

(1998) 10 PAT CK 0010
In the Patna High Court
Case No : C.W.J.C. No. 8788 of 1989

Bihar State Housing Board

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 15-10-1998

Acts Referred:

Bihar State Housing Board Act, 1982 — Section 20(2), 50(2), 59, 59(1), 59(5)
Management and Disposal of Residential Landed Properties Regulation, 1983 —
Regulation 10
Management and Disposal of Residential Landed Properties Rules — Rule 10
Penal Code, 1860 (IPC) — Section 193, 228

Citation : (1998) 3 PLJR 927

Hon'ble Judges : A.K. Ganguly, J

Bench : Single Bench

Advocate : Shravan Kumar and Rajiv Nayan Singh, for the Appellant;
Bhrigunath Singh and Madhav Roy and Chandra Mani Chaurasia, for the
Respondent

Final Decision : Dismissed

Judgement

A.K. Ganguly, J.—This writ petition has been filed by the Bihar State Housing Board through its Managing Director challenging inter alia the validity of the order passed in a proceeding u/s 59 of the Act. The said order is dated. 25.2.1986 passed in Case No. 66/82/21/83 as the application of the Petitioner for eviction of Respondent No. 4 from the plot in question was not granted by the competent authority in proceeding u/s 59 of the Bihar State Housing Board Act, 1982 (hereinafter referred to as the said Act), an appeal was filed u/s 60 of the said Act. by the Petitioner. The appellate authority agreeing with the findings of the competent authority dismissed the appeal with certain directions. Both these orders have been impugned as Annexures - 2 and 3 to this writ petition by the Petitioner Board.

2. Before considering the legality of those orders, the admitted facts of the case as it appears from the petition filed by the Housing Board are noted below:The

dispute arises out of plot No. 326, khata No. 85 area measuring about 209.10 sq. mtrs. situated at Bahadurpur Section-I at present under the occupation of Respondent No. 4. The facts as alleged in the writ petition is that plot No. 326 and some other plots, consisting of an area of 227.78 acres of land in village Bahadurpur, Thana No. 10. Thana-Patna City, was acquired by the Petitioner-Board for the purpose of developing M.I.G. plots in sector-I, II and IV of Bahadurpur.

3. The case of the Petitioner-Board is that in respect of the aforesaid plots a land acquisition proceeding was initiated and in connection with the said acquisition proceeding possession was handed over to the Petitioner-Board in the year 1977. But the Board found that the plot in question namely, plot No. 326 which according to it falls within the said acquired land was in occupation of Respondent No. 4. As Respondent No. 4 did not vacate the said plot the aforesaid eviction proceeding was initiated by the Board before the competent authority.

4. The case of Respondent No. 4 is that in respect to the said plot there is an agreement of sale which was executed on 21st May, 1969 and on the basis of the said agreement of sale, possession was handed over to Respondent No. 4 in the year, 1970. It is stated that the Respondent No. 4 has constructed a house on the said plot of land in 1974. It is also the case of the Respondent No. 4 that no notice was ever given to him in the said acquisition proceeding even though he is in possession of the plot in question since 1970 which is prior to initiation of such proceeding. As such it cannot be said that Respondent No. 4 is in an unauthorised occupation. On these facts the writ petition was filed complaining of Annexures-2 and 3 as stated above.

5. In this proceeding a counter affidavit has been filed by Respondent No. 4. In the said counter affidavit a stand has been taken by Respondent No. 4 that he came in possession of the land in question on 21st May, 1970 and service of notice on him in respect to the land acquisition proceeding was never made. The further stand taken by Respondent No. 4 is that the land in question was never acquired in accordance with law, in as much as Respondent No. 4 is the both owner and occupier of the land in question and was never served with a notice nor was ever awarded with compensation. The stand taken in the counter affidavit is that Annexures-2 and 3 have been passed by the two authorities in a quasi judicial proceeding and those orders have been passed validly on a consideration of the facts and circumstances of the case and this Court ought not to interfere with the same.

6. This Court has also perused Section 59 of the said Act. Admittedly, u/s 59 of the said Act, a proceeding was initiated by the Petitioner-Board. Section 59 of the said Act provides for a summary procedure for eviction and recovery of rents. The procedure contemplated u/s 59 of the said Act is a special procedure provided under the provisions of the said Act. Section 59(1) of the said Act specifies the situation in which a proceeding u/s 59 of the said Act may be initiated, such proceeding if initiated, will be deemed to be a judicial proceeding

within the meaning of Sections 193 and 228 of the Indian Penal Code. The powers of a competent authority holding such a proceeding are the same as are vested in a Civil Court under the provisions of the CPC when trying a suit in respect of certain matters which are enumerated in Clauses (a), (b), (c) of Sub-section (7) of Section 59 of the said Act.

7. One thing is clear from a perusal of Section 59 of the said Act, that the proceedings contemplated thereunder is certainly a quasi judicial proceeding and the competent authority holding such a proceeding has the trappings of a Court. A right u/s 60 of the said Act is given to a person who is aggrieved by an order of the competent authority to file an appeal. u/s 50(2) of the Act, it is made clear that the appellate authority on receipt of the appeal may call for a report from the competent authority after making such enquiry, if any, as may be necessary can pass such order as it think fit and proper and such orders shall be final.

8. From a perusal of Section 60 of the said Act, it is clear that the appellate authority has been given wide powers and has been conferred with the jurisdiction to pass such orders as the appellate court may think fit and such orders have been given a statutory finality. The appellate authority has also given powers to stay execution of the order passed by the competent authority. Therefore the appellate authority has also been constituted with all the mechanism of the powers of an appellate forum.

9. In view of the aforesaid statutory provisions this Court proposes to examine two orders in the facts of this case.

From a perusal of the order passed by the competent authority, it appears that the said authority has reached the following findings:

(I.) The title of Respondent No. 4 has been continuing for a long time before acquisition proceeding was initiated by the Petitioner-Board. (II) In the said acquisition proceeding Respondent No. 4 has not been made party at any stage. (III) After coming to know of the acquisition proceeding the Respondent No. 4 has made an application to the Housing Board and deposited the requisite fee and made a request for allotment of a plot of land which is in his possession. The said application has not been disposed of (IV) Under the said circumstances, the provisions of Section 59(5) is not applicable against Respondent No. 4.

The next finding which has been reached by the competent authority is that the sufficient time was given to the learned Counsel for the Petitioner Board to prepare and file documents, but no documents were produced. As such on a perusal of the documents produced by Respondent No. 4 the show cause submitted by Respondent No. 4 in that proceeding was accepted.

10. Against the said order as noted above an appeal was filed before the appellate authority by the Board.

11. Pursuant to the direction given by this Court by the order dated- 24.8.1998 the learned Counsel for the Petitioner-Board produced the memorandum of

appeal. But in the said appeal no ground was taken by the Petitioner Board that the competent authority incorrectly recorded the fact to the extent that the documents were not produced by the Petitioner-Board before the said competent authority. Therefore, the finding of the competent authority that despite sufficient opportunity documents were not produced before it has remained unchallenged before the appellate authority.

12. Now coming to the order passed by the appellate authority, this Court also finds that the appellate authority has also given sufficient opportunity to the Petitioner-Board to produce documents. It appears that on 5.5.1987 the Petitioner Board was directed to produce a clear detailed report of the Housing Board to show how many plots of land have been acquired by the Housing Board and how many were released from the acquisition.

Thereafter, the Boards case was heard again on 23rd July, 1987 in presence of the lawyers for the parties and on that date written information was filed by the Respondent No. 4 stating therein that plot Nos. 311, 312, 331, 332, 329, 330, 328, 332 and 337 in Bahadurpur Section-I on which houses have been constructed have been released from acquisition and the appellate authority has recorded that the counsel appearing for the Petitioners Board could not dispute those facts. As such on that date i.e., on 23.7.1978 further order was passed by the appellate authority on the Petitioner-Board to produce on the next date of hearing the necessary informations whether the aforementioned plots have been released from acquisition by the Housing Board.

13. The matter thereafter was heard on 25th August, 1987 and on that date counsel for Respondent No. 4 appeared but no one appeared on behalf of the Petitioner-Board. Only an Assistant appeared on behalf of the Board, but he could not produce any document. On that date one more chance was given to the Petitioner Board to produce necessary documents and it was made clear that if no Documents are produced on the next date, final order shall be passed. The matter was subsequently heard by the appellate authority on 27.10.198, but no Advocate appeared on behalf, of the Petitioner-Board nor any representative of the said Board appeared so on that date. The hearing proceeded only after hearing the Respondent No. 4, and on the basis of the documents produced by him.

14. From the aforesaid recitals in the order of the competent authority and also of the appellate authority, this Court comes to this conclusion that the matter was not properly pursued by the Petitioner Board either before the competent authority or before the appellate authority even though the proceeding which was initiated by the Board was quasi judicial in nature.

15. The finding of facts which have been recorded by the appellate authority in para-5 of its order is that Respondent No. 4 is in possession of the disputed plot in question since 21.5.1970 and the land acquisition proceeding was initiated in 1972, and according to the claim of the Board it got possession of the land in

question on 22.5.1977. In its order the appellate authority has observed that Respondent No. 4 should not have completed construction on the land in question when acquisition proceeding has been started in the year 1972 itself.

16. Since the construction has been completed in 1974 itself and which was much before the possession was taken over by the Housing Board the appellate authority disposed of the proceeding by directing the Housing Board to allot the land in favour of Respondent No. 4 in terms of the provisions of Management and Disposal of Residential Landed Properties Regulation, 1983. The appellate authority has noted that under regulation 10 of the said regulation the Housing Board is to allot a plot of land on priority basis in favour of those land holders whose land has been acquired by the Board. So the plot in question should be allotted to Respondent No. 4 in which he has constructed his house. Thus all that may be made after taking development cost from Respondent No. 4.

17. Learned Counsel for the Petitioner has seriously challenged the said order by contending that no challenge has been made to the land acquisition by the Respondent No. 4 and that the appellate authority does not have any power to give such direction for allotment of plot.

18. This Court has considered both these submissions, but this Court cannot agree with the same. The competent authority which is created u/s 59 of the said Act has been given wide powers has been noted above. It also appears from the provisions of Section 60 of the said Act that the appellate authority has also been given wide powers.

19. It has not been proved by the Petitioner that any notice of the acquisition proceeding was ever given to the Respondent No. 4 by the Petitioner. In the absence of such notice it is not possible for him to challenge the same. Apart from that from a perusal of the recitals made in the impugned order it would appear that the case of Respondent No. 4 as made out before the appellate authority is that various other plots under acquisition have been released by the said Board. This case of Respondent No. 4 has remained un-controverted. The ground for such release was given has also not been explained by the Petitioner Board. therefore while exercising its discretion the appellate authority is entitled to consider the aforesaid facts in the context of regulation 10 of the aforesaid regulations, the Housing Board is bound by the aforesaid regulation. Rule-10 of the aforesaid regulation makes it clear that in respect of those persons whose lands have been acquired by the Housing Board, in their cases on a priority basis allotment of land can be made.

20. Here the facts which have been recorded by two fact finding authorities are that Respondent No. 4 is in possession over the plot in question since 1970 and he has constructed the house in 1974. Therefore, instead of passing the order for demolition of the said house made in 1974, the appellate authority has passed the order in question by balancing the equities between the parties by giving the aforesaid direction on the Petitioner Board to make the allotment after taking the

necessary fees from Respondent No. 4.

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.

23. Going by these parameters this Court cannot interfere with the orders passed by the quasi-judicial authorities under the Act. Therefore, this writ petition is dismissed. No order as to costs.