

आदेश की क्रम सं०
और तारीख

1

आदेश और पदाधिकारी का हस्ताक्षर

2

आदेश पर की गई
कार्रवाई के बारे में
टिप्पणी तारीख सहित

3

BOARD OF REVENUE, BIHAR, PATNA.

Revision (Land Ceiling Surplus) Case No. - 11/2015

Dist. - Supaul

PRESENT :- K.K. Pathak, I.A.S.,
Additional Member

Jhulan Yadav & Others

Versus

The State of Bihar & Others

- Petitioner/ Appellant

- Opposite party

Appearance:

For the Appellant/Revisionist : Shri Lokesh

For the OP :

For the State : Shri Nirmal Kumar, Special G.P.

ORDER

06.03.2017

This is ceiling surplus matter concerning bataidari (under raiyat) issue in which a Revision application has been filed against the order passed by Learned Commissioner, Koshi on 25.03.1986 in Ceiling Appeal No. 339/1986. The Revision Petition was time barred.

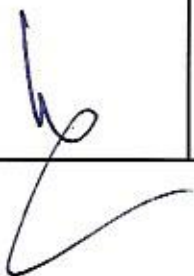
On 02.02.2017, the case was heard on point of admission and was admitted for hearing after condoning the delay. Accordingly, notices were issued to all the parties and the matter was posted for final hearing on 22.02.2017.

On 22.02.2017, I heard the Learned Advocate of the Petitioner in great detail. Learned Special GP was also heard on behalf of the State. Learned Advocate of the OP No. 7 to 11 was also present and was heard. Thus concluding the hearing, this order is being passed today.

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	<p>As per the Learned Advocate of the Petitioner, this matter has come on remand from the Hon'ble High Court. The Petitioner was declared bataidar by the Learned DCLR vide his order dated 29.08.1975. However subsequently, this land was declared surplus by the State and parchas were issued to the fathers of OP No. 7 to 11 namely Mahavir Ram and Domi Paswan.</p> <p>Continuing his arguments, the Learned Advocate mentioned that when he came to know of this development, he filed a Petition before the Learned SDO (Ceiling) on 18.06.1975. The Learned SDO ruled the matter in his favour on 14.10.1976. In compliance of the said order, the Learned DCLR ordered that the Petitioner be issued the bataidari parchas and also ordered the cancellation of the parchas issued to the fathers of the OP No. 7 to 11.</p> <p>Concluding his arguments, the Learned Advocate mentioned that the Petitioner, however, is still to get the bataidari parchas even when the Circle Officer's report is in his favour.</p> <p>The Learned Special GP, appearing on behalf of the State argued that the Hon'ble High Court has not given any ruling in favour of the Petitioner. Rather, the Hon'ble High Court has merely remanded the matter back to the Board of Revenue. Moreover, the Hon'ble High Court passed the order on 19.05.1999, whereas the Petitioner filed his Revision application in 2015, after a gap of 16 years.</p>	


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	<p>Continuing his arguments, the Learned Special GP mentioned that the land has already been distributed and the OPs are in possession. They have constructed houses on the land and are paying rent. No documents have been filed by the Petitioner as a proof of bataidari.</p> <p>I also heard the Learned Advocate of OP No. 7 to 11, who are the heirs of the two parchadharis to whom the disputed land was settled. He draws the attention of this Court that this case is badly hit by the limitation and this case has been filed after 16 years upon remand by the Hon'ble High Court.</p> <p>Continues his arguments, the Learned Advocate mentioned that a Land Ceiling Proceeding No. 36/1973 was initiated against Ram Dev Chaudhary and the land was declared surplus. Subsequently, the land was distributed to the fathers of OP No. 7 to 11. The legal heirs are in peaceful possession. Mutation is in their name and they are paying rent.</p> <p>He further says that the landholder's original return does not include the Petitioner as his bataidar. The Petitioner should have gone in appeal under Section 44(2) of the Bihar Tenancy Act, 1885 after the land was settled in his favour, which was not filed.</p> <p>Having heard the Learned Advocate of the Petitioner and Learned Advocate of the Parchadharis as well as the Learned Special GP on behalf of the State and having</p>	

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	<p>perused the material available on records, my own findings on the issue are as under:-</p> <p>(a) I find that this matter had earlier come before the Board of Revenue wherein Revision Case No. 339/1986, the Board of Revenue had dismissed the Revision by order dated 15.09.1987.</p> <p>(b) Aggrieved, the Petitioner went to the Hon'ble High Court in CWJC No. 6275/1990. The Hon'ble High Court, vide order dated 19.05.1999, set aside the order of the Board of Revenue and remanded the matter back.</p> <p>(c) However, since this order of the Hon'ble High Court, the Petitioner did not come to the Board of Revenue immediately and filed instant Revision application after 16 years. The Petitioner has been unable to explain the delay except mentioning that the then conducted lawyer had died and hence could not pursue the case. This delay is unacceptable. However, in the interest of justice, the delay was condoned and the matter was admitted for adjudication on merits.</p> <p>(d) I find that the Petitioner holds that the above mentioned order of the Hon'ble High Court is in his favour. I have gone through the said judgement. Nowhere, the Hon'ble High Court has observed that the said case of the Petitioner is genuine. The Court has observed that the Additional Member is</p>	

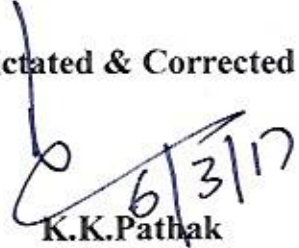
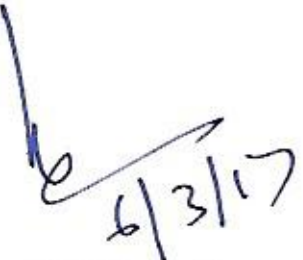


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	<p>required to see that the process of settlement under Section 27 was undertaken or not. As per the Hon'ble High Court, the settlement under Section 27 can be made only after an expiry of period of three months if no application is made by under raiyat under Section 22 of Bihar Land Ceiling Act, 1961.</p> <p>(e) Rule 25 of Bihar Land Ceiling Rule 1963 required that the under raiyat has to file his claim in Form LC-19 before the Learned Collector within the period of three months from the date on which the land is declared surplus.</p> <p>(f) In the instant case, it appears that, he did not file this application under Section 22 but rather did it under Section 15(3). Now, the issue to be decided here is, whether an application under 15(3) can replace the requirement of Section 22. It could be due to a bad legal advice or non clarity of procedures. I would tend to be liberal and would have agreed to the fact that the Petitioner had filed his objection. However, following two things would still come in the way of declaring the Petitioner as bataidar:-</p> <p>i. The name of the Petitioner does not appear in the return filed by the landholder in the Ceiling Case No. 36/1973-74. No papers have been</p>	

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	<p>submitted by the Petitioner that he is an under raiyat of his landlord.</p> <p>ii. His declaration of a bataidar by the Learned DCLR was not uncontested but was duly contested by the landlord himself.</p> <p>(g) The above therefore, forces this Court to <i>per se</i> not engulf myself with the technicalities as to whether the claim was filed under Section 22 or Section 15 of the Act. If I were to take a liberal view on this issue, I would still have to address the question whether the Petitioner was actually a bataidar or not. To that end, we have to see the orders passed by the Learned DCLR, Learned SDO, Learned Additional Collector and finally, the Learned Divisional Commissioner.</p> <p>(h) Coming to the orders passed by the Learned DCLR, I find that there are two orders passed by him - one was passed on 29.08.1975, in favour of the Petitioner declaring him to be a bataidar. The other was passed by the next Learned DCLR on 31.01.1984 rejecting his claim. Therefore, the two orders passed by the same Court are radically different and contradictory.</p> <p>(i) Coming to the order passed by the Learned SDO, who, in 1976 itself, held that the Petitioner be given bataidari parchas and the parchas given to</p>	

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	<p>the OP be cancelled. However, this order was never implemented and what is suspicious is that the Petitioner himself sat merrily and did not do anything till the year 1984. Why he was silent for these 8 years when parcha was not issued to him, cannot be explained by the Petitioner. This silence of 8 years also goes against the Petitioner.</p> <p>(j) And rightly, the Learned DCLR, in the year 1984, rejected the claim of the Petitioner.</p> <p>(k) The Learned Additional Collector also, vide order dated 20.02.1984, rejected the appeal.</p> <p>(l) The Petitioner then filed a Revision application before the Learned Commissioner, Koshi division who, vide order dated 25.03.1986, holding that this appeal is preferred under Rule 3 of Board Miscellaneous Rules, rejected the application. The Learned Commissioner held that Rule 3 of Boards Miscellaneous Rule would not apply in the instant dispute as the Acts in question had specific provisions of appeal. Hence, he rejected the application.</p> <p>(m) In my view, the understanding of the Learned Commissioner was correct and the instant dispute was rightly not covered under Rule 3 of Boards Miscellaneous Rules.</p>	

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	<p>(n) Further aggrieved, the Petitioner came to the Board of Revenue in Revision who, vide order dated 15.09.1987, dismissed the Revision application.</p> <p>(o) Subsequently, the Petitioner went to the Hon'ble High Court who desired that the matter be adjudicated on merits.</p> <p>Conclusion:-</p> <p>From the aforementioned findings, it can be seen that, I have tried to settle the dispute on merits rather than procedures. I am willing to concede that the Petitioner, nonetheless, filed his objection as an under raiyat. Whether, he filed it under Section 15 or under Section 22 is immaterial, which fact should be overlooked to the benefit of the Petitioner.</p> <p>However, the important point is whether he filed the objections within time or not. That evidence is not available on the record to suggest that he had filed the said application within three months of the land being declared surplus.</p> <p>Additionally, it is an important fact that the Petitioner's name does not appear as an under raiyat in the returns filed by the landholder. Furthermore, his bataidari claim itself was challenged by the landholder twice.</p> <p>Thus, it can be seen that the Petitioner has not been the undisputed owner of the land that he claimed to be occupying as an under raiyat.</p>	

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	<p>To complicate the matter further, the silence of the Petitioner since 1975, when the Learned DCLR ruled in his favour, till 1984, when the Learned DCLR ruled against him, is intriguing. Moreover, after the Hon'ble High Court remanded the matter back to the Board of Revenue in 1999, the Petitioner again went silent for 16 years and then files a Revision Petition before this Court in 2015.</p> <p>Having said that, it is clearly evident that the Petitioner has not been able to establish his bataidari claim conclusively. No papers have been filed by the Petitioner in support of his evidence of occupation of the land as an under raiyat. Therefore, it is difficult for this Court to conclude that the Petitioner indeed was a bataidar of the said land.</p> <p>In light of the above, I find no reason to interfere with the orders passed by the Learned Lower Courts.</p> <p>Revision Dismissed.</p> <div style="display: flex; justify-content: space-around; align-items: flex-end;"> <div style="text-align: center;"> <p>Dictated & Corrected</p>  <p>K.K.Pathak Additional Member Board of Revenue, Bihar.</p> </div> <div style="text-align: center;">  <p>(K.K.Pathak) Additional Member Board of Revenue, Bihar.</p> </div> </div>	