

(1988) 04 PAT CK 0036

In the Patna High Court

Case No : C.W.J.C. No's. 2560 and 3408 to 3411 of 1982

Satya Narain Mandal and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 15-04-1988

Acts Referred:

Bihar Tenancy Act, 1885 — Section 48C, 48E, 48E(5)

Citation : AIR 1988 Patna 334

Hon'ble Judges : Satya Brata Sinha, J

Bench : Single Bench

Advocate : Ram Suresh Rai and Ashok Kumar Mallick, for the Appellant; S. Hoda, Standing Counsel and Jahnvi Kr. Singh, Jr. Counsel to Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Satya Brata Sinha, J.—All these writ applications are directed against dl. 13-7-1981 and as contained in Annexure 5 series to the writ application.

2. The facts of the case He in a very narrow compass. The private respondents in each case filed applications against the petitioners before the Collector under the Bihar Tenancy Act, 1885 (hereinafter referred to as "the Act") purported to be u/s 48-C of the said Act.

3. From the perusal of the order sheet, dt. 1-9-1980 it appears that although the plaintiffs of those cases nominated their punches, but no punch was nominated by the opposite parties thereof petitioners of these writ applications). Further from the order dt. 31-1-1981 as contained in Annexure 4 to the writ applications, it appears that panches nominated by the parties were not present during the deliberation of the Panches and consequently the evidence was taken by the Chairman of the Panchayat himself.

4. The learned counsel appearing on behalf of the petitioners submitted that in terms of provision of Section 48-E read with Rule 2 of the Rules prescribed by

the State Government u/s 48-E of the Act, it was obligatory on the part of the Collector to nominate the panches on behalf of the opposite parties while nominating the Chairman as also the Panches nominated by the petitioners of the case. The learned counsel further submitted that in any event the Chairman of the Panches himself had no jurisdiction to proceed with the case in absence of the other panches as in such an event he could have only referred the matter back to the Collector for re consideration of the panches in accordance with law. Section 48-E of the Act reads as follows : --

48E. Prevention of threatened ejectment of under-raiyat and restoration to possession under-raiyat unlawfully ejected (1) If an under-raiyat is threatened with unlawful ejectment from his tenancy or any portion thereof by his landlord or if there is a dispute between them over the possession of land, crop or produce thereof either on the ground of non-existence of relationship of Eandlord and tenant between them or otherwise or if an under-raiyat is or has been ejected from his tenancy or any portion thereof within twelve years before the commencement of proceedings under this section in contravention of the provisions of Section 89 the Collector may, of his own motion or on application made in this behalf by the under-raiyat initiate a proceeding for preventing the landlord from ejecting the under-raiyat Or for settlement of the said dispute or for restoration to possession under-raiyat unlawfully ejected from tenancy or portion thereof.

(2) The Collector may, after hearing the parties, about which due notice shall have been given to them or ex parte, in cases of emrgency by an order in writing, prevent the landlord from ejecting the under-raiyat until Disposal of the proceeding or until further orders and if he is of opinion that any crop or produce of the land which is subject-matter of dispute in the proceeding under this section, is liable to speedy and natural decay, he may, if the situation so warrants and in similar manner as aforesaid direct the proper custody or harvesting or sale, as the case may be of such crop or produce or the sale proceed thereof.

(3) When a proceeding is initiated under Sub-section (1) the Collector may refer the matter (hereinafter referred to as "dispute") to a Board to be appointed by him, for promoting the settlement of the dispute between the under-raiyat and the landlord.

(4) A Board to be appointed by the Collector in the prescribed manner under Sub-section (3) shall consist of a Chairman; who shall be unconnected with the dispute referred to such board or with any party directly affected by such dispute and two members to represent the parties to the dispute and the person appointed as a member to represent any party shall be appointed on the recommendation of that party.

Provided that if any party does not nominate any person to represent him in the Board or nominates a person who is not available within such time as the Collector considers reasonable, the Collector may appoint such person as he

thinks fit to represent that party.

(5) If at any time before the Board has completed its work (the service of the Chairman or any member of the Board ceases to be available, or any member of the Board fails to attend the meeting of the Board on two successive dates without showing cause to the satisfaction of the Chairman, the Collector may appoint any suitable person in the prescribed manner to take his place and the proceeding shall be continued before such Board as so reconstituted.

(6) The Chairman of the Board to which a dispute is referred shall give written notice to the under-raiyat and his landlord in the prescribed manner and the Board shall make endeavours to bring about an amicable settlement of the dispute and when an amicable settlement of the dispute is brought about, the Board shall forthwith submit a report containing the terms on which settlement had been brought about, to the Collector, who may dispose of the proceeding in accordance with the terms of the report:

Provided that failure on the part of any member of the Board to sign the report shall not affect the validity of the same.

(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;

(8) Provided further that if any member does not want to sign the findings of the Board he will submit his disagreement on the findings in writing failing which the chairman will submit his notes on the subject.

(9) In case of disagreement with the report or the finding of the Board, the Collector shall, after recording his reason 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 provision of Sections 69 to 71 of the Act;

(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.

(10) The order of the collector under sub-sec. (6), (7) or (8) shall be in writing and shall state the grounds on which it is made and specify the period which shall not exceed six months from the date of the order within which his order shall be carried out.

(11) If the Board fails to record its finding or transmit the records as required under Sub-section (7) within a period of six months from the date of its appointment, the Collector may withdraw the proceeding from the Board and decide the dispute himself according to the provisions of this section.

(12) If the person against whom an order has been made under Sub-section (6), (7) or (8) fails to carry out the orders of the Collector within such time if any, as may be specified in the order of the order passed in appeal u/s 48-E, he shall, on a complaint filed by the Collector be punishable with imprisonment; which may extend to six months or with fine which may extend to one thousand rupees or with both.

Provided that the Collector shall await the result of appeal filed u/s 48-F for filing the complaint.

(13) The Board shall have the same power regarding the summoning and attendance of witnesses and compelling the production of documents as a CP Court has under the Civil P.C, 1908 (V of 1908) and the Collector shall have general control and superintendence over the Board.

(14) Save as expressly provided in this Act, no Civil or Criminal Court shall have any jurisdiction over the subject-matter of a dispute after a proceeding is initiated under Sub-section (1) by the Collector :

Provided that nothing in this sub-section shall be deemed to affect the power of a Criminal Court to take such action as may be necessary for preventing breach of the peace pending the final disposal of the proceeding by the Collector.

From a perusal of the said provision it is clear that all the Ranches are to be nominated simultaneously in the event a party does not nominate the person to represent him in the Board, the Collector has been enjoined with statutory duty to appoint such person to act as a panch as he thinks fit and proper,

5. In the instant case there is no doubt that the Collector has clearly violated the mandatory provision of law. In this connection Rule 2(a) and (b) of the rules prescribed by the State Government under Sections 48-C and 48-E of the Act may also be noticed. Evidently the provisions of the said rules were also not complied with by the Collector.

6. Further from a bare perusal of Sub-section (5) of Section 48-E of the Act, it is evident that the Chairman alone could not have discharged the function of the Board. The only statutory function of the Chairman himself is contained in Section 48-E(6) of the Act.

7. In my opinion, the aforementioned provisions are also clear inasmuch as if the Chairman or any member of the Board fail: to attend the meeting of the Board on two successive dates, the Collector who can appoint any suitable person in the prescribed manner to take his place and in such an event only the proceeding should continue before such Court as so reconstituted. In this view of the matter the Chairman of the Board himself could not have proceeded with the enquiry in absence of the other panches.

8. In this view of the matter this application is allowed and the impugned order as contained in Annexure-5 is hereby quashed. However, there will be no order as to costs.