
(1984) 01 PAT CK 0029
In the Patna High Court
Case No : L.P.A. No. 44 of 1979

Kamleshwari Mandal and Others

APPELLANT

Vs

Balgovind Thakur and Others

RESPONDENT

Date of Decision : 13-01-1984

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (1984) 32 BLJR 525

Hon'ble Judges : S.S. Sandhawalia, C.J.;H.L. Agarwal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Hari Lal Agrawal, J.—This is an appeal under Clause 10 of the Letters Patent against the judgment and order dated 10.9.1979 passed by B.P. Jha, J., a learned single Judge of this Court, in C.W.J.C. No. 1826 of 1977.

2. The matter arises out of a Bataidari proceeding initiated u/s 48E of the Bihar Tenancy Act, by one Kamleshwari Mandal and Bishundeo Mandal (respondent Nos. 2 and 3 respectively in the writ application) before the Deputy Collector, Land Reforms, Khagaria, alleging obstruction at the hands of the landlords, being petitioners 1 to 3 of the writ application. A Bataidari Board was constituted consisting of the Block Development Officer, Parbatta, as the President and two Panches nominated by each of the parties. The Board, however, having failed to submit the report within the prescribed time, the Deputy Collector, Land Reforms, withdrew the case from the Board under the provisions of Sub-section (10) of Section 48E of the Act and decided the matter himself in favour of the Bataidars. An appeal was filed by the landlords before the Collector but the same was also dismissed by the Additional Collector, Munger. The landlords accordingly filed the writ application which was placed for hearing before B.P. Jha, J.

3. One of the points that was pressed before the learned single Judge was that no endeavour for amicable settlement was made by the Deputy Collector when

he proceeded to dispose of the case himself. Accordingly the learned Judge allowed the application and quashed the order of the Deputy Collector and Additional Collector and remanded the case to the Deputy Collector "for fresh constitution of the Board".

4. This letters patent appeal was filed out of time and a petition u/s 5 of the Limitation Act for condoning the delay was filed which was ordered to be considered at the time of final hearing of the appeal. One of the points raised for condoning the delay in filing the appeal was that on the death of respondent No. 3 before the learned single Judge, his heirs were not substituted and, therefore, they had no knowledge of the writ case and they filed the appeal only after getting knowledge of the adverse decision from the rumours in the village. These facts have not been controverted by the respondents, nor any serious objection was raised by Mr. Krishna Prakash Sinha to the condonation of the delay. The limitation in filing the appeal is accordingly condoned.

5. On the merits of the appeal, Mr. Binod Kumar Roy pressed three points. Firstly he contended that the judgment of the learned single Judge having been passed without substituting the heirs and legal representatives of Bishundeo Mandal, respondent No. 3 before him, although this fact was brought on record was a nullity.

His second contention was that the Deputy Collector was not obliged to repeat the exercise of an amicable settlement which had been already attempted to by the Bataidari Board and failed. He also challenged the correctness of the decisions taking a view against him by a Bench of this Court in the case of Rasik Lal Singh and Ors. v. State of Bihar and Ors. 1979 B.L.J.R. 20 to which I was also a party--a case directly in point against this contention; as well as another Bench decision in Ram Narain Singh and Others Vs. State of Bihar and Others, .

The third point raised by Mr. Roy was that after the remand the learned Judge should have directed the Deputy Collector to decide the dispute himself and not to send the matter to the Bataidari Board.

6. In reply to the first point Mr. Krishna Prakash Sinha invited our attention to the operative portion of the order of the Deputy Collector to show that the order was in favour of Kamleshwari Mandal alone. It may be, as was contended by Mr. Roy in reply, that reading the whole order of the Deputy Collector would show that he was intending to allow the claim of under tenancy of both the brothers and that the landlords also took the order in the same form, but nonetheless it is the operative portion which ultimately records the final conclusion and becomes operative. The first point, therefore, has got no substance.

7. As regards the second contention, I have re-examined the reasons given in the decisions referred to earlier for taking the view that a Collector acting under Sub-section (10) of Section 48E was bound to follow the same procedure which was applicable for the Board. Sub-section (10) requires the Collector to "decide the dispute himself according to the provisions of this section". The emphasis

that he has to decide the dispute according to the provisions of the section cannot be given any other meaning than what has been given in the case of Rasik Lal Singh (supra). The Collector after withdrawal has to take up the proceeding de novo and the records of the Bataidari Board are of no use to him. If the contention of Mr. Roy is to be accepted then the Collector would also be bound by the evidence recorded by the Board or for that matter could refer to it, but obviously he cannot do that, in my opinion, the proceedings of the Bataidari Board after withdrawal become non est for all practical purposes and the Collector has to start with a clean slate.

8. The third point raised by Mr. Roy seems to have substance. I have already extracted the relevant provisions of Sub-section (10) of Section 48E, according to which after the withdrawal of the proceeding from the Board it is the Collector who is impressed with the duty to decide the dispute himself. The direction of the learned single Judge to the Deputy Collector to constitute a Bataidari Board for decision of the dispute between the parties, therefore, does not seem to be lawful. I would accordingly modify his judgment and order to that extent and direct the Deputy Collector, Land Reforms, Khagaria, to decide the dispute in question himself.

9. In the result, the appeal is dismissed subject to the modification as indicated above, but without any order as to costs.