

(2000) 02 PAT CK 0096

In the Patna High Court

Case No : L.P.A. No's. 556 and 596 of 1999

Amrit Varsha Hindi Dainik

APPELLANT

Vs

Bihar State Agriculture Marketing Board and Another

RESPONDENT

Date of Decision : 29-02-2000

Acts Referred:

Bihar Government Premises (Rent, Recovery and Eviction) Act, 1956 — Section 4
Civil Procedure Code, 1908 (CPC) — Section 144
Constitution of India, 1950 — Article 12

Citation : AIR 2000 Patna 192 : (2000) 2 PLJR 729

Hon'ble Judges : I.P. Singh, J; Bisheshwar Prasad Singh, J

Bench : Division Bench

Advocate : S.B. Upadhyay, Naresh Dixit and Brij Bihari Tiwary, in LPA No. 556/1999, Ram Janma Ojha, K.P. Yadav, L.K. Bajla, Bijay Kumar Pandey, Mukesh Kumar No. 2, Praveen Kumar Sinha, Suresh Kumar and Sachchida Nand Sharma, in LPA No. 596/1999, for the Appellant; M.L. Verma L.K. Bajla, Pravin Kumar Sinha, Ganga Prasad Roy, AAG-3, K.P. Yadav, S.C.V. Md. Kamaluddin, JC to AAG-3 in LPA No. 556/1999, S.B. Upadhyay and Naresh Dixit Advs. in LPA No. 596/1999, for the Respondent

Judgement

B.P. Singh, J.—These two Letters Patent Appeals arise out of the common judgment and order of a learned Judge of this Court dated 16th October. 1998 in Civil Writ Jurisdiction Case No. 5918 of 1997 and, therefore, these two appeals have been heard together and are being disposed of by this Judgment.

2. The writ petition was filed by Amrit Varsha Hindi Dainik through its proprietor publisher and auditor Paras Nath Tiwari, which has its office in the premises in question being Pant Bhawan, Bailey Road, Patna, which admittedly is owned by the Bihar State Agriculture Marketing Board (hereinafter referred to as the respondent-Board). In the writ petition filed by Amrit Varsha Hindi Dainik (hereinafter referred to as the appellant), the orders of the Sub-Divisional Officer, Sadar Patna, respondent No. 2 herein, dated 22-11-1997 and 2-12-1997 ordering its eviction from the premises in question under the provisions of the

Bihar Government Premises (Rent, Recovery and Eviction) Act, 1956 (hereinafter referred to as the Act) were challenged as being without Jurisdiction. The learned Judge while upholding the contention of the appellant and holding that the orders had been passed by an authority which had no jurisdiction in the matter, did not, in exercise of his discretion, grant the prayer for restoration of possession of the premises to the appellant in view of the fact that he was a chronic defaulter. Instead, he directed that the appellants should be compensated for the loss caused to it by forceful dispossession which was quantified by him at Rs. 1,00,000/- (rupees one lac). In addition, the appellant was given liberty to institute a suit for recovery of the price of goods which, according to it, had not been accounted for or returned to it, and for damages.

3. Letters Patent Appeal No. 576 of 1999 was filed by the appellant on 13-5-1999 challenging that part of the Judgment and order whereby restoration of possession of the premises in question was refused. Letters Patent Appeal No. 596 of 1999 was filed on 18-5-1999 by the respondent Board challenging that part of the judgment whereunder it was held that the order passed by the Sub-Divisional Officer under the Act was without jurisdiction.

4. The facts which give rise to the instant appeal may be briefly noticed.

The respondent executed a leave agreement in favour of the appellant on 25-8-97 granting to the appellant a lease of the premises in question for a period of three years. The monthly rental payable for the premises was Rs. 5560/- (at the rate of Rupees 2/-per sq.ft.) and the agreement was to commence from the 6th August, 1987. According to the respondent-Board, since the appellant was a chronic defaulter, it was left with no option but to initiate a proceeding for his eviction under the provisions of the Act. The said eviction case was registered as Eviction Case No. 7 of 1997 in the Court of Sub-Divisional Officer, Patna Sadar. On 5-5-1997 notice of the eviction proceeding was served upon the appellant by the SDO, Patna Sadar describing himself as the "House Controller" which required the appellant to appear and participate in the proceeding on 6-5-1997. On 5-7-1997, the appellant filed a writ petition before this Court challenging the notice issued on 5-5-1997 and for a direction to the respondent authorities not to disturb the peaceful possession of the appellant. On 7-7-1997, the appellant also filed a petition before the Sub-Divisional Officer objecting to the maintainability of the eviction proceeding before him. His objection was rejected by the Sub-Divisional Officer by his order dated 22-11-1997 on a finding that the premises in question were Government property. Ultimately, the S.D.O, acting as the "competent authority" passed a final order on 2-12-1997 directing the appellant to vacate the premises within 15 days of the receipt of the order failing which he may be forcibly evicted. The S.D.O. found that the appellant had defaulted in the matter of payment of rent and that he was running a press in the premises in question which was unauthorised.

5. After the order of eviction was passed, the appellant filed LA. No. 8282 of 1997 before this Court praying that the operation of the orders dated 22-11-97

and 2-12-97 be stayed. On 19-12-97, this Court passed an interim order and directed the respondent not to forcibly evict the appellant from the premises in question pursuant to order dated 2-12-1997. The respondent filed its counter-affidavit in opposition to the writ petition whereafter by order dated 2-2-1998 this Court admitted the writ petition for hearing, it further directed the appellant to pay the rent for each month by the 15th day of the following month pending disposal of the writ petition. The appellant as well as the Managing Director of the respondent-Board were directed to hold a meeting with a view to ascertain the arrears of rent due within a period of three weeks. In doing so, necessary adjustments had to be granted for the payments made by the appellant. After the ascertainment of the arrears of rent due, the appellant was to pay the arrears within a month. If it failed to do so, the respondent Board was at liberty to take steps for the eviction of the appellant in accordance with law.

6. The case of the respondent-Board is that a meeting took place on 5th of March, 1998 attended by the appellant as well as the Managing Director of the respondent-Board. The appellant was informed that up to February, 1998, the arrears of rent amounted to Rs, 13,07,589/- after adjustment of the amounts paid by the appellant. The appellant wanted that a statement of account be given to him and the meeting be adjourned to 11th of March, 1998. Accordingly, the respondent served upon the appellant the statement of account on 7th of March, 1998. Unfortunately, the appellant did not attend the meeting which was scheduled to be held on 11th of March, 1998, and thereafter did not approach the respondent-Board at all.

7. The case of the respondent-Board is that since the appellant did not comply with the order of the Court, the respondent was compelled to initiate proceeding for the execution of the order of eviction. Pursuant to the proceeding initiated, the appellant was evicted from the premises on 14-6-1998 with the aid of the Executive Magistrate who was deputed by the District Magistrate for the purpose. Since the employees of the appellant fled away, the articles kept in the premises were removed under the supervision of the Executive Magistrate in the presence of the Inspector of Police S. K. Puri Police Station, as well as the Estate Officer, Assistant Engineer and Security Guards of the respondent-Board. Since no one appeared on behalf of the appellant to take possession of the articles, an inventory was prepared in presence of witnesses and entrusted to the Assistant Engineer, Works Division, Patna. On 15-6-1998, the Executive Magistrate reported the action taken by him to the District Magistrate, Patna.

8. On 15-6-1998, the appellant filed I.A. No. 6314 of 1998 before this Court praying that the respondent be restrained from evicting him from the premises in question. The application came up before the Vacation Judge on 16-6-1998, but he did not pass any positive order, but only directed the respondents to strictly follow the order of this Court dated 2-2-1998. Thereafter the stay matter came up before this Court on 26-6-1998 when the Court directed that the matter be finally heard on 9-7-1998. After hearing the parties, the learned Judge passed

the impugned judgment and order which has been challenged in these two Letters Patent Appeals by the appellant as well as the respondent-Board.

9. In the appeal filed by the appellant Sri M. L. Verma, Senior Advocate, appearing on behalf of the respondent-Board did not challenge the finding of the learned Judge that the order of eviction passed by the Sub-Divisional Officer, Patna Sadar, purporting to act as the House Controller/Competent Authority under the Act was without jurisdiction. However, Sri Ram Janam Ojha appearing on behalf of the respondent-Board, the appellant in L.P.A. No. 596 of 1998, challenged that finding and submitted that the order passed by the Sub-Divisional Officer was in accordance with law and he had the jurisdiction under the Act to order the eviction of the appellant in the facts and circumstances of the case.

10. I shall first deal with the submission urged on behalf of the respondent-Board in its appeal being L.P.A. No. 596 of 1999. It was submitted that in the facts and circumstances of this case, it must be held that the Act applied to the premises in question. In any event, the learned Judge was in error in holding that for evicting the appellant a proceeding had to be initiated under the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982. The relevant provisions of the Act may first be noticed. Section 4 of the Act vests in the competent authority the power to evict certain persons from a Government premises. It provides as follows :

"4. Power to evict certain persons from Government Premises:-- Notwithstanding any thing to the contrary contained in any law for the time being in force of the competent authority is satisfied :

(a) that the person authorised to occupy any Government Premises has, whether before or after the commencement of this-

(i) sub-let, without the permission of the State Government or of the competent authority, the whole or any part of such premises; or

(ii) committed or is committing such acts of waste as are likely to affect materially the value or utility of the premises; or

(iii) otherwise acted in contravention of any of terms, express or implied, under which he is authorised to occupy such premises;

(b) that any person is in unauthorised occupation of any Government Premises, the competent authority may, by notice served by registered post or in such other manner as may be prescribed, order that person as well as any other person who may be in occupation of the whole or any part of the premises, shall vacate the premises within [one week] of the date of the service of the notice; and if any person refuses or fails to comply with such order, the competent authority may evict that person from, and take possession of, the premises and may for that purpose use force as may be necessary;

Provided that if within one week of the service of notice on him, the person concerned files a show cause, the competent authority shall consider and shall pass such order thereon, as he may consider necessary, and if the show cause is rejected, necessary, steps for eviction of the person concerned may be taken.

The definitions contained in Section 2(a) to 2(c) are also relevant and they provide as follows ;

(a) "allotment" means the grant, in writing, by or on behalf of the State Government, of a right of use and occupation of any Government Premises to any person but does not include a grant by way of lease.

(b) "competent authority" names any officer not below the rank of a Sub-Deputy Collector or a Sub-Deputy Magistrate, authorised by the State Government by notification in the Official Gazette, to perform all or any of the functions of the competent authority under this Act for such area as may be specified in the notification;

(c) "Government Premises" means any premises belonging to, or taken on lease or requisitioned by the State Government.

11. "Government premises" under the Act means any premises belonging to, or taken on lease, or requisitioned by the State Government. In the instant case, a question arises as to whether the premises in question belongs to the State Government. It is not disputed before us that the premises in question belongs to the respondent-Board which is a statutory authority, prima facie, therefore, the premises do not belong to the State Government. This is also supported by the definition of allotment u/s 2(a) of the Act. "Allotment" means the grant in writing by or on behalf of the State Government, of a right of use and occupation of any Government premises to any person, but does not include a grant by way of lease. It, therefore, follows that before action can be taken to evict a person from Government premises, it must be shown that the premises are Government premises, meaning thereby that the premises belong to the State Government. "Belonging to" connotes ownership of the State Government. It must further be shown that the person authorised to occupy the Government premises has committed the acts mentioned in 4(a). A person may also be evicted if he is in unauthorised occupation of any Government premises u/s 4(b). "Unauthorised" would mean that he has no right or authority to occupy, the premises, which will not be the case if an allotment is made in his favour. Such an allotment also has to be made by or on behalf of the State Government. Reading the provisions of the Act together, I find no difficulty in agreeing with the learned Judge that a Government premises under the Act must mean premises which are owned by the State Government, or taken by it on lease, or requisitioned by the State Government. The person who can be proceeded against under the Act, must be a person who is in unauthorised occupation of the Government premises, meaning thereby, that there is no allotment by the State Government in his favour. In case, he is authorised to occupy the Government premises under an order of

allotment, he may still be evicted if he commits the acts referred to in Sub-section (a) of Section 4 of the Act, such as sub-letting of premises without permission of the State Government, committing acts of waste as are likely to affect materially the value or utility of the premises, or otherwise acting in contravention of any of the terms under which he is authorised to occupy such premises.

12. In all cases, therefore, it must first be established that the premises belong to the State Government. Thereafter it must be shown that the person in occupation has either no authority to occupy the Government premises, or if he has, he has acted in a manner which disentitles him to occupy the Government premises. I, therefore, hold that the premises in question which are owned by the respondent-Board are not Government premises, because they are not owned by the State Government. It is no one's case that the premises had been taken on lease or requisitioned by the State Government. Thus, there could be no question of allotment of the premises by the State Government to any person.

13. Sri Ram Janam Ojha, Senior Advocate, appearing for the respondent-Board submitted that the term "belonging to" used in the definition of the Government premises does not connote ownership of the State Government. He further submitted that the words "State Government" must be understood to mean "State" in the wider sense of the term as in Article 12 of the Constitution of India. He went to the extent of saying that a property belonging to a local or other authority or an agency or the instrumentality of the State, would also come within the definition of "Government premises" under the Act. Marketing Board being a local authority was an Instrumentality of the State. The Board of Directors of the respondent-Board was under the control of the State Government. He, therefore, submitted that since the respondent-Board is an instrumentality of the State as defined under Article 12 of the Constitution of the India, it must be held that the property owned by the respondent-Board is property owned by the State.

14. In my view, this submission must be rejected. The extended meaning of "State" is relevant only for Part III of the Constitution of India which is the chapter on fundamental rights. It, therefore, follows that the State not only includes the Government and Parliament of India and the Government and the legislature of each of the State, but also all local and other authorities within the territory of India or under the control of the Government of India, for the purpose of Part III of the Constitution of India and even the agencies or instrumentalities of the State will come within the definition of State. In the instant case, we are not concerned with a petition filed by the petitioner for the enforcement of his fundamental rights, and therefore, the definition of State under Article 12 of the Constitution of India can be of no help to the respondent-Board. There is nothing in the Act which gives to the term "State Government" an extended meaning so as to include its agencies, instrumentalities and local authorities under its control. If the submission of the respondent-Board were to

be accepted, the provisions of the Act would apply, not only the premises belonging to the State Government, its agencies, instrumentalities and the local authorities under its control, but also to the properties belonging to the Union of India and its agencies, instrumentalities and local and other authorities under its control. A fair reading of the Act confirms the view that it is applicable only to premises belonging to the State Government. The submission urged on behalf of the respondent-Board in Letters Patent Appeal No. 596 of 1999 must, therefore, be rejected.

15. There is one other aspect of the matter which I must consider at this stage. Sri M. L. Verma, Senior Advocate urged before us that the learned Judge was in error in holding that the provisions of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 were attracted to the facts of this case, and that a proceeding under the aforesaid Act had to be taken by the respondent-Board if it wanted to evict the appellant from the premises in question. In this connection, he referred to Section 32 of the Act which provides that the Act shall not apply to a tenant whose landlord is a local authority or the State Government or the Central Government etc. He submitted that the respondent-Board was a local authority and therefore the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982, was not applicable to the premises in question. He relied upon three decisions of this Court. The first decision is dated 15-4-1987 by a learned single Judge of this Court in CWJC No. 730 of 1986(R). It appears from the perusal of the judgment that in that case it was conceded on behalf of respondent No. 3 that the respondent-Marketing Board was a local authority. The second decision dated 23rd January, 1996 by a Division Bench of this Court in CWJC No. 7015 of 1991 refers to the decision in CWJC No. 730 of 1986(R), as an authority for the proposition that the respondent-Marketing Board is a local authority. The third decision rendered on 4-11-1997 in LPA No. 712 of 1997 merely refers the earlier decision of this Court in CWJC No.7015 of 1991.

16. It is not necessary for me to go into the question as to whether the provisions of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 will apply to the premises in question. It is enough for the purpose of disposal of these appeals to hold that the order passed by the S.D.O., Patna evicting the appellant purporting to act as the competent authority under the provisions of the Act, is without Jurisdiction. The question as to whether the respondent-Board must initiate proceeding under the Bihar Buildings (Lease. Rentand Eviction) Control Act, 1982 or whether the respondent-Board must file a suit before a Civil Court for the eviction of the appellant is left open. It will be open to the respondent-Board to take such action against the appellant as it may consider proper, before such appropriate forum as it may be advised, in accordance with law.

17. The question then arises as to whether the learned Judge was justified in refusing to pass an order for restoration of possession in favour of the appellant. The learned Judge has noticed the fact that the appellant is a chronic defaulter.

Having gone through the material on record. I entertain no doubt that the appellant is a chronic defaulter. Apart from making defaults, in payment of rent, he appears to have raised frivolous claims of adjustments, so much so it wanted the respondent-Board to adjust against rent due, the amounts due to the appellant from various Government departments. However, I am of the considered opinion that even so It would be inequitable and harsh to deprive the appellant of the fruits of success merely on the ground of his conduct. The learned Judge held that the order of eviction passed by the Sub-Divisional Officer under the Act was wholly without jurisdiction. I have also reached the same conclusion. In a case where an eviction is ordered by the authority having no jurisdiction to do so, in my view, restoration of possession of the premises must be ordered if the order of eviction is held to be illegal on the ground of lack of inherent jurisdiction. In the exercise of its discretion in writ Jurisdiction, this Court may impose conditions for the grant of such relief, but it may not be justified in refusing the relief altogether. In the course of hearing, counsel for the appellant on several occasions stated that his client is willing to pay the entire amount due by way of arrears of rent. His grievance was that the claim being made was inflated, and that is why the appellant was not in a position to discharge its liability towards the arrears of rent.

18. Sri Verma, on the other hand contended that the lease agreement itself provided that the appellant would be liable to pay Interest at the rate of 12% on the arrears of rent. The appellant had also agreed that if it continued to occupy the premises after the expiry of the lease without the written consent of the respondent-Board, it shall pay an amount which was three times the monthly rental payable. He, therefore, submitted that a sum of Rs. 13,00,000/- and odd demanded in the month of February, 1998 was on this basis.

19. I am of the view that the appellant is entitled to the restoration of possession of the premises in question in view of the fact that the order of eviction passed against it is an order without jurisdiction. The order of eviction dated 2-12-1997 must, therefore, be quashed. It will, however, be open to the respondent-Board to take appropriate proceeding for eviction of the appellant before the appropriate forum in accordance with law. The observations made in the judgment of the learned Judge regarding the appropriate forum where such a proceeding must be initiated, shall not stand in the way of the respondent-Board to take a proceeding before any other forum as it may be advised, at its own risk. The question as to the forum before which the respondent-Board may seek its remedy is left open. The appellant shall be restored possession of the premises in question subject to his paying the entire arrears of rent due as on the date eviction. For the purpose of calculating the arrears of rent due. the monthly rental shall be taken to be Rs. 5560/-. Any amount paid by the appellant by way of rent to the respondent-Board shall be adjusted. It is made clear that the amount of Rs. 50,000/- deposited by the appellant by way of security shall not be adjusted, nor shall the appellant be entitled to adjustment of any claim that he may have against the State of Bihar or any of its departmental agency or

instrumentality. The respondent-Board shall not be entitled to interest on the arrears of rent or enhanced rent, but this is without prejudice to their claim which they may agitate before the appropriate forum in accordance with law. The appellate shall tender the amount due by way of arrears of rent within a period of two months from today and shall while tendering the same annex therewith a statement showing the manner in which the arrears of rent have been calculated. If he fails to pay the entire arrears of rent within the prescribed period, he will not be entitled to claim restoration of possession after the expiry of the period specified in this order

20. Counsel for the Board submitted that the appellant having accepted a sum of Rs. 1,00,000/- (rupees one lac) which was awarded by way of compensation in lieu of possession, he cannot now be permitted to challenge the order under which such compensation was paid to him. There is considerable dispute on the question as to whether the amount of Rs. 1,00,000/- (rupees one lac) was payable to the appellant in lieu of restoration of possession or whether it was paid to him by way of compensation for the loss or damage suffered by him on account of his forcible eviction pursuant to an illegal order. I need not go into this question, because counsel for the appellant agreed that this sum of rupees one lac paid to his client shall be taken into account while calculating the arrears of rent due.

The respondent-Board has claimed interest on the arrears of rent due, as also enhanced rent, three times the monthly rental, under the terms of the agreement. I have expressed no opinion on the claim of the respondent-Board on these matters and it will be open to the respondent-Board to agitate these claims before the appropriate forum which shall deal with such claims in accordance with law.

21. In the result, Letters Patent Appeal No. 556 of 1999 is allowed subject to the directions contained in this judgment. The Letters Patent Appeal No. 596 of 1999 is dismissed.