

(2007) 12 PAT CK 0063
In the Patna High Court
Case No : CWJC No. 9576 of 1989

Suresh Mishra and Another		APPELLANT
	Vs	
State of Bihar and Others		RESPONDENT

Date of Decision : 06-12-2007

Acts Referred:

Bihar Tenancy Act, 1885 — Section 48E, 48E(10)

Citation : (2008) 4 PLJR 30

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Advocate : B.P. Pandey, S.C. Giri and P.K. Sinha, for the Appellant; R.K. Sinha for the State, for the Respondent

Final Decision : Allowed

Judgement

Ajay Kr. Tripathi, J.—Heard Learned Counsel for petitioners and Learned Counsel for the State in both the writ application. There is representation on behalf of the private respondents. In both writ applications Annexure-1 are under challenge and the impugned orders are dated 16.8.1989. The proceedings have emerged out of an application which was filed by the respondents u/s 48E of the Bihar Tenancy Act. Though after initiation of the proceeding the Anchala Adhikari was nominated as Chairman of the Board but subsequently while exercising power u/s 48E(10) of the Act the matter was taken back from the Board and the same was decided by D.C.L.R. as is evident from the impugned orders.

2. Learned Counsel appearing on behalf of the petitioners assails the said order on some pointed submission. The submission is that though the Anchala Adhikari was nominated as Chairman of the Board the two members of the said Board representing the two parties were never nominated. Only notices were issued to the parties and the matter kept being adjourned for one reason or the other. No efforts were being made for reconciliation and even proper hearing was not done in the given case. His second limb of submission is that in the present case since powers were exercised by Collector u/s 48E(10) of the Act by withdrawing the

proceeding from the. Board this power had to be exercised de novo.

3. In this regard Learned Counsel for the petitioners rely on a Division Bench decision rendered in the case of Rashik Lal Singh & Anr. vs. The State of Bihar & Others reported in AIR 1979 Pat. 172. The Court in a similar situation examined the legal frame work of Section 48E of the Act and held that when the power is exercised u/s 48E(10) then the Collector is duty bound to follow the requirements of the procedure which have been laid down under the said section. It was in this background that the Court held that even the Collector is duty bound to take efforts in making an attempt for reconciliation in the matter. If it was not done as is the present case then the proceeding stands vitiated.

4. The Court has gone through the impugned orders. There is nothing to show on record that the requirements of law have been made after the proceeding was withdrawn from the Board by the Collector under sub-section 10 of Section 48E of the Act. No doubt many a reasons thereafter have been assigned in the impugned orders but a bare perusal of the same would show that the authority concerned has also used his personal opinion in reaching the conclusion rather than having gone through the evidence as stated. Be that as it may in view of the stated legal position in the case of Rashik Lal (supra) this Court is in agreement with the submission of the learned senior counsel appearing on behalf of the petitioners that the impugned orders contained in Annexure-1 are in violation of the mandate of law as the required procedure has not been followed after invoking sub-section 10 of Section 48E of the Bihar Tenancy Act. In that view of the matter Annexure-1 of both the writ applications are hereby quashed and the writ applications stand allowed. There will be no order as to cost.