
(2005) 01 PAT CK 0030

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 12137 of 2004

Dharikshan Sah and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 25-01-2005

Acts Referred:

Citation : (2005) 1 BLJR 225 : (2005) 2 PLJR 99

Hon'ble Judges : R.S. Garg, J

Bench : Single Bench

Advocate : Ashghar Hussain and Khatim Raza, for the Appellant; S.A. Hussain (SC 6), Banwari Sharma and Shiv Kumar, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Garg, J.—Heard learned counsel for the parties.

2. As many as 28 petitioners are before this Court making a prayer that the notices issued on 26.8.2004 under the signatures of the District Engineer, Zila Parishad, East Champaran, requiring the petitioners to remove their hutments be quashed.

3. According to the petitioners, each of them is occupying a particular piece of land and is carrying his business activities and is earning his livelihood. According to them, in the year 1994, under some plan, the petitioners were required to deposit Rs. 2000A so that the land could be settled in their favour.

4. It appears that some of the petitioners deposited the money but many of them did not. The money was deposited in the year 1994. It would appear from the letter dated 25.7.1996 (Annexure 2 series) that a resolution was passed by the District Board that a scheme was approved for construction of the shops and the petitioners were required to deposit Rs. 2000/- towards security. They were required to make payment of the ground rent and enter into an agreement. The petitioners did not enter into an agreement, therefore, on 25.7.1996, they were again informed that if the petitioners wanted to purchase the property then the

property would be given in allotment and the amount of Rs. 2000/- already deposited would be appropriated towards final price. It was expected of the petitioners that within one week of the service of the said notice they would submit their reply. On 27.8.1996, that is, almost after about one month of the said notice, the petitioners informed the authorities that they were ready and willing to deposit the ground rent and they be allowed to make construction.

5. It does not appear from the pleadings made in the writ application that after submitting the application in August, 1996, any or either of the petitioners made any application to the authorities of the District Board that they were ready and willing to enter into an agreement. As the petitioners were continuing on the spot, the contractor appointed by the District Board started recovering dally ground rent from these persons.

6. The District Board thereafter passed a resolution on 31.7.2003 that the shops would be constructed and the same would be allotted to the persons who would be ready and willing to pay Rs. 15,000/- rent. A notice in accordance with the said resolution was later on published on 13.2.2004. It would appear from the records that despite notice dated 13.2.2004 none of the petitioners applied to the Board nor they deposited the money nor they informed the District Board that they were ready and willing to enter into some agreement.

7. The present petition came to be filed on 28.9.2004. It was submitted before the Court that the rent receipts annexed with the writ application relate to very same piece of land on which the petitioners were carrying their business. It was submitted that they cannot be evicted and the land requires to be settled in their favour.

8. The respondents taking serious exception to the writ application submitted that the rent receipts were in relation to other parcel of the land. It had nothing to do with the land in dispute.

9. Finding that there were sharp disputes in relation to the facts and issue, this Court required the petitioners to file additional affidavit clearly stating that the rent receipts were in relation to land in dispute or were issued in regular course of business by the contractor or they related to another parcel of the land. The petitioners have filed their additional affidavit. They have simply stated that they are illiterate persons and they know nothing about the intricacies of law. They have, however, relied on two certificates issued by the Ward Councillors of Ward Nos. 2 and 3 who have stated in identical language that the land in dispute is part of Khata No. 560 Khesra No. 687 and as many as eight shops have been made on these lands. They have not stated that under what authority of law the shops have been constructed or who allotted the land in favour of the petitioners or who allowed them to carry on their business activities. They have simply produced the certificate saying that the petitioners were carrying on their business activities.

10. Learned counsel for the petitioners submits that the District Board who was

duty bound to enter into agreement after receiving a sum of Rs. 2000/- and as the petitioners are ready and willing to deposit this amount and there had been complete inaction all along on the part of the authorities to regularize the matter, the petitioners cannot be penalized. The respondents in their turn submitted that in absence of order of allotment simple occupation of a piece of land would not create any right in favour of the petitioners. It is further submitted that in the year 1994, the petitioners were invited for settlement of the land. Then in the year 1996, they were required to enter into an agreement and in the year 2004 in view of the notices published in the newspaper they could have applied and as these petitioners have failed every time, no equity stands in their favour and the Board is entitled to evict them for construction of their development activities.

11. Undisputedly a sum of Rs. 2000/- was deposited in the year 1994 and since thereafter the petitioners did not do anything. In the year 1996, they were asked to enter into an agreement and the petitioners but for writing letters in August, 1996, did not do anything. Even subsequent to the letters of 1996, upto 2004, for a long period of eight years, the petitioners did not do anything. They did not crave indulgence of the authorities either to allot the land or grant permission to make construction or enter into the agreement so that the plots are settled in their favour. The phrase "the petitioners are always ready and willing to make the deposit" should not be an empty formality. For a suit for specific performance of the agreement the limitation would be three years. Assuming the larger rope is given to the petitioners then too they are required and obliged to satisfy this Court that there had been no lapse on their part and they are still ready and willing to perform their part of the agreement.

12. In the present case, unfortunately, no agreement was entered into. Nothing could be specifically enforced. Even if I assume for a moment that the letter of the year 1996 can be termed to be an agreement then too the petitioners have failed to show and prove that for last eight years they had been ready and willing to perform their part of the contract and as such are entitled to an order in their favour. If some body is occupying a particular parcel of land and is paying ground rent then payment of the ground rent would not create a relationship of lessor or lessee, licensor or licensee or would not create any right for allotment or settlement. The petitioners are simply occupiers of a particular piece of land. They have no authority to stay there if the owner of the land wants them to evict. The equity would not come in the way of the respondents nor would protect the petitioners if the respondents are planning to develop the area and want to earn future revenue.

13. I find no reason to interfere. This petition is dismissed.