

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Civil Appeal No. 4173 of 1998

RAM NARAIN SHARMA Appellant (s)

VERSUS

STATE OF BIHAR &amp; ORS. Respondent (s)

(With office report)

Date : 22/07/2003 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SHIVARAV V. PATIL

HON'BLE MR. JUSTICE D.M. DHARMADHIKARI

For Appellant (s)Mr. Rakesh Dwivedi,Sr.Adv.

Mr. Lakshmi Raman Singh,Adv.

Mr. Ravi Prakash,Adv.

For Respondent (s)Mr. Akhilesh Kumar Pandey,Adv.

Mr. Devendra Prasad,Adv.

Mr. Ashok Kumar Pandey,Adv.

Mr. Kumar Rajesh Singh,Adv.

Mr. B.B. Singh,Adv.

UPON hearing counsel the Court made the following

O R D E R

Heard learned counsel for the parties from 10.30 a.m. to 11.20 a.m.

The civil appeal is disposed of.

No costs.

[ T.I. Rajput ][ Shelly Sengupta ]  
Court Master Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4173 OF 1998

Ram Narain Sharma

...Appellant(s)

Versus

State of Bihar & Ors.

...Respondent(s)

O R D E R

Respondents 4 to 45 herein filed a joint application before the Deputy Collector Land Reforms [for short, 'D.C.L.R.'] under Section 48-E of the Bihar Tenancy Act, 1885 [for short, 'the Act'] claiming to be the Bataidars over several plots with cultivating possession since twenty five years and that the appellant-landlord was threatening to dispossess them from their respective lands. The D.C.L.R., after examining the application in the light of the material placed before him, found that there was no prima facie case to initiate the proceedings under Section 48-E of the Act and in that view of the matter, he dismissed the application. Respondents 4 to 45, aggrieved by the said order, approached the Collector by filing an appeal. The Collector found that the D.C.L.R. passed the order without any local inspection and without any recommendation of the Advisory Board and in that view, remitted the case to the

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D.C.L.R. for hearing afresh and passing orders in accordance with law. The appellant-landlord filed a writ petition before the High Court challenging the order passed by the Collector. A learned Single Judge of the High Court allowed the writ petition and set aside the orders passed by the Collector as well as the D.C.L.R. The learned Single Judge was of the view that the appeal filed by Respondents 4 to 45 was not maintainable, but at the same time, he found that the order passed by the D.C.L.R. was equally bad. The writ appeal filed against the order of the learned Single Judge was also dismissed. Hence, this appeal by the landlord.

The learned counsel for the appellant contended that the learned Single Judge of the High Court was not justified in setting aside the original order passed by the D.C.L.R. without examining its correctness on merits; the D.C.L.R. only considered prima facie as to whether the proceedings should be initiated under Section 48-E of the Act or not; it was not that he adjudicated on going deep into the merits of the contentions of the parties.

Per contra, learned counsel for Respondents 4 to 45 urged that the D.C.L.R. exceeded his jurisdiction in passing the order dismissing the application filed by the said respondents; as can be seen from the order of the D.C.L.R. that he has considered the respective contentions of the parties after issuing notice and after hearing them, that too, going deep into the matter in appreciating the evidence as if he was deciding the main dispute finally. According

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to the learned counsel, the High Court was justified in holding that the order passed by the D.C.L.R. was not valid and the Division Bench of the High Court rightly confirmed the said order.

Having perused the order passed by the D.C.L.R., we find that he has considered the respective contentions in detail and has examined the evidence and recorded a finding thereon. In our view, for the purpose of initiating proceedings, it was not required to be done. The Collector, in the order passed in appeal filed by Respondents 4 to 45, remanded the case to the D.C.L.R. for passing a fresh order. While doing so, he found that no local inspection was done and the D.C.L.R. did not refer the matter to the Board, as required under Section 48-E of the Act.

The learned Single Judge of the High Court, though found that the appeal filed by Respondents 4 to 45 was not maintainable, set aside the original order passed by the D.C.L.R. without examining whether the original order passed could be sustained having regard to the reasons recorded therein. The learned Single Judge did not also examine whether the consideration by the D.C.L.R. was prima facie made or it was made in the nature of a regular enquiry. The Division Bench of the High Court did not examine the matter in any greater detail, except affirming the order passed by the learned Single Judge. The proceedings were initiated in the year 1991.

Having regard to the facts and circumstances of the case and looking to the reasons recorded in the order of the D.C.L.R., we are of the view that it is appropriate that the matter is placed

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before the Board by the D.C.L.R., as contemplated under Section 48-E of the Act, and the Board shall examine the same in accordance with law, after affording opportunity of hearing to both the parties. We do not think it necessary to direct the D.C.L.R. to examine afresh whether to initiate proceedings or not. Since the matter is pending since 1991, we direct the D.C.L.R. to refer the matter to the Board within a period of two weeks from the date of the receipt of the copy of this order and the Board shall pass orders in accordance with law within a period of three months from the date of receipt of the order of reference by the Collector.

We, however, make it clear that all the contentions of the parties are left open to be urged before the Board or the D.C.L.R., as the case may be.

The civil appeal is, accordingly, disposed of.

No costs.

.....J.  
[SHIVARAJ V. PATIL]

.....J.  
[D.M. DHARMADHIKARI]

New Delhi,  
July 22, 2003.