
(1997) 09 PAT CK 0079
In the Patna High Court
Case No : C.W.J.C. No. 1531 of 1994

Sita Ram Mandal and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 25-09-1997

Acts Referred:

Bihar Tenancy Act, 1885 — Section 48C(1)(b), 48E, 48E(8)

Citation : (1998) 1 BLJR 368 : (1998) 1 PLJR 64

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Aftab Alam, J.—This writ petition has been filed on behalf of ten persons who claim Bataidari rights in respect of different pieces of land under respondents 5 to 7. Their claim, at the 1st instance, was rejected by the DCLR, Khagaria by order dated 2.11.91 (Annexure 3) in Bataidari Case No. 15/8990/22/90-91. An appeal against this order was rejected by the Addl. Collector, Khagaria by order dated 11.11.93 (Annexure 4) in Bataidari Appeal No. 16/91-92. This writ petition has been filed challenging these two orders.

2. The petitioners filed applications u/s 48E of the Bihar Tenancy Act ("the Act", hereinafter) claiming Bataidari rights over different pieces of land under respondents 5 to 7. The respective pieces of land claimed by each of the petitioners have been described in detail in both the orders coming under challenge in this writ petition. The claims filed by the petitioners gave rise to Bataidari Case Nos. 15 to 24 of 1989-90. All the claims appear to have been consolidated into one proceeding and a common Bataidari Board was constituted, of which the Anchal Adhikari, Belaur was appointed as the Chairman. The parties to the dispute, namely, the claimants of Bataidari rights and the land holders also nominated their respective Panches. On the basis of an enquiry made by it, the Board recorded its findings in support of the petitioner's claim and submitted its report accordingly. On receipt of the report from the Board, the DCLR heard the

parties and in disagreement with the Board's findings and report disallowed the petitioner's claim holding it to be not maintainable against the land holders. In appeal, the Addl. Collector confirmed the order passed by the DCLR and held that the petitioners' claim was false and untrue.

3. Mr. Birendra Pd. Verma, learned Counsel appearing on behalf of the petitioners first submitted that the orders passed by the DCLR and then in appeal, by the Addl. Collector were illegal and without jurisdiction because those were contrary to the findings and report of the Bataidari Board. Learned Counsel contended that on a proper interpretation, the provision contained in Sub-section (8) of Section 48E of the Act must be construed to mean that disagreement with the report of the findings of the Board was permissible only in case the report of the Board was in support of the land holder and against the claimants of Bataidari rights. According to his submissions, it was not open to the Collector to take a view in disagreement if the report or the findings of the Board supported the claim of the Bataidar. In support of this extreme proposition, Mr. Verma relied upon the three Sub-clauses of Sub-section (8) of Section 48E and submitted that in case of disagreement with the report of the Board, the Collector was to act, depending upon the eventuality in accordance with any one of the three Sub-clauses which all were aimed at protecting the rights of the Bataidars. Mr. Verma submitted that Section 48E of the Act was a beneficial piece of legislation and it, therefore, must receive an interpretation which would protect, safeguard and advance the interests of the Bataidars. He accordingly submitted that the provisions contained in Section 48E must be understood to say that the Collector could disagree with the report or the findings of the Board only in case it was in favour of the land holder and against the claimants of Bataidari rights.

4. I am unable to accept this submission because such an interpretation of Sub-section (8) of Section 48-E would cause unwarranted violence to the plain language of the provision contained in that Sub-section. Sub-section (8) of Section 48-E of the Act is as follows:

(8) In case of disagreement with the report or the findings of the Board, the Collector, shall, after recording his reasons for such disagreement and after giving the parties concerned a reasonable opportunity of being heard, making 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 crops or produce of the sale proceeds thereof, as the case may be, to be divided between the under raiyat and his landlord in accordance with the provisions 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 the ejectment and was ejected within twelve years before the commencement of proceeding under this Section in contravention of Section 59, 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.

5. From the afore-quoted 1 provision, it is evident that the law empowers the Collector, on certain conditions, to take a view in disagreement with the report or the findings of the Board. The power thus conferred by law can be exercised, in appropriate cases, either way and the plain language of the provision does not indicate any restriction on this power. The interpretation sought to be put by Mr. Verrna on Sub-section (8) of Section 48E would amount to putting restrictions on the power of the Collector not sanctioned by law.

6. As to the argument based on the three Sub-clauses of Sub-section (8), the simple answer is that the three Sub-clauses are provided because the law recognized the vast difference of strength between the land holder and the Bataidar. In case the Collector finds in favour of the land holder a mere declaration that there was no relationship of land holder and Bataidar between the parties and the claimant did not have any Bataidari rights over the disputed land would normally suffice and put an end to the dispute because the land holder being in a much stronger position is normally capable of looking after his rights on his own. On the other hand, if the Collector finds in favour of the Bataidar, the dispute may not conclude with a mere declaration and, therefore, the law having regard to the three possible eventualities provides for him active intervention to protect and safeguard the rights of the Bataidar.

7. Mr. Verma then submitted that the reasons assigned by the DCLR and the Addl. Collector for taking a view in disagreement with the report of the Board were wholly bad and illegal and, therefore, the two impugned orders were unsustainable in law. Here, I find that the case of the petitioners is on more firm grounds.

8. I have gone through the two orders coming under challenge very carefully and in my view both the orders are not only bad and illegal but they suffer from perversity.

9. The DCLR by a process of convoluted rationalization based on a complete misconception of law and taking into account such unconnected facts as the land holders' geneology and the total lands held by the land holders' family has come to hold that the land holders were immune to a claim of Bataidari.

10. It is stated that the land holders were the sons of a certain Bachchu Singh who died leaving behind a widowed wife, three sons (the present land holders respondents 5 to 7), two daughters and four grand sons who live in jointness. Each of them were, thus, entitled to an equal share in the lands held jointly by

the family. It was further found on the basis of reports received from the two Circle Officers that the total lands held by the family was 78 bighas, 17 kathas, 12 dhurs and 10 dhurkis equal to 66.86 acres in area. Distributing the total holdings equally among the aforesaid ten members of the family, the DCLR came to the obvious inference that each of them will get lands less than 10 acres in area. Then invoking the provision of Section 48C, proviso (1)(b), the conclusion is arrived at that the respondents were immune to any claim of under raiyat rights in terms of Section 48E of the Act. Having thus held respondents, 5 to 7 as immune to a claim of Bataidari, the DCLR has proceeded to pick holes in the report submitted by the Bataidari Board. Finally, he disallowed the petitioners' claim as false and not maintainable.

11. The reasoning adopted by the DCLR appears to me to be quite fantastic. I find it a novel method to defeat a claim of Bataidari on the basis of an elaborate geneology and arithmetical division of the lands among the members of an alleged Hindu undivided family. The premise on which the conclusion is based is that no claim of under raiyat rights, in terms of Section 48E of the Act, can be raised against a person holding ten acres of unirrigated land. But the very premise is wholly unfounded and untenable. On this point, a bench of the Court in a recent decision in *Mukh Lal Ram v. State of Bihar and Ors.* 1997 (1) PLJR 487, has held as follows:

Mr. Singh, lastly submitted that respondent No. 3 had only 9.48 acres of unirrigated land and hence he was insulated against any proceeding u/s 48E of the Act. In our opinion, the submission is wholly without substance. The extent of the area of land held by a landlord is relevant only u/s 48C of the Act in terms of which 3 person having held the land as an under raiyat for a period of 12 years or more may raise a claim of acquisition of occupancy rights. In a proceeding u/s 48E of the Act, the extent of land held by the landlord has absolutely no relevance.

12. For the reasons aforesaid, I have no hesitation in holding that the impugned order passed by the DCLR cannot be sustained for a moment.

13. In appeal the Addl. Collector seems to have taken an equally misleading course. He noticed that the Bataidari Board was appointed on 16.2.1990 and it submitted its report on 11.4.1991, that is, after more than six months from the date of its appointment. According to the Addl. Collector the Board having failed to submit its report within six months from the date of its appointment, the Bataidari proceeding automatically lapsed and no order in favour of the claimants could, therefore, be passed in that proceeding. For holding that the proceeding must conclude within six months from the date of appointment of the Board, he relies upon Sub-section (9) of Section 48E of the Act. Sub-section (9) is as follows:

(9) The order of the Collector under Sub-sections (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.

14. A mere perusal of the provision provokes me to observe that the Addl. Collector does not seem to know what he is talking about.

15. Having held that the proceeding had lapsed on the expiry of six months from the date of the appointment of the Board, the Addl. Collector, like the DCLR, proceeded to make all manners of criticism against the report submitted by the Board and the procedure followed by the Board for making its report.

16. Having gone through the orders passed by the DCLR and the Addl. Collector, Khagaria, I feel sorry at the manner in which the, law relating to under raiyat rights is being enforced by the authorities under the Act.

17. For the reasons stated, I find that the appellate order passed in this case by the Addl. Collector, Khagaria is equally bad and illegal.

18. The two impugned orders as contained in Annexures 3 and 4 are accordingly set aside.

19. From the various criticism made against the report submitted by the Bataidari Board, it appears that the report was based on a local inspection held by the Anchal Adhikari without giving any notice to the land holders. From the observations made in the two orders, it also appears that the Bataidari Board did not follow the provisions contained in Sub-sections (6) and (7) of Section 48E of the Act. I, therefore, think that it would not be quite safe to rely on that report. I accordingly remit the matter back to the DCLR Khagaria with a direction to reconstitute a Bataidari Board in terms of Sub-section (3) and (4) of Section 48E of the Act and to proceed with this case afresh from that stage. As the case has become quite old, it is expected that a final order would be passed without any undue delay and preferably within six months from the date of receipt/production of a copy of this order.

20. In the result, this application is allowed with costs, subject to the aforesaid observations and directions.