

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11832 of 1992

=====

Sadashiv Chaudhary son of Tirthanarain Choudhary, resident of village- Panchobh,
P.S. Bishunpur, District-Darbhangha.

.... Petitioner/s

Versus

1. The State of Bihar
2. Commissioner, Darbhanga Division, Darbhanga
3. The Collector, Darbhanga
4. Deputy Collector, Land Reforms, Sadar Darbhanga.

.... Respondent 1st party

5. (i) Smt. Geeta Devi, wife of late Ram Naresh Jha
(ii) Sri Naveen Jha
(iii) Sri Bachacha Jha
(iv) Mohan Jha

All sons of late Ram Naresh Jha

6. (i) (a) Ajit Kumar Mishra
(b) Ranjit Kumar Mishra
(a) Lala Jee
(c) Madan Kumar Mishra
(a) Madan Jee
(d) Naval Kumar Mishra
(a) Tunni Jee

All sons of Late Surya Narayan Mishra.

- (ii) Moti Devi daughter of Mostt. Godawari Choudharain, wife of late Suraj
Narain Misrha

- (iii) Smt. Ful Devi daughter of Mostt. Godawari Choudharain, wife of late
Suresh Jha

7. (iv) Rahbar Devi daughter of Mostt. Godawari Choudharain, wife of late Rudra
Narain Mishra, resident of village+P.O.Sugaon, Dist. East Champaran.

=====

Appearance :

For the Petitioner/s : Mr. Yogendra Mishra

For the Respondent No. 5 : Mr. Jagannath Singh

For the State : Mr. Niranjana Kumar, A.C. to G.P.-27

=====

**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT

Date: 31-03-2015

A Division Bench judgment of this Court, while issuing notices to Respondents No. 5 and 6, by an order dated 24.03.1993 had posed a question as to whether the Divisional Commissioner could exercise his power under the provisions of Bihar Practice and Procedure Manual, 1958 while disposing of a matter initiated under

the Bihar Tenancy Act, 1885.

2. The petitioner in the present writ application seeks quashing of the order dated 26.10.1992 passed by the Commissioner, Darbhanga Division, Darbhanga whereby he has set aside the order passed by the learned Additional Collector, Darbhanga in Miscellaneous Bataidari Appeal No. 01/1990-91 and has referred the matter to the Collector, Darbhanga for passing an order on the dispute. While issuing direction to the Collector, Darbhanga for disposal of the dispute in question, the Commissioner has set out certain guidelines, mentioned in the said order.

3. From the facts narrated in the writ application, it appears that original Respondent No. 5, Ram Naresh Jha (since deceased) had filed Bataidari Case under Section 48-E of the Bihar Tenancy Act, 1885 before the Court of the Deputy Collector, Land Reforms (Sadar, Darbhanga), claiming to be Bataidar of the original Respondent No. 6, Mostt. Godavri Choudhary (since deceased). He claimed protection from ejectment form the land in question and also sought for division of crops grown on the lands which have been described in his application as follows:-

“Tauzi No.	Khata No.	Khesra	Area	Boundary
9627	2460	4795	2.5.0	North Anar Kuar ch. and Ors.
	1467	4787	0.5.0	South Mahaber Chou. and

				others. East Ganesh Choudahry.
--	--	--	--	--------------------------------------

4. The said application, however, came to be rejected by the Deputy Collector, Land Reforms by an order dated 05.02.1990. Respondent No. 5 and Respondent No. 6 died during the pendency of this application and have been substituted by their heirs/legal representatives. The petitioner is admittedly the purchaser of the land in question.

5. The deceased Respondent No. 5 had preferred the said Miscellaneous Bataidari Case No. 01 of 1990-91 before the Additional Collector, (Sadar, Darbhanga), who, vide his order dated 06.08.1991 rejected the appeal and confirmed the order of the Deputy Collector, Land Reforms (Sardar, Darbhanga). He had thereafter chosen to prefer appeal before the Commissioner, Darbhanga Division, Darbhanga being Case No. 38/91-92. The Commissioner while disposing of the appeal so preferred by said Ram Naresh Jha, though was of the opinion that there was no provision of appeal before the Divisional Commissioner under the Bihar Tenancy Act, he exercised his powers, purportedly vested in him under the Bihar Practice and Procedure Manual, 1958. He came to a conclusion that even the appeal before the Additional Collector, (Sadar,Darbhangha) was not maintainable against the order of Deputy Collector, Land Reforms and by setting aside the order of the Additional Collector, he

referred the matter to the Collector, Darbhanga for deciding the petitioner's appeal. The Commissioner asked the Collector, Darbhanga to dispose of the appeal in accordance with law and also issued certain directions to be carried out by him, while disposing of the appeal.

6. Mr. Yogendra Mishra, Learned counsel appearing on behalf of the petitioner has challenged the order of the Commissioner, Darbhanga Division, Darbhanga, on the ground of it being wholly without jurisdiction, having no sanction of law. He has submitted that under the Bihar Tenancy Act, 1885, no appellate or revisional jurisdiction has been conferred upon the Divisional Commissioner, to adjudicate upon any dispute arising out of the provisions under Chapter VIII of the Bihar Tenancy Act, 1885. He has accordingly submitted that the impugned order passed by the Commissioner, is a nullity in the eye of law. Upon a query put by this Court, particularly when the Commissioner had referred the matter to the Collector for adjudication, whether appeal would be maintainable before the Collector or not, Mr. Mishra has answered in negative and has contended that no appeal in a proceeding arising out of Chapter VIII of Bihar Tenancy Act, 1885 will lie unless a decision under Section 48-E(7) or Section 48(E)(8) is challenged. He submits that an appeal before the Collector would lie under Section 48-F of the Bihar Tenancy Act, 1885 against an order referred to in sub-section (7) and

sub-section (8) of Section 48-E and not otherwise. He, therefore, submits that even the Collector, to whom the matter has been referred by the Divisional Commissioner by impugned order has no jurisdiction to entertain such appeal or revision against the impugned order. He has contended that there was no occasion for filing appeal as stage of Section 48E(7) and 48E(8) of the Act had not reached.

7. Mr. Jagannath Singh, learned counsel appearing on behalf of the contesting Respondents, i.e. heirs and legal representatives of respondent No. 5 has, on the other hand submitted that non-submission of report by the Circle Officer in compliance of the order of the Deputy Collector, Land Reforms, led to a situation that the Board did not succeed in bringing about an amicable settlement of the dispute between the parties as contemplated under Section 48-E(7) of the Act. He has submitted that because the Board did not succeed in bringing about an amicable settlement of the dispute and the matter was dismissed before the Deputy Collector, land Reforms, the petitioner rightly preferred appeal before the Additional Collector (Sadar, Darbhanga), who rejected the appeal without appreciating the correct state of affairs.

8. Mr. Singh has also submitted that the petitioner, knowing well as regards pendency of the proceedings before the Additional Collector as well as the Commissioner, deliberately ignored such proceedings and, therefore, he cannot be allowed to question its

validity in the present proceeding under Article 226 of the Constitution of India.

9. To appreciate the rival submission made on behalf of the petitioners and in order to deal with the question posed by Court in the order dated 24.03.1993, as to whether the Commissioner had any power under the provisions of Bihar Practice and Procedure Manual, 1958 while disposing of a matter initiated under the Bihar Tenancy Act, 1885, it would be apt to refer to relevant statutory provisions and deal with them accordingly.

10. Section 48-E falls under Chapter VIII of Bihar Tenancy Act, 1885 which deals with different kinds of under-Raiyats. Section 48-E lays down the mode and manner in which threatened ejectment of an under-raiyat can be prevented and possession of under-raiyat, unlawfully ejected, can be restored. Relevant portions of Section 48-E of the Act is being quoted hereinbelow:-

“48E. Prevention of threatened ejectment of under-raiyat and restoration to possession of under-raiyat unlawfully ejected-(1) If an under-raiyat is threatened with unlawful ejectment from his tenancy or any portion thereof by his landlord or if there is a dispute between them over the possession of land, crop or produce thereof either on the ground of non-existence of relationship of Landlord and tenant between them or otherwise or if an under-raiyat is or has been ejected from his tenancy or any portion thereof within twelve years before the commencement of proceeding under this section in contravention of the provisions of Section 89 the Collector may, of his own motion or on application made in this behalf by the under-raiyat, initiate a proceeding for preventing the landlord from ejecting the under-raiyat or for settlement of the said dispute or for restoration of possession to under-raiyat unlawfully ejected from his tenancy or portion thereof.

[Explanation.- If in the midst of the proceeding it is found that the landlord has during or before the initiation of the proceeding transferred the land to any other person who is not a party to the proceeding initiated under sub-section (1), the Collector shall make such transferee a party to the proceeding.]

(2) The Collector may, after hearing the parties, about which due notice shall have been given to them or ex parte, in cases of emergency by an order in writing, prevent the landlord from ejecting the under-raiyat until Disposal of the proceeding or until further orders and if he is of opinion that any crop or produce of the land which is subject-matter of dispute in the proceeding under this section, is liable to speedy and natural decay, he may, if the situation so warrants and in similar manner as aforesaid direct the proper custody or harvesting or sale, as the case may be of such crop or produce or the sale proceeds thereof.

(3) When a proceeding is initiated under Sub-section (1) the Collector may refer the matter (hereinafter referred to as "dispute") to a Board to be appointed by him, for promoting the settlement of the dispute between the under-raiyat and the landlord.

(4) A Board to be appointed by the Collector in the prescribed manner under Sub-section (3) shall consist of a Chairman; who shall be unconnected with the dispute referred to such board or with any party directly affected by such dispute and two members to represent the parties to the dispute and the person appointed as a member to represent any party shall be appointed on the recommendation of that party.

Provided that if any party does not nominate any person to represent him in the Board or nominates a person who is not available within such time as the Collector considers reasonable, the Collector may appoint such person as he thinks fit to represent that party.

(5) If at any time before the Board has completed its work, the service of the Chairman or any member of the Board ceases to be available, or any member of the Board fails to attend the meeting of the Board on two successive dates without showing cause to the satisfaction of the Chairman, the Collector may appoint any suitable person in the prescribed manner to take his place and the proceeding shall be continued before such Board as so reconstituted.

(6) The Chairman of the Board to which a dispute is referred shall give written notice to the under-raiyat and his landlord in the prescribed manner and the Board shall make endeavors to bring about an amicable settlement of the dispute and when an amicable settlement of the dispute is brought about, the Board shall forthwith submit a report containing the terms on which settlement had been brought about, to the Collector, who may dispose of the proceeding in accordance with the terms of the

report:

Provided that failure on the part of any member of the Board to sign the report shall not affect the validity of the same.

(7) Where a Board does not succeed in bringing about an amicable settlement of the dispute, it shall make enquiry into the same, receive such evidence as it considers necessary, record its findings on the disputes and transmit the entire record of the proceeding forthwith to the Collector who may dispose of the proceeding in accordance with the terms of the findings:

Provided that failure on the part of any member of the Board to sign the finding shall not affect the validity of that finding:

Provided further that if any member does not want to sign the findings of the Board he will submit his disagreement on the findings in writing failing which the chairman will submit his notes on the subject.

(8) In case of disagreement with the report or the findings of the Board, the Collector shall, after recording his reasons for such disagreement and after giving the parties concerned a reasonable opportunity of being heard, make such enquiry, if any, as he thinks necessary and on being satisfied that-

(i) the person threatened with ejectment is an under-raiyat, the Collector shall declare the threatened ejectment illegal and direct that the landlord shall not interfere with the possession of the under-raiyat in his tenancy or any portion thereof;

(ii) the land under dispute is in the tenancy of the under-raiyat the Collector shall declare possession of the under raiyat and order the crop or produce or the sale-proceeds thereof, as the case may be, to be divided between the under-raiyat and his landlord in accordance with the provisions of Sections 69 to 71 of the Act;

(iii) the person alleged to have been ejected was an under-raiyat of the disputed land on the date of ejectment and was ejected within twelve years before the commencement of proceeding under this section in contravention of Section 89, the Collector shall order that the landlord, or, where any other person, is in possession of the land comprised, in the under-raiyat tenancy or portion thereof under any claim derived from the landlord, such person shall restore the under-raiyat to possession of the tenancy or portion from which he was so ejected.

(9) The order of the Collector under Sub-sections (6), (7) or (8) shall be in writing and shall state the grounds on which it is made and specify the period which shall not exceed six months from the date of the order within which his order shall be carried out.

(10) If the Board fails to record its findings or transmit the records as required under sub-section (7) within a period of six months [which shall be reckoned from the date of its appointment under sub-section (3)] the Collector may withdraw the proceeding from the Board and decide the dispute himself according to the provisions of this section.

(11) If the person against whom an order has been made under sub-sections (6), (7) or (8) fails to carry out the orders of the Collector within such reasonable time as may be specified in the order or the order passed to appeal under section 48F the Collector shall take or cause to be taken such steps or use or cause to be used such force as in his opinion may be necessary for securing compliances with the order or for preventing such threatened ejectment of under-raiyat or for restoring possession to under-raiyat unlawfully ejected.]

(12) The Board shall have the same power regarding summoning and attendance of witnesses and compelling the production of documents as a Civil Court has under the Code of Civil Procedure, 1908 (V of 1908) and the Collector shall have general control and superintendence over the Board.

(13) Save as expressly provided in this Act, no Civil or Criminal Court shall have any jurisdiction over the subject matter of a dispute after a proceeding is initiated under sub-section (1) by the Collector:

Provided that nothing in this sub-section shall be deemed to affect the power of a Criminal Court to take such action as may be necessary for preventing breach of the peace pending the final disposal of the proceeding by the Collector.

11. Section 48F of the Act provides for appeal from an order referred to under sub-section (7) and sub-section (8) of Section 48E, relevant portion of which reads thus:-

“ [48.F. Appeals.-(1) An appeal shall lie from an order referred to in [sub-section (7) and sub-section (8) of section 48E-

- (i) if such order is passed by an officer other than the Collector of a district, to the Collector of the district or to any officer specially empowered by the State Government by notification to hear such appeals; and
- (ii) if such order is passed by the Collector of a district, to the prescribed authority.”

12. In the present case, this is not in dispute that no Board was

appointed by the Collector in terms of Section 48-E(4) of the Act. Here, there is a plea on behalf of the contesting respondents that because of the failure on the part of the Circle Officer, who happens to be Chairman of the Board, to submit a report, that the Board could not be constituted.


13. I am not able to accept such submission on behalf of the contesting respondents. I find that the Deputy Collector, Land Reforms in his order dated 05.02.1990 has recorded that the contesting respondent himself was not taking due interest in the matter and in absence of any sound basis, he refused to proceed any further and rejected the application. Secondly, I find substance in the submission on behalf of the petitioner that appeal or revision is creature of statute and Section 48-E of the Act provides that appeals shall lie against an order referred to in Sub-section (7) and sub-section (8) of Section 48-E and not otherwise. The stage of Sub-section (7) and sub-section(8) of Section 48-E had not reached in the present case as no Board was appointed under Sub-section 48-E (4) of the Act and, therefore, there was no question of such Board failing in bringing about an amicable settlement of the dispute.

14. In my opinion, therefore, in the facts and circumstances of the case, no appeal could be preferred before the Additional Collector, Darbhanga, which fact is not being disputed even by the contesting respondents. The question now is as to whether the

Division Commissioner could have assumed the power of appellate authority or revisional authority in the facts and circumstances of the case, by invoking provisions of Bihar Practice and Procedure Manual, 1958.

15. Before referring to the provision under the said Manual, conferring power upon the Divisional Commissioner of appeal and revision, I must observe that the Divisional Commissioner, or any superior authority on the strength of any sub-ordinate legislation, cannot assume the power of the appellate authority or revisional authority, de hors the provisions of legislative enactment, even in order to fill up any gap in such enactment. Bihar Tenancy Act, 1885 is a self contained legislative enactment. The Bihar Practice and Procedure Manual, 1958 in my opinion cannot be read in a manner that would confer Appellate Jurisdiction on any superior authority over the decisions taken by the Authorities under the provisions of the Act, in the absence any specific provision in this regard in the Act itself.

16. Chapter V of the said Manual deals with the power of Appeal and revision exercisable by superior authorities. The said chapter preconceives a situation where the power of appeal or revision is vested in the superior authority by any act of legislature, with general powers of supervision and control over the proceedings and orders of sub-ordinate officers. Unless such general powers of supervision and control over the proceedings and orders of sub-



ordinate officers are vested in a superior authority by an act of legislature, the Divisional Commissioner or any superior authority cannot assume such power in the garb of any provision under said Bihar Practice and Procedure Manual, 1958. The rules, as a matter of fact, lay down the guidelines dealing with the manner in which such general powers of supervision and control over the proceedings and orders of sub-ordinate officers must be exercised by a superior authority. As a matter of fact, the rules caution superior authorities that such general powers must be exercised only in circumstances as mentioned in the rules. Needless to reiterate that such power is to be exercised when and act of legislature confers such powers upon a superior authority. For quick reference, Rule 76 of the Manual is being quoted hereinbelow:-

“76. The fact that a superior authority is vested by an Act of the legislature with general powers of supervision and control over the proceedings and orders of subordinate officers does not of itself confer upon a party to a case or proceeding any right of appeal to such superior authority; but Government have held that those powers do confer on such authority, when satisfied that injustice has been done, a right to revise orders passed by subordinate officers. Powers of control and supervision are discretionary, and superior authorities exercising such powers are not ordinarily disposed to interfere except in the following classes of cases:-

1. where a subordinate officer has improperly refused to exercise a jurisdiction vested in him;
2. where such officer has acted without jurisdiction;
3. where such officer in the exercise of the jurisdiction has signally failed in his duty; or
4. generally where it is necessary for the purpose of preventing gross abuse or gross injustice.”

17. I do not find any substance in submission made on behalf of the contesting respondents that the petitioner having not participated before the Revenue Courts below is precluded from challenging the impugned order in the present proceeding as this is not in dispute that the petitioner is rightful purchaser of the property in question.

18. In view of the discussions as above, I am of the view that the proceeding before the Commissioner, Darbhanga Division, Darbhanga in appeal No. 38/91-92 was wholly without jurisdiction. The impugned order dated 26.10.1992 as contained in Annexure-5 is quashed as having been passed without jurisdiction.

19. It goes without saying that the contesting respondents shall have liberty to take recourse to appropriate provision of law for the redressal of his grievance.

20. This application is allowed accordingly.

21. There shall be no order as to costs.

(Chakradhari Sharan Singh, J.)

Saif/-

U			
---	--	--	--