

Sukhdeo Paswan and ors. Vs. State of Bihar and ors.

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Court : Patna

Decided On : May-20-1993

Judge : S.B. Sinha and A.N. Chaturvedi, JJ.

Acts : Bihar Tenancy Act, 1885 - Sections 48E (1); [Constitution of India](#) - Article 227

Appeal No. : Civil Writ Jurisdiction Case No. 354 of 1992

Appellant : Sukhdeo Paswan and ors.

Respondent : State of Bihar and ors.

Advocate for Def. : Seema Ali Khan, SC 7

Advocate for Pet/Ap. : Binod Kumar Ambastha, Adv.

Disposition : Application dismissed

Prior history : S.B. Sinha, J. 1. This application is directed against an order dated 8-10-1991 passed in Bataidari case No. 100 of 1991 and other analogous case whereby the Deputy Collector Land Reforms, Manjhaul had dismissed the application of all the petitioners by a common order. 2. The petitioner's claimed themselves to be the agricultural labourers. According to them they are bataidars of the landlord for the last 13 years. The petitioners having been threatened with unlawful ejectment filed appl

Judgement :

S.B. Sinha, J.

1. This application is directed against an order dated 8-10-1991 passed in Bataidari case No. 100 of 1991 and

other analogous case whereby the Deputy Collector Land Reforms, Manjhaul had dismissed the application of all the petitioners by a common order.

2. The petitioner's claimed themselves to be the agricultural labourers. According to them they are bataidars of the landlord for the last 13 years. The petitioners having been threatened with unlawful ejectment filed applications for a declaration that they are bataidars of the respondent No. 3.

3. The petitioners themselves have contended that 114 such applications has been filed resulting in initiation of 114 different cases. The respondent No. 2 issued notice to the respondent No. 3 and allowed him to file documents.

4. By reason of the impugned order dated 8-10-1991, the Respondent No. 2 has come to the conclusion that the petitioners have failed to make out a case that they are bataidars of Respondent No. 3 and their claim is thus unfounded.

5. Mr. Binod Kumar Ambastha, the learned counsel appearing on behalf of the petitioners submitted that at the stage of entertaining the application under Section 48E (1) of the Bihar Tenancy Act a detailed enquiry was wholly unwarranted.

6. He further submitted that the respondent No. 3 is a big land holder and the proceedings under Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act is pending against him.

7. Section 48(E) of the Bihar Tenancy Act reads as follows : 'Prevention of threatened ejectment of under-raiyat and restoration to possession under-raiyat unlawfully ejected. (I) If an under-raiyat is threatened with unlawful ejectment from his tenancy or any portion thereof by his landlord or if there is a dispute between them over the possession of land, crop or produce thereof either on the ground of

non-existence of relationship of landlord and tenant between them or otherwise or if an under-raiyal is or has been ejected from his tenancy or any portion thereof within twelve years before the

commencement of proceedings under this section in contravention of the provisions of Section 89 of the Collector may, of his own motion or on application made in this behalf by the under-raiyat, initiate a proceeding for preventing the landlord from ejecting the under-raiyat or for settlement of the said dispute or for restoration to possession under - raiyat unlawfully ejected from his tenancy or portion thereof.'

From a bare perusal of the aforementioned provision there cannot be any doubt that a proceeding thereunder can be initiated if there exists a bonafide dispute.

8. The contentions raised in this application are no longer resintegra.

9. In *Dhanji Singh v. State*, reported in AIR 1979 Patna 259 (SB) : 1979 BBCJ (HC) 521, it has been held that it is for the Collector under the Act to satisfy himself on the basis of the information received by him or on the materials brought on records for arriving at a finding as to whether the dispute is bona fide one so as to warrant, initiation of a proceedings under Section 48E (1) of the said Act.

10. This aspect of the matter had again been considered in *Bhaddo Uraon v. State of Bihar* reported in 1988 BBCJ (HC) 711 wherein the forementioned Full Bench Judgment in *Dhanji's Case* (Supra) was analysed in the following terms:-

'It was stated in the judgment of B. P. Singha, J. in the same case viz *Dhan Singh* (Supra) that the Collector had to find out whether a prima facie case existed for initiation of proceeding under the said section 48E and as such the Collector could not prevent the opposite party from appearing before him to establish that such a prima facie case did not exist in favour of the applicant.

It was observed in the judgment of P.S. Sahay J. also in the same case, that it should not be held that the opposite party had a right to appear before the Collector in all cases as a matter of right, though no hard and fast rule could be laid down in this regard. It was observed further that at the initiation stage all that

the Collector had to see was whether the

three requisite conditions enumerated in Sub-section(I) of Section 48E had been satisfied or not.

Construing the observations in the three judgments of the learned Judges in the said Full Bench decision it appears to me that the Collector at the stage of initiating proceeding under Section 48E is only required to be satisfied that a prima facie case has been made out by the applicant. In the absence of a prima facie case no proceeding under section 48E should be initiated even if the Opposite Party did not appear. The examples given in the judgment of M.P. Singh, J. in the said case may be noted. If it was the allegation of the under-raiyat that he had been dispossessed by the landlord 12 years prior to the date of filing of the application or that the under-raiyat had been dispossessed by a third party obviously his application under section 48E would not be maintainable ex facie and no proceeding should be initiated.'

11. This aspect of the matter has also recently been considered again by me in CWJC Nos. 2119 & 455 of 1985 disposed of on 30-4-1993 wherein upon taking into consideration various decisions it was held that it is for the court concerned to arrive at a satisfaction as to whether a prima facie case for entertaining the application under Section 48E (1) existed or not.

12. From a perusal of the impugned order, it appears that as the Collector under the Act was required to consider a large number of cases involving similar points. He was, thus entitled to give an opportunity of hearing to the landlord also before arriving at a finding as to whether the said application should be entertained or not.

13. The Collector under the Act has clearly held that the petitioners had not possessed the lands in question and the said applications was mala fide.

14. It was further held that in the village in question a hoard of applications arc being filed in a planned manner so as to usurp the lands of the landholder. The Collector under the Act came to the finding that most of the applicants were even not aware of the detail

of lands of which are said to be bataidars.

15. This court while exercising its jurisdiction under Article 227 of the [Constitution of India](#), cannot consider the sufficiency of reasons assigned by the Collector. If the findings arrived at by the Collector under the Act are reasonable, this court cannot exercise its jurisdiction under Articles 226 and 227 of the [Constitution of India](#).

16. It has not been contended that the order passed by the Collector under the Act was mala fide or if he misdirected himself in law in passing the said order. It is now well known that illegality, irregularity and irrationality are the main grounds upon which this court may exercise its discretion under Articles 226 & 227 of the [Constitution of India](#).

17. In our opinion, the Collector under the Act in passing the impugned order has neither committed any illegality, irregularity nor irrationality.

18. There is, thus, no merit in the application, which is accordingly dismissed, but without any order as to costs.

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