
(2007) 05 PAT CK 0004
In the Patna High Court
Case No : CWJC No. 4873 of 2002

Surendra Prasad Bishwas and Others	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 03-05-2007

Acts Referred:

Bihar Tenancy Act, 1885 — Section 48D

Citation : (2007) PLJR 364

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Navaniti Pd. Singh, J.—Heard. The present writ application has been filed for quashing the order dated 16.5.1996 passed by the Circle Officer, Araria, in Bataidari Case No. 26/1996-97 as affirmed in appeal by order dated 3.1.2002 passed by the Sub divisional Officer, Araria in Appeal Case No. 61/ 1996-97 in terms of section 48D of the Bihar Tenancy Act on application of respondent No.4. The effect of the said order is that now respondent No.4 has been declared to be the raiyat of the land, in question, as against the petitioners. The State was given several opportunity over last four years to take instruction and file a comprehensive counter affidavit but none has been filed. It was recorded in the order earlier that in absence of counter affidavit either by the State or by the private-respondent, who had since appeared, the Court will proceed on the pleadings available on record. Today again no counter affidavit has been filed on behalf of the State but a counter affidavit has been filed by the sole contesting private respondent, being respondent No.4.

2. Heard the parties and with their consent this application is being disposed of at the stage of admission itself.

3. Respondent No.4 claiming to be a Bataidar in respect of land of the petitioners for a period of over 12 years claimed to be declared as occupancy raiyat and thus

in terms of Section 48D claimed to be declared raiyat in place of original raiyat under whom they were Bataidars. This claim was resisted by the petitioners, inter alia, on the ground that the petitioners" have less than 20 acres of land. In fact, they gave detail of sale that they had only about 12 acres of unirrigated land and as such were protected tenants within the meaning of Section 48C(i)(a) of the Bihar Tenancy Act and that being so the respondent could not be declared occupancy under raiyat nor could he acquire the right of raiyat. This was not accepted by the Anchal Adhikari by the impugned order.

4. The Anchal Adhikari gave a finding that the petitioners had more than 20 acres of land. From where this finding has come remains unexplained. A reference to the order, in question, would show that except the assertion of respondent No.4, the Bataidar claimant there was nothing on record in this respect.

5. Similar is the situation of the appellate order. Neither of the order referred to even a single document to show that the petitioners are in possession of more than 20 acres of land. The petitioners in Annexure 1 to this writ petition have given full details of their land which in total measures about 12 acres among different family members.

6. It is well settled that a party, who based his claim on certain facts must, establish this fact. The petitioners were required to state and disclose their land holding. They did so. The respondent and the State authority had taken a position that the petitioners had more than 20 acres of land to disentitle the petitioners from being protected tenants. In such a situation the onus was entirely on the respondents to establish that the petitioners had more than 20 acres of land. The petitioners cannot be expected to prove a negative fact. Regrettably, there is no material on record to establish this fact.

7. The counter affidavit filed by the private respondent merely refers to the "findings of fact" as given by the authority in the order impugned, as the only basis for denial of petitioners" claim of being protected tenants.

8. In the said counter affidavit Khatian has been annexed to show the fact that the respondent has been shown as sikmidar raiyat. That to my mind does not change the legal position.

9. As noted above, this "finding of fact" has no basis. It is not based on relevant or cogent material brought on record.

10. In that view of the matter, this "finding of fact" is no "finding of fact" or if it is a "finding of fact" it is a perverse "finding of fact". That being the position, the petitioners would be protected tenants and the respondent cannot claim any right with reference to Section 48C of the Act.

11. The impugned orders are thus unsustainable and are liable to be quashed and are quashed as such. This writ application is allowed.