
(2003) 07 JH CK 0055

In the Jharkhand High Court

Case No : Letters Patent Appeal No. 112 of 1995 (R)

Bihar State Housing Board and Another	APPELLANT
Vs	
Services Housing Co-operative Society and Others	RESPONDENT

Date of Decision : 11-07-2003

Acts Referred:

Bihar Housing Board Act, 1982 — Section 59
Constitution of India, 1950 — Article 226

Citation : (2003) 3 JCR 285 : (2003) 3 BOMLR 1916

Hon'ble Judges : P.K. Balasubramanyan, C.J;R.K. Merathia, J

Bench : Division Bench

Advocate : Anil Kuma Sinha and V.K. Prasad, for the Appellant; Kameshwar Prasad I. Sen Chaudhury and Sunil Kumar Sinha, for the Respondent

Final Decision : Allowed

Judgement

P.K. Balasubramanyan, C.J.—Respondents 1 and 2 in CWJC No. 2352 of 1993 filed in the Patna High Court, Ranchi Bench, Ranchi are the appellants In this appeal. The appellant, in effect, is the Bihar State Housing Board governed by the Bihar State Housing Board Act, 1982. -

2. The writ petitioner (respondent No. 1 herein) is a Society registered under the Bihar and Orissa Co-operative Societies Act. It is a co-operative society of the Government employees. The Society sought allotment of land from the Government to meet its object of providing land for construction of houses to the employees of the Government of Bihar, who became its members. It was decided by the Government to allot 155 acres of land to the Society as can be seen from the proposal dated 19.12.1964. But it is seen that on the basis of the title of the State, only an extent of 152.36 acres was available for being granted to the Society. Therefore, under an agreement for sale dated 30.1.1969 (An-nexure 3 in the counter affidavit filed by the Housing Board), the State of Bihar agreed to assign an extent of 152.36 acres of land and put the Society in possession, though there was some controversy regarding development charges claimed by

the State as payable by the Society. For the moment, we are not concerned with the dispute relating to the said extent of 152.36 acres of land.

3. There was an adjacent extent of 2.10 acres apparently lying unseparated from 152.36 acres referred to above, over which the Government had not acquired title. The Government initiated a proceeding for acquisition of that land and the acquisition was completed on 4.4.1972. It is seen that the Society under cover of the decision to allot it 155 acres of land and notwithstanding the fact that it had actually obtained only 152.36 acres of land, claimed to have trespassed into the said extent as well. The Housing Board having come into existence by virtue of the Housing Board Act, the Housing Board was put in possession of that land. The Housing Board found the Society to be in unauthorized occupation of the 2.10 acres of land, though obviously, with expectancy of obtaining allotment thereof from the Government. The Housing Board initiated a proceeding u/s 59 of the Housing Board Act for eviction of the Society. The Authority, dealing with the application found that the Society was in unauthorized occupation of that land, but it had an expectancy of getting the land assigned and in that situation, Section 59 of the Act may not strictly apply, and that the Housing Board should consider the transfer of the title to the said 2.10 acres of land to the Society, on recovery from it the market value of the land. It may be noted here that the acquisition of 2.10 acres of land under the Land Acquisition Act after paying full compensation to the owners thereof in terms of that Act was for the public purpose of providing houses for the Lower Income Groups (LIG) and Middle income Groups (MIG). It may also be noted that the petitioner Society consisted of Government officers and, obviously they took it person who were not eligible for obtaining allotment either as part of the Lower Income Group or Middle Income Group.

4. It is seen that the Housing Board attempted to challenge the order of the Authority on its application u/s 59 of the Act before the Appellate Authority under the Act. That appeal was dismissed for default. There was a writ petition filed in the High Court at Patna challenging that appellate decision which was also dismissed for default. Counsel for the Housing Board submitted that these defaults were induced by influential officers, who were members of the Society, the writ petitioner. We are not concerned with that aspect here, nor do we think that we should go into that question in this proceeding. What is relevant here is to notice that the challenge of the Housing Board to the direction of the Authority concerned to consider the transfer of 2.10 acres of land to the Society on recovering the market value thereof, has become final as against the Housing Board in the sense that the challenge of the Housing Board to the same has come to an end.

5. The writ petitioner Society challenged the order of the concerned Authority, marked Annexure 2-A in the writ petition, to the extent that the Authority directed that 2.10 acres be conveyed to the writ petitioner-Society on realization of its market value. The prayer made in the writ petition was to issue a writ of

mandamus directing the Housing Board to convey title over the 2.10 acres of land to the Society on the basis of the valuation that was adopted for 152.36 acres of land already conveyed to the Society, subject to certain lingering disputes. The Housing Board resisted the writ petition by pointing out that no mandamus could be Issued to it for executing a sale deed as claimed; that the said prayer was beyond the purview of the Court entertaining a writ petition under Article 226 of the Constitution of India and that even otherwise, the Society was not entitled to such a relief on the fact and in the circumstances of the case. It was also contended that the prayer for, conveying the land at a price that was fixed for 152.36 acres of land allotted to the Society based on its alleged illegal entry into the land could not be granted and, in any event, such a relief should not be granted in a proceeding under Article 226 of the Constitution of India and the grant of such a relief would be inequitable and unjust. The learned Single Judge took the view that the Authority who entertained the application u/s 59 of the Housing Board Act had no right to direct a conveyance of the extent of 2.10 acres on realization of market value and he having found that the proceeding u/s 59 of the Act was not maintainable, could not have issued such a direction. Without following up the consequence of that finding, the learned Single Judge, in exercise of a wider jurisdiction under Article 226 of the Constitution directed that the land be conveyed to the Society on its depositing the balance amount outstanding on the basis of the claim of the Society itself with interest thereon at 15% per annum compounded. It may be noted here that according to the Society, it had deposited the amount due on 13.4.1980. It was found that the deposit was inadequate. Learned counsel for the Housing Board submitted that the direction of the learned Single Judge was wholly inequitable, unjust and illegal. He pointed out that 2.10 acres of land was acquired only in the year 1972 and it was an acquisition under the Land Acquisition Act for the market. value and compensation payable under that Act and for the specific public purpose of providing housing to the Lower Income Groups or Middle Income Groups. A direction to convey such an extent of land to the Society of Government Servants, who were obviously influential as can be seen from the facts of the case was unjust. This resulted in loss to the State. The claim of the Society was founded on an illegality and no cause of action founded on an illegality, here, an illegal entry into the property could be entertained by the Court. The concerned Authority was not justified in holding that Section 59(2) of the Housing Board Act was not applicable to the case on hand and the learned Single Judge was also in error in taking the view that an application u/s 59 of the Act was not maintainable. He also submitted that the learned Single Judge has far exceeded his jurisdiction in practically decreeing specific performances as it were, that too of a non-existent agreement for sale. The direction to convey land, not for market value but for the price as claimed by the Society was, in any event. clearly illegal, unjust, inequitable and wholly without jurisdiction. Learned counsel for the Society, on the other hand, submitted that, the challenge of the Housing Board to the order of the Authority which passed Annexure 2-A stands finally rejected by the dismissal of the appeal and the writ petition and in that

situation, it was not open to the Housing Board to raise a contention that Section 59 of the Act was applicable to the case on hand. Counsel further submitted that the Government itself had accepted the position that the Society had got into possession of 2.10 acres of land and had directed the consideration of the same being assigned to the Society and in that situation, there was no merit in the argument now sought to be raised by the Housing Board. Counsel submitted that the learned Single Judge cannot be said to have exceeded his jurisdiction in issuing the direction he has issued in the impugned judgment.

6. It appears to us that the claim of the writ petitioner Society for relief is founded on an illegality. According to the Society, it has trespassed into the property, yet to be acquired by the Government, be it noted, and its claim allegedly flows from that alleged illegal occupation. In this context, it has to be noted that the acquisition proceedings under the Land Acquisition Act were completed only on 4.4.1972 and the State became entitled to take possession of the land by the process of that acquisition. Even according to the counter affidavit filed by the Society, possession was taken on 4.4.1972 by the Government, though the Society has attempted to state that it was only a formal taking of possession and the Society was in actual possession. Whatever it be in our view, when a wrong doer like the Society illegally occupying a piece of the land approaches the Court for relief by invoking Article 226 of the Constitution based on that occupation, it is certainly not for the Court to exercise its discretionary extraordinary jurisdiction in favour of such a wrong doer. Ex: dolo molo non oritur actio is a well accepted principle of law and especially in the context of the nature of jurisdiction of the Court under Article 226 of the Constitution, grant of relief is not warranted when the cause of action is founded on an illegality. After all, even according to the Society, though there was a proposal to convey, to it 155 acres of land, what was actually agreed to be conveyed ultimately was only 152.36 acres of land as can be seen from Annexure E, agreement for sale, and what was transferred by virtue of the sale deed executed on 17.3.2001, was also only 152.36 acres of land. The Society having thus founded its cause of action on an alleged illegal entry into 2.10 acres of land, we are of the view that the Society is not entitled to any relief in the writ petition it has filed invoking Article 226 of the Constitution of India. The learned Single Judge, unfortunately, has not borne in mind this aspect at all and thereby he has committed a clear illegality.

7. Even going by the case of the writ petitioner-Society, the writ petitioner-Society was claiming possession of 2.10 acres based on an original intention to convey 155 acres of land and based on it allegedly having taken possession of 2.10 acres of land. It may be noted that 2.10 acres of land was acquired by the Government only on 4.4.1972 and thereafter possession was handed over to the Housing Board as can be seen from Annexure-D filed along with the counter affidavit. It is not the case of the Society that it trespassed into the land subsequent to the handing over of the possession to the Housing Board under Annexure-D; Any illegal occupation that it might have had over the 2.10 acres

of land, came to an end on the said land being acquired by the State under the Land Acquisition Act. The acquisition proceedings under the Land Acquisition Act put an end to whatever claims the Society might have had regarding the possession of 2.10 acres of land, even if it be in expectation of assignment. In this situation, it is clear that the Society has made out no case for relief based on its alleged occupation of 2.10 acres of land. The mere fact that the Society which consists of Government officers could induce someone at the lower level of the Housing Board to accept some payment allegedly made in the year 1980 could not certainly be taken to be the basis to find any right in the Society over the land in question. It may be noted that even the learned Single Judge has found that the amount paid or allegedly tendered was not the proper amount and he had ordered that the balance should be paid with 15% interest compounded. It is, therefore, clear that the writ petitioner- Society had not laid any foundation for relief in respect of conveyance of 2.10 acres of land either against the Government or, in any event, against the Housing Board which, according to the writ petitioner-Society came into existence in the year 1973.

8. Though we are inclined to the view, at least prima facie, that Section 59(2) of the Housing Board Act has application to the case on hand and the Society could be thrown out by invoking Section 59(2) of the Act, we are not pursuing that aspect here in the light of the fact that the Housing Board allowed its challenge to the order of the concerned Authority to be rejected by getting its appeal and the writ petition, both dismissed for default. Though there might be some force in the submission of learned counsel for the Housing Board that these dismissals were the outcome of undue influence exercised by the officers of the writ petitioner-Society, on the available materials, we are not inclined to pursue that aspect or proceed on the basis that the said submission is acceptable. The fact remains that the challenge of the Housing Board to the order in question stands rejected and except to the limited extent of trying to defend its possession, the Housing Board is not entitled to challenge the order (Annexure 2-A) in this appeal. But to the extent it is a challenge to the direction of the learned Single Judge to convey the land to the writ petitioner- Society, the Housing Board is certainly entitled to raise this aspect as one of its points. Whatever it be, on the facts and in this circumstances of the case, we think that no ground was made out for interference with the direction Issued by the Authority in the application u/ s 59 of the Housing Board Act in the sense that the Authority had made an equitable direction considering the developments in the case. This was certainly not a case for interference by the learned Single Judge so as to modify that direction further in favour of the writ petitioner-Society. Even what the Authority concerned had granted to the writ petitioner-Society was something that the writ petitioner-Society did not really deserve. Therefore, interference with that part of the direction by the learned Single Judge cannot be sustained.

9. There is yet another aspect. The land in question was acquired for a public purpose under the Land Acquisition Act, namely, to provide housing accommodation to the Lower Income Groups and Middle Income Groups. Once

land is acquired for a public purpose, to the extent possible, the acquired land could be used for that purpose only. Of course, deviation In appropriate cases may be permitted, provided the original object could not be carried out and the new object is not wholly inconsistent with the purpose for which the acquisition was made. Assigning it away to a trespasser is certainly not a public purpose. Also, here, the writ petitioner-Society is a Society of persons, a number of whom are not qualified for allotment of housing accommodation either as belonging to the Lower Income Group or Middle Income Group. We cannot also brush aside the submission of learned counsel for the Board that the officers of the writ petitioner-Society were in a position to somehow manage to get at the 2.10 acres of land. Whatever it be, what is relevant to notice is that the learned Single Judge has, while exercising jurisdiction under Article 226 of the Constitution of India, permitted the defeating of the object of the acquisition itself. We feel that while exercising jurisdiction under Article 226 of the Constitution, the learned Single Judge should have taken note of this aspect and declined relief to the writ petitioner-Society. After all, the Authority concerned has only directed that the land be conveyed to the writ petitioner-Society on its paying the market value of the property. We see nothing inequitable in that direction which is capable of being interfered with at the instance of the writ petitioner, who after all claims to be a trespasser into the land. Moreover, the property of the State cannot be directed to conveyed for a price below the market value as is clear from the decision of the Supreme Court in *State of Kerala and others Vs. M. Bhaskaran Pillai and another*, . There is no equity in favour of the writ petitioner-Society which would justify the direction that the Government or the Housing Board should convey that extent to the writ petitioner- Society at a price below the market value and at a price below the price which the State itself had paid for acquisition of the land under the Land Acquisition Act. The direction by the learned Single Judge in that behalf appears to us to be unjust, inequitable and unsustainable.

10. It appears to us that in the circumstances, it is a fit case where the learned Single Judge should have refused any relief to the writ petitioner-Society. After all, it is not the province of this Court while exercising jurisdiction under Article 226 of the Constitution of India to direct conveyance of a specific extent of land to the writ petitioner. If at all, the writ petitioner had any claim or right, it should have been allowed to work out that right in an appropriate Civil Court. We have also found, for reasons stated above, that setting aside of the direction for payment of the market value is not justified on facts, on law or in equity. Thus, we are satisfied that it was a case where the writ petition filed by the Society should have been wholly dismissed.

11. For the foregoing reasons, we allow this appeal and setting aside the decision of the learned Single Judge, dismiss the writ petition filed by the writ petitioner with costs. Normally, we would have stopped here. But in view of the developments and the circumstances, we think that it is necessary to issue some further directions in the interests of justice. We, therefore direct that the order of

the Authority to convey for the market value will be complied with by the Housing Board if the writ petitioner-Society pays the market value as fixed by the Housing Board by applying the principles of the Land Acquisition Act to the Housing Board within two months of the Housing Board communicating to it the market value at which the land is to be conveyed. The price to be paid will be communicated the Housing Board to the Society within two months from today. If the Society does not pay the amount as indicated above, within the time, the housing Board will take possession of the lands on the strength of this judgment, but the persons, if any, who have put up residential buildings will be given an opportunity to purchase the portions occupied by them at the price fixed as above, if they complete the transaction by paying the price within six months from today. If they do not come forward, they will be physically dispossessed within seven months from today.

R.K. Merathia, J.

I agree.