
(2004) 04 PAT CK 0094
In the Patna High Court
Case No : C.W.J.C. No. 1910 of 1989

Chitaranjan Kumar Singh and Others	APPELLANT
Vs	
The State of Bihar and Others	RESPONDENT

Date of Decision : 13-04-2004

Acts Referred:

Bihar Tenancy Act, 1885 — Section 48E

Citation : (2004) 3 PLJR 10

Hon'ble Judges : S.N. Hussain, J;Nagendra Rai, J

Bench : Division Bench

Advocate : Ras Bihari Thakur, Binod Kumar and Prabhat Kumar Singh, in C.W.J.C. No. 1910 of 1989, Sumitra Kumari and Mukteshwar Singh, in L.P.A. No. 342 of 1995, for the Appellant; Jai Prakash Singh and Standing Counsel No. 7 in C.W.J.C. No. 1910 of 1989, Binod Kumar and A. Kr. Rai and P. Kr. Singh and Standing Counsel No. 8 in L.P.A. No. 342 of 1995, for the Respondent

Final Decision : Dismissed

Judgement

Nagendra Rai and S.N. Hussain, JJ.—C.W.J.C. No. 1910 of 1989 and L.P.A. No. 342 of 1995 have been ordered to be heard together and accordingly they have been heard together and are being disposed of by this common judgment.

2. The Petitioners in C.W.J.C. No. 1910 of 1989 are some of the Respondents in L.P.A. No. 342 of 1995 and Respondent No. 5 in the writ application is the Appellant in the aforesaid Letters Patent Appeal. The writ Petitioners are hereinafter referred to as the "landlords" and the Respondent in the writ petition and Appellant in the Letters Patent Appeal are hereby referred to as the "tenants".

3. The tenants had filed Bataidari case u/s 48E of the Bihar Tenancy Act. The dispute between the parties relates lands of two khata Nos. 33 and 34 situate in village Madandehra (P.S. Itarhi) in the district of Buxar. Total area involved is 12 acres 25 decimals consisting of several plots. Admitted fact is that this land was recorded as sikmi land in the cadastral survey in the name of ancestor of the

tenant. The vendors of the landlord, namely, Natho Singh were recorded as landlords.

4. The case of the landlord is that one Bans Kishore Singh son of Natho Singh and Shyama Kuer, widow of Natho Singh by registered sale deeds dated 8.4.1919 and 27.4.1924 transferred the land to the ancestor of the landlords and since then they are coming in possession of the land as raiyats. Later on, the ancestor of the tenant executed deed of Bajdawa disclaiming the interest as under-raiyat with regard to the land in question. During revisional survey there was fight between the landlord and the tenant with regard to recording of name of the tenant as under-raiyat and their objection was rejected and revisional survey khatian was prepared in the name of the landlords.

5. The case of the tenant, on the other hand, is that they are under-raiyats since long and they were recorded as such in the cadastral survey. An application was filed by Bhukhan Mahto father of one of the tenants before the Anchal Adhikan claiming dispossession at the instance of the landlords.

6. The matter was referred to the Deputy Collector Land Reforms, Buxar. The Deputy Collector Land Reforms constituted Bataidari Board submitted its ex-parte report dated 29.6.1973 against the landlords. The landlords challenged the said report of the Bataidari Board along with the order of the Deputy Collector Land Reforms passed on the basis of the said report before this Court and this Court quashed the report of the Bataidari Board as well as the order passed by the Deputy Collector Land Reforms and remanded the matter again to the Deputy Collector Land Reforms for fresh constitution of the Board and to proceed with the matter in accordance with law.

7. The Deputy Collector Land Reforms again constituted a fresh Bataidari Board. The Bataidari Board submitted its report whereby part of the land i.e. 81 decimals of plot No. 72 and 72 decimals of plot No. 263 was found in possession of the tenants as under-raiyats. On the basis of the said report, the Sub-Divisional Officer, Buxar passed an interim order which was challenged by the landlords before this Court and this Court quashed the same.

8. Thereafter, the Deputy Collector Land Reforms constituted a third Bataidari Board on the ground that the report of the second Bataidari Board was submitted much beyond the prescribed period of six months. The matter again came to this Court in C.W.J.C. No. 1136 of 1983 and this Court by order dated 11.10.1983, reported in 1984 BBCJ 309 [1984 PLJR 152], held that the period of six months fixed for recording the findings and transmission of the records to the Collector by the Bataidari Board is not mandatory one and even if the report is submitted thereafter, the same can be considered and accordingly directed the Deputy Collector Land Reforms to consider the matter and pass order u/s 48E of the Bihar Tenancy Act and dispose of the proceedings expeditiously unless he chooses to disagree with the report. It appears that the Deputy Collector Land Reforms disagreed with the report submitted by the second Bataidari Board and

took oral and documentary evidence and by order dated 20.9.1985 allowed the claim of the tenant as bataidars. The landlords challenged the same by filing appeal before the Collector and the Collector has dismissed the appeal by order dated 7.1.1989. Against that order C.W.J.C. No. 1910 of 1989 has been filed by the landlord.

9. During Consolidation proceedings under the provisions of Bihar Consolidation of Holdings and Prevention of Fragmentation Act the disputed land has been recorded in the name of the landlords and in pursuance of that khatian has been prepared and the scheme has been confirmed. Thereafter, the tenants filed an application with regard to their claim as under-raiyat which was rejected by all the authorities i.e. original authority, appellate authority and the authority under the Act on the ground that as the scheme has been confirmed, no case is made out. Against the said orders the tenants filed C.W.J.C. No. 69 of, 1994 and the learned Single Judge by order dated 18.1.1995 has dismissed the same on the ground that no case for interference in writ jurisdiction is made out.

10. So far case of Bataidari u/s 48E of the Bihar Tenancy Act is concerned both the parties have adduced oral evidence and filed large number of documents. The landlords have filed, as it appears from the order of the authorities, revisional survey khatian, objection of tenants rejected during revisional survey, registered deed of disclaimer issued by one of the ancestors of tenants, canal parcha and other documents, apart from examining five witnesses. The landlords have also filed documents with regard to mutation, orders passed in criminal proceeding and the order passed under the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act. The Deputy Collector Land Reforms has catalogued those documents and in four lines stated that he is satisfied that the claim of bataidan is correct one. When the matter went before the appellate authority, the appellate authority has only held that as the name of the bataidars are recorded in the cadastral survey and that cannot be challenged in Bataidan case and accordingly upheld the order of the Deputy Collector Land Reforms.

11. This Bataidari case is pending since 1969 and has travelled to this Court times without number. We are constrained to observe that the original authority Deputy Collector Land Reforms and the appellate authority have not applied their minds to the basic question involved in the case nor they have paid attention to the documents and value attached to those documents and disposed of the matter mechanically. The question to be considered in this case is as to the effect of cadastral survey, subsequent entry in revisional survey, registered deed of Bajdawa given by under-raiyats, order passed in Consolidation proceeding and Ceiling proceeding,, but as stated above, both the authorities have not considered any of the documents. The Deputy Collector Land Reforms, as stated above, has not expressed any opinion on those documents and the appellate authority has taken wrong view that when there is entry in cadastral survey their correctness cannot be challenged under Bataidari case ignoring the existence of

the subsequent documents contrary to the same.

12. As we are inclined to remand the matter, we are not expressing any opinion on the merits of the case. As the matter is an old one, instead of remanding the same to the original authority we are remanding the matter to the appellate authority, i.e. the Collector of the District, who is directed to consider and dispose of the matter within a period of three months from the date of receipt/production of a copy of this order. It will be open for the parties to file further documents before him after service of copy to the counsel for the other side. Accordingly, the impugned order passed by the Deputy Collector Land Reforms, as contained in Annexure-2 and the order, passed by the Collector, as contained in Annexure-1 are quashed and the matter is remitted to the appellate authority for decision in the light of the observations made above.

13. So far L.P.A. No. 342 of 1995 is concerned, admitted fact is that under the provisions of the Act there is power vested in the authority also to make an entry with regard to under-raiyat during consolidation proceeding and the tenant did not raise any objection and the scheme has been confirmed. In that view of the matter, the authorities under the Act did not interfere with the matter and the learned Single Judge, in our view, rightly held that at this stage the matter cannot be reopened. We do not find any merit in the Letters Patent Appeal and the same is accordingly dismissed.

14. In the result, C.W.J.C. No. 1910 of 1989 is allowed and I.P.A. No. 342 of 1995 is dismissed.