

(2007) 08 JH CK 0003
In the Jharkhand High Court

Dhanbad Motor Co. and Another	APPELLANT
Vs	
State of Bihar (Now Jharkhand) and Others	RESPONDENT

Date of Decision : 24-08-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2008) 1 JCR 529

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.G.R. Patnaik, J.—By this writ application, the petitioners have prayed for quashing the order dated 6.6.1995 passed by the respondent No. 3 vide Letter No. Patna 15 dated 6.6.1995 and for issuance of an appropriate writ order or direction to the respondent to allot to the petitioners the shop of an area of 856 sq. feet in front portion of the Jawan Bhawan on lease of 30 years as promised by them on 10.10.1981 at a meeting held between the petitioners and other shop keepers and confirmed by the Director himself by his letter dated 5.6.1991. The relief prayed for is based on the assertion of the petitioner that they had vacated their respective shop premises situated on the main road on the assurance that they would be allotted similar space and fully equipped shop with all basic amenities, facing the main road as soon as the respondent completes the construction of market complex known as the Jawan Bhavan and despite willingness of the petitioners to pay the stipulated rent @ Rs. 3/- per sq. feet of the allotted area, the respondents have avoided construction of the market complex, contrary to their promise and have finally refused to construct the market complex and allot the shop to the petitioners. The claim is on the ground that the respondents are bound by the principles of promissory estoppel and further, that the failure of the respondents in constructing the market complex and allotting similar shops to the petitioners which were vacated is discriminatory and violative of Articles 14 and 16 of the Constitution of India. The petitioners contend that the respondents being State cannot be allowed to act like an

ordinary businessman and refuse to comply with the promise after having compelled the petitioners to vacate their shop on assurance and promise given to the petitioners.

2. Brief facts of the case is that the respondents i.e. respondent No. 2, the Sainik Kalyan Nideshalaya also known as the Sainik Punawas Nideshalaya governed by the Home Department, Government of Bihar through its Director, is the owner of the land measuring 4.6 acres situated by the side of the main road, Ranchi. Within a portion of the said land, the respondents constructed shop complex known as commercial complex shop rooms. The shop; rooms measuring 40 ft. x 20 ft. each located within the ground floor of the building was leased out to the tenants, including the petitioners on payment of rent for a period of five years initially in September, 1969. The period of lease was renewed from time to time. A circular was issued to the lessees by the Home Department Government of Bihar, through the Director, Sainik Kalyan Nideshalaya, informing the lessees that Vijay Rawat who was the Estate Manager of the complex has ceased to function and in his place Maj. Ramayan Singh was appointed as the Estate Manager from 1.5.1988 and that Maj. Ramayan Singh was authorized to deal with the tenants in all matters concerning the shop complex. Later on, a meeting of all the tenants was called for by the Estate Manager and other officers representing the Sainik Kalyan Nideshalaya on 10.10.1988. The minutes of the meeting was circulated to all the tenants informing them that the respondents had taken a decision to construct a new building/shop complex after demolishing the existing complex and the tenants would be shifted to the new building complex. It was also conveyed that the tenants had agreed at the meeting to shift either in the new construction which would be on one side of the Indian Airlines Office or the first floor of the proposed new building. The claim of the petitioners is that they were assured of being given 856 sq. feet of construction area in the proposed new construction near the Indian Airlines Office. The offer given by the respondents was accepted by the petitioners who had agreed to shift to the proposed new building on one side of the Indian Airlines Office near the side of the Jawan Bhawan shopping complex. The petitioners by letter dated 29.10.1998 had confirmed the arrangement offered by the respondents agreeing to shift to the proposed new building near the Indian Airlines Office, though with stipulation that there should be a built-in bathroom within the premises proposed to be allotted to the petitioners. A new shopping complex known as "Jawan Bhawan Market Complex" was constructed by the respondents, though the proposed building in front of the Jawan Bhawan shopping complex wherein the petitioners were to be accommodated was not constructed. The petitioners claim that the respondents had wanted the petitioners to shift to two rooms allotted to the petitioners individually within the Jawan Bhawan building complex temporarily on payment of rent of Rs. 800/- per month till such time the construction of the other building in front of the Jawan Bhawan Complex is completed and the petitioners had agreed to shift to the allotted shops within the inner portion of the Jawan Bhawan Complex believing the assurance that such

allotment was temporary and that the new building proposed to be constructed in front of the Jawan Bhawan Complex would be constructed soon and the petitioners would be allotted shops therein and the entire terms of agreement in the context between the petitioner and the representatives for the respondents was also brought to the knowledge of the respondent 5 (Deputy Development Commissioner, Ranchi) who was the spokesperson of the respondent in his capacity of being the Secretary of the Managing Committee which was running the market complex. Similar letters were addressed by the petitioners to respondent 4 who was the then Estate Manager of the Sainik Kalyan Nideshalaya. A reciprocal confirmation letter was also issued by respondent No. 4, Estate Manager purportedly under the authority of the respondent No. 3, namely the Director of Sainik Kalyan Nideshalaya, to the petitioners confirming the fact that the allotment of shops to the petitioners within the inner portion of "Jawan Bhawan" shopping complex was temporary and the assurance was reiterated that on a priority basis suitable shops on the front side of the complex will be constructed and given to the petitioners at the earliest possible time.

The petitioners explain further that while giving the assurances and promises, they were also shown approved plan of the proposed building and the shop rooms which were promised to be allotted to them in the proposed building and the petitioners had even opted to take shop rooms market as JR2 and JR-1 respectively. On being so assured, the petitioners had finally shifted to their newly allotted shops within the near complex of Jawan Bhawan taking G-48 and G-47 respectively temporarily and till such time as the construction of the new building in front of the Jawan Bhawan Complex is complete and the Shop Nos. JR-1 and JR-2 are allotted to the petitioners. Instead of undertaking construction of the proposed building complex by the side of the Jawan Bhawan, the respondents demanded on 6.5.1992 that the petitioners should execute lease deed latest by 20.5.1992 in respect of the shops allotted to them within the Jawan Bhawan Complex, failing which the allotment of shops to them within the complex would be cancelled. Being aggrieved the petitioners preferred a writ application before the High Court in CWJC No. 3352 of 1994 R praying for writ of mandamus on the respondents to act on their promise and to construct their shop as promised according to the plan shown to the petitioners. The High Court in the aforesaid writ application passed an order on 13.3.1995 directing the petitioners to file their respective representations before the appropriate authority. The petitioners accordingly filed their respective representations. However, by the impugned order dated 6.6.1995 the representation of the petitioners were rejected by the respondent No. 3 without taking into consideration the fact that assurance and promise were made to the petitioners in the meeting held on 21.10.1988 between the tenants and Deputy Development Commissioner, Ranchi who was the then executive of the Managing Committee of the Sainik Kalyan Nideshalaya. The petitioners contend that the rejection of their representation by the respondent No. 3 on the ground that the Director, Sainik Kalyan Nideshalaya, or the Estate Managing Committee had

never made any promise to construct shops is an error of law and record and likewise, the rejection of the representation on the ground that the respondent No. 4 was not authorized to make promise is also an error of law and record as because all the promises which the respondent 4 had made was under the authority of respondent as would be evident from the letters (Annexures 11 and 11/1) of the writ petition, The petitioners claim that they had acted upon the respondents' assurance and promise and in the process they had suffered serious detriment to their business by vacating their permanent shops, the respondents cannot retract or back out from their promise, nor can they claim to be exempted from the liabilities of carrying out their promises. Basing the correspondences exchanged between the petitioners and the respondents including the letter dated 21.10.1988 issued by the Estate Manager and the subsequent letter dated 27.1.1990 and 17.2.1990 confirming the arrangement made with the petitioners, it is claimed by the petitioners that the respondent No. 3 Is bound by the assurances and commitments and to act upon the promise given to the petitioners. The petitioners have demanded that the respondents should construct shop rooms (Gr-1 and Gr-2) as per their promise made to the petitioners on 21.10.1988 and confirmed on 1st July, 1991, according to the approved plans of the proposed shop, within time limit to be fixed by this Court.

3. A counter affidavit has been filed on behalf of the respondents 2 and 3 namely Sainik Kalyan Nideshalaya, and its Director respectively. The answering respondents have denied and disputed the entire claim of the petitioners and have counter asserted that the writ petition is not maintainable either on facts or in law, claiming that the petitioners have made several statements which are incorrect, incomplete and unfounded and that the petitioners have suppressed material facts which have vital bearing on the subject matter hereof. The answering respondents claim that in the issues raised by the petitioners, there is an indirect controversy of facts which cannot be resolved in the writ proceeding. The respondents further claim that the petitioners have not been able to show jurisdictional error or arbitrariness on the part of the respondents in passing the impugned order dated 6.6.1995 which was passed in pursuance of the order passed by the High Court on 13.3.1995 in CWJC No. 3352 of 1994 R. The respondents have made a counter assertion that the petitioners have not come to this Court with clean hands in as much as they are defaulters in payment of rents and other charges to the tune of more than rupees four lakhs each excluding the interest accrued thereon and for which two proceedings under Sections 6 and 7 of the Bihar Government Premises (Rent Recovery and Eviction) Act, 1956 numbered as Case No. 10 of 1996 and Case No. 13 of 1996 against the petitioners 1 and 2 respectively was instituted and was disposed of on 13/19th February, 1977 by the competent authority under the Act and against whose decision an appeal has been filed before the appellate authority on 1.3.1977 by the petitioners. The respondents also deny the petitioners' claim of right on the purported promissory estoppel and have stated that neither the Deputy Development Commissioner, Ranchi, nor the Estate Manager had made

any assurance to the petitioner unequivocally to construct and make available to them alternative commercial premises by the side of the Indian Airlines Office building and that neither the Deputy Development Commissioner or the Estate Manager had any authority or power to give any such undertaking on behalf of the Sainik Kalyan Nideshalaya. The respondents claim that the contents of the letter dated 21.10.1988 (Annexure 5), relied upon by the petitioners, has been distorted and twisted out of context and as a matter of fact, by the said letter, it was only communicated that the petitioners could shift either to the new construction by the side of the Indian Airlines Office, or the first floor of the Jawan Bhawan and any one of the two alternative accommodations would be provided to them. Out of the two options available to the petitioners, they had exercised one option by shifting to the premises within the Jawan Bhawan Complex wherein they have been provided with more accommodation than what they had possessed earlier in the old demolished building. Having thus opted for the alternative allotment within the Jawan Bhawan Building Complex, and having shifted thereto, the petitioners cannot insist upon being given the other option also of constructing and providing accommodation at a different place by the side of the Indian Airlines Office. The respondents add that even if there was representation or assurance or promise given to the petitioners of alternative accommodation by the side of the Indian Airlines Office, it does not bestow any right upon the petitioners on the principle of novation. The petitioners are precluded from insisting on alternative accommodation since by their conduct in accepting the accommodation provided to them within the Jawan Bhawan, the petitioners have exercised one of the options and had waived the other option. The respondents further clarify that in respect of the old commercial building since demolished, it was the Government acting through the Deputy Commissioner, Ranchi, who was the ex officio President of the Board and as such all the old leases in respect of the premises within the old commercial building including those leased out in favour of the petitioners on 18.6.1980 were executed on behalf of the Government of Bihar through the Deputy Commissioner, Ranchi. Later, by the letter of resolution No. 232 dated 1.2.1984, the Government of Bihar (Home Department) adopted by the Home Department declared the Director, Sainik Kalyan Nideshalaya as the head of the department of the Sainik Kalyan Nideshalaya which consists of Rajya Sainik Board at the State level and Zila Sainik Board at the district level. Subsequently, the director was declared as the competent authority for all purposes of the directorate of Sainik Kalyan Nideshalaya and by resolution dated 10.10.1991 passed by the Government of Bihar through the Secretary, Home Department, it was stipulated inter alia that henceforth, the Director of the Sainik Kalyan Nideshalaya would be the competent authority and confirmed the powers of taking all action, decision and to carry on functioning and managing the affairs of Jawan Bhawan cum Sainik Bazar. The respondents emphatically deny that the letter dated 21.10.1986 (Annexure 5) constituted any promissory estoppel against the respondents as because the letter was signed and issued by the then Deputy Development Commissioner, Ranchi who had absolutely no right or authority to

make such representation on behalf of the Sainik Kalyan Nideshalaya of which its Director alone is the Chief Executive Officer and the main functionary and at no point of time did the Director give any assurance or promise to the petitioners.

4. It is further stated by the respondents that by order dated 13.3.1995 (Annexure 1) passed by this Court in CWJC No. 3352 of 1994 R, direction was given to the petitioners to file their representation before the Director, Sainik Kalyan Nideshalaya, Home Department Government of Bihar, who was directed to examine the claim of the petitioners in respect of their representation for being given new accommodation by constructing a new building by the side of the original Indian Airlines Office and to decide the matter in accordance with law within two weeks from the date of receipt of the representation. After receiving the representation, the director had given full opportunity to the petitioners to submit all documents and other facts and in response, the petitioners had produce and relied upon the letter (Annexure 5) issued by the then Deputy Development Commissioner, Ranchi besides other documents including some correspondences. After considering the pleas of the petitioners, the Director had disposed of the representation of the petitioners by a comprehensive speaking order dated 6.6.1995 (impugned order). The respondents further state that the letter dated 12.5.1988 referred to by the petitioners notifying the name of Maj. Ramayan Singh as the Estate Manager was only in the context of payment and realization of rent from the tenants and in terms of which the Estate Manager was authorized to deal with the tenants. The letter cannot be construed to give any authority to the Estate Manager to make fresh allotment or to make promise or assurance on behalf of the Sainik Kalyan Nideshalaya or to lay down or stipulate any terms and conditions with any out side party.

5. From the entire statements made by the petitioners in the writ application, it would be evident that they have based their right of claim primarily on the letter dated 21.10.1988 (Annexure-5) issued by the then Deputy Development Commissioner and the letter issued by the then Estate Manager claiming that both the officers were representatives of the managing committee of the Sainik Kalyan Nideshalaya with authority vested in them by the Director of the Nideshalaya and their promise to undertake construction of the building and to allot shops to the petitioners was binding upon the respondents and the respondents are bound by such promise on the principle off promissory estoppel. The respondents have denied and disputed the entire claim of the petitioners.

6. In the aforesaid letters referred to by the petitioners, it does appear that on the petitioners agreeing to shift to the shop premises within the Jawan Bhawan Building Complex, one shop room in the said building complex was allotted to each of the petitioners. Letters (Annexure-5) and those written by the Deputy Development Commissioner, Ranchi and those written by the then Estate Manager do suggest that the allotment was purported to be made by way of temporary arrangement.

7. The question which arises for consideration is whether the contents of the

aforesaid letters do constitute any promise given out to the petitioners to allot two shops on the main road for the petitioners and even if such assurance could be deciphered from the letters, whether the Deputy Development Commissioner or the Estate Manager were authorized to make such promise which could have the effect of binding the Sainik Kalyan Nideshalaya?

8. It is not disputed that even to the knowledge of the petitioners pursuant to the resolution dated 1.2.1984 adopted by the Government of Bihar (Home Department), the Director was declared as being the Head of the Department of the Sainik Kalyan Nideshalaya and the competent authority of the Directorate of Sainik Kalyan Nideshalaya who was conferred with powers to take all actions, decisions and to carry on functioning and the affairs of the Jawan Bhawan cum Sainik Bazar. The petitioners have not brought any such evidence on record which could suggest that either the then Deputy Development Commissioner or the Estate Manager was vested with any authority to take any independent decision of their own concerning the affairs of the Sainik Kalyan Nideshalaya or to make any commitment or promise to any of the tenants on behalf of the Sainik Kalyan Nideshalaya. Admittedly, the Director of the Sainik Kalyan Nideshalaya was never involved in any negotiation with the petitioners, nor had he participated in any such meeting held between the petitioners and the Deputy Development Commissioner or the Estate Manager and neither was the Director ever approached by the petitioners or apprised of the promise and assurance purportedly given by the Deputy Development Commissioner or the Estate Manager. The communication by the circular to the tenants informing them of the appointment of Maj. Ramayan Singh, as the Estate Manager in place of the former, does not indicate that the Estate Manager was appointed or vested with any authority to deal with the tenants other than for the purpose of realization of rent from the tenants and the General Manager of the Jawan Bhawan or the Sainik Bazar. Under such circumstances, the purported assurance and promise given by the Deputy Development Commissioner, Ranchi or the Estate Manager to the petitioners if any, are without authority and non-est and they cannot be held binding upon the Sainik Kalyan Nideshalaya, nor does it constitute any promissory estoppel against the respondents.

9. It further appears that the earlier writ petition filed by the petitioners containing the same prayer and on the basis of the same facts as stated in the instant writ application was disposed of by this Court with the direction to the petitioners to file their representation before the Director who was the competent authority and the Director of the Sainik Kalyan Nideshalaya was directed to examine the claim of the petitioners and decide the matter in accordance with law within two weeks from the date of receipt of the representation. The representations of the petitioners were received and they were given opportunity to place all materials before the Director who by the reasoned order dated 6.6.1995 impugned in this application, had disposed of the representation. Reasons recorded in the impugned order for rejection of the representation was that the Estate Managing Committee of the Nideshalaya had never taken any

decision in any of its meeting to allot similar shops with similar spaces and similar facilities by constructing another shopping complex to the tenants of the old commercial building and that though the petitioners had written letters to the Estate Manager seeking confirmation of the purported assurance given to the petitioners, any such confirmation given by the Estate Manager was of no consequence since the Estate Manager was not vested with any exclusive authority to decide such issue either to accept or reject the claim involving the properties belonging to the Sainik Kalyan Nideshalaya. It was also observed that both the petitioners were allotted shop Nos. G-48, G-47 and G-49 and G-44 measuring a larger area of 1045 sq. feet each, a though the petitioners were earlier in occupation of an area of 858 sq. feet only within the demolished building. The impugned order therefore cannot be termed as discriminatory or violative of Articles 14 and 16 of the Constitution of India.

10. In the light of the above discussion and the facts and circumstances of the case, I do not find any merit in this application. This writ accordingly is accordingly dismissed.