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**(1976) 03 PAT CK 0013**  
**In the Patna High Court**  
**Case No : C.W.J.C. No. 2136 of 1975**

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| Lakshmi Thakur @ Laxmi Narayan Thakur | APPELLANT  |
| Vs                                    |            |
| State of Bihar and Others             | RESPONDENT |

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**Date of Decision :** 05-03-1976

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227

**Citation :** (1977) 25 BLJR 106 : (1977) 10 PLJR 50

**Hon'ble Judges :** S.N.P. Singh, C.J.; S.K. Jha, J

**Bench :** Division Bench

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## Judgement

S.K. Jha, J.—In this writ application under Articles 226 and 227 of the Constitution India the petitioner ha prayed for the issuance of an appropriate writ quashing the order sheet of the Deputy Collector Inchnrge Land Reforms (respondent No. 2) in a proceeding u/s 48E of the Bihar Tenancy Act (hereinafter to be referred to as "the Act"), as incorporated in Annexure "G" to the petition.

2. The facts relevant for the disposal of this application are these. The petitioner claims to be the owner of plot No. 569, khata No 24, having an area of 2 bighas 10 kathas in Mouza Sanhauli within Khagaria municipal area bearing thana No. 268. The aforesaid plot of land is situate near the Kosi College, Khagaria. On the 5th of June, 1975, Saryug Mahto (respondent No. 4) filed a petition before the Deputy Collector Incharge Land Reforms (respondent No. 2) u/s 48E of the Act alleging that he was in occupation of 21/2 bighas of land as an under-raiyat for a period of 18 years and was cultivating the same. The further case of respondent No. 4 was that he had built and made construction over part of this land having Gohal etc. and that he had further plained some mango trees and other trees. It was alleged in the petition filed by respondent No. 4 that the petitioner wanted to evict him forcibly from the aforesaid land. On receipt of the notice of the petition filed by respondent No. 4, the petitioner filed an objection before respondent No. 2 stating that he was the owner of khata No. 24, plot No. 569, having an area of 2 bighas 10 kathas, situate within the municipal limits of the Khagaria

Municipality. The petitioner's further objection was that he had no other land excepting the land mentioned above, which is less than 5 acres of irrigated land. The further case of the petitioner was that there was relationship of landlord and tenant between him and respondent No. 4. The house had been constructed by the petitioner for cultivating by himself. The house had been let out to respondent No. 4 as a tenant. The petitioner had installed and constructed an electric tubewell. The case put forward by respondent No. 4 in the application (Annexure 1) was denied by the petitioner. The petitioner thus objected to the initiation of a proceeding u/s 48E on two jurisdictional facts, namely, (1) that the petitioner was a tenant protected under the proviso to Section 48C of the Act and no bataidari right could be claimed by respondent No. 4 in respect of the land in question and (2) that the land allegedly falling within the municipal limits of Khagaria Municipality the provision as of the Act were not applicable to the area in question in view of Section 1(3) of the Act as there was no notification issued as envisaged u/s 1(3) by the State Government in respect of the land falling within the Khagaria Municipality. Respondent No. 2 on the aforesaid objection having been filed by the petitioner sent the matter to the Anchal Adhikari, Khagaria (respondent No. 3), for enquiring and reporting the extent of land belonging to the petitioner as also to report on the question as to whether the disputed land was situated within Khagaria Municipality. A copy of the aforesaid order passed by respondent No. 2 has been marked Annexure "3" to the writ petition. According to the petitioner's case, on the 2nd of July, 1975, he filed an affidavit also stating that the petitioner owned and possessed only 21/2 bighas of land being plot No. 569, khata No. 24 in touzi No. 4958, and that the petitioner had no other land in the world excepting this block of land. A copy of the affidavit said to have been filed by the petitioner has been marked Annexure "4" to the writ application. On the 25th of August, 1975, the Deputy Collector Incharge Land Reforms (respondent No. 2) without waiting for the report of the Anchal Adhikari and in spite of the protest on behalf of the petitioner that a Board of Settlement should not be constituted till the report of the Anchal Adhikari was received ordered that one Siyaram Mahto be nominated as a member of the Board on behalf of respondent No. 4, the alleged Bataidar. The petitioner's case is that after the affidavit (Annexure 4) was filed by him, respondent No. 4 also filed a petition before respondent No. 2 stating that the petitioner was in possession of 18 bighas 10 kathas and 4 dhurs of land. On the 10th of July, 1975, respondent No. 2 further informed the Anchal Adhikari for a report relating to the plot in question. Without waiting for the report from the Anchal Adhikari, however, the Deputy Collector Incharge Land Reforms observed that as the petitioner had not submitted his declaration according to Section 48C of the Act, there was no necessity for calling for a report from the Anchal Adhikari. The order entrusting the matter for enquiry to the Anchal Adhikari was recalled. That is the impugned order as contained in Annexure "6" of which the validity has been challenged in this writ application.

3. A counter-affidavit has been filed on behalf of respondent No. 4 which is not

very relevant for the purpose of the point at issue in this case. It has merely been stated in the counter-affidavit that the petitioner did not fall within the protection of the proviso to Section 48C of the Act as he owned and possessed more than 18 bighas of land.

4. Learned Counsel for the petitioner urged that both the questions raised by the petitioner in his objection filed before the Deputy Collector Incharge Land Reforms were questions with regard to jurisdictional facts. Once the matter had been entrusted by respondent No. 2 for enquiry and report to respondent No. 3, to say the least, the law did not warrant the recalling of that order by the Deputy Collector Incharge Land Reforms. It was also urged that the observation of the Deputy Collector Incharge Land Reforms that since no declaration had been filed by the petitioner in consonance with the provisions of the proviso to Section 48C the point could not be raised by the petitioner was erroneous in law I think there is sufficient force both the contentions raised on behalf of the petitioner. The relevant portion of Section 48C of the Act reads thus:

48-C. Acquisition of right of occupancy by under-raiyats -- Every person who, for a period of twelve years, whether wholly or partly before or after the commencement of the Bihar Tenancy (Amendment) Act, 1938 (Bihar Act 11 of 1938), has continuously held land as an under-raiyat in any village, whether under a lease or otherwise, shall be deemed to have acquired, on the expiration of that period, a right of occupancy in the land which he has so held for the said period:

Provided that an under-raiyat shall not, irrespective of the duration of his holding any land as an under-raiyat, acquire any right of occupancy-

(i) in such area of the land to be selected and declared by his landlord in the prescribed manner as together with the area of land already held by the landlord under his cultivation does not exceed the following limits, namely:

(a) five acres of land irrigated by flow irrigation work, lift irrigation work or tube-well owned, constructed, maintained, improved or controlled by the Central or the State Government or by a body corporate constituted under any law or by tube-well owned and maintained by the landlord or;

(b) ten acres of other land; or

"in the land, within the ceiling area fixed law of a landlord, who is a widow or a person suffering from blindness, leprosy or paralysis or is a person of unsound mind or a person in the service of the Army, Navy or Air Force of the Union of India during the period the landlord remains a widow or suffers from blindness, leprosy or paralysis or remains of unsound mind or remains in the service of the Army, Navy and Air Force of the Union of India", " From a perusal of the aforesaid provisions of Section 48C its true scope and purport emerge as follows. Every person who has continuously held land as an under-raiyat in any village, whether wholly or partly before the commencement of the Bihar Tenancy (Amendment)

Act, 1938, whether under a lease or otherwise, shall be deemed to have acquired on the expiration of the aforesaid period of twelve years a right of occupancy in the land which he has so held. The proviso to Section 48C lays down that irrespective of the duration of an under-raiyat holding any land, he shall not acquire any right of occupancy in such area of the land which may be selected and declared by his landlord in the prescribed manner as together with the area of land already held by the landlord under his cultivation does not exceed five acres of irrigated or ten acres of unirrigated land. The primary object of the proviso is to restrict an under-raiyat acquiring any occupancy right in any land if the land held by the under-raiyat together with the land held by the raiyat (landlord) falls within the areas mentioned in proviso (i)(a) and (b) to Section 48C of the Act. Learned Counsel for respondent No. 4 invited our attention to Rule 1 of the Rules prescribed by the State Government under Sections 48C and 48E of the Bihar Tenancy Act, 1885, hereinafter to be referred to as the Bihar Tenancy Act, 1885, hereinafter to be referred to as the Bihar Tenancy Rules dated the 24th February, 1971. Rule 1(a) thereof reads as follows:

1. Declaration by the landlord under Clause (i) of the proviso to Section 48C --  
(a) A landlord shall make a declaration to the Anchal Adhikari or Block Development Officer-cum-Anchal Adhikari under Clause (i) of the proviso to Section 48C in form A" contained in the Schedule appended to these Rules, showing necessary particulars in respect of all the lands held by him and by the under-raiyats holding under him, anywhere in the State and the details of the lands in respect of which it is claimed that the under-raiyats shall have occupancy rights.

Learned Counsel also drew our attention to Form "A" prescribed under the aforesaid Rules. Before advertng to the contents of Form "A", it is pertinent to point out that Rule 1 does not in any way support the contention of respondent No. 4. The last part of the above-noted rule prescribes that the declaration to be made by a landlord (raiyat) has to be made in Form "A" showing necessary particulars in respect of all the lands held by him and by the under-raiyats holding under him anywhere in the State and the details of the lands in respect of which it is claimed that the under-raiyats shall have occupancy rights. It will thus be seen that the rule contemplates a raiyat (landlord) having more than the area as envisaged under the proviso to Section 48C, some of which may be in possession of under-raiyats. Under the rule and Form "A", therefore, a declaration has to be made by the landlord as to in which plot of land under the occupation of an under-raiyat he elects not to exercise his option for treating such an under-raiyat within 5 acres or 10 acres of the different categories of land mentioned in the proviso to Section 48C. To give an illustration : supposing "A" a raiyat, has in all 20 acres of irrigated land, out of which different portions are under the occupation of, say, three under-raiyats, "X", "Y" and "Z" and the land actually held under the direct cultivation of the landlord "A" is less than 5 acres of irrigated land. In such a case he has to elect as to which particular under-raiyat he chooses for the purpose of his acquiring occupancy right in such areas

of land as are being held by them. To continue with the illustration : supposing "X", an under-raiyat, is in possession of 8 acres of land out of 20 acres aforesaid; "Y" is in possession of 7 acres of land and "Z" in possession of  $2\frac{1}{2}$  acres of land as under-raiyats. The total area of  $17\frac{1}{2}$  acres of land. "A" then remains in has cultivating possession of land to the extent of  $2\frac{1}{2}$  acres of irrigated land only. In such a case he has to file a declaration under the proviso to Section 48C read with Rule 1 of the aforesaid Rules in Form "A" specifying therein as to which, of the under-raiyats, "X", "Y" and "Z" he treats as having acquired occupancy right in the plots held by them and which of such under-raiyats with regard to which specific portion of land held by such an under-raiyat is claimed by the landlord "A" not to be the subject-matter of occupancy right so that such an area along with  $2\frac{1}{2}$  acres as held and possessed by him not exceed 5 acres of irrigated land. It is in that context that therelevancy of the words "and the details of the lands in respect of which it is claimed that the under-raiyats shall have occupancy rights" as laid down in the last portion of Rule 1 has to be judged. Therefore, a declaration in Form "A" is essential only in such cases where the total area of land belonging to a landlord though in excess of the limit prescribed under the proviso to Section 48C the landlord exercises his option and elects to have a particular area demarcated for the purpose of putting himself within the area fixed in the proviso. Where as in the instant case, the case of the petitioner is that he holds only  $2\frac{1}{2}$  bighas of land in all and that there is no under-raiyat on the land, I do not think there could be any justification in insisting on a declaration in Form "A" being filed for it will be a declaration in vacuum, which the statutory provisions should not be construed to mean. Assuming for the sake of argument, however; that such a declaration was essential even on the facts of the instant case, an opportunity must be afforded to the petitioner to file such a declaration before rejecting his claim summarily. It is of the essence and substance of the statutory provisions that if, as the case of the particular in the present case is, the landlord (raiya) holds in all less than 5 acres of irrigated or 10 acres of unirrigated land claiming that he has not inducted any under-raiyat on the land, no verification as contemplated in Form "A" is required. Be that as it may, in any event, prudence demanded that when the matter was referred to the Anchal Adhikari (respondent No. 3) for enquiry and report, the least that could have, been done by the Anchal Adhikari was, if the affidavit filed by the petitioner was not acceptable, to give an opportunity to the petitioner to file a declaration as envisaged in Form "A". It was further incumbent on respondent No. 2 to have waited for a report from the Anchal Adhikari (respondent No. 3) with regard to the fact as to whether the land in question fell within the municipal limits of Khagaria Municipality or not and if it did so fall whether there was any notification issued by the State Government as contemplated by Section 1(3) of the Act. The two points raised by the petitioner were very much matter of substance and they go to the root of the jurisdiction of the authorities to proceed further in the matter in a proceeding u/s 48E of the Act.

5. For the forgoing reasons, the ordersheet of respondent No. 2 as contained in Annexure "6" must be quashed and this application has to be allowed. But in exercise of my power under Article 227 of the Constitution I would remit the case back to the Deputy Collector Incharge Land Reforms for having the two matters mentioned above enquired by the Anchal Adhikari (respondent No. 3) and only in the event of a finding against the petitioner on each of the two points should respondent No. 2 proceed to constitute a Board of Settlement under Sub-section (3) of Section 48E of the Act. There shall be no order as to costs.