
(2010) 07 PAT CK 0191
In the Patna High Court
Case No : CWJC No. 1512 of 2004

Shri Krishna Mishra and Others

APPELLANT

Vs

The State of Bihar and Ors

RESPONDENT

Date of Decision : 22-07-2010

Acts Referred:

Citation : (2010) 07 PAT CK 0191

Final Decision : Allowed

Judgement

Sheema Ali Khan, J.—The Petitioner is the landholder and has challenged the orders dated 30.9.2005 and 4.4.1998 passed by the Deputy Collector Land Reforms, Naugachia as contained in Annexures-2 and 5 as well as the order dated 18.8.2003 passed by the Collector, Bhagalpur (Annexure-6).

2. With respect to the lands in dispute, a proceeding u/s 48E of the Bihar Tenancy Act (hereinafter referred to as the Act) was initiated in the year 1975 by a third party for getting himself declared as a bataidar of the Petitioner against the vendor of the Petitioner, which was dismissed. The name of the vendor of the Petitioner was entered in the revisional survey published in the year 1982. The Petitioner came into the picture when he purchased the land in the year 1990. The present application u/s 48E of the Act was filed on 20.3.1992 giving rise to Bataidari Case No. 26 of 1991-92. The Petitioner filed Title Suit No. 51 of 1992 against Respondent No. 5, claiming that Respondent No. 5 should be stopped from entering and disturbing the peaceful possession of the Petitioner on his land. The injunction petition was allowed on 2.5.1992 and made absolute on 23.9.1993. Respondent No. 5 did not file any appeal or revision against the orders restraining him from entering upon the lands in question. The Bataidari Case No. 26 of 1991-92 filed by Respondent No. 5 was dismissed in limine on 30.9.1992. Respondent No. 5 then filed writ application which was allowed with a direction to the Collector to constitute a Board. Accordingly, one Shiv Kumar Awam was made the Chairman of the Board. This was challenged by Respondent No. 5 by filing a writ application which was allowed and ultimately the Circle

Officer, Naugachia was appointed as the Chairman of the Board. Thereafter, the Petitioner moved this Court by filing CWJC No. 8789 of 1995 challenging the appointment of the Circle Officer as the Chairman of the Board which was ultimately dismissed. Eventually, the Board was constituted and the matter proceeded.

3. The limited question which has been raised on behalf of the Petitioner is that whether in the absence of the Panches, the Board could have proceeded in the matter without following the provisions of Sub-Section 5 of Section 48E of the Act.

4. Sub-Section 5 of Section 48E of the Act reads as follows:

(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.

5. It envisages that if any member of the Board does not appear on two consecutive dates without showing cause to the satisfaction of the Chairman, the Collector may appoint a suitable person in the prescribed manner as the member of the Board. The prescribed manner has been defined in Appendix (d). Rule 4 of the Rules made in compliance of Section 48E of the Act.

6. Rule 3 reads as follows:

(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.

7. Obviously, this procedure has not been followed which will be apparent by referring to the order sheet of the proceedings. Sri Bishnudeo Bidrohi was appointed on behalf of Respondent No. 5 and Sri Devendra Mishra was appointed on behalf of the Petitioner as the Panch. Notices were issued to the Panches. The next date fixed in the case was 20.11.1995 and thereafter 27.11.1995. On both of these dates, the Panch on behalf of Petitioner did not appear before the Board. On 4.12.1995, a decision was taken to hear the matter ex-parte and the Board proceeded with the matter.

8. The argument on behalf of the Petitioner is that since the procedure as laid down in the Statute was not followed, no steps were taken for appointing/nominating a Panch on behalf of the Petitioner, all the following procedures u/s 48E of the Act collapsed, as no decision could be made in the absence of the properly constituted Board, to take steps for amicable settlement and the like. As such, the recommendation made on behalf of the Board and the subsequent orders ought to be quashed on the ground of this defect alone.

9. In order to support his case, Counsel for the Petitioner relies on a case of Haji Taiyab Ali and Another Vs. The State of Bihar and Others, It has been held in the case of Hazi Taiyab Ali that "... in a case where Panch nominated by any parties is not available for any reason whatsoever, the constitution of the Board is rendered incomplete". The reasonings of the Court stands good even today. It has been noticed that once the nominee of any of the parties refused to co-operate with the Board, the persons concerned would be deprived of the advantage of getting a person of his choice and the person concerned would be faced with the risk of being represented by a Panch who is not of his choice.

10. Counsel for Respondent No. 5, on the other hand, submits that the Respondent has been greatly prejudiced by the fact that the title suit has been filed in which there is an order of injunction barring him from entering the lands in question although he had the advantage of orders in his favour. It is also submitted that the suit would be barred under Sub-section 13 of Section 48E of the Act.

11. Counsel for Respondent No. 5 and the Petitioners submit that they have no instructions whether the order of injunction has been challenged before this Court and what is the present position of the suit. Irrespective of the fact aforesaid, this Court has based this order on the basis of law in the proceedings u/s 48E of the Act.

12. In the result, I quash the impugned orders contained in Annexures-4, 5 and 6 and remand the matter back to the Collector to constitute a Board, appoint Panches and then proceed in the matter.

13. I may make it clear that the Respondent No. 5 would be at liberty to show by oral evidence that he has been in possession as a Bataidar before the order of injunction was issued against him. The question whether the suit would be maintainable in view of the present proceeding u/s 48E of the Act ought to be considered by the Munsif, Naugachia or the Court who is hearing the matter considering the fact that a proceeding u/s 48E of the Act is pending. This question may be raised by Respondent No. 5 as a preliminary issue which ought to be decided expeditiously by the concerned Court, if the suit is still pending.

14. This application is allowed with the aforesaid observations and directions.