

(1978) 11 PAT CK 0009

In the Patna High Court

Case No : Civil Writ Jur. Case No. 2464 of 1976

Rasik Lal Singh and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 22-11-1978

Acts Referred:

Bihar Tenancy Act, 1885 — Section 48E, 48E(10), 48E(6), 48E(7), 48E(8)

Citation : AIR 1979 Patna 172

Hon'ble Judges : Hari Lal Agrawal, J;B.P. Jha, J

Bench : Division Bench

Advocate : Parmeshwar Prasad, for the Appellant; Madan Mohan, (for No. 4), R.N. Bhagat and Iqbal Ahmad, Jr. Counsel to Govt. Pleader No. 3, for the Respondent

Final Decision : Allowed

Judgement

1. In an application under Articles 226 and 227 of the Constitution of India, these petitioners (landlords) pray for quashing of Annexures 1 and 2. Annexure 1 contains an order of the Deputy Collector Land Reforms u/s 48-E(10) of the Bihar Tenancy Act, 1885, (Act 8 of 1885) (hereinafter to be referred to as "the Act").

2. The Deputy Collector Land Reforms decided the dispute between an under-raiyat and the landlords u/s 48-E (10) of the Act for the reasons that the Board failed to record its findings and to transmit record to the Collector under Sub-section (7) of Section 48-E of the Act. In this circumstance the Collector decided the dispute u/s 48-E (10) of the Act. Section 48-E (10) of the Act provides that in such circumstance the Collector may withdraw the proceeding from the Board and decide the dispute himself according to the provisions of this section-By virtue of Sub-section (10) of Section 48-E of the Act, the Collector shall have to decide the dispute himself according to the provisions of Section 48-E of the Act. Sub-section (6) of Section 48-E of the Act requires that the Board shall make endeavours to bring about an amicable settlement of the dispute between the parties. If the Board fails to bring about amicable settlement between the

parties, then it shall record evidence under Sub-section (7) of Section 48-E of the Act. Under Sub-section 10 of Section 48-E of the Act, the Collector shall follow all the provisions of this section. If it is so, the Collector is required to make endeavours to bring about an amicable settlement of the dispute between the parties. If the Collector fails to bring about an amicable settlement between the parties, then he will be entitled to record evidence under Sub-section (7) of Section 48-E of the Act.

3. In the present case, it is clear from the order as contained in Annexure "1" that before recording evidence the Deputy Collector Land Reforms did not make any endeavour to bring about an amicable settlement of the dispute between the parties. Hence, we hold that the Deputy Collector Land Reforms while holding an inquiry under Sub-section (10) of Section 48-E of the Act did not follow the mandatory provisions of Sub-section (6) of Section 48-E of the Act. In this view of the matter, we quash the order of the Deputy Collector Land Reforms as contained in Annexure 1 as he failed to follow the procedure laid down u/s 48-E (6) of the Act.

4. Annexure 2 is an order in appeal. In our opinion, the appeal is not maintainable against the order passed by the Collector u/s 48-E (10) of the Act. An appeal lies only from an order passed under Sub-section (8) of Section 48-E of the Act. We quash Annexure 2 on the ground that the appeal itself is not maintainable under the provisions of this Act.

5. In the result, the petition is allowed and Annexures 1 and 2 are quashed. The parties will bear their own costs.