

**Ramotar Thakur and anr. Vs. the State of Bihar and ors.**

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**Court :** Patna

**Decided On :** Feb-02-2005

**Judge :** Mridula Mishra, J.

**Acts :** Bihar Tenancy Act - Sections 48C, 48D and 48E

**Appeal No. :** C.W.J.C. No. 6780 of 2000

**Appellant :** Ramotar Thakur and anr.

**Respondent :** The State of Bihar and ors.

**Advocate for Def. :** Arun Prasad Ambastha and Ravindra Kumar Choudhary, Advs.

**Advocate for Pet/Ap. :** R.C. Thakur and Kamal Kishore Singh, Advs.

**Disposition :** Application allowed

**Judgement :**

**Mridula Mishra, J.**

1. Heard learned counsel for the petitioner and the counsel appearing for the respondents.
2. The dispute relates to land of Khata No. 2525 Plot No. 622 measuring 2.1/2 decimal situated in village Dhamdaha. Petitioners have filed this application for

quashing the order dated 22.9.1999, passed by the Anchal Adhikari, Dhamdaha in case No. 52 of 1999-2000 under Section 48D of the Bihar Tenancy Act (hereinafter referred to as the Act whereby he has declared the raiyati right of the respondents 4 to 7 over the land in question. The petitioner has also prayed for quashing the order dated 5.6.2000 passed in Appeal No. 6 of 1999 by which the S.D.O. Dhamdaha has dismissed the appeal preferred by the petitioners on the point of limitation only.

3. Considering the arguments advanced by the counsels for the petitioners, respondents 4 to 7 as well as the statements made in the writ application, counter affidavit and reply to the counter affidavit, it transpires that both the petitioners and respondents are descendants of common ancestor. The land was recorded as sikmi in the cadestral survey in the name of Bansi Thakur, the grand father of respondent Nos. 4 to 7 and great grand father of petitioners under Mahadeo Thakur who was the raiyat of this land. After the death of Bansi Thakur his sons came in possession of the land and they constructed their houses over the land. Initially the respondent Nos. 4 to 7 filed an application under the provisions of Privileged persons homestead Tenancy Act for issuance of basgit parcha with respect to 5 decimal lands of Khata No. 2525 Plot No. 622. Their claim was rejected by the Circle Officer Dhamdaha. Subsequently on the basis of entry of their grand father's name in the cadestral survey records of rights, they filed an application under Section 48D of the B.T. Act against Mahadeo Thakur who is kaimi raiyat for declaration of their raiyati right with respect to the land. Petitioners are claiming that since their residential houses were over 2-1/2 decimal of this land, out of the total 5 decimal. They got executed a sale deed in their favour from the kaimi raiyat. With respect to 2-1/2 decimal of lands. The transaction with respect to this transfer had started much before the filing of an application by the respondents under Section 48D for declaration of their raiyati right, but the sale deed was executed in their favour subsequent to the passing of the order under Section 48D of the B.T. Act in favour of the respondents.

4. The point which needs consideration in the present application is that whether the respondents claim for declaration of their raiyati right should have been allowed by the Circile Officer under Section 48D of the Act when their right as

Bataidar under Section 48E of the Act itself was under dispute. The respondents have filed their application for declaration of their raiyati right under Section 48D simply on the basis of the entry of their grand father's name in the cadestral survey records of right. This was the ground for declaring respondent Nos. 4 to 7 as raiyats of the land, in that case petitioners were also great grand sons of the same Bansi Thakur who was shown as Sikmidar of the land. It was not the case of respondent that they held lands continuously or a period of 12 years as an under raiyat and have acquired right of occupancy in the land which was held by them. It has been decided in the case of Dilip Goswami and Ors. v. Anukul Chandra Verma and others, 2003(2) PLJR 211 that in any proceeding under Section 48D where any objection is raised by the land lord as to the under raiyat status of the claimant, the authority under the Act is obliged to make enquiry not only to the question whether he was in possession of the land for a period of 12 years and acquired occupancy right also the question as to whether his claim of being under raiyat is true.

5. From the impugned order passed by the Circle Officer it do not transpire that any such enquiry was made and it was found that respondents have perfected their raiyati right under Section 48C by remaining in possession of the land in question as under raiyat for continuous 12 years as such they can claim for declaration of their raiyati right under Section 48D of the Act. There is no such finding in the impugned order passed by the Circile Officer.

6. Mr. Arun Kumar Ambastha counsel for respondent Nos. 4 to 7 has placed reliance in the case of Bhola Sharma and Ors. v. State of Bihar and Ors., 2004 (1) PLJR 211 in order to defend the case of respondents that there was no necessity to consider that whether respondents were under raiyats of that land for deciding their claim under Section 48D of the Act. I do not think that this is the ratio of the decision on which he has placed reliance. In 2004(1) PLJR 211 reliance has been placed on the decision reported in 2003 (2) PLJR 211 and there it has been held that for declaration of raiyati right under Section 48D applicant claim being in possession of the land for continuous 12 years as an under raiyat must be enquired by the authorities if the claims of the applicant is disputed by the land lord. Since no such enquiry was made and only on the basis of entry of

respondents grand father's name in the cadastral survey records of right their claim of being raiyati under Section 48D has been allowed, it is against the provisions of Section 48D as well as under Section 48C of the Act.

7. In the present case as the petitioners have purchased disputed land and they raised dispute relating to the status of the respondents as under raiyat in such circumstance it was essential that an enquiry should have been held by the Circle Officer which was not done. So far the order of the appellate court is concerned it is not on merit and simply on the point of limitation appeal it has been rejected.

8. On consideration of the facts and circumstances of the case I find that the order passed by the S.D.O. as an appellate authority is illegal as he failed to consider the merit of the case and dismissed it on the point of limitation only. The order of the Circle Officer under Section 48D of the Act is also not sustainable for the reasons stated above.

9. Accordingly both the orders are quashed and this application is allowed. The matter is remitted back to the circle officer for deciding it afresh in accordance with law.

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