
(1978) 01 PAT CK 0023

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 333 of 1977

Haji Taiyab Ali and Another

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 16-01-1978

Acts Referred:

Bihar Tenancy Act, 1885 — Section 48E, 48E(4)

Citation : AIR 1978 Patna 251 : (1978) 26 BLJR 558

Hon'ble Judges : M.P. Singh, J;H.L. Agrawal, J

Bench : Division Bench

Advocate : S.S. Asghar Hussain and Ahsan Shahabuddin, for the Appellant; R.B. Mahto (G.P. IV), Ashutosh Jha (J.C. to G.P. IV) for Respondents Nos. 1 to 3 and Naratan Singh, for the Respondent

Final Decision : Allowed

Judgement

1. This writ application is directed against the order, dated the 13th of June, 1976 passed by the Deputy Collector-in-charge Land Reforms, Naugachhia (Respondent No. 2) in a proceeding started u/s 48-E of the Bihar Tenancy Act, 1885 (hereinafter to be referred to as "the Act") on the petition filed by respondent No. 4, Sattam Sharma, on or about the 19th September, 1975, for a declaration of his raiyati rights over the lands in question. On the basis of that application Bataidari Case No. 12 of 1975 was registered by respondents No. 2 and after notice, the parties were directed to nominate their Panchas to constitute the Bataidari Board. The landlords, who are the petitioners before us, had nominated one Satto Choudhary as their Panch. This Panch did not participate in any of the proceedings of the Board, rather an application was filed by the petitioners before respondent No. 2 that their Panch would not participate in the meeting of the Board, which was scheduled to be held at Village Shaho Parbatta. The ground for non-participation of the petitioners' Panch was apprehension of overt acts on his person at the instance of respondent No. 4. In the counter-affidavit that has been filed on behalf of respondent No. 4, it has

been controverted that any threat was held by the said respondent. It, however, stands admitted that Satto Choudhary did not participate in any of the sittings of the Board. A part of the order-sheet of the Board has been made Annexure-3 to the writ application and the orders, dated the 20th April, 1976 and 16th May, 1976 indicate that Satto Choudhary was absent and he was refusing to attend the meeting unless the Board held its sitting at Naugachhia. In that view of the matter, the Board consisting only of the Chairman and the Panch of respondent No. 4 proceeded to decide the issues and ultimately forwarded a report in favour of respondent No. 4 and on that basis; respondent No. 2 passed the order on the 13th June, 1976, as already stated above, in agreement with the report of the Board, accepting the Bataidari claim of respondent No. 4 and directing the petitioners not to interfere with his possession. An appeal was filed against the said order by the petitioners before the Collector, Bhagalpur, who by his order, dated 11th January, 1977, dismissed it on the ground of limitation. The petitioners have accordingly come to this Court.

2. Mr. Asghar Hussain, learned Counsel appearing in support of this petition, on the basis of the proviso to Sub-section (4) of Section 48-E of the Act, contended that in as much as the nominee of the petitioners was not available, the Deputy Collector-in-charge Land Reforms should have appointed another person in his place, as he thought fit as their panch to constitute the Board and in the absence of any such appointment, any decision taken by the Board in the proceeding was incompetent and, therefore, the order passed by respondent No. 2 in the absence of the petitioners' nominee cannot be sustained.

3. In order to appreciate the contention, we extract the relevant provision, namely, Sub-section (4) of Section 48-E with its proviso:

"4. A Board to be appointed by the Collector in the prescribed manner under Sub-section (3) shall consist of a Chairman, who shall be unconnected with the dispute referred to such Board or with any party directly affected by such dispute and two members to represent the parties to the dispute and the person appointed as a member to represent any party shall be appointed on the recommendation of that party:

Provided that if any party does not nominate any person to represent him in the Board or nominates a person who is not available within such time as the Collector considers reasonable, the Collector may appoint such person, as he thinks fit to represent that party."

4. Learned Counsel for respondent No. 4 contends that the expression "not available" would not cover a case where a nominee deliberately absents himself or non-co-operates with the deliberations of the Board and would cover only such cases where the non-availability is due to reasons beyond the control of the parties or the panch concerned.

5. Having considered the Scheme of the relevant provisions, we find force in the contention of the learned Counsel for the petitioners. According to Sub-section

(4) of Section 48-E, a Board is to consist of a Chairman and two Panchas: one nominated by each of the parties to the dispute, which is to investigate into the rival claims of the parties and then come to a conclusion. In a case where the Panch nominated by any of parties is not available for reasons whatsoever, the constitution of the Board is rendered incomplete. In a circumstance like the one as in the present case, where the nominee of the petitioners practically refused to co-operate with the Board, the petitioners would suffer the advantage of getting a person of their choice as their Panch and would expose themselves to the peril of being, represented by another person who is nominated by the Collector, a man not of their choice. The fact in any event would be that the Panch does not become available within the time which the "Collector" considers reasonable. The grounds or the reasons for a Panch being not available, in our opinion, are not relevant for the consideration of the Collector. The fact of non-availability of any Panch ipso facto requires him to appoint another person in his place as he thinks fit and proper and complete the composition of a valid Board.

6. No authority was cited at the Bar before us but we may refer to two cases in support of our view, namely:--

The United Commercial Bank Ltd. Vs. Their Workmen, and Ram Bharosey Agarwal Vs. Har Swarup Maheshwari, .

In the first case, it was held that, proceeding with the adjudication in the absence of one undermines the basic principle of the joint work and responsibility of the Tribunal and, therefore, when the services of a member cease to be available the rest by themselves have no right to act.

In the second case also, a disciplinary committee of the Bar Council constituted u/s 9 of the Advocates Act of three persons, where only two were present when the case was heard, was held to be invalid. The ratio of the above cases would apply a fortiori to this case.

7. In this connection reference may be usefully made also to Sub-section (5) of Section 48-E, which provides that if at any time before the Board has completed its work the service of the Chairman or any member of the Board ceases to be available, or any member of the Board fails to attend the meeting of the Board on two successive dates without showing cause to the satisfaction of the Chairman, the Collector may appoint any suitable person in the prescribed manner to take his place and the proceeding shall be continued before such Board as so reconstituted. It is apparent, therefore, that the scheme of Section 48-E emphasises that there must be a representation of all the three members of the Board and the Board cannot proceed to deliberate in absence of any of its members.

8. The undisputed facts enumerated by us do establish that the Board in this case proceeded and decided the issues without the aid of the third member, that is, the nominee of the petitioners. The decision of this Board, therefore, being vitiated in law, should not have been accepted by respondent No. 2 and made

the basis of the order passed by him.

9. We would accordingly allow this application, set aside the order dated the 13th June, 1976 (Annexure-3) passed by respondent No. 2 and the order, dated 11th January, 1977, passed by respondent No. 1 on appeal preferred by the petitioners and would remand the case back to respondent No. 2 with a direction to constitute a proper Board by nominating a nominee on behalf of the petitioners in place of Satto Choudhary and then dispose of the proceeding in accordance with law. In the circumstances of the case, we would leave the parties to bear their own costs.