
(1997) 11 PAT CK 0018
In the Patna High Court
Case No : C.W.J.C. No. 8837 of 1996

Dinesh Murmu and Others	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 05-11-1997

Acts Referred:

Bihar Tenancy Act, 1885 — Section 48E, 48E(1), 48E(3), 48E(4)
Criminal Procedure Code, 1973 (CrPC) — Section 144, 145

Citation : (1998) 1 PLJR 110

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Advocate : B.P. Verma and Prabhas Ranjan, for the Appellant; Kamal Kishore Mishra, for the Respondent

Final Decision : Allowed

Judgement

1. This writ petition has been filed on behalf of 41 persons whose application, filed u/s 48E of the Bihar Tenancy Act, claiming under raiyat rights over different pieces of land belonging to Respondent No. 3 was rejected by a common order dated 24.6.1996 passed by the D.C.L.R. Forbesganj in Case No. 770/1994-95. By the impugned order, the Collector, after hearing the parties, rejected the claim of the Petitioners even without constituting a Board as provided under Sub-sections (3) and (4) of Section 48E. It is this order which comes under challenge in this writ petition.
2. Heard Mr. B.P. Verma, counsel for the Petitioners and Mr. Kamal Kishore Mishra, counsel appearing on behalf of Respondent No. 3 at some length. Also perused the impugned order.
3. The impugned order is heavily burdened with quotations from judgments cited on behalf of Respondent No. 3, the landlord. But the actual consideration of the matter appears to be very brief and the reason assigned by the "Collector" for rejecting the claim even without constituting a Board boils down to this. It is stated that according to the counsel for the Opp. Party (Respondent No. 3, the

landlord), the Santhals (that is to say, the present Petitioners) had forcibly occupied the disputed lands and the landlord had made complaints in this regard before the Minister, the District Magistrate and the Sub-divisional Officer. An enquiry was held on the complaint made by her and a proceeding u/s 144 of the Code of Criminal Procedure was also initiated. In that proceeding a police report was received in which it was stated that in anticipation of the disputed lands being declared as surplus, in a land ceiling proceeding against the land holders, a number of Adivasis had started tilling the lands in the hope that those lands would be settled in their favour following their acquisition by the State Government. The "Collector" simply added an observation that the report was jointly made by the officer In charge, Forbesganj police station and the Circle Officer, Forbesganj. In other words, the impugned order rejecting the Petitioners' claim and declining to make a reference to the Bataidari Board was founded solely on the report alleging that the Petitioners had forcibly occupied the disputed lands.

4. At this stage, it has to be noted that Mr. Mishra, learned Counsel for Respondent No. 3 invited my attention also to a letter dated 3.8.1994 written by the D.C.L.R., Forbesganj to the Circle Officer, Forbesganj. In this letter too, it is stated that on some lands, which were earlier taken in acquisition in a land ceiling case against Sri Mahanand Thakur, the father of Respondent No. 3 some Adivasis had forcibly entered even before the lands could be distributed, in accordance with, the provisions of the ceiling law. Although the impugned order does not make any reference to this letter, Mr. Mishra submitted that this letter too was on the record of the case and this also lends support to the case of the landlord that the Petitioners were not really Bataidars but had taken over the disputed lands forcibly.

5. Mr. Birendra Prasad Verma, counsel for the Petitioners submitted that the letter relied upon on behalf of Respondent No. 3 was written by the same officer (D.C.L.R.) who eventually passed the order coming under challenge in this writ petition. The impugned order, therefore contended Mr. Verma, was also bad on account of the personal bias of the "Collector".

6. However, without going into the question of bias the purely legal issue that I propose to examine in this case is whether it was within the jurisdiction of the Collector to take upon himself the adjudication of the dispute between the parties and to record a finding, determining the dispute on an appraisal of the evidence led before him by one of the parties to the dispute.

7. In my considered opinion, the answer must be in the negative.

8. From the scheme of Section 48E of the Act, it is quite clear that a dispute relating to a claim of Bataidari right must normally be resolved by a Bataidari Board, either by amicable settlement or on failure to make the parties arrive at a settlement by an enquiry to be conducted by the Board itself. The Collector, however, is under a statutory obligation to satisfy himself before constituting the

Board and referring the dispute to it that the claim made by the under raiyat was not vexatious, malicious or frivolous and that there was a bona fide Bataidari dispute between the parties. The reasons for the Collector to so satisfy himself are obvious; in the first place, the decision to initiate a proceeding u/s 48E of the Act has been held to be quasi judicial in nature and hence, an order initiating the proceeding can only be passed by the Collector on due application of mind; the other reason is to protect the land lord from unnecessary harassment from malicious or vexatious claims. The statutory obligation of the Collector to satisfy himself that the claim was not malicious or vexatious does not however extend his authority to the extent that he may himself decide, on merits, the dispute between the parties. At this stage, it needs to be clearly borne in mind that prima facie satisfaction about the claim being bona fide is one thing and it is some thing quite different to take upon oneself the adjudication of the dispute, delve deeply into the respective claims of the parties, shift the evidences adduced on their behalf and then to arrive at a finding regarding the claim being true or untrue. In view of the aforesaid it becomes the duty of the Collector, once he is prima facie satisfied about the claim being bona fide, to constitute a Board and to refer the dispute to it and the Collector can decline to make reference to the Bataidari Board only in case he found that the claim was ex facie, malicious or frivolous.

9. Mr. Mishra submitted that even for coming to this finding, the Collector will have to take into consideration and appraise the materials brought before him by the parties. In support of his submission, learned Counsel relied upon a passage from a Full Bench decision of this Court in Dhanji Singh Vs. State of Bihar and Others, . The passage relied upon by Mr. Mishra is from Para 8 of the judgment and it is as follows:

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 those 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 in 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 exists or not.

10. In my view the passage relied upon by Mr. Mishra does not give any aid to his contention but on the contrary it supports the view taken by me. It is to be noted that both the circumstances cited in the above quoted passage (i.e., the

claimant's admission that he was dispossessed for more than 12 years or that he was dispossessed not by the landlord but by some third party) are such as to make the claim *ex facie* untenable and in those circumstances it would not be required to initiate any proceeding. Further, on reading the judgment of the special Bench in its entirety it at once becomes clear that the scope of the threshold enquiry by the Collector is very limited. In para 7 of the judgment, it was observed as follows:

In my view, although Sub-section (3) says that when a proceeding is initiated under Sub-section (1) the Collector "may" refer the matter to Board to be appointed by him, it has to be interpreted that after initiating the proceeding he has to refer the matter to the Board. It was pointed out in the aforesaid Ram Narain Singh's case in connection with Sub-section (1) of Section 48-E than doubt, the legislature has used the word "may" which is generally understood as enabling and not mandatory, but "when the power conferred by the statute is coupled with the duty of the person to whom it is given to exercise it, then even though the word "may" is used, it has to be construed as imperative.

11. Adverting then to the scope of the threshold enquiry by the Collector, the observation was made that Section 48E of the Act did not envisage an enquiry within an enquiry. The Special Bench decision also cited some illustrative cases in which it could be *ex facie* said that there was no bona fide dispute between the parties. The relevant passage in para 11 of the judgment is as follows:

Of course in some cases, where the claim on behalf of the under-tenant has been made by suppressing the material facts, liken order u/s 145 of the Code of Criminal Procedure between the same parties, upholding the claim of the landlord and negating the claim of possession made by the under tenant, or a recent delivery of possession having been effected in favour of the landlord over the lands in question, then the landlord may bring to the notice of the Collector that the claim of the applicant lacks bona fide. But, the landlord cannot be permitted at that stage to convert the initiation of the proceeding, a mini trial or a parallel enquiry. He has to wait till the matter is placed before the Board.

12. It is to be noted that the illustrations are of the nature of a final order passed by a Magistrate in a proceeding u/s 145 of the Code of Criminal Procedure between the same parties or a recent delivery of possession effected in favour of the landlord by the process of Court. The Special Bench decision does not refer even by way of illustration to any report of a police officer or revenue authority which at best would have an evidentiary value and can be rebutted by leading counter evidence.

13. I am, therefore, unable to accept the submission of Mr. Mishra and I have no hesitation in holding that in the threshold enquiry it is not open to the "Collector" to examine the claim and the counter claim of the parties in depth and to appraise the evidence led on their behalf.

14. On the basis of the discussions made above, it must be held that in passing

the impugned order the Collector exceeded his jurisdiction and the impugned order thus suffers from an error of jurisdiction. It is accordingly set aside and the matter is remitted back to the D.C.L.R., Forbesganj with a direction to constitute a Bataidari Board and to refer the dispute between the parties to it for proceeding in accordance with law.

15. In the result, this application is allowed without any order as to costs.