

**(1979) 01 PAT CK 0016**

**In the Patna High Court**

**Case No : C.W.J.C. No's. 491, 493 and 494 of 1977**

Shivanandan Roy and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

**Date of Decision : 31-01-1979**

**Acts Referred:**

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

**Citation : (1979) PLJR 475**

**Hon'ble Judges : K.B.N. Singh, C.J;Lalit Mohan Sharma, J**

**Bench : Division Bench**

**Advocate : K.K. Sinha and Mahendra Prasad Sinha, for the Appellant; R.N. Bhagat, Rajballabh Prasad Yadav, B.N. Gupta, R.P. Bhagat, Rash Behari Singh and Krishna Mohan, for the Respondent**

## Judgement

Lalit Mohan Sharma, J.—These three writ applications arise out of three proceedings u/s 48E of the Bihar Tenancy Act, and, as the facts and points arising in them are similar, they have been heard together at the joint suggestion of the parties and this common judgment will govern them. The petitioners in the three cases are common. Respondent No. 5 in each of these three cases claimed to be Bataidar in respect of different plots of lands fully described in the respective writ applications and the proceedings out of which they arise.

2. On the 28th February, 1974, the three Bataidars filed applications u/s 48E of the Bihar Tenancy Act (hereinafter referred to as the Act), before the Land Reforms Deputy Collector, Bhagalpur (Respondent No. 3), giving rise to three cases. The Land Reforms Deputy Collector enquired into the claims of the Bataidars for the purpose of finding out as to whether they were able to make out prima facie case and, by orders dated the 7th March, 1975 (as contained in Annexure "4" to each of the writ applications), he recorded a finding that the Bataidars failed to make out prima facie case. He, therefore, refused to draw up a proceeding. Against these orders, the three Bataidars filed appeals before the Collector of Bhagalpur (Respondent No. 2), which were registered as Revenue

Appeals Nos. 1, 2 and 3 of 1975-76. By this orders dated the 1st October, 1975 (as contained in Annexures "5", "5A" and "5" respectively, in the three cases) the Collector (Respondent No. 2) set aside the orders passed by the Land Reforms Deputy Collector (Respondent No. 3), and directed him to draw up proceedings, constitute Bataidari Boards and proceed with the same in accordance with law. Further steps were accordingly taken and the Bataidari Board, constituted in each case, submitted reports, which are Annexures "7", "7" and "6", respectively to the three writ applications. Two of the reports, namely, those in Civil Writ Jurisdiction Cases Nos. 491 and 493 were in favour of the petitioners (landlords) while the third, as contained in Annexure "6" to the writ application in Civil Writ Jurisdiction Case No. 494 of 1977; was in favour of the Bataidar in that case. The Land Reforms Deputy Collector, thereafter, directed the Board to submit fresh reports in cases giving rise to Civil Writ Jurisdiction Cases Nos. 491 and 493 of 1977. The Board, accordingly, submitted fresh reports, which are annexed to the two writ applications as Annexure "9". The findings in these reports were given against the landlords. Orders were thereafter passed on the 3rd. January, 1977, against the petitioners, which are respectively, Annexures "10", "10" and "7", in the three writ applications. The petitioners have prayed for quashing of the orders passed by the Collector in Revenue Appeals Nos. 1, 2 and 3 of 1975-76 (Annexure "5", "5A" & "5" respectively in the three cases), the orders passed by the Land Reforms Deputy Collector dated the 12th July, 1976 (Annexure "8" to C.W.J.C. Nos. 491 and 493 of 1977), directing the Bataidari Boards to submit fresh reports, reports of the Bataidari Boards dated the 28th August, 1976 (Annexure "9" to C.W.J.C. Nos. 491 & 493), as also the orders of the Land Reforms Deputy Collector dated the 3rd January, 1977 (Annexures "10", "10" and "7", respectively, in the three cases), by which the three proceedings have been finally decided against the petitioners. The petitioners have also challenged the report of the Bataidari Board dated the 28th June, 1976 (Annexure "7" to the writ application in C.W.J.C. No. 494 of 1977).

3. Mr. K.K. Sinha, learned counsel appearing for the petitioners, has raised a large number of points in support of the writ applications, one of them being that the orders contained in Annexure "4" were not appealable and for that reason, the orders passed by the Collector in Revenue Appeals Nos. 1, 2 and 3 of 1975-76, as contained in Annexures "5", "5A" and "5", respectively, of the three cases; are wholly without jurisdiction; and, therefore, void. It has been submitted that as a necessary consequence, the entire proceedings in the three cases subsequent to and in pursuance of these orders are completely vitiated in law and have to be quashed.

4. For appreciating the points mentioned above, the provisions of Section 48F of the Act, providing for appeals and the provisions of Sub-section (8) of Section 48E of the Act will have to be examined. On an application by a Bataidar the Land Reforms Deputy Collector, who is the "Collector" under the Act, can examine the question as to whether the Bataidar has made out a prima facie case or not; and, if in the opinion of the Collector (i.e. Land Reforms Deputy

Collector) the applicant has made out such a case, a proceeding should be drawn up (see Ram Narain Singh and Others Vs. State of Bihar and Others, ). The orders contained in Annexure "4" in each case were such orders, and, as the Land Reforms Deputy Collector was of the view that the Bataidars were not able to make out a prima facie case, he refused to draw up proceedings. In case, where a proceeding is drawn up by the Land Reforms Deputy Collector, a Bataidari Board is constituted, which, on failure to bring about an amicable settlement of the dispute, makes an enquiry and submits a report, final orders have to be passed by the Land Reforms Deputy Collector. He can agree with the findings of the Bataidari Board and decide the proceeding accordingly. But he has a jurisdiction to take a different view and pass an order not consistent with the report. The provisions of Sub-section (8) of Section 48E of the Act deal with the cases in which the Land Reforms Deputy Collector disagrees with the report and the findings of the Board. u/s 48F of the Act, a right of appeal is given to an aggrieved party only in cases in which an order under Sub-section (8) of Section 48E of the Act is passed. It is, therefore, manifest that an appeal u/s 48F of the Act is not maintainable against an order passed by the Land Reforms Deputy Collector, refusing to initiate a proceeding on the ground that the Bataidar has not been able to make out a prima facie case. It has not been suggested on behalf of the respondents that there is any other provision in the Act; providing for an appeal. It must, therefore, be held that the Revenue Appeals Nos. 12 and 3 of 1975-76 filed before the Collector (respondent No. 2), were not maintainable, and the orders as contained in Annexures "5", "5A" and "5", respectively in the three cases are without jurisdiction, and, therefore, void. As a result, it must further be held that the entire proceedings; which followed these orders, are bad in law and have to be quashed.

5. Since these three writ applications must succeed on this point, it is not necessary to discuss the other questions raised on behalf of the petitioners. For the reasons mentioned above the impugned orders in the three cases are Quashed and the writ applications are allowed, but without costs. It may be clarified at this stage that this judgment will not prejudice the rights of the Bataidars (respondent No. 5 in the three cases) in claiming any right to which they may be entitled in law in any properly constituted proceeding or suit.

K.B.N. Singh, C.J.

I agree.