

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.453 of 2019

In

Civil Writ Jurisdiction Case No.2721 of 2019

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Ashok Mandal Son of Late Kamleshwari Mandal @ Jageshwar
Mandal Vill.- Brahm Gyani, P.s.-Bhawanipur, Distt.-Purnea

... ... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Revenue and Land Reforms, Government of Bihar, Patna
2. The District Collector Purnea
3. The Deputy Collector Land Reforms, Dhamdaha, District-Purnea
4. The Anchal Adhikari Bhawanipur P.S.-Bhawanipur, District-Purnea
5. Hemant Kumar Singh @ Hemant Kumar Sinha S/o Narendra Kumar Singh R/o Village-Kapsauna, P.S.-Sabour, District-Bhagalpur, at present resident of Village-Brahm Gyani, P.S. Bhawanipur, District-Purnea

... ... Respondent/s

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Issue for consideration : Has the Appellant failed to establish prima facie case of his claim of being a Bataidar under section 48E of the

Bihar Tenancy Act ,1885 and is there any merit in appeal requiring interference

section 48D of the Bihar Tenancy Act -Plot of Land at Mauza Supauli Thana no. 271 , Bhawanipur , Purnea-DCLR vide an order declared appellant as Bataidar - respondent appeal with Collector rejected – aggrieved by the order of DCLR and Collector respondent challenge the order before Bihar Land Tribunal – order of DCLR and Collector set aside – Appellant preferred writ petition – same was dismissed by learned Single Judge –aggrieved the Appellant preferred writ petition before this court which was dismissed -Application by Jugeshwar Mandal under section 48E of Bihar Tenancy Act ,1885 dismissed – Appellant failed to establish Bataidari agreement -Has the Appellant failed to establish prima facie case of his claim of being a Bataidar under section 48E of the Bihar Tenancy Act ,1885

Held The Appellant claimed that he took up Bataidari , regularly giving share of produce , since there was no custom of receipt , he claimed that he was not having receipt of Bataidari , DCLR declared him Bataidar based on local inspection , DCLR clearly erred in passing the order as no inheritance right was established , the Collector also erred in the appeal by simply confirming the DCLR order .It is evident from the order of DCLR that the Appellant has not held to be Bataidar on the ground of his having inherited such rights .There is no finding by any competent authority that the Petitioner father or his grandfather acquired right of occupancy within the meanng of section 48 D of the Bihar Tenancy Act . Bataidari is an agreement that subsists till the said

Bataidar is in cultivating possession of the said land and he pays to the land lord the produce rent for the land held by him .

The court has also held that in order to become an Under Raiyat , there must be some element of agreement between the Raiyat and the under Raiyat and no person can be held to be Under Raiyat if he has occupied the land without any agreement .

There is no material to substantiate that the Appellant entered into bataidari agreement with the landlord after the death of his Father , also there was complete absence of attempts for conciliation . It is also pertinent to mention that the application of the Appellant Father has been earlier rejected under section 48E of the Bihar Tenancy Act . [Padarath Chaudhary vs Mostt Jogtia (1987 BLJ 636) , shrikishun v Harihar (ILR 27 Patna 194) ,Bibi Jalosan v.Bhulai Baitha (1981 BBCJ 466)] [Para 9]

section 48D of the Bihar Tenancy Act- **Application by Jugeshwar Mandal under section 48E of Bihar Tenancy Act ,1885 dismissed –** Appellant filed separate application under **section 48E of Bihar Tenancy Act ,1885 which was dismissed-**

DCLR clearly erred in passing the order , the Collector also erred in the appeal by simply confirming the DCLR order -The bataidari right cannot be inherited unless an Under Raiyat acquires the right of occupancy raiyat within the meaning of section 48D of the Bihar Tenancy Act it is also pertinent to mention that the Appellant Father raised an identical claim which was earlier denied by the appropriate authority.

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- Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Yogendra Kumar, Advocate
For the Respondent/s	:	Mr. Md. Khurshid Alam (AAG)
		Mr. Samir Ali Khan, Advocate
		Mr. Binay Kumar Sinha, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJIV ROY)

Date : 11-01-2024

Heard the parties.

2. The appeal arises out of order dated 27.02.2019 in CWJC No. 2721 of 2019 passed by the learned Single Judge by which holding that the appellant-petitioner failed to establish even, prima facie case, his claims of being a ‘Bataidar’ of respondent no. 5 under section 48E of the Bihar Tenancy Act, 1885 (henceforth for short, ‘the Act’), the writ petition was dismissed.

3. The facts of the case is/are as follows:



4. The disputes relate to a piece of land appertaining to Khata no.226, Plot no.46 (part) (area 2.88 acres) at Mauza- Supauli, Thana no.271, Bhawanipur in the District of Purnea (hereinafter referred to as the land in question).

5. One Jugeshwar Mandal preferred application under section 48E of 'the Act' in respect of land in question vide case no. 35 of 1993 which was dismissed.

6. In the year 2003, the appellant preferred another petition under section 48E of 'the B.T. Act' which gave rise to case no. 23 of 2003. In the said petition, he claimed himself to be the son of Kamleshwari Mandal stating therein that he has taken it as 'Bataidari' from his grand father, Bigan Mandal. The grand father of the petitioner died in the year 1988 whereafter his father was doing 'Bataidari' and after his death on 04.01.2002, the appellant took up the Bataidari, regularly giving share in produce. Since there was no custom of granting receipt, as such, it was claimed that he was not having receipt of the 'Bataidari'.

7. The DCLR vide an order dated 28.04.2005 declared him as 'Bataidar' based on local inspection effective 26.04.2003, the date when the landlords intimated him about



vacating the land. The respondent no. 5 filed appeal before the Collector, Purnia in Revenue Appeal no. 109 of 2005 which came to be rejected on 08.02.2009.

8. Aggrieved, CWJC No. 18602 of 2011 was preferred by the respondent no. 5 and the Court vide an order dated 30.08.2016 allowed him to challenge the orders before the Bihar Land Tribunal (henceforth for short 'the Tribunal'). This followed B.L.T. Case No. 481 of 2017 where, after hearing the parties, the orders passed by the DCLR as also as the Collector were set aside vide an order dated 06.04.2018.

9. Aggrieved, the appellant preferred the writ petition. The matter was heard by learned Single Judge and vide an order dated 27.02.2019, the same was dismissed. It is relevant to incorporate paras 13 to 19 of the order which read as follows:

“13. What is clearly evident from the order of the Deputy Collector Land Reforms dated 28.04.20015 that he has not held the petitioner to be bataidar on the ground of his having inherited any such right consequent upon the death of his father. There is no finding by either the Deputy Collector Land Reforms or the Collector that the petitioner’s father acquired raiyati rights under Section 48D of the Act. The



*submission on behalf of the petitioner that the petitioner inherited any right from his father after his death as bataidar in 2002 cannot be entertained at all. Reliance has been placed by learned counsel for the petitioner on Division Bench decision in case of **Balbhadra Prasad Singh** (supra). In case of **Balbhadra Prasad Singh** (supra), the Division Bench has observed in paragraph 8 that 'rights of occupancy under raiyat shall be inheritable on account of the words succession to, which occurred in Section 48D of the Act as it stood prior to its amendment. There is no finding by any competent authority that the petitioner's father or his grandfather had acquired right of occupancy within the meaning of Section 48D of the Act. Paragraph 8 of the said decision in case of **Balbhadra Prasad Singh**(supra) is relevant and is being reproduced hereinbelow:*

“8. There are judgments of this Court which have considered the effect of aforesaid legal provisions and have come to the conclusion that the rights of occupancy under- raiyat shall be inheritable but 'not transferable'. This is on account of the words



‘succession to’ which occurred in section 48D of the Act as it stood prior to its amendment. By way of illustration, we may refer to the judgment in the case of Padarath Chaudhary v. Mostt. Jogtia (1987 BLJ 636. in which reliance was placed upon a Division Bench Judgment of this Court in the case of Shrikishun v. Harihar (ILR 27 Patna 194) and the judgment of the single judge in the case of Bibi Jaloosan v. Bhulai Baitha (1981 BBCJ 466) to come to a conclusion in Para-10 of the judgments that an under-raiyat having occupancy rights by dint of his continuous possession for more than 12 years can have rights to succession etc. but cannot have the rights to transfer. A similar view has been taken in a recent judgment by a single judge of this Court in the case of Dehal Mahton v. Nathuni Ram Marwari 2006 (2) PLJR 642.’

14. Similar view has been taken by



*another Division Bench of this Court in case of **Sukhdeo Pandit** (supra), paragraph 12 of which reads thus :-*

“12. This is to be noted here that in order to verify the assertion that in spite of notice the private respondents did not appear before the Board, we had called for the original records from the Collector, Banka in order to ascertain whether the notices were served upon the private respondents or not regarding proceedings before the Board. We do not find from the records whether the notices were in fact sent or served upon the private respondents. The private respondents have pleaded that they did not have any knowledge about the proceeding before the Board.”

*15. In case of **Sukhdeo Pandit** (supra), the Division Bench has clearly held as noted above that bataidari is primarily an agreement between the raiyat and under raiyat (bataidar),*



*which agreement subsists till the said bataidar is in cultivating possession of the said land and he pays to the landlord the produce-rent for the land held by him. In case of **Kartik Singh and Another** (supra) also this Court has held that in order to become an under raiyat, there must be some element of agreement or contract between the raiyat and under raiyat and no person can be held to be under raiyat if he has occupied the land without any such agreement.*

16. Considering the background of the propositions of law, as noted above, for the present adjudication, I reiterate that the petitioner's case that he was in cultivating possession as an under raiyat, immediately after his father died in the year 2002, cannot be said to have been accepted by the Deputy Collector Land Reforms and the Collector, Purnia, since the petitioner has been held by them to be bataidar with effect from 26.04.2003. Even if it is accepted that the petitioner's father was a bataidar of respondent No.5 as on the date of his death, the



bataidari agreement, if any, lost its force on the date of his death. There is no material indicated in the order of the Deputy Collector Land Reforms and the Collector, Purnia, to arrive at a conclusion that the petitioner entered into bataidari agreement with the landlord (respondent No.5). In addition to the above, I do not find any illegality in the reason assigned by the Tribunal that there was complete absence of attempts for conciliation, which also rendered the order passed by the Deputy Collector Land Reforms illegal.

17. Learned counsel appearing on behalf of respondent No.5, in my opinion, has rightly submitted that the petitioner failed to establish even, prima facie, his bonafide claim of being a bataidar of respondent No.5 on the basis of his assertion in the application seeking such right under Section 48E of the Act.

18. For the reasons aforesaid, no interference with the impugned decision of the Tribunal is required.

19. This application is accordingly



dismissed.”

10. Aggrieved, the present appeal.

11. Learned Counsel for the appellant submits that the writ petition was dismissed on erroneous finding that he was only seven years old at the time of death of his father and as such could not have done ‘bataidari’. On the contrary, he was twenty nine years old in the year 2002 and affidavit to this effect was also given.

12. It is his further submission that the learned Single Judge has placed reliance on the voter list which cannot be said to be an authentic document. Further, the respondent no. 5 ought to have taken route to the statutory appeal before the appellate authority under ‘the Act’ which was not taken note of by the learned Single Judge.

13. A counter affidavit has been filed on behalf of the respondent nos. 2 to 4 which is on record. Learned Single Judge in paragraph 5 took note of the fact that the appellant-petitioner is son of Jugeshwar Mandal whose application under section 48E of ‘the Act’ was earlier dropped. The appellant accepted that the Jugeshwar Mandal is the alias name of his father Kamleshwari Mandal and thus, it is an admitted fact that the said proceeding under section 48E of



‘the Act’ was dropped earlier. In that backdrop as also the fact that when he was seven years on 04.01.2002 when his father died, ‘the DCLR’ wrongly came to the conclusion that he was ‘bataidar’ of the respondent no. 5 w.e.f. 26.04.2003.

14. The Learned Single Judge also took note of the fact that the DCLR has not acknowledged that on the day of his death, the appellant-petitioner’s father who was also a ‘bataidar’ to which he immediately succeeded. In that background 'the Tribunal' rightly allowed the case of the respondent no. 5.

15. We have gone through the facts of the case and we have no hesitation in accepting the stand of the respondent no. 5 that ‘bataidari’ is primarily an agreement between the raiyat and under raiyat which subsists till the ‘bataidar’ is cultivating the land and paying the produce-rent to the landlord for the said land. The ‘bataidari’ right cannot be inherited unless an under raiyat acquires the rights of an occupancy raiyat within the meaning of section 48D of ‘the Act’.

16. In that background, to become an under raiyat, there must be some agreement of contract between the raiyat and the under raiyat and in absence of that, it is hard to



interfere with the orders in question.

17. The learned Single Judge did not find that the petitioner was only one year, when his father died. What was noticed was, the Tribunal's finding, that the age of the petitioner in 1980 would be only one year and that his claim that he was cultivating the land with his father, from 1980 is belied. His inheritance from his father cannot be assumed, since though he turns 24 years in age (DOB as per Aadhar Card in CWJC is 01.01.1978) as on 2002, when his father died, there was no agreement entered into with the raiyat. All the more significant is the fact that, the father, under whom the petitioner claims, raised an identical claim which was denied by the appropriate authority; thus negating his claim of inheritance.

18. The Deputy Collector Land Reforms clearly erred in passing the order on the basis of local inspection without going into the merits of the case needed under 'the Act'. The Collector also erred in the appeal by simply taking the line of 'the DCLR' without applying his mind.

19. In so far as the orders in question is/are concerned, we do not find any merit in appeal and are not inclined to interfere with it.



20. In that background, the appeal stands rejected.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

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