

(2011) 05 PAT CK 0061

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 10920 of 1992

Bihar State Housing Board

APPELLANT

Vs

Ganesh Pandit and Others

RESPONDENT

Date of Decision : 03-05-2011

Acts Referred:

Bihar State Housing Board Act, 1982 — Section 59, 60
Land Acquisition Act, 1894 — Section 11, 16, 4, 6

Citation : (2011) 59 BLJR 1876 : (2011) 3 PLJR 867

Hon'ble Judges : Birendra Prasad Verma, J

Bench : Single Bench

Judgement

Birendra Prasad Verma, J.—In this batch of writ petitions, Bihar State Housing Board through its Managing Director, being the Petitioner, has challenged the validity and correctness of the separate orders passed by the appellate authority under the provisions of Section 60 of The Bihar State Housing Board Act, 1982 (in short "Act"), whereby in most of the cases, barring a few, the orders passed by the competent authority in terms of Section 59 of the Act have been affirmed and in the remaining cases, orders passed by the competent authority have been reversed. However, in all these cases, the appellate authority has rejected the claim of the Petitioner- Bihar State Housing Board (hereinafter in short "the Board") for eviction of the raiyats, who are private Respondents in this batch of the writ petitions, from the lands in question. The prayers of the Petitioner Board for recovery of rent and damages from the private Respondents have also been rejected by the Respondent Appellate Authority.

2. Material facts in all the cases are almost similar and identical. However, the case numbers and dates of orders passed by Competent Authority and Appellate Authority are different. Area of lands claimed by the raiyats/private Respondents is also different in each case. For the purposes of disposal of these writ petitions, I shall draw the basic facts occurring in C.W.J.C. No. 10920 of 1992, except by specific reference to any other particular case.

3. The case of the Petitioner Board, in short, is that a notification u/s 4 of The Land Acquisition Act, 1894 (In short L.A. Act) was issued by the Collector for acquiring certain plots of land, total area being 227.78 acres, situate at Mohalla-Bahadurpur in the town of Patna. It is further claimed that subsequently a notification dated 01.05.1975 (Annexure-1) u/s 6 of the L.A. Act was also issued and thereafter, the Petitioner Board claims that the lands in question came in its possession on 22.07.1977 on conclusion of the proceeding under L.A. Act and, therefore, the private Respondents had/ have no legal right to continue over the same, unless and until the plots of land in possession of respective private Respondents are allotted in their favour by a valid order passed by the Petitioner-Board and its functionaries.

4. The Petitioner Board on the premiss that the lands in question belonged to it, filed an application on 09.02.1983 in terms of Section 59 of the Act before the competent authority, giving rise to Housing Eviction Case No. 20 of 1983. After hearing both sides, the competent authority by his impugned order dated 29.06.1988 (Annexure-3), noticing the factual background of the case, rejected the claim of the Petitioner Board for eviction of the private Respondents and for realization of arrears of rent and damages. The competent authority has further taken notice of the fact that private Respondents claim their right, title and possession over the lands in question on the basis of the grounds indicated in that order. It was further noticed that private Respondents are poor persons and are in occupation of the land in question for last 25 years. Before passing the final order, an enquiry was conducted by an Executive Magistrate and a report was submitted to the effect that private Respondents are in occupation over the land in question for last 25 years and they are living there by constructing their houses.

5. The Petitioner-Board, being aggrieved by the order passed by the competent authority, preferred an appeal in terms of Section 60 of the Act, giving rise to Case NO. 52 of 1988. The appellate authority, after hearing the parties and on consideration of materials produced by them, has dismissed the aforesaid Appeal by his impugned order dated 17.11.1990 (Annexure-4) and has recorded a finding of fact that the private Respondents herein cannot be termed as "encroachers", as they are living there by constructing their houses for the last 25 years. However, while dismissing the appeal preferred by the Petitioner-Board, the appellate authority has directed that the lands in question be allotted to the private Respondents, after realizing the proportionate developmental costs. Thus, the claim of the Petitioner-Board has been rejected by the original authority as also by the appellate authority with certain specific directions. Similarly, in other cases also claim of the Petitioner-Board for eviction of private Respondents and for realization of rent/damages from them has been rejected by competent authority as also by the Appellant Authority. However, in C.W.J.C. No. 12212 of 1992, 12215 of 1992 and 12219 of 1992, the original authority had passed the orders in favour of the Petitioner- Board. When the private Respondents of those cases preferred appeal, then by the impugned orders, their

appeal was allowed in similar terms as in C.W.J.C. No. 10920 of 1992 and order passed by the original authority was set aside. The case in C.W.J.C. No. 12223 of 1992 is altogether on different factual background. In that case the competent authority has dismissed the case of the Petitioner-Board by order dated 14.05.1990 on the ground of non-prosecution of the case. The appeal preferred by the Petitioner-Board was also dismissed as barred by limitation.

6. Mr. Anil Kumar Sinha, learned Counsel appearing on behalf of the Petitioner-Board in this batch of the writ petitions, submits that admittedly notice under Sections 4 and 6 of the L.A. Act was issued for acquisition of the lands in question, which are subject matter in these proceedings, and subsequently on the basis of award, the Petitioner-Board came in possession over the same. However, on a query made by the Court, he has not been able to produce any award prepared u/s 11 of the L.A. Act showing the finality of the acquisition of the lands in question. He has also not been able to show that compensation amount has been paid either to original raiyats or to the private Respondents, who claim to be the transferee from the original raiyats.

7. In order to consider the claim of the Petitioner Board of its possession over the lands in question, Section 16 of The Land Acquisition Act is relevant and is quoted herein below:

16.- Power to take possession.- When the Collector has made an award u/s 11, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances.

On examination of Section 16 of the L.A. Act, it is apparent that an award u/s 11 of the L.A. Act has to be prepared and only thereafter, possession over such acquired land can be taken and such land shall vest absolutely in the Government free from all encumbrances. In the present proceeding neither before the competent authority nor before the appellate authority, award prepared in terms of Section 11 of the L.A. Act was produced by the Petitioner-Board. Even before this Court, copy of the award prepared u/s 11 of the L.A. Act has not been brought on record. In absence of such an award, entire claim of the Petitioner-Board that lands in question came in its possession w.e.f. 22.07.1977 is not at all believable and whole claim has to be rejected in the background of the findings of facts recorded by the appellate authority.

8. In all these matters, it is apparent that an enquiry was conducted by an Executive Magistrate and report was submitted. After looking into all those materials in all these cases, the appellate authority has come to a finding that the lands in question, which are subject matter in this batch of the writ petitions, are in possession of the private Respondents and they are living there by constructing their residential houses with their family members. In some of the cases, the claim of the private Respondents is based on certain title deeds and in some other cases, their claim is based on the deeds of gift or other valid documents, but in all these cases, the private Respondents have claimed their

right, title and possession, and their claim of possession only over the lands in question has been accepted by the competent authority and appellate authority.

9. Learned Counsels appearing on behalf of the Respondents have submitted that orders impugned are perfectly valid and justified and no interference is required by this Court. According to them, the Petitioner-Board has not been able to show any legal infirmity in the orders passed by the competent authority or by the appellate authority. Learned Counsels appearing on behalf of the Respondents have also placed reliance on a judgment of this Court in the case of Bihar State Housing Board Vs. The State of Bihar and Others, . The dispute in that case was with regard to plot No. 326, appertaining to khata No. 85, situate at Mohalla Bahadurpur in the town of Patna. In the present matter also, in one of the cases, the dispute is regarding with respect to the same plot No. 326. Facts involved in case referred to above, and facts involved in the present batch of writ cases are almost similar and identical. Learned Single Judge of this Court, in the aforesaid case of Bihar State Housing Board v. State of Bihar (Supra) has considered the scheme and scope of Sections 59 and 60 of the Act and finally on the ground of equity, the aforesaid writ petition filed by the Bihar State Housing Board was dismissed. Paragraphs 21 and 22 of the aforesaid judgment are relevant and are quoted herein below:

21.- This Court, sitting in a writ jurisdiction, does not feel inclined to interfere with the same. It is not the case of the Housing Board that because of the occupation of the plot in question by the Respondent No. 4 or because of the order of the appellate authority the development scheme has been frustrated, on the other hand, if the Petitioner is asked to demolish the building in question and is ousted from the house which has been constructed in the year, 1974, that exercise of direction will not be equitable in the facts of this case. So this Court cannot hold that the exercise of discretion by the appellate authority is perverse.

22.- The well known test is that while exercising certiorari jurisdiction over the orders of such quasi-judicial bodies, the High Court will not interfere just because different conclusion is possible in the fact of the case. It can interfere only when the conclusion of such bodies is so patently perverse that no reasonable person or body of persons can approve the same. It is well known that the High Court's jurisdiction in such matters is just supervisory and not appellate.

10. Now coming to the case at hands, in almost all the cases, it appears that the private Respondents are in possession either from nineteen sixties or from nineteen seventies and they all are in occupation of the lands in question by constructing their residential houses. The Petitioner-Board has not been able to prove that the lands in question were validly acquired under the provisions of the L.A. Act and possession was taken in terms of Section 16 of the L.A. Act. The appellate authority has also disbelieved the claim of possession of the Petitioner-Board. Therefore, after such a long time of about 50 years, it would not be in the interest of justice to direct for eviction of the private Respondents under the provisions of Section 59 of the Act. Therefore, the prayer made on behalf of the

Petitioner-Board for eviction of the private Respondents has rightly been rejected by the competent authority as also by the appellate authority.

11. However, it is claimed by the Petitioner-Board that the lands in question were acquired by following the procedure prescribed under the L.A. Act and even if the possession was not taken then in that case also, it would be deemed to be the land of the Petitioner-Board. The private Respondents have claimed that they have applied for allotment of the lands in question to them on priority basis in terms of Clause 10 of the Bihar State Housing Board (Management And Disposal of Housing Estates,) Regulation, 1983. In the given facts of the case, interest of justice would be sub served, if the lands claimed by the private Respondents are allotted by the Petitioner-Board by valid orders, after realizing the proportionate developmental costs and other legal dues, for which the Petitioner-Board may be entitled. In fact, the appellate authority has also issued similar direction for allotment of such land in favour of the private Respondents.

12. For the reasons recorded above, though this Court declines to interfere with the orders impugned, but direct the private Respondents in all these cases to appear before the Managing Director of the Bihar State Housing Board within a period of four weeks from today with a certified copy of the present order and a detailed representation for allotment lands claimed by them in their favour. If such a representation is filed, the Respondent-Managing Director will take appropriate steps for allotting the lands in questions in the light of observations and directions made above, in accordance with law within a period of six months.

13. With the aforesaid observations/directions, all these writ petitions are disposed of. No costs.