
(2010) 01 JH CK 0056
In the Jharkhand High Court

Bihar (now Jharkhand) State Housing Board and The
Executive Engineer Bihar (now Jharkhand)

APPELLANT

Vs

Adya Prasad

RESPONDENT

Date of Decision : 19-01-2010

Acts Referred:

Citation : (2010) 4 JLJR 355

Hon'ble Judges : Gyan Sudha Mishra, C.J;Rakesh Ranjan Prasad, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This appeal has been preferred by the Bihar State Housing Board now substituted by Jharkhand State Housing Board against the order dated 09.10.2001 passed in CWJC No. 1311/2000 which is time barred by 2570 days for which an application for condonation of delay has been filed. The reasons recorded in the application for condonation of delay is hardly satisfactory, yet we were more than indulgent in granting liberty to the Counsel for the appellant-Housing Board to address us on the merit of the matter merely to avoid miscarriage of justice if there be any in the event of its dismissal only on the ground of delay.

2. Having perused the impugned order and on hearing the Counsel for the appellant-Board, we have noticed that the respondent herein had filed a writ petition before the learned Single Judge challenging the notice dated 04.05.2000 issued by appellant-Board directing him to vacate the land measuring 613.38 square meter situated in Chotagovindpur at Jamshedpur. The petitioner/respondent's case before the Single Bench was to the effect that he had succeeded in securing a decree in his favour and therefore he has right, title and interest over the land in question and yet the Housing Board had sent an eviction notice against the petitioner/respondent herein.

3. The appellant/housing Board however, contested the matter and submitted

that the eviction notice has been issued to the petitioner/respondent herein since the land in question had been acquired for the purpose of construction of the house by the Housing Board.

4. However, the learned Single Judge has categorically recorded that the appellant/Housing Board has not submitted a single chit of paper much less notification by which it claims to have acquired the land. On the contrary, the appellant-Housing Board had merely carved out a proposal to acquire the land in question. The learned Single Judge, therefore, had been pleased to allow the writ petition and the impugned notice dated 04.05.2000 was quashed and set aside. But the learned Single Judge, by way of abundant caution observed that the order passed by the learned Single Judge will not come in the way of the respondent/Housing Board in taking possession of the land after the land is acquired under the provision of the Land Acquisition Act. The respondent/appellant-Housing Board thereafter did not prefer any appeal against the impugned judgment and order for 2570 days but it claimed that a review petition has been filed by the appellant-Housing Board wherein the notification has been annexed to the review petition in regard to the acquisition. This was also a reason for the appellant-Housing Board not to have pressed this appeal since the impugned judgment nowhere indicates that any notification was ever produced before the Single Bench indicating the acquisition of the land. On that premise, if the learned Single Judge had allowed the writ petition, it is difficult to interfere with the said impugned judgment and order ignoring the huge delay. The reason for not preferring the appeal for a period of 2570 days can well be understood in the aforesaid perspective as the appellant-Housing Board obviously could not have asserted its right over the land in question in absence of any notification for acquisition. Therefore, it had rightly not preferred any appeal. Subsequently, what prompted the appellant/Housing Board to prefer an appeal without any substance or merit, is difficult to understand.

5. Thus, the appeal is fit to be dismissed on merit as also on the ground of delay. However, it would not be just to come in the way of the housing Board in so far as the impact of dismissal of this appeal on the Review petition is concerned, for if the Housing Board before the concerned Bench taking up the review petition succeeds in proving that the land had in fact been acquired and the respondent had lost his right and title over the land in question by virtue of acquisition, obviously the fate of the review petition shall not be affected merely on account of dismissal of this appeal which we have recorded in order to avoid miscarriage of justice in any manner.

6. Subject to the aforesaid observation, this appeal is dismissed on merit and the delay in filing the appeal impliedly stands condoned.