
(1999) 09 PAT CK 0146

Patna High Court

Case No: C.W.J.C. No's. 241 with 350 of 1999

Dina Nath Singh and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision: Sept. 21, 1999

Acts Referred:

- Bihar Tenancy Act, 1885 - Section 48C, 48D, 48E

Citation: (1999) 3 PLJR 594

Hon'ble Judges: S.J. Mukhopadhaya, J

Bench: Single Bench

Advocate: Shashi Shekhar Dwivedi, Shambhu Sharan Singh and Ravi Shankar Dwivedi, for the Appellant; Rama Kant Sharma and R.K. Prasad and Mr. C.R. Sinha for the State, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

S.J. Mukhopadhaya, J.

As both the writ petitions have been preferred by common petitioners and common point involved, they were heard together and are being disposed of by this common order. The dispute relates to land measuring 3.08 acres out of Plot No. 179/1021 under Khata No. 68/26 of village Kauriram, P.S. Mohania, district Kaimur in C.W.J.C. No. 241/99 and in the other case C.W.J.C. No. 350/99, the dispute relates to land measuring 1.48 acres of Plot No. 10 under Khata No. 48 of the said village Kauriram, P.S. Mohania, District Kaimur.

2. It appears that Respondents Nos. 4 to 8 of C.W.J.C. No. 241/99 claimed to be occupancy raiyats in respect of land dispute therein and preferred application u/s 48D of B.T. Act. It was registered as Batai Case No. 3/94-95.

Similar claim was made by Respondent No. 3 of C.W.J.C. No. 350/99, who claimed to be occupancy raiyat in respect of land, in dispute in the said case. It was registered

as Batai Case No. 1/95-96.

3. Batai Case No. 3/94-95 was earlier decided by Circle Officer on 29th November, 94 in favour of Respondents 4 to 8 (appellants). The other Batai Case No. 1/95-96 was also decided in favour of Respondent No. 3 (appellant). The petitioners preferred Appeal No. 305/95-96 which was rejected by the Collector, Kaimur, vide order dated 7th May" 96 on the ground that it was time barred. The petitioners at that stage moved before this Court and challenged the orders dated 29th November" 94 and 28th July" 95 passed in the aforesaid batai cases in C.W.J.C. No. 11014/96 and C.W.J.C. No. 11077/96 respectively. Both the aforesaid cases were heard together by this Court and disposed of by common judgment and order dated 28th July"98.

this Court relying on a Bench decision of [Kusumlal Mallah Vs. State of Bihar](#), , held the orders illegal, ratio laid down having not followed and remitted the matter to the Respondents.

4. It appears that on remittance of the case, the impugned orders have been passed on 28th November, 98 and decided in favour of the contesting Respondents.

5. According to the counsel for the petitioners, the Respondent Circle Officer had not followed the provisions laid down u/s 48E of the B.T. Act and thereby flouted the Court's order and judgment passed on 28th July, 98 in C.W.J.C. No. 11016/96 and analogous cases.

6. The constesting Respondents have appeared. According to them, the Circle Officer, on remand, after hearing the parties, had passed the order. However, the counsel accepted that no specific provision under B.T. Act has been followed.

7. In Chapter-VI of B.T. Act, 1885, provisions have been laid down for recovery of rent; produce rent; restriction on payment of certain kinds of rent; acquisition of rights; prevention of threatened ejectment etc. of under-raiyat. While acquisition of "right of occupancy by under-raiyat" has been laid down u/s 48C; acquisition of raiyati right by occupancy under-raiyat has been stipulated u/s 48D of the said Act. There is no separate provision laid down for determination of question as to whether a person is under-raiyat or not, except the provision laid down u/s 48E of the B.T. Act, where procedure laid down for prevention of threatened ejectment.

No declaration of raiyati right u/s 48D can be given till the claimant under-raiyat is "an occupancy under-raiyat". Whether such under-raiyat is "occupancy under-raiyat" or not, can be determined only u/s 48C of the Act.

Until the amendment introduced by section 48C of the Act, there could be no occupancy right acquired by under-raiyat, except under some custom or use duly recognised in this behalf (refer 1987 B.L.J. 636).

Since introduction of section 48C of the Act, Bihar Act XXIV of 1955, an under-raiyat who for a period of 12 years has continuously held the land, whether under a lease

or otherwise, shall be deemed to have acquired the right of occupancy on the expiration of that period, subject to proviso containing certain conditions precedent and exceptions thereto.

8. It is a settled law that an under-raiyat having occupancy right by dint of his continuous possession for more than 12 years, can have right to succession etc., but cannot have the right to transfer

9. In a given case, even one may raise the basic dispute relating to claim of a person, as an under-raiyat.

In view of aforesaid provisions, for determination of raiyati right u/s 48D, it is to be seen as to whether the claimant is an occupancy under-raiyat or not. In absence of any such declaration, first a determination is to be made relating to acquisition of right of occupancy under-raiyat for which one is to undergo test of proviso as laid down u/s 48C of the Act.

Similarly, in absence of any declaration/direct evidence relating to basic claim that the claimant is under-raiyat on dispute, at the first instance, such question requires to be adjudicated u/s 48E of the Act.

10. Thus, if there is direct evidence that an under-raiyat is in continuous possession of the land for more than 12 years, subject to any objection raised under proviso to section 48C, such under-raiyat can be treated to have acquired right of occupancy and raiyati right can be declared in his favour u/s 48D of the Act.

Contrary, in absence of such direct evidence and/or objection if raised under proviso to section 48C, no declaration of raiyati right u/s 48D can be given, without declaration of occupancy right of under-raiyat u/s 48C of the Act.

Similarly, in absence of direct evidence like records of right/Khatian, even at the stage of declaration of raiyati right u/s 48D, on objection made by a party, the basic question is required to be determined as to whether the applicant is under-raiyat or not, which can be determined only u/s 48E of the Act.

11. It is for the said reason, this Court referred back the matter to the Respondents for redetermination of the issue, in view of objection raised by petitioners, in the light of decision of this Court in the case of [Kusumlal Mallah Vs. State of Bihar](#), .

12. However, as the authority concerned, while passed the impugned orders on 28th November" 98 failed to proceed in the matter in terms with guidelines, as stated above, and the ratio laid down in the case of Kusum Lal Mallah (supra), I set aside both the orders dated 28th November" 98, passed in Batai Case Nos. 3/94-95 and 1/95-96 and remit the case to the court below. Both the writ petitions stand disposed of with the aforesaid observations and directions.