

(1992) 08 PAT CK 0002

In the Patna High Court

Case No : Civil Writ Jurisdiction Case Nos. 7103, 7104, 7105, 7106, 7114, 7115, 8084, 8085, 8086, 8087 and 8088 of 1991

Brijendra Kumar Narain Singh and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 03-08-1992

Acts Referred:

Citation : (1992) 08 PAT CK 0002

Judgement

B.K. Roy, J.—In terms of the order dated 11-10-1991 passed in these cases and in view of the fact that common question of law and facts are involved, they are being disposed of on merit by this common judgment after hearing learned Counsel for the petitioners as well as learned Counsel for Respondent No. 6 at the stage of their admission.

2. In C.W.J.C. No. 7105 of 1991 despite notice Respondent No. 6 Arjun Ram, has not appeared though he is petitioner No. 6 in C.W.J.C. No. 5971 of 1992, which was heard along with these cases at the request of Mr. Verma on the question of its admission.

3. Relevant facts for disposal of these writ petitions, in which prayers have been made to quash the appellate order as contained in Annexure-1, are in narrow compass.

4. The petitioners stated to this effect. Respondent No. 6 of each cases (hereinafter referred to as the applicants) filed an application before the Sub-Divisional Officer, Jehanabad (Respondent No. 3) alleging that he happens to be an under-raiyat of the land described by him since 30 years but he was tried to be dispossessed from the said land by the landlord and as such notice be issued to him. Respondent No. 3 transferred the applications to the Deputy Collector, Land Reforms, Jehanabad (Respondent No. 4). Respondent No. 4, after registering them, issued notices to them (the petitioners) to file objections, if any. The petitioners filed objections denying the claim of Respondent No. 6 tracing the history of acquisition of the lands by their ancestor; of several

prohibitory proceedings, suit, execution; in which ancestors of Respondent No. 6 were defeated; of partition of the lands in a partition suit; non-figuring of the Respondent No. 6 or their ancestors in recent Survey proceedings, proceedings under the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 as well as under the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 starting further that the dispute has been raised mala fide and that there is no prima facie case and the instant proceeding be dropped. They also emphasized that the applicants are of such ages that it would be wholly unnatural that they could have been entrusted with cultivating the lands in batai. Father of the applicants has been litigating earlier in regard to the lands in question on the basis of an alleged settlement. The petitioners also filed documents in support of their objection that the dispute raised was No. bona fide and that no prima facie case has been made out. By order dated 15-3-1991, Respondent No. 4 held that the claim of batai put forward by the Respondents is not bona fide and no prima facie case has been made out and dropped the proceeding. In arriving at the aforementioned finding, he took into account the following circumstances :--(i) The claim of the applicant that he is in possession as under-raiyats for the last 20 years has not been supported by any material circumstances; (ii) In the Survey of 1914, the ancestors of the applicants had filed objections against the entry made therein which were rejected; (iii) The ancestors of the applicants had claimed title of the land and not any right on the basis of being under-raiyats and had filed a suit for recovery of possession which too, was dismissed; (iv) The possession of the land holders was challenged prohibitory proceedings, but the claim put forward by the applicants ancestors was rejected; (v) Even in the Rent Fixation Proceeding, the objection of the ancestors of the applicants was rejected; (vi) Even in the proceedings under the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, no claim of under-raiyat was made by the applicants; (vii) Claim of being under-raiyats by persons aged about 40 years vaguely stating of their possession for the last 30 years is obviously mala fide.

Even though no appeal lies u/s 48-F of the Act, the applicants went up in appeals before the Collector, Jehanabad. The petitioners raised objections about the maintainability of the appeals. Surprisingly, the Collector, Jahanabad (Respondent No. 2), by his order dated 12-9-1991 (as contained in Annexure-1 to these writ petitions), held that there is no provision for appeal but proceeded pass an order setting aside the order of the Deputy Collector, Land Reforms and remitted the case to Respondent No. 3, which is liable to be quashed. The petitioners assert other facts, which I do not consider to state in view of the short point involved in these petitions.

5. No counter-affidavit has been filed in any case by the applicants.

6. Mr. Shahi, learned Counsel for the petitioners, submits as follows :

(i) It is a settled law that an appeal is a creature of Statute. No appeal having been provided under the Statute against an order dropping proceedings, the

Collector, Jehanabad, Respondent No. 2, even after holding the appeals to be not maintainable exceeded his jurisdiction in allowing them and in setting aside the orders of the Deputy Collector, Land Reforms and remitting the cases for disposal after constituting Batai Boards.

(ii) The finding of Respondent No. 2 to the effect that the learned Deputy Collector, Land Reforms, either failed to appreciate the documentary evidence or ignored the total evidence of the bataidar in support of their claim is wholly misconceived and erroneous, as this finding is not only bald, but has been recorded without stating what documents the applicants had filed and in fact no evidence was led by any party. Petitioners have filed only documents to show prima facie that the claim against them was wholly mala fide and set up contrary to what was set up earlier by the applicants ancestor, who had lost throughout.

(iii) The writ application is, thus, fit to be allowed.

Mr. Verma, Learned Counsel, appearing on behalf of Respondent No. 6 in all cases except C.W.J.C. No. 7105 of 1991 and for the Petitioners in C.W.J.C. No. 5971 of 1992, in which Respondent No. 6 of C.W.J.C. No. 7105 of 1991 is one of the petitioners, submits, as follows :

(i) The reasons given by the appellate authority are valid. There was no question of hearing of the petitioners by the Deputy Collector, Land Reforms as on the application itself he was bound to initiate proceeding and should not have noticed to the petitioners to have their say at that stage.

(ii) The stating aside of the appellate order would mean perpetuating illegality inasmuch as the order of the Deputy Collector, Land Reforms, which was without jurisdiction and void, would stand restored.

(iii) The writ petitions should be dismissed except his which should be admitted.

Mr. Varma, to support his contention, placed great reliance on these cases:--(i) Dhanji Singh Vs. State of Bihar and Others, (ii) Bhadu Oraon v. State of Bihar, reported in 1988 BLJ 1027 (iii) Hari Prasad Mandal v. Additional Collector, reported in 1978 BBCJ 575 and (iv) Lakshmi Prasad v. State of Bihar, reported in 1978 BBCJ 750.

8. Mr. Shahi, in reply, submits that Dhanji Singh case is a Special Bench Judgment, which supports him than Mr. Varma C.W.J.C. No. 5971 of 1992 has been filed as a counter meet after receipt of notices in these writ petitions.

9. I find substance in the arguments of Mr. Shahi and accept them.

10. In this context, the ratio in Kapildeo Singh v. Chattu Lal Rai 1978 BBCJ 131 is relevant, when this court speaking through L. M. Sharma, J. (Now of the Hon'ble Supreme Court) and B. P. Sinha, J. held " We think that it is for the Officer concerned to be satisfied with the bona fide nature of the application before drawing up any proceeding. The criticism of Mr. Verma is correct that the Court has not attempted to appreciate the circumstances, materials or evidence relied

and produced by the petitioner" In this case, validity of an order initiating proceeding was successfully challenged before a Division Bench of this Court on the ground that there must be a finding of a prima facie case in favour of an applicant before a proceeding u/s 48-E of the Act could be drawn up.

11. Dhanji Singh's case, (supra), which did not overrule Kapildeo Singh's case (supra) is a judgment of a Special Bench of this court consisting of three Hon'ble Judges. The ratio laid down therein is binding on us. N. P. Singh, J. (Now of the Hon'ble Supreme Court held as follows :

5. This case was referred to special Bench by Hon'ble the Chief Justice, perhaps, to determine the scope of Sub-section (1) of Section 48-E of the Act which empowers of the Collector to initiate a proceeding under that section for the purpose of deciding a dispute between the raiyat and under-raiyat in respect of possession and dispossession of the lands.

6. Sub-section (1) to Sub-section (3) of Section 48-E of the Act, as substituted by Bihar Act VIII of 1970, which are relevant for the purpose of this case, are as follows :

(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 the commencement of proceedings 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--

(2). The Collector may, after hearing the parties about which due notice shall have been given to them or exparte, 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 action, is liable to speedy and natural decay, he may, if the situation so warrants and in a 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 landlord.

On a plain reading of the aforesaid sub-sections it appears that the Collector may of his own motion, or on application made in this behalf by the under-raiyat,

initiate a proceeding u/s 48-E (i) if an under-raiyat is threatened with unlawful ejectment from his tenancy or any portion thereof by his landlord, (ii) If there is a dispute between them over the possession of the land crop or produce thereof, either on the ground of non-existence of relationship of landlord tenant or otherwise (iii) if an under-raiyat is or has been ejected from his tenancy or any portion thereof within 12 years before the commencement of the proceeding under said section in contravention of the provisions of Section 89. Sub-section (2) vests power in the Collector to prevent the landlord from ejecting an under-raiyat till the disposal of the proceeding or until further orders. This power is analogous to the power of granting injunction. Sub-Section (2) says that such order can be passed only after hearing the parties, it can be passed ex parte, only in cases of emergency. Sub-section (3) provides that once a proceeding is initiated under Sub-section (1) the Collector may refer the dispute to the Board to be appointed by him for promoting the settlement of the dispute between the parties...

8. ...What is the scope of sub-Section (1), can be determined only after it is ascertained as to whether under sub-Section (1) the Collector has to exercise an administrative power or a quasi-judicial one. According to learned Government Advocate, who appeared on behalf of the State, the Collector has no option, after having received an information or petition from the under-tenant regarding a threatened ejectment, or a dispute about possession of the under tenant, but to refer the same to the Board for decision. As such, according to him, there is no question of exercise of a quasi-judicial power at that stage. In my opinion, it is difficult to accept this contention sub-Section (1) prescribes three contingencies mentioned above, under which the Collector has to initiate a proceeding. The Collector, before initiating the proceeding has to be satisfied on the materials produced before him or on the basis of the information received by him that one of these three requisite conditions exists. Is the Collector bound to initiate a proceeding under sub-Section (1), if an allegation has been made in the petition of the under tenant that he had been dispossessed on a date which is beyond 12 years from the date of the filing of this application ? Similarly, is he bound to initiate a proceeding if the allegation or information is that the under tenant has been dispossessed not by his landlord but by a third person ? The answer in both the cases shall be the negative. Therefore, it cannot be said that at the time of initiating a proceeding, the Collector has not to apply his judicial mind for the purpose of ascertaining as to whether the requisite conditions for initiating the proceeding exist or not.

9. Learned Government Advocate submitted that Sub-section (1) does not say in so many words that the Collector should be satisfied about the existence of the dispute. According to me merely because of the absence of expressions like of the Collector is satisfied" it cannot be held that the reference to the Board is an automatic action without any application of mind. If it is well settled that where a particular statute vests power in a particular authority to initiate or not to initiate a proceeding on its own opinion, still it can be shown that those circumstances

do not exist or that they are such that it is impossible for any one to form an opinion therefrom, suggestive of the aforesaid things. In other words, the opinion can be challenged on the ground of non-application of mind or perversity or on the ground that it was formed on collateral grounds and was beyond the scope of the statute

xx xx xx

The Collector under the said section after having initiated the proceeding can prevent the landlord from ejecting the proceeding which order shall be in nature of an order of injunction. Then, can it be said that he is performing only administrative functions. In my opinion, no sooner the Collector considers the question of initiation of a proceeding under sub-Section (1) on the basis of an information received by him or on the basis of an application made on behalf of the under raiyat, a quasi judicial proceeding is initiated and all orders passed thereafter are to be passed consistent with the norms prescribed. I have no hesitation in holding that a proceeding u/s 48-E can be initiated only after the Collector is satisfied that one of the three requisite conditions exists. On what materials 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.

B. P. Sinha, J. held as follows :

17 Before a proceeding is initiated and the Collector decides to go further or make a beginning, he has to form an opinion. Once this is conceded he cannot refuse to hear the landlord in proper cases. It is true that at the stage of initiating a proceeding the Collector has only to find out a prima facie case and he is not required to have a mini trial...The Collector has to find out a prima facie case and, in hand out a prima facie case, he cannot shut out the landlord from appearing before him and showing that the proceeding sought to be initiated is mala fide and baseless. How it will be done will, surely, depend upon the facts of each case. Such proceedings are not aimed at harassing the landlord. No doubt it is a beneficial legislation for safe guarding the interest of the bataidars but care must be taken that the landlords are not unnecessarily harassed at the lands of unscrupulous persons

P. S. Sahay, J. held as follows

18. For initiating a proceeding u/s 48-E of the Bihar Act the Collector has only to see whether the three requisite conditions enumerated under Sub-section (1) of the Section 48-E have been satisfied or not. How he will be satisfied about it is entirely for him to decide and no hard and fast rule can be laid down. If the landlord appears and wants to be heard then Collector may hear him

12. The following ratio laid down in a recent Full Bench judgment of three judges of this Court in Shankar Mandal v. Deputy Collector, Land Reforms reported in

1991 (2) BLJR 312 is also relevant :

9...Section 48-E is for prevention of threatened ejectment of under raiyat by landlord from his tenancy and restoration of possession of under-raiyat unlawfully ejected. Landlord has been defined in Section 3(4) of the Act to mean a person immediately under whom a tenant holds and includes a Government. u/s 3(9) holding means a parcel or parcels of land held by a raiyat and forming the subject of a separate tenancy. Section 4 enumerates classes of tenants which include raiyat under-raiyat. Under-raiyat is a tenant holding immediately or immediately under a raiyat. Section 5 inter alia, provides what is meant by raiyat. Chapter X of the Act deals with preparation of record of rights and settlement of rent. Section 102 of Chapter X provides the particular to be recorded in the record of rights. Besides other particulars, the record of right must specify the class to which each tenant belongs, that is to say whether he is a tenure holder raiyat or under raiyat.

(10). The Act is applicable to agricultural holdings only. Existence of under-raiyat presupposes existence of a raiyat and a holding held by the raiyat. There cannot be a raiyat if there is no holding within the meaning of the Act and consequently there cannot be under raiyat.

The facts which a person in an application u/s 48-E must plead are existence of a holding and of an under raiyat both with-in the meaning of the Act. Raiyat is landlord in relation to his under raiyat.

(11). Neither in the application filed by the petitioner as contained in Annexure-3 nor in whole of the writ petition, there is any averment that the petitioner was under raiyat within the meaning of the Act. He did not describe the holdings a meant under the Act in respect of which he apprehended his ejectment. He did not bring on record, the record of rights to prima facie show that the original respondents No. 2 and 3 were his landlords, being raiyats record-ed in a particular holding and the land in question was the subject-matter of that holding. In absence of these facts, the applications u/s 48-E of the Act were not entertainable.

If basic facts are absent in an application filed u/s 48-E, there is no question of the Collector applying his mind whether there is a dispute between the landlord and the under-raiyat.

13. Here the applicants (Respondent No. 6 in each cases) failed to prima facie show the requirements as stated above before the Deputy Collector Land Reforms or even before the alleged appellate authority or even before us.

14. From the ratio laid down by different Judges constituting the Special Bench, it is clear that the initiation of i proceeding under the Act is a quasi judicial matter and it is open for a landlord to show the Collector, prima facie that the dispute raised is mala fide and baseless and to harass him though in appropriate cases, the Collector may refuse to hear the landlord.

15. Since the judgment of Dhanji Singh's case (supra) is of Special Bench I need not consider several other judgments cited at the Bar by Mr. Verma except Bhadu Oraon.

16. In Bhadu Oraon's case (supra) strongly relied upon by Mr. Varma, the writ petitioner was recorded as a Sikmidar (under-raiyat) in the record of rights itself, with which was attached the presumption of correctness besides continuity of the state of affairs and, thus, it could not be said that the dispute raised by the writ petitioner was *prima facie*, *mala fide* and in that backdrop it was laid down that the Collector is required to be satisfied that a *prima facie* case has been made out by the applicants and that in absence of a *prima facie* case, no proceeding u/s 48-E should be initiated (See paragraph 29 of the judgment).

17. In the instant case, the applicants have not figured anywhere in the proceeding initiated under the provisions of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956. Had Respondent No. 6 been under-raiyats, the matter must have been noticed by the Consolidation authorities as well as the Village Advisory Committee and their names recorded. Respondent No. 6 have not figured even during the proceedings initiated under the provisions of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961. Had they really been under raiyats the Anchal Authorities who made report must have reported to that effect to the Collector. In this backdrop, it would not be advisable to refuse to exercise my discretion under Articles 226 and 227 of the Constitution of India.

18. The writ petitioners filed the documents just to show, *prima facie*, that the dispute raised against them by the applicants was not *bona fide* rather *mala fide* and in adjudicating it the Deputy Collector, Land Reforms, was well within his jurisdiction, to make a casual reference to them and it cannot be said that he held a mini trial. Perusal of his order does not show that any document and/or material was placed or pressed by the applicants. True it is that the parties, as it appears his order, raised an issue as to whether after having registered the applications, but before constituting Board, he can decide the issue of *mala fide* or not, on which he went to consider the cases of this Court at some length which made his order slightly bulky. I fail to appreciate as to what documents had produced before the Collector, Jehanabad, on the basis of which he reversed the finding of the Deputy Collector, Land Reforms. In order to satisfy my conscience, I even looked to the pleadings of the applicants, who have filed C.W.J.C. No 6971 of 1992, even though they cannot be looked into while considering these cases. It has no-where been stated therein what documents the applicants had filed either before the Deputy Collector, Land Reforms or before the Collector, Jehanabad. It has also not been stated in their writ petitions about the existence of any circumstance to which would have justified initiation of the proceedings. They have not even shown any circumstance to us to show that there existed *prima facie* any *bona fide* dispute. Even the order dated 12-6-1990 of the Deputy Collector, Land Reforms (as contained in Annexure 1 of

C.W.J.C. No. 5971 of 1992) does not show that he was satisfied prima facie to initiate proceedings and or even though he had proceeded to constitute a batai board.

19. It was the Deputy Collector, Land Reforms, who was to be satisfied of the existence of prima facie, bonafide dispute and not for the Collector to be satisfied, who had no jurisdiction to hear the appeal in question. What I find is that the Collector, Jehanabad had exceeded his jurisdiction in allowing the appeals even after holding that there is no provision for an appeal as laid down by a Division Bench of this Court in Shivanandan Roy's case reported in 1980 BLJR 41 . In Osmania University and others Vs. A.V. Ramana and others, , the Apex Court held that "No statutory authority or tribunal can assume jurisdiction in respect of the subject-matter which the Statute does not confer on it". Thus, I hold the impugned order as void. If this Court allows the prayer of the petitioners of C.W.J.C. No. 5971 of 1992 to uphold and affirm the appellate order of the Collector that would perpetuate an illegality.

20. In the aforementioned view of the matter, it cannot be held that setting aside of the impugned orders would perpetuate such an illegality so as to refuse the discretion, vested under Article 226 of the Constitution of India.

21. I find substance in the argument of Mr. Shahi that C.W.J.C. No. 5971 of 1992 has been filed by the applicants much belatedly without even naming the learned Counsel who allegedly gave advice and as a counter blast to these writ petitions.

22. I, accordingly, allow these writ applications and quash the impugned orders (as contained in Annexure I to each of them), but in the peculiar facts and circumstances, without costs.

23. Let writs of certiorari issue accordingly.

24. I agree.