

(2001) 08 PAT CK 0007
In the Patna High Court
Case No : C.W.J.C. No. 10635 of 1999

Onkar Nath Choudhary

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 21-08-2001

Acts Referred:

Bihar Tenancy Act, 1885 — Section 48E, 48E(7), 48E(8)

Citation : (2001) 3 BLJR 2048 : (2001) 4 PLJR 651

Hon'ble Judges : S.K. Katriar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.K. Katriar, J.—Heard learned Counsel for the parties.

2. This writ petition is directed against the order 17-3-1999 (Annexure-1), passed by the learned Land Reforms Deputy Collector, Sadar, Darbhanga in Bataidari Case No. 8/90-91 (Ram Autar Singh v. Soti Lal Singh), whereby the proceedings u/s 48-E of the Bihar Tenancy Act, 1885 (hereinafter referred to as the "Act"), was decided against the present petitioner, who is one of the landlords, respondent No. 4 is the Bataidar, and respondent No. 5 is the purchaser.

3. Learned Counsel for respondent No. 4 has raised the preliminary objection to the effect that the petitioner has approached this Court without exhausting the statutory remedy of appeal provided u/s 48-F of the Act.

4. Learned Counsel for the petitioner as well as respondent No. 5 have submitted that the Land Reforms Deputy Collector has passed the order arbitrarily and without hearing the petitioner and, therefore, the present writ petition is maintainable. In their submission, a statutory appeal before the Collector is maintainable only in the cases of disagreement between the Board and the first authority. He relies on the judgment of the Supreme Court report in Badri Yadav Vs. Sat Narain Das and Others, , as well as the judgment of a learned Single

Judge of this Court reported in 1985 BLT 259 (Ahmad Mian and Ors. v. State of Bihar and Ors.).

5. Having considered the rival submissions, I am of the view that the preliminary objection advance by learned Counsel for respondent No. 4 ought to be upheld. He is right in his submission that the petitioner's contention over-looks the insertion made in Section 48-F by Acts of 1987. Sub-section (7) and Sub-section (8) of Section 48-E, as well as Section 48-F (1) of the Act are set out hereinbelow for the quick reference:

48-E (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 is disagreement on the findings in writing failing which the Chairman will submit his notes on the subject,

(8) In case of disagreement with the report or the findings of the Board, the Collector shall, after recording is reasons for such disagreement and after giving the parties concerned a reasonable opportunity of being heard, make such enquiry, if any, as he thinks necessary and on being satisfied that:

(i) the person threatened with ejectment is an under-raiyat the Collector shall declare the threatened ejectment illegal and direct that the landlord shall not interfere with the possession of the under-raiyat in his tenancy or any portion thereof;

(ii) the land under dispute is in the tenancy of the under-raiyat the Collector shall declare possession of the under-raiyat and order the crop or produce or the sale-proceeds thereof, as the case may be, to be divided between the under-raiyat and his landlord in accordance with the provisions of Sections 69 to 71 of the (sic);

(iii) the person alleged to have been ejected was an under-raiyat of the disputed land on the date of ejectment and was ejected within twelve years before the commencement of proceeding under this section in contravention of Section 89, the Collector shall order that the landlord, or, where any other person, is in possession of the land comprised in the under-raiyat tenancy or portion thereof under any claim derived from the landlord, such person shall restore the under-raiyat to possession of the tenancy or portion from which he was so ejected.

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[48-F. Appeals.--(1) An appeal shall lie from an order referred to in 2 [Sub-

section (7) and] Sub-section (8) of Section 48-E--

(i) if such order is passed by an officer other than the Collector of a district, to the Collector of the district or to any officer specially empowered by the State Government by notification to hear such appeals; and

(ii) if such order is passed by the Collector of a district, to the prescribed authority.

6. It is thus manifest that prior to the insertion made by Act 8 of 1987 in Section 48-F of the Act, an appeal was maintainable only with respect to the issues relatable to Section 48-E (8) of the Act which related to cases of disagreement between the Board and the first authority. By Act 8 of 1987, the words "....Sub-section (7) and....." have been inserted in Section 48-F (1) of the Act. The position has thus been altered after the aforesaid insertion made in Section 48-F of the Act, whereby the matters disposed of by the first authority in terms of Section. 48-F (7) has also been made appealable u/s 48-F of the Act. It is manifest from a conjoint reading of Sub-sections (7) and (8) of Section 48-E read with Section 48-F (1) of the Act, that all orders passed by the first authority and referable to Sub-section (7) and/or Sub-section (8), whether in agreement or disagreement with the Board, are appealable of terms in Section 48-F of the Act.

7. I must at this stage deal with the aforesaid two judgments relied upon by the learned Counsel for the petitioner. The same lay down to the effect that appeals in terms of Section 48-F of the Act is maintainable only with respect to cases of disagreement between the Board and the first authority. However, both the judgments are prior to the aforesaid insertion brought about by Act 8 of 1987. After the insertion is taken into account, it follows that appeal in case of agreement between the Board and the first authority is also maintainable u/s 48-F of the Act. Therefore, both the judgments are inapplicable to the facts and circumstances of this present case.

8. In the result, this writ petition is dismissed with the liberty to the petitioner to prefer statutory remedy of appeal in accordance with law, if so advised.