

(1983) 10 PAT CK 0012

In the Patna High Court

Case No : Civil Writ Jurn. Case No. 1136 of 1983

Awadhesh Kumar Singh and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 11-10-1983

Acts Referred:

Bihar Tenancy Act, 1885 — Section 48E(10)

Citation : AIR 1984 Patna 102 : (1984) PLJR 152

Hon'ble Judges : Surendra Narain Jha, J; Hari Lal Agrawal, J

Bench : Division Bench

Advocate : Ganga Prasad Roy, for the Appellant; C.K. Sinha, Govt. Pleader No. 1 and Nishat Haider, Jr. Counsel, (for Nos 1 to 3), Muktaashwar Singh, Subhash Chandra Jha and Ram Chandra Jha, (for Nos. 4 and 5), for the Respondent

Final Decision : Allowed

Judgement

Hari Lal Agrawal, J.—This writ application arises out of a proceeding u/s 48E of the Bihar Tenancy Act, and a learned single Judge has referred it to a Division Bench, as it raises interpretation of Sub-section (10) of Section 48E as well as some other questions of law, for their authoritative decision.

2. The relevant facts are these. A proceeding was started in the year 1968 on the application of Bhukhan Mahto, respondent No. 4, before the Anchal Adhikari, Itarhi, claiming bataidari rights in respect of certain agricultural lands under khata Nos. 33 and 34, situate in village Madandehra. A long history has been given in the writ petition in support of the claim of under-raiyat by respondent No. 4, with which we are not concerned very much for the question for our consideration. The Anchal Adhikari by his order dt. 6-1-1969 referred the records of the proceeding to the Land Reforms Deputy Collector, Buxar, respondent No. 2, who in his turn, constituted a Bataidari Board, the Board submitted its ex parte report dt. 29-6-1973 against the petitioners. According to the petitioners, respondent No. 2 had constituted the Board without following the prescribed procedure and the Board also submitted its report in the same manner.

Accordingly the petitioners came to this Court in C.W.J.C. No. 2283 of 1977 and this Court by its judgment dt. 9-2-1979 allowed the writ application and quashed the report and the order of the Deputy Collector based on the said report, and remanded the matter to him for "fresh constitution of the Board and to proceed with the matter in accordance with law".

Thereafter the second Bataidari Board was constituted under the chairmanship of respondent No. 3, the Assistant Project Executive Officer, Itarhi, after this Court's order. Respondent No. 3 submitted his report (Annexure 1) on 9-5-1980 after a long delay of more than two years, partly in favour of respondents 4 and 5, stating that respondent No. 5 was in possession of only 81 decimals of plot No. 72 and 72 decimals of plot No. 263. On the basis of this report, the Sub-divisional Officer, Buxar, passed an interim order on 30-7-1982 directing the petitioners not to disturb the possession of respondents 4 and 5. The petitioners challenged that order also in C.W.J.C. No. 3468 of 1982 as without jurisdiction which was allowed on 28-2-1983 and the order of the Sub-divisional Officer was quashed.

Thereafter respondent No. 2 by his order dt. 13-1-1983 ordered for constitution of a Third Board on the ground that the report of the Second Bataidari Board was submitted after more than two years, i.e., much beyond the prescribed period of six months. But by a subsequent order dt. 10-2-1983 (Annexure 4) he recalled that order dt. 31-1-1983 (Annexure 3) on the objection of the bataidars, and directed the parties to appear before him on 21-2-1983 for a settlement. The petitioners have filed this application for quashing these orders contained in Annexures 3 and 4 and their argument is that the report submitted by the Second Bataidari Board on 9-5-1980 could not be held to be invalid in law simply because it was submitted after a period of six months prescribed therefor. In other words, the argument is that the period of six months fixed for submission of the report by the Board under Sub-section (10) of Section 48E was not mandatory and the Collector was not bound to recall the records from the Board.

3. Yet another ancillary argument urged on behalf of the petitioners in this regard is that after the receipt of the report respondent No. 2 having acted on that basis for a long time -- over 2 1/2 years, he could not go behind the said report and declare it invalid.

4. No counter-affidavit has been filed but the questions of facts are not in dispute. In order to answer the question I may refer to some of the relevant provisions of Section 48E of the Act. According to the provisions of Sub-section (3) when a proceeding is initiated under Sub-section (1), the Collector may refer the matter (dispute) to a Board to be appointed by him, for promoting the settlement of the dispute between the under-raiyat and the landlord. And then under Sub-section (5) the Chairman of the Board to whom the dispute is referred, after giving written notices to both the parties "shall make endeavours 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".

Then according to Sub-section (7), where a Board does not succeed in bringing about an amicable settlement of the dispute, it shall make enquiry into the same and then transmit the record to the Collector who may dispose of the proceeding in accordance with the terms of the findings of the Board or may disagree with the Board and may make such enquiry, as he thinks necessary, and after recording his reasons for such disagreement, may make his own order stating the grounds for the same (vide the provisions contained in Sub-sections (7), (8) and (9)). Sub-section (10) fixes a time limit of six months for the Board to complete its proceedings and if it fails to complete its work within the said period, then the Collector may withdraw the proceeding from the Board and decide the dispute himself according to the provisions of this section.

I may do better to quote Sub-section (10) which runs as follows :

"If the Board fails to record its findings or transmit the records as required under Sub-section (7), within a period of six months from the date of its appointment, the Collector may withdraw the proceeding from the Board and decide the dispute himself according to the provisions of this section."

The question that falls for consideration is the interpretation and construction of Sub-section (10) quoted above, namely, (1) whether the Board is bound to record its findings and transmit the records within a period of six months from the date of its appointment, and (2) whether the Collector is bound to withdraw the proceeding from the Board on its failure to complete it within six months, and to decide it himself?

5. It is, no doubt, true that the Legislature intended that the Board will complete the proceeding and transmit the records within a period of six months so that the dispute between the landlord and the under-raiyat may not unnecessarily linger on indefinitely. But I find myself unable to accept the contention of the learned counsel for the respondents that this period of six months is intended to prescribe a limitation in the matter of disposal of the proceeding by the Bataidari Board in the sense that after the expiry of the said period, the Board would cease to have the jurisdiction and would automatically become functus officio. The constitution of the Board, the procedures prescribed for its deliberations, including the endeavours for making the settlement between the parties, and on its failure to begin the enquiry, take evidence, and the like, are, no doubt, somewhat cumbersome. There may be many cases where in spite of all the despatch and speed shown by the Board the proceeding, which might have reached an advanced stage, could not be completed and the record despatched to the Collector. To hold that the expiry of the said period rendered the entire proceeding of the Board invalid, instead of furthering the intention of the Legislature and the cause of justice, will cause great hardship to the Bataidars. It

would be very easy and convenient for the unscrupulous landlords to frustrate the intention of the Legislature. The Legislature has, therefore, left the discretion of the Collector open. If in a given case, he feels that the time of six months has not been usefully utilised and the Board is not taking proper interest in the matter, or for that matter, if he thinks that the proceedings, for some other reason, is bound to be abnormally delayed, he may recall the record and decide the same himself. No material has been produced before us as to whether the Collector at any point of time during the pendency of matter before the Board, had thought it fit to recall the proceeding. Had respondent No. 2, during the pendency of the proceeding before the Board for a period of two years, applied himself or either of the parties might have brought to his notice the circumstances in which the matter was being delayed, the Collector might, in his wisdom, have recalled the record. But he having himself failed to exercise the discretion in proper time, cannot be permitted to throw away the report and that also not after its immediate receipt but after a further delay of more than two years when the same was not only accepted, but was also acted upon for quite a long time resulting in the passing of some orders in favour of the respondents themselves, which were the subject matter of the second writ application referred to above.

6. Reliance was, however, placed on my own decision (sitting singly) in the case of Mahanth Ramswaroop Giri v. Commr., Tirumal Division (1980 PATLJR 378 where the question specifically arising for decision in this case was not directly in issue, but an observation in the nature of obiter was made that "the result obtaining on account of the failure on the part of the Board to complete the proceeding within six months renders the partly conducted proceeding also irrelevant for all practical purpose."

I, after giving a second and considered thought to the entire matter, as indicated above, find myself unable to approve of my above observations and record my dissent herewith.

7. The result of the above discussions is that it must be held that the period of six months fixed for recording the findings and transmission of the records to the Collector by the Bataidari Board under Sub-section (10) of Section 48E of the Act is not mandatory and the jurisdiction of the Board does not lapse or cease simply on the expiry of the said period of six months unless the Collector, in his discretion, decides to withdraw the proceeding from the Board for deciding the dispute himself.

Once this view is taken regarding the period of six months mentioned in Sub-section (10), then the other question as to whether it was proper for respondent No. 2 to constitute the third Board or not, does not arise.

8. In view of the decision recorded above, the respondent No. 2 is directed to pass an order in terms of Sub-section (7) of Section 48E and dispose of the proceeding expeditiously in the light of the report of the second Board, dated

9-5-1980, unless he chooses to disagree with the report.

9. In the result, the application succeeds, but in the circumstances I shall make no order as to costs.

Surendra Narain Jha, J.

I agree.