
(2000) 07 PAT CK 0029
In the Patna High Court
Case No : C.W.J.C. No. 3096 of 1995

Anju Das and others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 03-07-2000

Acts Referred:

Citation : (2000) 3 PLJR 703

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Advocate : K.N. Choubey, sic Prasad, for the Appellant; Sharvan Kumar, Rajiv Nayan Singh for Respondent no. 4 and Mr. H.S. Himkar for P.R.D.A., for the Respondent

Final Decision : Allowed

Judgement

Aftab Alam, J.—There are six petitioners before this court who are the settlees/occupants of different flats in Block "I" and "J" situate at Rajendra Nagar, a residential colony in the town of Patna. They seek to challenge the allotment of a piece of land with the dimensions of 65" x 32" (hereinafter referred to as "the disputed piece of land") in favour of respondent no. 4 by the Patna Regional Development Authority (hereinafter referred to as "the Authority") by its resolution no. 8/91 taken in its meeting, dated 14.3.1991. The disputed piece of land was admittedly carved out of plot no.1 which was shown in the Master Plan as part of the larger piece of land over which were constructed two double stoned buildings (blocks "I" and "J") each containing six flats.

2. It is the case of the petitioners that plot no. 1 provided the open space in front of the two blocks of flats and was intended to be used as common facility by the settlees/occupants of the flats in the two blocks. It is contended on behalf of the petitioners that both the manner in which the disputed piece of land was carved out of plot no. 1 and the manner in which the carved out piece of land was allotted in favour of respondent no. 4 were bad and illegal and called for an interference by this court.

3. On behalf of respondent no. 4 on the other hand, it is submitted that there was nothing wrong in the disputed piece of land being carved out of plot no. 1 and its allotment was made in his favour quite validly on the basis of an application made by him in the year 1973.

4. Before proceeding further it may be noted that this controversy came to this court when respondent no. 4 started construction on the disputed piece of land. The petitioners then came to this court initially seeking a direction restraining respondent no. 4 from proceeding with the construction and also a direction to the officials of the Authority not to allow him to proceed with the construction. By and by, it came to light from the affidavits filed on behalf of the respondents that the disputed piece of land was allotted to respondent no.1 by the Authority through the resolution as indicated above. It was then that the petitioners filed an amendment petition seeking to challenge the Board's resolution making allotment of the disputed piece of land in favour of respondent no. 4.

5. This court has heard Mr. K.N. Choubey, learned Senior counsel appearing for the petitioners. Mr. Himkar appearing for the Authority and Mr. Sharvan Kumar, learned senior counsel appearing for respondent no. 4 at some length on different dates. On hearing counsel for the parties and after going through the records of the case, two questions arise for consideration :

(i) Whether it was legally permissible for the Authority to carve out the disputed piece of land for construction of a kiosk or a residential house from plot no. 1 which was shown in the Master Plan as part of the larger piece of land over which two blocks of residential flats were constructed and which provided the open space in front of the two blocks of flats ?

(ii) In the event, the answer to the above question is in the affirmative, the next question that arises for consideration is whether the allotment of the disputed piece of land in favour of respondent no.4 was made validly and in accordance with the rules ?

6. Pleadings of the parties are not of much help in deciding the first question. Although more than one counter affidavits have been filed on behalf of the Authority, no relevant provision from the Act or the Rules was brought to the notice of the court which could permit carving out of pieces of land from plots which are shown in the Master Plan as part of some existing blocks of flats.

7. Mr. Sharvan Kumar, however, stated that the need for such carving out arose in the exigency of the situation. Learned counsel submitted that by the middle of 1980's, there were no plots of land available at Rajendra Nagar and yet there were a number of claimants under various categories. In order to satisfy those claims the Authority took the decision to carve out some pieces of land from the existing plots. There was no legal bar before the Authority in doing so and, therefore, it was quite competent to take such a decision. According to Mr. Sharvan Kumar, 11 such pieces of land were carved out from the existing plots and those 11 carved out pieces of land were allotted to different persons,

including respondent no. 4.

8. The statements made by Mr. Sharvan Kumar, however, do not find any support from the averments made in the counter affidavits filed on behalf of the Authority. In the counter affidavit filed on behalf of the Authority, it is stated that the disputed piece of land forming the open space in front of the two blocks of flats was being encroached upon by the occupants of those flats who were making unauthorised construction(s) over the land. The constructions being made besides being haphazard were quite illegal and unauthorised and were also encouraging anti social activities there. It is further stated that it was with a view of prevent those unauthorised construction over the open space that the Authority took the decision to carve out the disputed piece of land from plot no 1 and and to settle it in favour of respondent no. 4

9. This court is not too sure that this would be sufficient justification carving out the disputed piece of land and making it over to a private person. If the occupants of the flats or anyone else was making any unauthorised constructions over the open space, the Authority was certainly not helpless in taking appropriate steps for removal of encroachments and unauthorised constructions. The remedy was not to take away the land and settle it in favour of someone else for construction of a kiosk or even a residential building and, thus to deprive for all times to come, the occupants of those flats of the only open space available in front of the two blocks of flats.

10. Mr. Sharvan Kumar submitted that the action of the Authority in carving out pieces of land from the existing plots was earlier challenged before this court in case of other allottees. According to him all those challenges failed and this court did not interfere in any of those cases. No order of this court was produced before me which would show that on a consideration of the relevant provision law this court, by a speaking order has approved the action of the Authority in carving out pieces of land from the existing plots which in the master plan we were shown as part of other buildings or block of flats and it appears to me that the question has never been formally adjust cated on by this court.

11. Having thus indicated the issue, I would leave it at that, open for adjudication in an appropriate case in future. This is because I find that so far as this case is concerned, it can be effectively decided on the basis of the second question alone even after assuming the answer to the first question to be in favour of the respondents.

12. Thus proceeding on the assumption that the disputed piece of land was validly carved out of plot no. 1 and it was validly available with the Authority for allotment in favour of a third person, the question still remains to be examined whether its allotment in favour of respondent no. 4 was legally fair and at arms length.

13. Before proceeding to examine this aspect of the matter, it is to be borne in mind that at all material times respondent no. 4 was an employee of the

Authority and was working there as an Assistant Engineer. Mr. Sharwan Kumar contended that being an employee of the Authority had nothing to do with the allotment of the disputed land in favour of respondent no. 4 and simply being an employee of the Authority will not disqualify him from getting allotment of a land in his favour. How much substance is there in this contention is now to be examined ?

14. Respondent no.4 on his own showing made an application for allotment of a piece of land for the first time in the year, 1973. A copy of the application is not on the record. From the materials on the record, it is evident, and this court can also take judicial notice of the fact, that the scheme for setting up Rajendra Nagar Housing Colony was made in the year, 1954. Applications for allotment of plots of land/flats were made in response to advertisements duly published by the Patna Improvement Trust (the predecessor of the Authority) between the mid nineteen fifties and early nineteen sixties and practically all the allotments were made by the end, if not by the middle of the nineteen sixties.

15. There is no evidence that respondent no.4 had made his application in the year, 1973 in response to any advertisement issued by the Trust or the Authority. In the counter affidavit filed on behalf of the Authority, there is no mention of any advertisement issued in the years 1972 or 1973. In one of the counter affidavits filed on behalf of respondent no. 4 although it is stated that his application was in response to an advertisement, no advertisement is brought on record and, therefore, it is difficult for this court to accept that it was in response to any advertisement issued by the Authority that respondent no.4 made his application for allotment of a piece of land for the first time in the year, 1973.

16. Coming now to the manner of allotment. In the affidavit filed on behalf of the Authority on 7.10.1996, it is stated in paras 3 to 6 as follows :

3. That the Land Disposal Committee in its meeting dated 24.11.1990 decided to allot a plot of land to respondent no.4.

4. That the Patna Regional Development Authority in its resolution dated 26.11.1990 approved the decision of the Land Disposal Committee.

5. That as per decision/resolution contained in Annexure C/2 to this affidavit, the Land Disposal Committee in its meeting dated 28.11.1990 allotted the carved out plot adjacent to I & J plot in Mohalla Rajendra Nagar, Patna.

6. That the decision of the Land Disposal Committee contained in Annexure C/2 was approved vide Resolution no. 8/91 of the Patna Regional Development Authority dated 14th March, 1991.

17. From Annexure B/2 which is the proceedings of the meeting of the Land Disposal Committee held on 24.11.1990, it appears that the case of respondent no. 4 was considered along with the claim of other employees of the Authority. The Land Disposal Committee decided to allot one plot to respondent no. 4 but in case of other employees it was observed that as there was shortage of land and

there were many claimants, a principled decision on their claim will be taken later. Then the matter moved rather swiftly and the Authority in its meeting of 26.11.1990 (held to consider the deferred agenda of 20.11.1996) also gave its approval to the decision of the Land Disposal Committee regarding allotment of a plot of land to respondent no. 4. (See Annexure-C/2). Two days later the Land Disposal Committee in its meeting of 28.11.1990 decided to allot the disputed piece of land to respondent no. 4 and it further decided that as there was no more land, it was not possible to allot plots of land to any other employees of the Authority and their cases for allotment will be considered when the Authority took up any project in future (see Annexure D/2). The Authority finally approved the decision of the Land Disposal Committee by its resolution no. 8/91 taken in the meeting of 14.3.1991 (See Annexure-G).

18. It may be noted here that rule 17 of the P.R.D.A. (Disposal of Land) Rules, 1978 which deals with preferential settlements does not provide for any preferential settlements in favour of employees of the Authority.

19. The materials on record and the affidavits filed on behalf of the Authority and respondent no. 4 leave practically all the relevant questions unanswered. How and under what circumstances respondent no. 4 made an application of the in the year, 1973 ? How and why was this application, made without any advertisement, entertained by the Authority? How and under what circumstances the claim of respondent no. 4 was considered to the Land Disposal Committee along with the other employees of the Authority ? How and under what circumstances it was respondent no. 4 alone and no one else even among the employees of the Authority who were favoured with the allotment of the disputed piece of land ? There is no answer to any of these questions.

20. It further appears from the records of the case that the allotment of the disputed piece of land in favour of respondent no. 4 was initially for construction of a kiosk; it was later change to construction of a residential house. How was the change in the use of land allowed remains completely unexplained.

21. For the reasons discussed aboved I am convinced that the allotment of the disputed piece of land in favour of respondent no. 4 was wholly invalid and illegal.

22. Even assuming that the disputed piece of land was available with the Authority for allotment in favour of a third person the allotment could have been made only after making due advertisement and considering the claims of all eligible candidates applying in response to the advertisement. No procedure, known to law, having been followed the allotment in favour of respondent no. 4 is untenable and must be struck down. This court accordingly sets aside the impugned resolution no. 8/91 taken by the Authority in its meeting, dated 14.3.91 in so far as it relates to respondent no. 4; a consequent direction is issued commanding the officials of the Authority and respondent no. 4 not to proceed with any construction over the disputed piece of land and to vacate it forth-with.

23. Coming now to the question of encroachment over the open space by the occupants of the flats, it is made clear that any unauthorised construction over plot no. 1 has to be removed without any delay. Mr. K.N. Chaubey, learned senior counsel appearing for the petitioners stated that at present there was no unauthorised construction made by any of the petitioners in existence over the land in question and if there be any, that shall be removed within two days from today. The officials of the Authority are directed that in case any unauthorised constructions are to be found on the open space in front of the blocks I & J after two days from today those must be removed, if necessary, even by use of optimum force. Plot no. 1 and the open space in front of Blocks "I" and "J" must be made absolutely clear of all unauthorised constructions moveable or immoveable within ten days from today.

24. Mr. Chaubey also gave an undertaking on behalf of the occupants of the two blocks that no unauthorised construction will be made in future on the open space in front of the two blocks. In the result, this writ petition is allowed with the aforesaid observations and directions. No order as to costs.