
(2005) 04 PAT CK 0010
In the Patna High Court
Case No : CWJC No. 13333 of 2002

Shyam Sundar Yadav and Another	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 07-04-2005

Acts Referred:

Bihar Tenancy Act, 1885 — Section 48E

Citation : (2005) 3 PLJR 611

Hon'ble Judges : Mridula Mishra, J

Bench : Single Bench

Advocate : Jai Krishna Pd, for the Appellant; Aninash Kumar and Md. Abbas Haider, for the Respondent

Final Decision : Dismissed

Judgement

Mridula Mishra, J.—Heard learned counsel for the petitioners and learned counsel for the State. Petitioners in this application claim to be under-raiyats of respondent Nos. 6 and 7. They filed an application before the D.C.L.R. stating that the land of R.S. khata No. 35, R.S. plot. No. 172 measuring 2.16 acres of village Narayanpur has been recorded in the name of Deity Bhola Baba. Respondents are Sewaits and the petitioners are cultivating the land as an under-ra/yate for several years. Their claim as bataidars is not being admitted by the respondents and therefore, they are in an apprehension of ejectment. The application filed by the petitioners was registered as B.T. Act Case No. 14 of 2002. Notice was issued to the so called landholder-respondents Nos. 6 and 7. Respondent No. 7 appeared and filed objection stating that the petitioners are big landholders possessing several acres of land. They have never been inducted as bataidars over the land and they have never cultivated the land as bataidars. The D.C.L.R. on consideration of the objection filed by the respondents as well as considering the documents produced by the parties came to a conclusion that prima facie there is no relationship of landlord and tenant in between the parties and there is no bonafide dispute with respect to which a proceeding u/s 48E of

the Bihar Tenancy Act can be initiated. The finding given by the D.C.L.R. is that the applicants themselves are big landholders and their claim as bataidars is not genuine.

2. Learned counsel for the petitioners has submitted that the order passed by the D.C.L.R. is illegal and it is against the settled law as decided by this Hon"ble Court in several decisions. Once an application u/s 48E of the Bihar Tenancy Act is filed by anyone stating that he is an under-tenant, and there is apprehension of ejectment, the application is registered and notice is issued to the respondents, in such cases, it will be deemed that the proceeding has been initiated. Once proceeding has been initiated, the matter must be referred to the Board of Conciliation for deciding the matter in accordance with law as provided under sub-sections of Section 48E of the Bihar Tenancy Act. It has also been submitted that the D.C.L.R. could not have held a mini trial and passed the impugned order against the provisions of Section 48E of the Bihar Tenancy Act and settled law decided in several cases.

3. Learned counsel for the respondent No. 7 has stated that for initiating a proceeding u/s 48E of the Bihar Tenancy Act, three essential ingredients must be present there. Firstly, there must be a prima facie relationship of under-raiyat and landlord in between the parties. Secondly, existence of bonafide dispute must be there in between the parties and thirdly, there must be something to show that the person, who has filed the application, is cultivating the land and either there is a threatening of ejectment or he has already been ejected by the landholders.

4. In the present case, not a single essential ingredients was present for the purpose of initiating a proceeding. There is neither a relationship of landlord and underraiyats in between the parties. The dispute which has been raised is not bonafide dispute rather with a malafide motive, at the instance of other brother of respondent No. 7 i.e. respondent no 6, this proceeding has been initiated by the petitioners. Thirdly, petitioner have never been in cultivating possession. They are not under-raiyate rather big landholders. It has also been submitted by the learned counsel for the respondents that the area of the land in question is 2.16 acres of unirrigated land. Even if it is considered that petitioners were in cultivating possession of the lands, bataidari right cannot be declared with respect to the said land which is less than 5 acres irrigated and 10 acres unirrigated land. A proceeding u/s 48E of the Bihar Tenancy Act cannot be initiated.

5. Learned counsel for the State has submitted that facts mentioned in the writ application do not make out a prima facie case in favour of the petitioners and the dispute do not seem to be a bonafide dispute. In such cases, it should not be mandatory to refer the matter to the Board of Conciliation.

6. Considering the rival contentions of the parties, I am of the view that though it has been decided in many cases that when there is a dispute raised by

underraiyat and notices have been issued, in such cases matter should be referred to the Board, but in all these decisions it has been mentioned that the dispute must be a bonafide dispute and the satisfaction of the Collector under the Act is also necessary for initiating a proceeding u/s 48E of the Bihar Tenancy Act. In the present case, from the averment made by the petitioners in the writ application, I find that the petitioners failed to state about the duration for which they are cultivating the land. They have also failed to make it clear that they are in cultivating possession of the land. So far relationship of landlord and under-raiyat is concerned, they have stated that they were inducted by the respondent No. 6 as bataidars. Admittedly, respondent No. 6 is not person who is looking after the affairs of the deity and respondent No. 7, who is the Sewait, has not inducted the petitioners as bataidars. In that case claim of the petitioners that they were cultivating as bataidars, prima facie do not seem to be genuine, considering the facts that neither a prima facie relationship of landlord and under-raiyat is there in between the parties nor a bonafide dispute is there. The D.C.L.R. has rightly rejected the claim of petitioners. I do not find that there is any illegality in the order passed by the D.C.L.R. There is no reason to interfere with the matter. Accordingly, this application is dismissed.