

(2013) 02 PAT CK 0021

In the Patna High Court

Case No : LPA No. 1496 of 2010 in CWJC No. 12277 of 2010

Shukdeo Pandit

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 22-02-2013

Acts Referred:

Bihar Tenancy Act, 1885 — Section 48E, 48E(3), 48E(5)

Citation : (2013) 2 PLJR 625

Hon'ble Judges : T. Meena Kumari, J;Chakradhari Sharan Singh, J

Bench : Division Bench

Advocate : Jitendra Singh and Shankar Kumar Thakur, for the Appellant; T.N. Matin and Rajeev Kumar Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Chakradhari Sharan Singh, J

1. This appeal under Clause 10 of the Letters Patent of Patna High Court has been preferred against the order dated 2.8.2010 passed in CWJC No. 12277 of 2010 by the learned single Judge whereby the learned single Judge has been pleased to direct the Collector, Banka (Respondent No. 2) to consider whether the Board within the meaning of Section 48E of the Bihar Tenancy Act, 1885 (in short "the Act") has been properly constituted in accordance with Section 48E and sub-section 5 of the Act and whether it is essential to constitute a new Board in view of efflux of time and the appearance of a third party in the proceeding and pass appropriate orders accordingly. The facts of this case are not much in dispute.

2. Khantar Pandit, father of the appellant filed a petition before the learned Deputy Collector Land Reforms, (hereinafter referred to as the DCLR), Banka, District-Banka under 48E of the Act with the plea that the respondent were trying to evict him from the land belonging to respondents Nos. 5 to 8 over which the said Khantar Pandit was in cultivating possession. The land in question has been

described as Khata No. 1; Khesra Nos. 1053 (1425 hectare), 683 (1160 hectare), 696 (4210 hectare) and 82 (475 hectare). The respondents Nos. 5 to 8 appeared before the DCLR, Banka and filed objection. After hearing both sides, vide order dated 5.6.1992 (Annexure-1) the DCLR referred the matter to the Board in accordance with Section 48E(3) of the Act and a Bataidari Board was appointed by the Collector, Banka (Respondent No. 2). The Circle Officer, Banka (Respondent No. 4) was appointed as Chairman of the Board. The private respondents preferred a writ petition before this court vide CWJC No. 6366/1992 challenging the order dated 5.6.1992 (Annexure-1). The writ petition was, however, permitted to be withdrawn by this court vide order dated 20.5.1993.

3. In Case No. 13 of 1991, which was initiated on the application of Khantar Pandit, learned DCLR passed the order dated 6.12.1993 (Annexure-2) and dismissed the application on the basis of the report of the Chairman of the Board-cum-Circle Officer, Banka on the ground that the land in question fell within the limits of Banka Municipality over which the Act was not applicable. The said Khantar Pandit, thereafter, preferred an application before the Collector, Banka (Respondent No. 2) being Bataidari Case No. 185/93-94. The Collector, Banka (Respondent No. 2) vide order dated 17.7.1995 came to the conclusion that the land in question could not be said to be within the limits of municipal area as there was no notification to this effect and set aside the order dated 6.12.1993 (Annexure-2) passed by the DCLR; vide his order dated 17.7.1995 (Annexure-3).

4. In the meanwhile said Khantar Pandit died on 1.4.1995 which would be evident from the contents of the order dated 17.7.1995 (Annexure-3), who had claimed to be a Bataidar. Whether the appellant, being son of Khantar Pandit could also claim to be Bataidar by way of inheritance or whether the proceedings could have come to an end immediately after his death are the questions which also cropped up in course of hearing of the present Letters Patent Appeal.

5. Be that as it may, the fact remains that the present appellant, on the death of his father Khantar Pandit, got himself substituted in the appeal proceeding being Bataidari Case No. 185/93-94 before the Collector, Banka in which proceeding, as referred to above, final order dated 17.7.1995 (Annexure-3) was passed.

6. In view of the order dated 17.7.1995 (Annexure-3) passed by the learned Collector, Banka the Bataidari Board continued with the proceeding and came to a finding in its report dated 23.12.1995 that ancestors of the appellant were in cultivating possession over the land and held that the appellant was under-raiyat (Bataidar) and, accordingly, recommended to the Collector, Banka for disposal of the proceeding in terms of the findings, as required u/s 48E(7) of the Act.

7. The assertion in the writ petition on behalf of appellant is that the private respondents never cared to appear before the Board nor did they appoint their panches nor participate in the Board proceeding and in that view of the matter, the Circle Officer, Banka, the Chairman of the Board, had to constitute a Board as per provisions of Section 48E of the Act. This is to be noted that the Collector,

under the Act may dispose of the proceeding either in terms of the report of the Board or may proceed in terms of Section 48E(8) of Act if he disagrees with the same, after recording reasons.

8. The private respondents thereafter preferred another writ petition before this court vide CWJC No. 6725 of 1995 for quashing the order dated 17.7.1995 (Annexure-3). However, the writ petition was dismissed vide order dated 22.4.1997 (Annexure-5) passed by this court. Thereafter, Letters Patent Appeal Vide LPA No. 690 of 1990 was preferred against the order dated 22.4.1997 (Annexure-5) which too was dismissed by this court vide order dated 17.10.2006 (Annexure-6).

9. However, the grievance of the appellant is that respondent No. 2, the Collector, Banka did not pass any order on the findings/report of the Bataidari Board dated 23.12.1995 (Annexure-4) though the private respondents were unsuccessful up to the stage of Letters Patent Appeal while challenging the order dated 17.7.1995 passed by the Collector, Banka (Respondent No. 2). This is not in dispute that at the instance of some interveners, the Collector, Banka vide order dated 3.12.2007 passed in Misc. Case No. 22/07-08 directed for constitution of a Board afresh. The appellant, challenging the order dated 3.12.2007 filed the writ petition nearly three years thereafter vide CWJC No. 12277 of 2010 which was disposed of by learned single Judge, as mentioned above, vide order dated 2.8.2010, which order is under challenge in the present appeal. While disposing of the writ petition learned single Judge observed that there has been delay to challenge of the order of the Collector. We have gone through the pleadings of the writ petition and we find no material/statement to explain the delay. We have also noted that the interveners, at whose instance the order dated 3.12.2007 was passed were not impleaded as party respondent in the writ petition. Learned single Judge, keeping in view long lapse of time, disposed of the writ petition with a direction to the Collector, Banka (Respondent No. 2) to consider whether the Board was properly constituted and whether it was essential to constitute a new Board, keeping in mind appearance of third party in the proceeding.

10. We do not find any illegality or impropriety in the order passed by learned single Judge keeping in view the entire facts and circumstances of the case, but there are certain things which need to be added in the present proceeding.

11. The original application filed by Khantar Pandit in the year 1991 u/s 48E of the Act has not been brought on record. Khantar Pandit is said to have claimed to be Bataidar in cultivating possession of the land. There is no pleading in the writ petition that Khantar Pandit, the father of the present appellant, claimed the status of occupancy raiyat. Bataidari is primarily an agreement between raiyat and under-raiyat (Bataidar). That agreement subsists till the said Bataidar is in cultivating possession over the land and he pays to the landlord produce-rent for the land held by him. There is no pleading in the writ petition that Khantar Pandit ever claimed to have acquired the right of a raiyat within the meaning of Section

48D of the Act; no statutory provision has been shown to us on the basis of which the appellant herein can claim Bataidari rights by way of inheritance.

12. This is to be noted here that in order to verify the assertion that in spite of notice the private respondents did not appear before the Board, we had called for the original records from the Collector, Banka in order to ascertain whether the notices were served upon the private respondents or not regarding proceedings before the Board. We do not find from the records whether the notices were in fact sent or served upon the private respondents. The private respondents have pleaded that they did not have any knowledge about the proceeding before the Board. In view of the facts abovementioned, we find no merit in the appeal. The Collector, Banka while acting pursuant to the order passed by the learned single Judge will also take into account the claim of the appellant to be a Bataidar after the death of his father Khantar Pandit as also keep in mind that the agreement between Khantar Pandit and landlord came to an end with the death of Khantar Pandit on 1.4.1995. He will keep in mind the fact that there was dispute over Bataidari raised by Khantar Pandit and whether after his death the landlord permitted the appellant to continue as Bataidar (under-Raiyat).

The appeal is, accordingly, dismissed. There will be no order as to costs.

Let the original records pieced before us by the State Respondents be handed over to learned G.P. 7.

T. Meena Kumari, J.

I agree.