against ejectment therefrom under section 48E of the Bihar Tenancy Act (for short 'the Act') was considered and rejected at its threshold without proceeding further in the matter by constituting a board and referring the same for adjudication in accordance

with law. Aggrieved by the aforesaid order the petitioner filed a revision being Case No. 439/89-90 before the Respondent-Collector which was considered and rejected by order dated 31.3.1992 (Annexure-4). The said order has also been impugned in the present writ application.

According to the writ petition, the petitioner was Bataidar of respondent nos. 3 and 4 in respect of subject land. The respondent/land holder(s) fell in need of money and, as such, the subject land was mortgaged with him and after redemption thereof the petitioner continued as Bataidar of the subject land. He was subsequently threatened by the respondent-landholder(s) with forcible ejection therefrom leading to filing of the said application (Annexure-2) which was considered and rejected at its threshold by the Respondent-Collector.

Heard Mr. Jaipuriar for the petitioner. No one has appeared on behalf of the State as well as respondent no.4. No counter affidavit has been filed by any of the respondent(s).

Learned counsel for the petitioner submits that from the order impugned passed by the Respondent-Collector under the Act (Annexure-3) it would appear that a mini trial has been made by the said authority for rejecting the case of the petitioner at its threshold which is not permissible in law. He submits that under wrong advice an appeal/revision was preferred thereagainst which was also rejected by the Respondent-Collector by order dated 31.3.1992 (Annexure-4). Learned counsel has drawn attention of the Court to the reasoning(s) assigned by the Respondent-Collector in the order (Annexure-3) wherefrom it appears that the landholder was noticed before admitting the application and was permitted to place diverse records. The Collector under the Act perused the documents and in the light of the submission advanced on behalf of the land holder finally concluded that respondent-land holder(s) was protected

against such proceeding in terms of section 48C of the Act as they hold less than five acres of land. Counsel for the petitioner relying on **1997 (1) BLJ 609 (Mukhlal Ram vs. The State of Bihar & Ors.)** and **1990 (2) BLJ 79 (Awadh Rai & Ors. vs. The State of Bihar & Ors.)** contends that the said view taken by the respondent authority is contrary to the provisions of the Act.

I have considered the submissions made on behalf of the petitioner and perused the materials on record. On perusal of the order dated 13.6.1989 (Annexure-3) it appears that authority under the Act before admitting the application directed issuance of notice on the landholder who appeared and presented diverse documents and took the plea that they hold less than 05 acres of land and, as such, they were insulated against any such action under section 48E of the Act. The Collector under the Act accepting those submissions of the landholder(s) and taking into consideration the provisions contained in section 48C of the Act rejected the application.

Somewhat similar issue fell for consideration before a Division Bench of this Court in Mukhlal (supra). This Court in paragraph 13 of the report (at page 612) held as under:-

“13. Mr. Singh, lastly submitted that respondent No.3 had only 9.48 acres of unirrigated land and hence he was insulated against any proceeding under Section 48-E of the Act. In our opinion, the submission is wholly without substance. The extent of the area of land held by a landlord is relevant only under Section 48-C of the Act in terms of which a person having held the land as an under-raiyat for a period of 12 years or more may raise a claim of acquisition of occupancy rights. In a proceeding under Section 48-E of the Act, the extent of land held by the landlord has absolutely

no relevance.”

A learned Single Judge of this Court in identical fact situation held as under in Awadh Rai (Supra) at para 20,21 and 21A:-

“20. According to this provision, an under- raiyat gets a right of occupancy in the land which he has held for the prescribed period, subject to the restrictions laid down under Clauses (a) and (b) of sub-sections (i) and (ii) of the proviso to Section 48-C of the B.T. Act. If the land, held by the landlor under his cultivation, does not exceed five acres of irrigated land or ten acres of other land or in certain other circumstances as mentioned in the proviso to Section 48-C of the B.T. Act, an under-raiyat does not get a right of occupancy irrespective of the period, for which he holds the land in that capacity.

21. As provided under Section 48-E of the B.T. Act, an application on behalf of an under- raiyat is maintainable if he is threatened with unlawful ejectment from his tenancy or any portion thereof by his landlord. A Bataidar (Under-raiyat) has been conferred a legal right under Section 48-E of the B. T. Act irrespective of the fact whether he has acquired a right of occupancy or not. This view is amply supported by a decision of this Court in Upendra Mandal v. State of Bihar, 1989 PLJR 333, relied on behalf of the petitioners. It has been held in that case that Section 48-C of the B.T. Act is absolutely irrelevant for judging the maintainability of the application filed under Section 48-E of the Act. So, there is no manner of doubt that respondent no.2 has wrongly applied the said provision of

law for rejecting the claim of the writ petitioners.

21-a. Thus, the D.C.L.R. has made a patent error in interpreting the statutory provision laid down under Section 48-C of the act and so this Court is not deprived of the power to interfere with such an order in this writ jurisdiction.”

It thus appears that the view taken by the Respondent-Collector under the Act in the impugned order (Annexure-3) is wholly erroneous in law. On a consideration of diverse provisions of the Act this Court found and held that the protection under section 48C of the Act shall not be relevant in a matter where the Bataidar raises a claim under section 48E of the Act. From the impugned order (Annexure-2) it further appears that aforesaid reason prevailed over the said authority for rejecting the application of the petitioner outrightly without proceeding further in the matter in accordance with the laid down procedure under section 48E of the Act.

In view of aforesaid this Court is satisfied that the order dated 13.6.1989 (Annexure-3) passed by the Respondent-Collector under the Act is wholly unsustainable in law and the same merits to be interfered with and set aside. Mr. Jaipuriar is right in his submission that no appeal/revision thereagainst is maintainable. I have already held that original order (Annexure-3) passed by the Respondent-Collector is bad in law and, as such, this Court is also persuaded to interfere with the revisional/appellate order passed by the Respondent-Collector in Case No. 439/89-90 (Annexure-4).

Consequently, the application is allowed. The order dated 13.6.1989 (Annexure-3) and order dated 31.3.1992 passed by the Respondent-Collector (Annexure-4) are quashed and set aside. The matter is restored on the file of the

Respondent Deputy Collector, Land Reforms for disposal thereof in accordance with law. The petitioner shall appear before the respondent Deputy Collector, Land Reforms along with a copy of the present order within six weeks enabling the said respondents to decide the dispute raised through the application (Annexure-2) afresh in accordance with law.

No order as to cost(s).

(Kishore Kumar Mandal, J)

HR/-