
(1988) 03 PAT CK 0035

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1288 of 1987

Hari Narayan Mukhiya and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 07-03-1988

Acts Referred:

Bihar Tenancy Act, 1885 — Section 48E, 48E(3), 48E(4)

Citation : (1988) PLJR 608

Hon'ble Judges : S.B. Sinha, J

Bench : Single Bench

Advocate : Bashishtha Narain Mishra, for the Appellant; S.N. Jha, Standing Counsel II for State and Mr. Vijayeshwar Narain Sinha for Respondent 4 and 5, for the Respondent

Judgement

S.B. Sinha, J.—In this writ application, the order dated the 16th April, 1986, and the order dated the 17th February, 1985, passed by the respondents 2 and 3, as contained in Annexures-1 and 2 to the writ application are under challenge. By reason of the aforementioned orders the respondents disallowed the application filed by the petitioners against the respondents 4 and 5 purported to be u/s 48E of the Bihar Tenancy Act.

2. Learned counsel appearing for the petitioners has raised a very short question. He submitted that, from a perusal of the order dated the 17th February, 1985, as contained in Annexure-2 to the writ application, it is evident that, in terms of section 48E(3) and 48E(4), the dispute was referred to the Board and both the parties nominated their punches and the Circle Officer, Majhaulia, was appointed as the Chairman of the Board. The said order was passed in the Court itself but allegedly the parties thereto did not raise any objection. It has further been observed therein that, although there is a violation of rule 2 of the Rules prescribed by the State Government u/s 48C and 48E of the said Act, as the parties did not make any objection with regard to the appointment of the Circle Officer, Majhaulia, as the Chairman of the Board, the said objection could not be

entertained.

3. On behalf of the respondents my attention has been drawn to the order dated the 3rd June, 1985 and the order dated the 17th June, 1985, as contained in Annexure-A to the application for vacating the order of stay passed by this Court and it was contended with reference to the aforementioned orders that, by an order dated the 3rd June, 1985, both the parties were given notice to nominate their respective punches as also to accord their approval relating to the appointment of the Circle Officer, Majhauria, as the Chairman and the case was ordered to be put up on the 10th June, 1985.

4. However, from the order sheet dated 17.6.1985 it appears that the respondents 4 and 5 were absent. On behalf of the petitioners, the name of Suraj Singh was mentioned as their punch but in view of the absence of the opposite parties, the punch nominated by the opposite parties could not be appointed. The opposite parties were directed to submit the name of their punch by the next date, i.e., the 25th June, 1985

5. In terms of rule 2 of the aforementioned Rules, when a proceeding is initiated under sub-section (1) of Section 48E, the Collector will nominate a person as the Chairman of the Board and simultaneously, ask both the landlord and the under-ryat to indicate within three days of his order whether they have any objection in the nomination on the ground that the Chairman nominated has any connection with the dispute or with any of the party directly affected by the dispute. In terms of sub-rule (b) of the aforementioned rule 2, the party raising an objection will be heard by the Collector and if the objection is found to be valid another person will be nominated as the Chairman. In terms of sub-rule (c) of the aforementioned rule 2, on the expiry of the period of three days from the date of the order under clause (a), if no objection has been raised by then or an objection has been disallowed after hearing the party under clause (b), the Collector will appoint the person nominated as the Chairman of the Board.

6. The petitioners have categorically stated in para 8 of the writ application that no notice was served on them and it has further been stated that when they came to learn thereof an objection was filed alleging therein that the Circle Officer was a relation of the respondents 4 and 5. The petitioners have categorically stated that the aforementioned objection was filed on the 30th September, 1985, but the same was rejected on the ground that the same was not maintainable because the report of the Board had been received on the same day.

7. In this case, no counter-affidavit has been filed on behalf of the respondents but, as Stated hereinbefore, an application for vacating the order of stay had been filed on behalf of the respondent No. 5 on the 17th November 1987, wherein the aforementioned order sheet as contained in Annexure-A thereto had been annexed.

8. The very fact that in the impugned order itself it has categorically been stated

that the punches were nominated in the court itself and, as it is not the case of the respondents that there has been an error of record excepting the statements made in the show cause in the manner as mentioned hereinbefore, it is evident from the statements made by the petitioners that an objection was filed by the petitioners on the alleged ground that no notice was served upon them in terms of rule 2 aforementioned remains uncontroverted. In the impugned order, it has not been held that actually any notice was issued although directed to be issued by the aforementioned order dated the 3rd June, 1985, or the petitioners did not raise any objection in spite of a receipt of any notice. On the other hand as mentioned hereinbefore, in the impugned order itself it has been observed that there has been a violation of rule 2 aforementioned.

9. In that view of the matter, I am of opinion that, as there has been a violation of the mandatory provision of rule 2 aforementioned, the impugned order cannot be sustained. In the result, this writ application is allowed and Annexures-1 and 2 which are admittedly on the basis of the report of the Board constituted in terms of section 48E(3) of the said Act, are hereby quashed. The Respondent No. 3 is hereby directed to proceed with the case afresh after service of notice to the parties concerned. No order as to costs.