

(2001) 09 PAT CK 0093
In the Patna High Court
Case No : C.W.J.C. No. 12898 of 1999

Fudan Lal Mandal and Others		APPELLANT
	Vs	
State of Bihar and Others		RESPONDENT

Date of Decision : 21-09-2001

Acts Referred:

Bihar Tenancy Act, 1885 — Section 48E, 48E(1), 48E(3), 48F

Citation : (2002) 3 PLJR 614

Hon'ble Judges : S.K. Katriar, J

Bench : Single Bench

Advocate : Arun Prasad Ambastha, Ravindra Kumar Choudhary, Sanjay Sharma and Rupesh Ranjan, for the Appellant; S.S. Naiyar Hussain, for State and Parmeshwar Prasad, for the Respondent

Final Decision : Allowed

Judgement

S.K. Katriar, J.—Heard learned Counsel for the parties.

This writ petition is directed against the order dated 9.8.96 (Annexure-4), passed by the learned Collector of Araria, in Appeal No. 100 of 1990-91 (Jageshwar Choudhary v. Fudan Lal Mandal), in purported exercise of powers u/s 48F of the Bihar Tenancy Act (hereinafter referred to as "the Act"), whereby he has set aside the order dated 5.10.90 (Annexure-3), passed by the learned LRDC Araria, in Case No. 404 of 1989-90 (Fudan Mandal v. Jageshwar Choudhary). The learned LRDC had allowed the application of the Bataidar (the Petitioners herein) u/s 48E of the Act and had extended to them the requisite protection from dispossession as Bataidars at the hands of the landlords.

2. The Bataidar (the Petitioners herein) had filed an application before the LRDC. Araria, u/s 48E of the Act, alleging therein that they are Bataidar with respect to the lands in question owned by Respondent No. 4 herein (Jageshwar Choudhary). The same was registered as Araria case No. 404/89-90. After hearing the parties and on consideration of the materials before him, the learned LRDC by his order

dated 5.10.90, allowed the Bataidars application u/s 48E of the Act and directed the landlord not to dispossess the Bataidars from the lands question. Aggrieved by this order, the landlord (Respondent No. 4 herein) filed an appeal before the Collector u/s 48F of the Act which has been disposed of by the impugned order dated 9.8.96 (Annexure-4), whereby he has set aside the order of the learned LRDC and has in substance rejected the Bataidars application. Hence the present writ petition at the Instance of the Bataidars.

3. I have heard learned Counsel for the parties at length. It appears to me that the learned LRDC has acted in violation of the mandatory provisions of Section 48E(3) of the Act. Law is well settled by a long line of cases of high authority that once the first authority initiated a proceeding u/s 48E(1) of the Act he is obliged in law to constitute a Board in terms of Section 48E(3) of the Act. It was so held by a special Bench of this Court in the case of Dhanji Singh v. State of Bihar, the judgment of which is reported in 1979 PLJR 247, the relevant portion of which is set out hereinbelow for the facility of quick reference.

In my view, although Sub-section (3) of Section 48E uses the expression "may" it has to be held that once a proceeding initiated under Sub-section (1) of the Section, the dispute has to be referred to the Board to be constituted by the Collector. A bench of this Court in the case of (3) Lakshmi Prasad Bhagat and Anr. v. The State of Bihar and Ors. 1979 P.L.J.R. 82 : 1978 BCJ 750 has held that the Collector after initiating the proceeding has no jurisdiction to decide the dispute without reference to the Board. I am in respectful agreement with the said view. If the impugned order amounts to deciding the dispute itself, then it has to be held that the Sub divisional Officer had no such power before it had been referred to the Board.

It is thus manifest that once this provision has been held to be a mandatory provision of law, inter alia, for the reason that if the Board is not constituted, the provision to bring about a settlement of the dispute between the Bataidars and the landlord is rendered otiose. In the present case, the learned LRDC decided the dispute between the Bataidars and the landlord without constituting the Board which was in violation of the mandatory provision of Section 48E(3) of the Act. This also escaped the attention of the appellate Court. In that view of the matter, I hereby set aside the order dated 5.10.90 (Annexure-3), passed by the learned LRDC, as well as the order dated 9.8.96 (Annexure-4) passed by the Collector, Araria, and remit the matter back to the LRDC for a fresh consideration of the matter in accordance with law. He is hereby directed to constitute the Board in terms of Section 48E(3) of the Act and decide the dispute expeditiously.

4. In the result, this writ petition is hereby allowed.