
(2012) 03 PAT CK 0048
In the Patna High Court
Case No : CWJC No. 13638 of 2005

Kali Kant Jha and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 06-03-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145

Citation : (2012) 2 PLJR 318

Hon'ble Judges : Ravi Ranjan, J

Bench : Single Bench

Advocate : Purushottam Jha, for the Appellant; Sharangdhar Jha, for the Respondent

Final Decision : Dismissed

Judgement

Dr. Ravi Ranjan, J.—The petitioners filed an application for prevention of their threatened ejectment as under-raiyats u/s 48E of the Bihar Tenancy Act (hereinafter to be referred to as "the Act"), as contained in Annexure-1 before the respondent no. 3, before the Deputy Collector Land Reforms, Farbishganj, District-Araria, which was numbered as Application No. 23/2005-2006. From the order-sheet of the concerned case it appears that after perusal of the application and after hearing the petitioners on 6.6.2005 the matter was posted for 18.6.2005. On the date fixed notices were directed to be issued against the opposite parties, however, from the order dated 22.7.2005 it appears that, after finding that the opposite parties have remained absent even after notice, a procedure for constitution of the Board for promoting the settlement of dispute between the under-raiyats and the landlord was initiated. The Anchaladhikari, Farbishganj was nominated as Chairman of the Board and the parties were directed to nominate their respective members. From the order dated 25.7.2005 it appears that the petitioners had given the name of the member on their behalf who was nominated as one of the members of the Board. From the order dated 25.8.2005 it appears that initially both the sides were absent but subsequently

the opposite parties appeared and the matter was posted on 5.9.2005. However, on 5.9.2005 the respondent no. 3 had reviewed the earlier order on 25.7.2005 and had recalled the order of constitution of the Conciliation Board by nominating its Chairman and had dismissed the application filed by the petitioners finding no prima facie case.

2. Being aggrieved by such order, as contained in Annexure-2A, the petitioners have preferred this writ application for quashing of the same.

3. I have heard learned counsel for the petitioners and learned counsel for respondent nos. 4(b), 4(c), 4(i), 5, 6(a), (g), 6(e), 8, 9, 16 and 17 and perused the records of the case.

4. Counter affidavits appear to have been filed on behalf of the Collector, Araria as well as on behalf of respondent nos. 4(b), 4(c), 4(i), 5, 6(a), 6(g), 6(e), 8, 9, 16 and 17.

5. Learned counsel for the petitioners submitted that once a proceeding was initiated under sub-section (1) of Section 48E of the Act and the matter had been referred to the Board by nominating its Chairman and directing the parties to nominate the members on their behalf, the Collector under the Act was not empowered to review its earlier decision upon a petition having been filed on behalf of the landlord and thereafter recall the earlier order and reject the application filed on behalf of the petitioners without giving any opportunity of hearing to them. Thus, it has been contended that the order requires to be set aside.

6. On the other hand, learned counsel for the appearing respondents submitted that the order passed by the respondent no. 3 was bad as the same had been passed without service of notice upon the landlord. The concerned land is a homestead land, thus, such proceeding would not be maintainable. It has further been contended that the petitioners are well off and not poor persons and there was no landlord and under-raiyat relationship between the petitioners and the aforesaid respondents. It is also submitted that, before passing the order nominating the Chairman of the Board, a notice upon the aforesaid respondents was mandatory.

7. From the submissions made on behalf of the parties, the following questions emerge for determination:--

(i) Whether it was mandatory upon the Collector to hear the landlord before initiation of a proceeding or before constitution of the Board?

(ii) Whether the statute empowers the Collector to review its earlier order whereby a direction for constitution of the Board was given and Chairman of the Board was nominated?

(iii) Whether in any case, the earlier order could have been reviewed or recalled by the respondent no. 3 on the application made on behalf of the landlord,

without according any opportunity of hearing to the applicants?

8. For appropriate consideration of the matter, it would be apt to quote the relevant provisions of Section 48E of the Act as under:--

48E. Prevention of threatened ejectment of under raiyat and restoration to possession of under-raiyat unlawfully ejected.--(1) If an under-raiyat is threatened with unlawful ejectment from his tenancy or any portion thereof by his landlord or if there is a dispute between them over the possession of land crop of produce thereof either on the ground of non-existence of relationship of landlord and tenant between them or otherwise or if an under-raiyat is or has been ejected from his tenancy or any portion thereof within twelve years before the commencement of proceeding under this section in contravention of the provisions of Section 89 the Collector may, of his own motion or on application made in this behalf by the under-raiyat, initiate a proceeding for preventing the landlord from ejecting the under-raiyat or for settlement of the said dispute or for restoration of possession to under-raiyat unlawfully ejected from his tenancy or portion thereof.

[Explanation.--If in the midst of the proceeding it is found that the landlord has during or before the initiation of the proceeding transferred the land to any other person who is not a party to the proceeding initiated under subsection (1), the Collector shall make such transferee a party to the proceeding.]

(2) The Collector may, after hearing the parties, about which due notice shall have been given to them or ex-parte, in cases of emergency by an order in writing prevent the landlord from ejecting the under-raiyat until disposal of the proceeding or until further orders and if he is of opinion that any crop or produce of the land which is subject-matter of dispute in the proceeding under this section is liable to speedy and natural decay, he may, if the situation so warrants and in similar manner as aforesaid direct the proper custody or harvesting or sale, as the case may be, of such crop or produce or the sale proceeds thereof.

(3) When a proceeding is initiated under sub-section (1) the Collector may refer the matter (hereinafter referred to as "dispute") to a Board to be appointed by him, for promoting the settlement of the dispute between the under-raiyat and the landlord.

(4) A Board to be appointed by the Collector in the prescribed manner under sub-section (3) shall consists 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.

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(6) The Chairman of the Board to which a dispute is referred shall give written notice to the under-raiyat and his landlord in the prescribed manner and the Board shall make endeavors to bring about an amicable settlement of the dispute and when an amicable settlement of the dispute is brought about, the Board shall forthwith submit a report containing the terms on which settlement had been brought about, to the Collector, who may dispose of the proceeding in accordance with the terms of the report:

Provided that failure on the part of any member of the Board to sign the report shall not effect the validity of the same.

(7) Where a Board does not succeed in bringing about an amicable settlement of the dispute, it shall make enquiry into the same, receive such evidence as it considers, necessary, record its findings on the disputes and transmit the entire record of the proceeding forthwith to the Collector who may dispose of the proceeding in accordance with the terms of the findings:

Provided that failure on the part of any member of the Board to sign the finding shall not affect the validity of that finding:

Provided further that if any member does not want to sign the findings of the Board he will submit his disagreement on the findings in writing failing which the Chairman will submit his notice on the subject.

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(10) if the Board fails to record its findings or transmit the records as required under sub-section (7) within a period of six months which shall be reckoned from the date of its appointment under sub-section (3) the Collector may withdraw the proceeding from the Board and decide the dispute himself according to the provisions of this section.

9. From the aforesaid provisions it would be apparent that the Collector upon his satisfaction of a bona fide dispute, either on his own motion or an application made in this regard by the under-raiyat, may refer the matter to the Board. It would not be mandatory upon him to issue notice or hear the landlord before referring the matter to the Board. However, subsection (2) of Section 48E of the Act provides that in cases of emergency he may direct for proper custody or harvesting or sale of crops or produce with respect to the land under dispute either after hearing the parties or even ex-parte. From the reading of the entire provisions of Section 48E it does not appear that any statutory power has been given to the Collector under the Act for review or recall of the order of initiation of the proceeding and reference to the Board. Once the proceeding has been initiated and the matter has been referred to the Board, the Collector can only lay hands into the concerned dispute if some recommendation is sent to him by

the Board either after amicable settlement or even without amicable settlement after recording finding regarding the dispute and transmitting the entire records to the Collector or under sub-sections (6) and (7) or sub-section (10) of the Act. In case the Board fails to record its finding or transmit the records as required under sub-section (7) within a period of six months from the date of the appointment of the Board under sub-section (3) of Section 48E of the Act, in that case the Collector may withdraw the proceeding from the Board and decide the dispute himself in accordance with the provisions of the section. The entire scope and sweep of Section 48E of the Act has been considered by a Special Bench of this Court in *Dhanji Singh vs. The State of Bihar and Others*, 1979 Patna Law Journal Reports 247. It has been held by the majority that although the Collector has been vested with general control and superintendence over the proceeding in connection with the dispute between the landlord and the under-raiyat, however, at the time of initiation of the proceeding he has to satisfy himself regarding a bona fide dispute and if satisfied, he has to refer the dispute to the Board, which, in its turn, may record its own finding and thereafter transmit the record to the Collector alongwith such finding. Then the Collector at that time has either to accept the finding or disagree with the finding. However, at the time of initiation of the proceeding he is not required to notice the landlord and hold a mini trial before the actual dispute having been taken by the Board. Of course, in some cases where the under-tenant has suppressed the material fact, for example, an 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 land 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 proceeding into a mini trial or a parallel enquiry. He has to wait till the matter is placed before the Board. It has also been held that how and in what manner the Collector satisfies himself depends upon him upon the existence of one or other requisite conditions for initiation of the proceeding. No hard and fast rule can be laid down for such purpose as the same will depend upon the facts and circumstances of each case.

10. Findings as recorded in paragraphs 10 and 11 of the judgment rendered in *Dhanji Singh* (supra) are reproduced as under:--

10. Learned counsel appearing for the petitioner, while challenging the impugned order, submitted that even if it is held that the order for initiating a proceeding u/s 48E of the Act, by the Collector, is of a quasi judicial nature, still for that he is not required to hear the landlord. In my view, this contention has to be accepted before passing an order, the other side is to be heard only under two situations, (i) if it is required by the statute itself, or (ii) even in absence of an express provision, it is required under the principles, of natural justice. So far as the present case is concerned, sub-section (1) does not say that before initiation of the proceeding the landlord must be heard. This cannot be read even on the principles of natural justice because by merely initiating a proceeding no final

order is passed affecting any of the rights of the landlord.

11. xxx xxx In my opinion, from the scheme of Section 48E it is clear that it does not conceive two enquiries, one preliminary and other the final. If the applicant satisfies the Collector on the basis of the materials produced before him or the Collector is satisfied on the information received by him, then without waiting for the landlord he can initiate the proceeding. Of course, in some cases where the claim on behalf of the under tenant has been made by suppressing the material facts, i.e. an order u/s 145 of the Code of Criminal Procedure between the same parties, upholding the claim of the landlord and negative 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 applicants lacks bona fide. But, the landlord cannot be permitted at that stage to convert the initiation of proceeding into a mini trial or a parallel enquiry, he has to wait till the matter is placed before the Board.

11. Coming to the case in hand, it appears that after hearing the petitioners at length on 6.6.2005 respondent no. 3 had posted the matter on 18.6.2005 and on that date directed for issuance of notice upon the landlord which was not at all required. However, on three dates the landlord did not appear then he had referred the matter to the Board by nominating its Chairman. Though learned counsel for the appearing respondents has submitted that from the order of the Collector it does not appear that he was satisfied prima facie and thus, has initiated the proceeding, the aforesaid submission is only noted to be rejected as it has already been held by the Special Bench of this Court in Dhanji Singh (supra) that no hard and fast rule can be laid down on what material and in what manner the Collector has to satisfy himself regarding one or other requisite conditions for initiation of the proceeding. Once he has heard the matter and referred the same to the Board it would necessarily mean that he was prima facie satisfied regarding the existence of one of the conditions. Thereafter, there is no statutory provision under which he could have exercised a power of review or could have recalled the earlier order. Though in view of the decision of the Apex Court in Budhla Swain and Others vs. Gopinath Deb and Others, (1994)4 Supreme Court Cases 396, a Tribunal or Court may recall an order earlier made by it, if the proceedings culminating in the order suffered from inherent lack of jurisdiction or the same has been obtained by playing fraud or collusion or there has been mistake by the court prejudicing the party or a judgment has been rendered in ignorance of the fact that a necessary party has not been served any notice and thus, was not represented. However, from the impugned order dated 5.9.2005 it does not appear that the aforesaid order has been reviewed or recalled on any of such conditions. The order has been reviewed on the ground that from the records it appears that the land in question is not suitable for agriculture. Secondly, how the applicants have acquired the right can only be decided by a civil court and also that there is no force in the claim of "bataidari" made by the applicants. Thus, the application has been rejected as prima facie it

does not disclose any merit. Consequently the earlier order constituting the Board has also been recalled. The entire aforesaid exercise has not been done at the time of initiation of the proceeding but has been done subsequently while reviewing the earlier order. Though a claim has been made on behalf of the landlord that the matter has been referred to the Board without hearing the landlord, it does not appear that any finding has been recorded upon that. It has not been stated by the respondent no. 3 in the impugned order that a notice was required to be served and the same could not be served upon the landlords. However, I would be in respectful agreement with the law laid down by the Special Bench of this Court on this issue and hold that since no notice was required to be issued at the time of initiation of the proceeding as it has been held in *Dhanji Singh (supra)* that by merely initiating a proceeding no final order is passed affecting any right of the landlords, the proceeding cannot be held to be in violation of the principles of Natural Justice. Secondly, though such notices were issued at the time of passing of the impugned order, it has not been held by the Collector, while revising the order, that there was lack of service of notice upon the landlord. From the scheme of Section 48E of the Act it does not appear that there is any requirement of hearing the landlord before referring the matter to the Board rather it has been held by the Special Bench of this Court in *Dhanji Singh (supra)* that the same would amount to holding a mini trial or parallel enquiry at the time of initiation of the proceeding which has to wait till the matter is placed before the Board. The question of lack of jurisdiction has neither been raised nor does it appear from the record. A question of mala fide or fraud has also not been raised or proved before the concerned authority."

12. So far the question as to whether the land was capable for agriculture or not, there is no discussion at all and in one sentence it has been stated by the respondent no. 3 that from the scrutiny of the submissions raised on behalf of the landlord it appears that the land concerned is not capable of being cultivated. In my view, that would not be a sufficient reason for review of his earlier order. The entire such exercise appears to have been done by the authority concerned without hearing the applicants and without recording any reason as it does not appear from the order impugned that the petitioners were heard on the point of review though it stands recorded that their application has been seen at that point of time. Similarly, the findings that there was no force in the claim of bataidari and the right of petitioner could only be decided by a civil court, were also totally unwarranted at the stage of review as that would amount to touching the merit of the case at the initial stage in the absence of any statutory power and also in the absence of the applicants. Thus, in the opinion of this Court, the authority concerned has transgressed its jurisdiction as the earlier order has been reviewed/recalled in absence of any statutory power or in the absence of any pre-condition laid down by the Apex Court in *Budhla Swaln and Others (supra)*. Accordingly, all the questions that have emerged for determination, as mentioned above, are answered in negative and it is held that it was not mandatory to hear the landlord either before initiation of proceeding or before

referring the matter to the Board. I have already noticed that the impugned order has been passed by the respondent no. 3 without granting any opportunity of hearing to the petitioners.

13. As a result, this writ application succeeds and the impugned order dated 5.9.2005 as contained in Annexure-2A is set aside. However, the parties would be at liberty to nominate the members of the Board on their behalf in accordance with law and the respective parties would be at liberty to raise all the grounds in support of their respective cases before the Board.