

(2013) 09 PAT CK 0072
In the Patna High Court
Case No : CWJC No. 4845 of 2005

Vidyanand Biswas and Another	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 25-09-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145

Citation : (2013) 4 PLJR 392

Hon'ble Judges : Birendra Prasad Verma, J

Bench : Single Bench

Advocate : Arun Prasad Ambastha and Rama Nand Poddar, for the Appellant; Sanjay Kumar No. -1 for the Respondent Nos. 1 and 2, Mr. Jagdish Prasad Bhagat for the Respondent Nos. 3 to 7 and None, for the Respondent

Final Decision : Allowed

Judgement

Birendra Prasad Verma, J.—Heard learned counsel for the petitioners, learned Standing Counsel No. 12 appearing on behalf of respondent No. 1 and 2 as also learned counsel appearing on behalf of respondent Nos. 3 to 7. However, despite valid service of notice, respondent Nos. 8 to 10 have chosen not to appear and contest the matter. The petitioners are aggrieved by the order dated 17.6.2004 (Annexure-4) passed in Batai Case No. 40 of 2003-04 by the respondent DCLR, Baisi (District-Purnea), whereby batai claims raised on behalf of the petitioners with respect to 81 decimals of land appertaining to plot Nos. 579 and 578 has been rejected at the very threshold in terms of Section 48E(1) of the Bihar Tenancy Act, 1885 (in short Act), without referring the matter to the Batai Board constituted under the provisions of Section 48E(3) of the Act.

2. Learned counsel for the petitioners submits that the respondent DCLR, Baisi, after holding a mini/parallel trial, has rejected the batai claims of the petitioners with respect to the lands under dispute by recording a long judgment running into 22 pages. It is contended that one Mahesh Lal Biswas, grandfather of the petitioners, was recorded as Sikmidar with respect to the lands under dispute,

and the petitioners, besides others, have been coming in possession over the lands under dispute for a quite long time. However, on threat of ejectment from the landlords-respondent Nos. 3 to 7, they filed an application u/s 48E of the Act seeking protection from unlawful ejectment from the lands under dispute, which gave rise to Batai Case No. 40 of 2003-04 before the respondent DCLR, Baisi, the Collector under the Act. It is pointed out that after registering the case, notices were issued to the landlords by order dated 27.1.2004 and the matter was adjourned and heard on different dates. After hearing the parties at great length and on consideration of all the materials and evidence produced by the parties, batai claims raised on behalf of the petitioners with respect to the lands under dispute was arbitrarily rejected by the impugned order dated 17.6.2004 (Annexure-4) by holding a parallel trial/mini enquiry.

3. Learned counsel for the petitioners further submits that the impugned order is contrary to the scheme and scope u/s 48E of the Act and is also in breach of judicial pronouncements made by a Special Bench of this Court as also by the Hon''ble Apex Court. In support of his above contentions, he has placed reliance on a judgment of the Hon''ble Apex Court in the case of Ram Narain Sharma Vs. State of Bihar and Others as also on the judgment of a Special Bench of our own High Court in the case of Dhanji Singh Vs. State of Bihar and Others,

4. Learned Standing Counsel appearing on behalf of the respondent Nos. 1 and 2, and learned counsel appearing on behalf of respondent Nos. 3 to 7 have jointly opposed the prayer made on behalf of the petitioners in the writ petition and have supported the impugned order passed by the respondent DCLR, Baisi. They are unanimous in their submissions that once a batai case was filed by the claimants-petitioners, then the respondent DCLR, being the Collector under the Act, was required to find out a prima facie case of bona fide batai dispute and only thereafter the matter could have been referred to the duly constituted Batai Board under the provisions of Section 48E(3) of the Act. It is pleaded by them that though the impugned order is a long one, but the respondent DCLR, Baisi did not find any prima facie case of bona fide batai dispute between the parties, therefore, the claims raised on behalf of the petitioners have rightly been rejected. It is also pleaded that the landlords have transferred certain area of lands to some other persons, but they have not been impleaded as party in the present proceeding or in the batai case filed before the respondent DCLR, therefore, on that ground also the batai claims raised on behalf of the petitioners are liable to be dismissed, in support of their above contentions, they have placed reliance on a Division Bench judgment of this Court in the case of Brijendra Kumar Narain Singh and Others Vs. State of Bihar and Others

5. After having heard the parties at length and on consideration of the materials available on record, this Court finds the issues raised herein either on behalf of the petitioners or on behalf of the respondents are no longer res integra. Identical issues were raised long ago with respect to batai dispute u/s 48E of the B.T. Act and therefore the matter was referred to a Special Bench of this Court.

The Special Bench of this Court has considered the scheme, scope and mandate of Section 48E of the Act at great length in different paragraphs in the case of *Dhanji Singh v. State of Bihar* (supra). A question was raised before the Special Bench as to whether at the very threshold landlord is required to be heard for the purpose of constitution of Batai Board? The Special Bench was of the opinion that there is no prohibition or any legal bar in hearing the landlord before referring the batai dispute to a duly constituted Batai Board u/s 48E(3) of the Act. But it has further been held that for the purpose of finding out a prima facie case of bonafide batai dispute, the Collector under the Act cannot be permitted to hold a mini trial or parallel enquiry at the very threshold. However, if the landlord chooses to appear at that stage, he can show to the Collector under the Act that batai claim lacks bonafide, but for that also, factors have been indicated in the aforesaid case of *Dhanji Singh v. State of Bihar* (supra). Paragraph-11 of the judgment of Special Bench in the case of *Dhanji Singh v. State of Bihar* (supra) answers all the issues, which have been posed either on behalf of the petitioners or on behalf of the respondents. Therefore, for better appreciation, paragraph-11 of the aforesaid Special Bench judgment in the case of *Dhanji Singh v. State of Bihar* (supra) is reproduced hereinbelow:--

11. Learned counsel appearing for the respondent, however, submitted that there being no bar, if the landlord appears at his own and intervenes at the time of the initiation of the proceeding, he should be heard and it should be open to him to show that the information received by the Collector is false or that the application filed by the under-tenant is not a bona fide one. In my opinion, from the scheme of Section 48E it is clear that it does not conceive two enquiries, one preliminary and other the final. If the applicant satisfies the Collector on the basis of the materials produced before him or the Collector is satisfied on the information received by him, then without waiting for the landlord he can initiate the proceeding. Of course, in some cases where the claim on behalf of the under tenant has been made by suppressing the material facts, like an order u/s 145 of the Code of Criminal Procedure between the same parties, upholding the claim of the landlord and negating the claim of possession made by the under-tenant, or a recent delivery of possession having been effected in favour of the landlord over the lands in question, then the landlord may bring to the notice of the Collector that the claim of the applicant lacks bona fide. But, the landlord cannot be permitted at that stage to convert the initiation of the proceeding, a mini trial or a parallel enquiry. He has to wait till the matter is placed before the Board.

6. The principles enunciated by the aforesaid Special Bench judgment of this Court have been reinforced by Hon'ble Apex Court in the case of *Ram Narain Sharma v. State of Bihar* (supra). However, so far as the judgment in the case of *Brijendra Kumar Narain Singh v. State of Bihar* (supra), referred to by the learned counsel appearing on behalf of the respondents, is concerned, in the factual matrix of the present case the ratio laid down therein cannot be followed in the present case by this Court.

7. For the reasons recorded above, the impugned order dated 17.6.2004 (Annexure-4) passed in Batai Case No. 40 of 2003-04 by the respondent DCLR, Baisi, is hereby set aside and the matter is remitted back to him with a direction to constitute a Batai Board for settlement of batai dispute between the under-raiyat and the landlord. However, if it is found that after filing of the batai case by the petitioners some parts of the land have been transferred by the landlords to some other persons, then those transferees shall also be impleaded as party by the respondent DCLR under the provisions of Section 48E(1) Explanation of the Act.

8. It is clarified that this Court has not gone into the merits of the claims raised on behalf of the parties with respect to the lands under dispute, which is left to be decided once again by the respondent DCLR, Baisi, once there is recommendation by the Batai Board constituted by him in terms of Sections 48E(3) and (4) of the Act. In the result, writ petition stands allowed to the extent indicated above. However, the parties shall bear their own costs.