
(1978) 01 PAT CK 0010

In the Patna High Court

Case No : Criminal Miscellaneous No. 113 of 1976

Mosafir Yadav and Others

APPELLANT

Vs

Mahanth Chandra Shekhar Giri and Others

RESPONDENT

Date of Decision : 02-01-1978

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 146, 482, 483

Citation : (1978) 26 BLJR 164

Hon'ble Judges : Uday Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Uday Sinha, J.—This is an application under Sections 482 and 483 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code) by thirty petitioners for quashing a proceeding u/s 145 of the Code. The lands in dispute in the proceeding were attached by the learned Magistrate in terms of Section 146 of the Code by order dated 23-12-1975. The petitioners were members of the third party. Party to the proceeding and claimed to be Bataidars of the expropator since long. Opposite party No. 1 claimed to be in possession of some of the lands in dispute as owner impersonal cultivation. Opposite party Nos. 2 to 25 claimed to be in possession of some of the land in dispute as Bataidars of opposite party No. 1.

2. The point urged on behalf of the petitioners in support of the rule issued by this court is that the proceeding u/s 145 of the Code of not maintainable by virtue of the provisions contained in Section 48E (13) of the Bihar Tenancy Act, 1885 hereinafter referred to as the Act, learned Counsel for the petitioners placed reliance upon the case of Jai Prakash Rai and Anr. v. Bans Lal and Ors. 1977 Bihar Bar Council Journal 626 where it was held that during the pendency of the proceeding u/s 48E of the Act, a proceeding u/s 145 of the Code is not maintainable. The position in law in regard to non-maintainability of the proceeding u/s 145 of the Code pending adjudication before a Bataidar Board

(hereinafter referred to as the Board) constituted u/s 48E of the Act is not disputed. It is, however contended on behalf of the opposite party that no proceeding u/s 48E of the Act is pending and, therefore the proceeding u/s 145 of the Code is well maintainable. It was submitted by Mr. Jagdish Pandey that petitioner No. 1, Mosafir Yadav was party to a writ application which was subject-matter of Civil Writ Jurisdiction case No. 508 of 1972 in which the constitution of the Board u/s 48-E of the Act was challenged. This court allowed the writ application quashed the jurisdiction of the writ. It was, therefore, submitted on behalf of the opposite party that it was obvious that no Bafaidari dispute was pending before a Board constituted u/s 48-E of the Act. Learned counsel for the petitioners conceded that the application of Musafir Yadav and Ors., who were petitioners in O.W.J.C. No. 508 of 1972 must be dismissed, as there was no proceeding pending before the Board. In regard to other petitioners, however, learned Counsel for the petitioners submitted that the Board was in sisin of the matter and, therefore, the present proceeding u/s 145 of the Code was not maintainable.

3. At the time of hearing of this application by order dated 6-11-1977 a report was called from the land reforms Deputy Collector, Jehanabad, Gaya as to whether the Bataidari dispute between the petitioners and Mahanth Chandra Shekhar Giri, opposite party No. 1 had been referred to a Bataidari Board for adjudication or not. Report dated 2-12-1977 has been received from the land reforms Deputy Collector, Jehanabad, Gaya. The report shows that notices have been issued u/s 48E of the Act or persons claiming to be Bataidars over the lands to dispute. The report contains a list are petitioners to this application. It is therefore, obvious that the Bataidari dispute between Mahanth Chandra Shekhar Giri and some of the petitioners is still pending adjudication before a Board. That being the position the present proceeding u/s 145 of the Code is without jurisdiction and it is barred by the provisions of Section 48E (13) of the Act.

4. No one has appeared on behalf of opposite party No. 1 Mabanth Chandra Shekhar Giri, Shri Jagdish Pandey appearing on behalf of opposite party Nos. 2 to 25 submitted that the proceeding before the Board was without jurisdiction and, therefore, the present proceeding u/s 145 of the Code was tot barred by the provisions of Section 48(e)(13) of the Act. It was submitted by Shri Pandey that his claimants claimed to be Bataidars of Mahanth Chandra Shekhar Giri and a dispute between Bataidars and Bataidari is not contemplated by Section 48E of the Act. In view of the stands taken by the parties. There is no substance in the opposition of Shri Jagdish Pandey. According to the petitioners, opposite party Nos. 2 to 25 were only stooges of Mahanth Chandra Sbekhar Giri, set up to thwart the claim of the petitioners. Since the matter in dispute in regard to possession is pending adjudication before a Board, it would be pre-judging matters if I were to hold that the members of the opposite party were independently claiming possession. In case the claim of the petitioners to be Bataidars of Mahanth Chandra Shekhar Giri is rejected, the proceeding before the Board will undoubtedly be dropped. Thereafter, it will be open any Magistrate

to adjudicate upon the question of possession between opposite party Nos. 2 to 25 and any body else. I am, therefore, unable to hold that the Bataidari Board had no jurisdiction to entertain the claim of the petitioners.

5. In the view that I have taken, the application of petitioner No. 1 Mosafir Yadav, No. 15 Ramfal Mochi, No. 25 Rambalak Yadav, No. 26 Rajdeo Prasad Yadav and No. 27 Nathuni Yadav is dismissed, as their claim is not pending adjudication before the Bataidari Board. The application of other petitioners is allowed and the proceeding u/s 145 of the Code bearing No. M/733 of 1975, pending in the court of Shri R.K. Mishra is hereby quashed.