

(1998) 12 PAT CK 0008
In the Patna High Court
Case No : C.W.J.C. No. 3762 of 1991

Ram Narayan Das

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 24-12-1998

Acts Referred:

Bihar Tenancy Act, 1885 — Section 48E, 48E(10), 48E(6)

Citation : (1998) 12 PAT CK 0008

Hon'ble Judges : S.K. Singh, J;B.N. Agarwal, J

Bench : Division Bench

Advocate : Siya Ram Shahi and Sidhendra Narayan Singh, for the Appellant;
Arun Prasad Ambastha, for the Respondent

Judgement

B.N. Agarwal and S.K. Singh, JJ.—This application has been filed for quashing the order dated 7.8.1990 passed by Deputy Collector, Sadar Purnea (Respondent No. 1) contained in Annexure-1 whereby application u/s 48-E of the Bihar Tenancy Act (hereinafter referred to as the Act) has been allowed and that dated 15.3.1991 passed in appeal by District Collector, contained in Annexure-2, whereby the aforesaid order has been upheld.

2. It appears that Respondent No. 4 filed an application u/s 48-E of the Act claiming bataidari right in the subject of dispute. Upon making of the said application, Respondent No. 3 constituted a Board and referred the matter to it for decision in the matter. As the Board failed to submit its finding within a period of six months, the proceeding was withdrawn from the Board by Respondent No. 3 acting under Sub-section (10) of Section 48-E of the Act.

3. Thereafter fresh notice was given to the Petitioner for appearance before Respondent No. 3 before whom on behalf of bataidar, witnesses were examined, but the Petitioner failed to appear before Respondent No. 3 on most of the dates. Thereafter, Respondent No. 3 passed an order contained in Annexure-1 declaring bataidari right of Respondent No. 4 in the subject of dispute. When the matter was taken in appeal, the appellate authority has confirmed the order passed by

original authority. Hence this writ application.

4. Learned Counsel for the Petitioner contended that after withdrawal of the case from the Board, Respondent No. 3 has not taken any steps for amicable settlement between the parties, as required under Sub-section (6) of Section 48-E of the Act. It has been submitted that under the aforesaid Sub-section, not only the Board is required to take steps for amicable settlement, but the Collector under the Act is also required to take such step in case the matter is withdrawn from the Board. In support of his submission, learned Counsel has placed reliance upon two Division Bench decisions of this Court in *Rasik Lal Singh and Ors. v. State of Bihar and Ors.* 1979 B.L.J.R. 20 and *Kamleshwari Mandal and Ors. v. Balgovind Thakur and Ors.* 1984 P.L.J.R. 41. In these two cases, it was laid down that even if proceeding is withdrawn by Collector under the Act, acting under Sub-section (10) of Section 48-E of the Act, the authority is required to first take steps for amicable settlement, as required under Sub-section (6) of Section 48-E of the Act. In the present case, no step at all has been taken for amicable settlement by Respondent No. 3. Therefore, in our view, the present case is squarely covered by the aforesaid two decisions of this Court.

5. For the foregoing reasons, the writ application is allowed, the orders contained in Annexures-1 and 2 are hereby quashed and the matter is remitted back to Respondent No. 3 for deciding the matter afresh in accordance with law, after giving an opportunity of hearing to the parties. After remand, Respondent No. 3 shall first take steps for making amicable settlement of the dispute between the parties. In case, Respondent No. 3 does not succeed in bringing about amicable settlement of the dispute between the parties, he shall proceed to make further inquiry into the matter. In that event, as some of the witnesses have been already examined on behalf of bataidar who could not be cross-examined on behalf of the Petitioner, Respondent No. 3 shall give an opportunity to the Petitioner to further cross-examine them. It will be also open to the bataidar to lead further evidence. The Petitioner shall be also afforded an opportunity to lead evidence in support of his case. Learned Counsel for the Petitioner stated that his client undertakes before this Court to appear before Respondent No. 3 in the aforesaid bataidari proceeding within a period of two months from today.

6. With the aforesaid directions, this writ application is disposed of.