
(2010) 02 PAT CK 0047
In the Patna High Court

Anju Sinha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 08-02-2010

Acts Referred:

Citation : (2010) 02 PAT CK 0047

Final Decision : Dismissed

Judgement

Samarendra Pratap Singh, J.—Heard counsel for the petitioner and the State as well as counsel appearing for the Bihar Sharif Cooperative Cold Storage Limited, respondent No. 5.

2. In the instant writ petition the petitioner prays for a writ of mandamus directing the respondents to restore the possession of the godown which was leased to her by the Bihar Sharif Cooperative Cold Storage and Government authorities which was forcibly evicted by the government authorities namely Block Development Officer and the Sub-Divisional Officer. The petitioner further prays for a direction to the respondent authorities to restore the articles seized vide Annexure-11/A.

3. The petitioner states that there is a Cooperative Society working in the name and style of Bihar Sharif Cooperative Cold Storage Limited (hereinafter referred to as "the Cooperative Society") duly registered u/s 11 of the Cooperative Societies Act. The object of the Society is to own and maintain cold storage. In the year 1997 a resolution was passed by the Cooperative Society to lease one of its godown for 40 years. The petitioner being desirous of taking godown on lease, approached the Society. The authorities of the Cooperative Society after considering the case of all aspirants selected the petitioner for grant of lease for a period of 40 years. On being asked, the petitioner deposited a sum of Rs. 1,50,000/- on 4.11.1997 vide receipt No. 1288 of same date which was to be adjusted against yearly rent. On 28.11.1997 Shri Vijay Kumar the then Secretary of the Society executed registered lease agreement for 40 years in favour of the petitioner. A copy of the lease agreement is at Annexure-2. After execution of the

agreement the petitioner came in possession of the godown.

4. In the last quarter of 1997, the management of cold storage was put under suspension by the Registrar, Cooperative Society, Bihar, Patna. On 31.5.2000 the petitioner filed an application before the District Cooperative Officer cum Administrator for paying dues of godown rent. When the petitioner did not receive any response, she sent a reminder on 3.2.2001. A copy of the petition dated 31.5.2000 and reminder dated 3.2.2001 are annexed at Annexures 4 and 5. In the meantime the Accountant of the Cooperative Society made a complaint regarding the use of godown to the District Cooperative Officer. The District Cooperative Officer made certain enquiries from the Night guard, who by his letter No. 70 dated 27.3.2001 affirmed the possession of the petitioner. In July 2001, the new Secretary, after assuming office of the Cooperative Society started disturbing the persons who were known to the other group. On 15.4.2002 the Secretary made a request to the District Cooperative Officer, Bihar Sharif to get the godown vacated as he was under the impression that the said godown was under illegal possession of Vijay Kumar, whereas the same was in possession of the petitioner. The petitioner states that she even deposited a sum of Rs. 2090 towards payment of arrears of godown rent through Demand Draft. A copy of accompanying letter and receipt thereof has been annexed at Annexures-9 to 9/C.

5. It appears that the District Cooperative Officer vide letter dated 21.6.2002, contained in Annexure-8 asked the Subdivisional Officer for deputation of a Magistrate, so that the lock of the godown may be broken. The Subdivisional Officer vide memo No. 724 dated 7.7.2002 entrusted the Block Development Officer, Dr. Fateh Fayyaz to get the godown vacated. The Magistrate cum B.D.O. broke open the lock and prepared inventory behind the back on 11.7.2002, contained in Annexure-11 and 11/A.

6. A counter affidavit has been filed on behalf of respondent No. 5, Bihar Sharif Co-operative Cold Storage Limited as well as on behalf of respondent Nos. 1 to 3. Both respondent Nos. 1 to 3 and respondent No. 5 have taken similar stand. It is stated that the Cooperative Society was registered in the year 1953 u/s 11 of the Bihar Cooperative Society Act, 1935. The Cooperative Society has its own bye-laws. Clause 17(1) of the Bye-laws provides that subject to such resolution, a general body may from time to time pass; the business of Society shall vest in the Managing Committee consisting of not more than 11 members. Clause 21(ii) defines the duty and responsibility of the Secretary. As per provisions of Clause 3 of the Bye-laws, the two potato chambers were constructed in the year 1962 besides two godowns. The godown No. 2 which is northern godown is in dispute. Before loading the potato in Cold storage chamber the same is unloaded in the two godowns. Similarly at the time of delivery of potato, the stocks are dried in the godown and then delivered to the customers. It has been asserted that the two godowns are part and parcel of the entire operation of inflow and outflow, and as such these two godowns are not meant for letting or sub letting to any

body. Thus in no case the Secretary is empowered to let out the same much less on lease. The respondents further state that in the year 1995, one Vijay Kumar son of Jaganath Prasad was elected as Secretary of the Cooperative Society. He very soon began to indulge in corrupt practices. Being disgusted with the corrupt and arbitrary manner of functioning of Vijay Kumar, 7 out of 11 members of the Managing Committee, including the President submitted their resignation on 19.11.1997 to Registrar, Cooperative giving rise to Misc. Case No. 284 of 1997. The Registrar, Cooperative issued notice to all concerned on 10.11.1997 and superseded the Society headed by Vijay Kumar vide his order dated 15.12.1997. Vijay Kumar filed an appeal No. 3/98 before the Hon'ble Cooperative Minister, Government of Bihar, who vide his order dated 10.3.1998 stayed the order of the Registrar, Cooperative Societies dated 15.12.1997, contained in Annexure-B of the State's affidavit. The aggrieved members moved the Hon'ble High Court in C.W.J.C. No. 4730 of 1998 which vide its order dated 30.6.1998 stayed the operation of the order passed by the Cooperative Minister dated 10.3.1998. A copy of the order dated 30.6.1998 of the High Court is at Annexure-B.

7. The respondents further alleged that in the meantime, Vijay Kumar had enrolled 80 members of his choice including the petitioner which too was declared null and void by order dated 22.1.2000, passed by the Deputy Registrar, Cooperative Society in Misc. Case No. 7 of 1998. The aforesaid order has been annexed at Annexure-A to the State's counter affidavit.

8. The respondents have controverted the claim of the petitioner that she ever came in possession. The respondents have denied that the petitioner ever deposited Rs. 1,50,000/-. They submit that the receipt granted by Vijay Kumar who happens to be the mother's brother of the petitioner is a false document and a fraudulent act. Further more the aforesaid Vijay Kumar maliciously has shown that Rs. 1,50,000/- was spent on repair in a day which is a near impossibility. The aforesaid Vijay Kumar did not hand over the cash book, journal ledger, counter foil of money receipt of the year 1997-98 and 1998-1999. A photo copy of the cash book, page No. 127 is a false transaction. The petitioner never established contact with the District Cooperative Society cum Administrator and photo copy of the lease deed is a concocted and collusive document which was never acted upon. It has been specifically stated that from perusal of the inventory list at the time of handing over charge to the then Administrator on 1.1.1999, no document either of rent or lease executed by Vijay Kumar was found in the office of the Society. The key of both the godowns remained with Jai Karan Paswan, the Peon cum Night Guard. A copy of the inventory list dated 1.1.1999 is at Annexure-J. The New Managing Committee formed on 10.7.2001, found that Vijay Kumar, the Ex-Secretary was carrying illegal business of coal and keeping the godown under his possession illegally for which he was not authorized under the law. It appears that Vijay Kumar managed to obtain the key of the godown from Jai Karan Paswan. On 27.2.2001, the matter came to the notice of Kameshwar Prasad, the Accountant of the Society. He submitted a report to the District Cooperative Officer cum

Administrator on 27.2.2001. The Administrator vide his letter Nos. 73 dated 2.2.2001, 102 dated 3.4.2001 and 133 dated 3.5.2001 directed Vijay Kumar to submit his show cause regarding the alleged repair of godown. The story of sending Rs. 2,090/- through Demand Draft is totally false and acknowledgement receipt dated 10.10.2001 was an act of fraud played by the petitioner on the Secretary. Lastly, the respondents state that the instant writ petition is not maintainable as the main relief is against the private Managing Committee of the Cooperative Society.

9. Mr. Ram Balak Mahto, learned Senior Counsel appearing on behalf of the petitioner states that the instant writ application is maintainable as the petitioner is aggrieved by the impugned action of the government officials contained in Annexures-7, 10 and 11. He states that the petitioner was forcibly evicted by the Block Development Officer pursuant to the order of the Subdivisional Officer, District Cooperative Officer, Biharsharif. He further states that Annexure-6, the letter of the then Secretary of the Cooperative Society addressed to the District Cooperative Officer, Biharsharif would show that the petitioner is in possession. The aforesaid position would also be borne out from Annexure-10, whereby the Subdivisional Officer, Biharsharif deputed the then Block Development Officer as Magistrate for effecting the eviction. Annexure-11 and 11/A would show that the lock was opened and inventories were prepared. On the aforesaid premises, learned Counsel submits that the petitioner was in possession of the shop leased to her and as such she could be evicted only through the process of Civil Court and not by forceful eviction. In support of his contention, he relied upon a decision of this Court in the case of Smt. Sushila Srivastava and Others Vs. State of Bihar and Others, relying upon decisions of the Apex Court rendered in the case of Krishna Ram Mahale (Dead), by his Lrs. Vs. Mrs. Shobha Venkat Rao, and State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others, .

10. This Court does not find any substance in the contention of the learned Counsel for the respondents that the instant writ petition is not maintainable as relief in substance has not been sought against private respondent No. 5. The petitioner is aggrieved by the action of the Magistrate cum Block Development Officer who unlocked the disputed premises and made inventories pursuant to the order of the Subdivisional Officer, Biharsharif. Thus, I find that the challenge is not against action of private respondents but in respect to the government's actions and as such the instant writ petition cannot be held to be non-maintainable on this ground.

11. Mr. Ram Balak Mahto, learned Sr. Counsel has raised the point that as the petitioner was put in possession pursuant to a registered lease deed, she could not be evicted save by process of the court in view of the decisions referred to above.

12. On the other hand, learned Counsel for the respondents disputing the contention states that the petitioner never came into possession and the

impugned order contained in Annexures-7, 10 and 11 does not in any manner show that the petitioner was in possession of godown. Their case is that in February, 2001 Vijay Kumar has somehow managed to take the key from Peon cum Night Guard and did not open the premises and evaded notices. As such on the order of the District Cooperative Officer, the lock of the premises was opened.

13. There cannot be any dispute to the proposition of law that if one is in settled possession pursuant to lease deed, he cannot be evicted save and except by a process of law.

14. In the case of Smt. Sushila Srivastava reported in 2000(1) PLJR 301, the petitioners of that case had moved against the purported demolition of their premises. The possession of the petitioners was not disputed by the respondent State rather they admitted that they were in possession over a period of more than 25-40 years. It is not in dispute that the petitioners were put in possession of the premises in accordance with law. In such circumstances, this Court held that the petitioners could be evicted only after following process of law as they were in possession for a long period of time. This Court further observed that when there is a bonafide dispute regarding title, the executive cannot dispossess any one by aid of force.

15. In case of Krishna Ram Mahale (supra) 1989 SC 2097, the Apex Court observed that where a person is in settled possession of the property, even on assumption that he had no right to remain on the property, he cannot be dispossessed by the owner of the property except by course of law. The relevant passage

It is a well settled law in this country that where a person is in settled possession of property, even on the assumption that he had no right to remain on the property, he cannot be dispossessed by the owner of the property except by recourse to law.

16. In the case of State of U.P. (supra) the Apex Court observed that a lesser has no right to resume possession by use of force from lessee even after expiry of earlier term of lease.

17. In the case of Smt. Swati Pande and Others Vs. The Registrar, Co-operative Societies, Bihar, Patna and Others, , this Court was considering the case of cancellation of allotment pursuant to a deed of registration. This Court observed that such deed of transfer can be nullified only by a Civil Court of competent jurisdiction.

18. In the case of Bishan Das and Others Vs. The State of Punjab and Others, , the Apex Court observed that possession can be resumed by the government only in a manner known or recognized by law.

19. In my opinion, none of the case laws would come to the aid of the petitioner as the factum of possession claimed by the petitioner has been disputed. The petitioner has not been able to place any evidence on record to show that she

was in possession or that the lease deed in question has been acted upon. No order of Government officials or of the Secretary show that the petitioner was in possession. The inventories made on 1.1.1999 by the Administrator after supersession of the Cooperative Society also negative the claim of the possession of the petitioner. Annexures-7, 10 and 11 would all go to show that the premises was locked by one Vijay Kumar, the then Secretary who some how managed to take the key from the Night Guard in February, 2001. When the aforesaid fact came to the knowledge of the authorities, notices were issued to him to show cause and vacate the same. Vijay Kumar is not the petitioner in the instant case. Further more, there is no trace of lease deed or even mention of it in any of the record of the Society. Further from the photo copy of the lease deed, it would appear that 2 Kathas 5 dhur and 10 dhurki of the land adjacent to the godown was leased. The lease deed does not show that any shop or godown was leased to the petitioner.

20. In view of the above, it is difficult to hold that the petitioner was in settled possession of the godown rather the claim of possession has been disputed. Further more there is hardly any evidence that it was petitioner, who was evicted or dispossessed. In absence of aforesaid vital rights and ingredients no writ of mandamus under Article 226 of the Constitution can be issued restoring possession.

21. For the reasons stated above, I do not find any merit in the instant application. It is accordingly dismissed. However, dismissal of this writ petition would not prejudice or come in the way of the petitioner in pursuing her remedy before a Civil Court of competent jurisdiction.