(1975) 08 PAT CK 0008

In the Patna High Court

Case No : Civil Writ Jur. Case No. 57 of 1973

Hari Narain Singh APPELLANT

Vs

Patna Improvement Trust and Others RESPONDENT

Date of Decision : 16-08-1975

Acts Referred:

Bihar Town Planning and Improvement Trust Act, 1951 — Section 85(3)
Patna Improvement Trust (Disposal of Land) Rules, 1957 — Rule 9(3)

Citation : AIR 1976 Patna 50

Hon'ble Judges : S.N.P. Singh, C.J;S.K. Jha, J

Bench : Division Bench

Advocate : Prabha Shankar Mishra, S.C. Misra and Kumar Hari Narain Singh, for the Appellant; Ray Paras Nath, Yadunath Saran Singh, Indu Shekhar Pd. Sinha and Bhupendra Narain Sinha, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Jha, J.—In this application under Articles 226 and 227 of the Constitution of India the petitioner prays for a writ of mandamus to issue against respondent No. 1, the Patna Improvement Trust (hereinafter to be referred to as the Trust) commanding it to consider the petitioner''s application for settlement of one of the plots in favour of the petitioner, after quashing the settlement of a plot of land made by respondent No. 1 in favour of Ramesh Prasad, respondent No. 2.

2. When this application was taken up for hearing, learned counsel for the petitioner prayed for an adjournment of the case on the ground that an application for substitution of the Trust, which was originally respondent No. 1 to the writ application, by the Patna Development Authority (hereinafter to be referred to as the Authority), which is its successor-in-interest, would be made. It may be mentioned here that during the pendency of this writ application the Trust was superseded and the said Authority was constituted in its place. Mr. Yadunath Saran Singh, who initially appeared on behalf of the Trust, conveyed to us that he was also representing the Authority and he would be filing appearance

on its behalf later--by Tuesday next. In that view of the matter, it was not thought necessary to issue any notice to the Authority for its addition as a party respondent. The Authority being represented toe-fore us, we treated it as respondent No. 3 to this writ application and proceeded to hear the arguments on merits.

3. The facts giving rise to this application are short and simple. The petitioner and respondent No. 2 are both members of the legal profession in Patna. None of them has any residential house of his own or any land in Patna. Respondent No. 1 had been constituted as a local authority by the State of Bihar under the Bihar Town Planning and Improvement Trust Act, 1951 (Bihar Act 35 of 1951) --hereinafter to be referred to as the Act--for the improvement and development of, and for providing residential facilities in, Patna for the benefit of residents. The Trust was also responsible for settlement of plots of land and houses for the people of various income groups. One such colony is situate at Shrikrishnapuri where respondent No. 1 developed some plots for settling them to the applicants of lower income group. Applications were invited for settlement of these plots in the month of September, 1971 at the rate of Rs. 3,100 per katha. The petitioner submitted his application for settlement of plot No. 122-E in his favour complying with all the formalities required under the law. Respondent No. 1 received near about 1,000 applications and in respect of plot No. 122-E herein before mentioned there were more than two applications including those of petitioner and respondent No. 2. The aforesaid plot was ultimately settled by the Trust in favour of respondent No. 2. When the petitioner came to know that that plot had ,''been settled in favour of respondent No. 2 and that no auction had been held between the different competitors for the same plot, this application was filed challenging the settlement made by respondent No. 1 in favour of respondent No. 2. The main ground of attack against the settlement made and the obvious rejection of the petitioner''s application for settlement is that no competitive auction was held as is required by law.

4. Mr. Prabha Shankar Mishra, learned counsel for the petitioner, urged that the settlement made in favour of respondent No. 2 should be quashed and a writ of mandamus should issue to respondent No. 1 or its successor-in-interest respondent No, 3, commanding it to consider the application of the petitioner afresh and to conform to the requirement of law regarding auction in respect of the plot amongst the applicants for the settlement of the same plot. It was contended that the impugned settlement was made in utter violation of the provisions of Section 85 (3) of the Act and Rule 9 (3) (b) of the Patna Improvement Trust (Disposal of Land) Rules, 1957 (hereinafter to be referred to as the Rules). It was urged that the provisions aforesaid toeing mandatory in nature, respondents 1 and 3 are bound to act according to the statutory requirements. For the purpose of appreciating the arguments advanced, it is necessary to refer to the ''provisions'' of Section 85 (3) of the Act and Rule 9 (3) (b) of the Rules.

Section 85 of the Act reads thus:--

"(1) The Trust may retain, or may lease, sell, exchange, let on hire, or otherwise dispose of, any land vested in or acquired by it under this Act.

(2) Whenever the Trust decides to lease or sell any land acquired by it under this Act from any person, it-

(a) shall give notice toy advertisement in the local newspapers, and

(b) shall offer to the said person, or his heirs, executors or administrators, a prior right to take on lease or to purchase such land, at a rate to be fixed toy the Trust, if the Trust considers that such an offer can toe made without detriment to the carrying out of the purposes of this Act.

(3) If in any case two or more persons claim to exercise a right offered under Clause (b) of Sub-section (2) to take on lease or to purchase any land the rights shall be exercisable by the person who agrees to pay the highest sum for the land, not being less than the rate fixed by the Trust under that clause to the exclusion of the others."

It will be seen from the provisions afore-said that Sub-section (3) of Section 85 is attracted in the case of two or more persons claiming to exercise a right of offer under Clause (b) of Sub-section (2) to take on lease or purchase any land. In the present case there has been no competition between applicants claiming to exercise any right offered under Sub-section (2) (b) of Section 85, Section 85 (3) is, therefore, not attracted at all in the instant case.

Under the rule-making power conferred u/s 134 of the Act, the Trust had framed the Rules aforesaid. It| may at once be noticed that Section 85 of the Act does not contemplate the settlement or sale of plots of Land by the Trust in any particular manner nor does it envisage the following of any rules by the Trust which may be prescribed for that purpose. It is also pertinent to point out that Section 134, which confers powers on the Trust to make rules, does not confer any specific power of rule-making with regard to disposal of lands by it. Obviously, none of Clauses (a) to (g) of Section 134 gives any specific power in this regard. It is manifest, therefore, that the rules with which we are concerned in the instant case have been framed under the general provision contained in Clause (h) of Section 134, which says that the Trust may make rules consistent with the Act generally for carrying out the purposes of the Act. I have given this background because mandatory or directory character of the rule will have to be judged in the above context.

Turning now to Rule 9 (3), it reads-

"9. Lease or sale of plots to persons of specified income-groups or members of Co-operative Housing .Societies.-

(1) .....

(2) .....

(3) All applications for lease or sale of plots reserved for persons of specified income-groups, shall toe Submitted by them to the Land Disposal Committee, along with the evidence of their belonging to any of these groups the plots shall be leased or sold to-

(a) the applicant, if there be only one application in respect of that plot, on payment of standard costs;

(b) the highest bidder among the applicants, if there be more than one application in respect of that plot, on payment of costs at the highest rate bid and accepted:

Provided that the rate so bid and accepted shall not be lower than the standard cost :

Provided further that the Chairman shall cause a notice indicating the number of applications received in respect of any plot till the previous day to be hung upon the notice board of his office."

It is actually Rule 9 (3) (b) on which learned counsel for the petitioner ultimately rested his case. For, when it was pointed put to him that Section 85 (3) is not applicable to the case at hand, he at once appreciated the infirmity of his argument based on Section 85 (3) and finally focussed all his attention to the provisions of Rule 9 (3) (b).

5. Rule 3 of the Rules lays down that when execution of a scheme framed under the Act has so far progressed that vacant lands within the limits of the scheme have been divided into convenient plots and lands for the use of the public, such as roads, parks ,and playgrounds or lands required toy the Trust for its own use or for such other use as the Trust may desire, have been indicated either on the site or a map prepared by the Trust, it has been given the power to decide which plots are to be leased out, sold, exchanged with other lands, let on hire or otherwise disposed of. Under Rule 4 of the Rules the Trust is empowered to appoint a Committee constituting of the Chairman and four other Trustees or associate members u/s 16 of the Act and such a Committee has been termed the Land Disposal Committee which, subject to the decisions of the Trust under Rule 3, is to execute the work of disposal of lands in any scheme. Rule 7 deals with lease or sale of Land to the previous owners or their heirs, etc. Rule 8 deals with lease or sale of land to displaced persons Rule 9 relates to lease or sale of plots of land to persons of specified income group or members of Co-operative Housing Societies. Rule 10 deals with lease or sale of lands not reserved by Trust and Rule 12 with temporary letting or lease of lands by it. Rule 13 enables the Trust to lease out lands for the development of public institutions and community centres, whereas Rule 14, which, is in the shape of a non obstante clause, lays down that the Trust may, with the previous banction of the State Government, provide such facilities as it may consider to be necessary for encouraging the

organisation and development of small or medium industries. Rule 16 lays down priorities or preferences to be kept in view while making settlement or sale of residential plots under Rule 10.

It is pertinent to reproduce Rule 16 aforesaid here-

"In case of plots to be sold or leased for residential purposes, except those which are to be sold or leased under Rule 10 or to a Co-operative Housing Society, under Rule 9, preference will be given to one-

(a) who is ordinarily a resident of Patna or is engaged in Patna in some profession, e.g.. medical, teaching, journalism, legal, engineering etc., trade, commerce, business or service;

(b) who does not own or have a share in, a residential house of his own at Patna; and

(c) who does not own or have a share in, any land at Patna suitable for construction of a residential house."

This is more or less a complete picture of the rules for disposal of land by the Trust. In order to judge whether the rules are mandatory in character or directory laying down certain guidelines in the matter of disposal of land, one further provision in the Rules deserves special attention and that is Rule 11. Rule 11 (1) lays down that mere issue of notice u/s 7 or 8 or issue of notice or advertisement under Rule 10 or receipt of applications under Rules 9 and 10, shall not by itself create any claim or right in favour of any person for settlement of sale of any land vested in the Trust. Rule 11 (2) lays down that the Land Disposal Committee may reject, without assigning any reason, any application or any bid or any offer for lease or sale of any land vested in the Trust.

Judging in the light of the cumulative effect of the rules aforesaid--especially Rule 9 (3) read with Rule 16 and Rule 11, I am of the view that the provisions of these rules are merely directory laying down certain guidelines to be ordinarily and generally followed either by the Land Disposal Committee or by the Trust itself. There is no scope for judging the provisions of Rules 16 and 9 (3) as mandatory. Mr. Mishra urged that the provision of Rule 16 in the matter of laying down priorities is as mandatory as that of Rule 9 (3). I am not inclined to accept this argument, especially in view of the clear provisions of Rule 11 which say in so many words that no applicant merely by making an application shall have a claim or right in having any particular plot of land settled in his favour. When a person cannot claim as of right settlement of a particular plot in his favour, it would be doing violence to the language of Rule 11 if it were to be held that the provisions of Rules 9 and 16 were mandatory in nature. I must, however, make it clear that, although directory in nature, the provision was meant ordinarily and generally to be followed and it does little credit to the authorities of the Trust to assert that in the matter of allocation of residential plots for settlement ever since 1963 it was not the practice to lease them by auction amongst the competing applicants.

It is a fact, which is borne out by the counter-affidavit of the Trust as well as respondent No. 2, that an Enquiry Commission was constituted, commonly known as the Mahapatra Enquiry Commission, to go into the question of some alleged irregularities committed by the Trust or its authorities in the matter of settlement of plots of land. There also the stand taken by the Trust and its officers was that

"till 1963, residential and commercial plots used to foe put in auction when there were more than one applicant insistent upon such plot. When that was found to be only advantageous to comparatively wealthy people ,and when the Trust became aware of public resentment against such practice, they decided to abandon that as far as possible and make allotments by encouraging adjustment between competing applicants."

And, it was held by the Commission that no legitimate grievance could be made against the said allotments being made. I want to make it perfectly clear that I am in no way being influenced by the report of Enquiry Commission aforesaid but I have made a reference to the averments made in the counter-affidavit in this regard merely for the purpose of showing that the Trust''s or its authorities'' bona fides may not be challenged in all cases. Be that as it may, once the rules have been framed--albeit merely as guidelines to be followed in the matter of disposal of land either by the Trust or by the Land Disposal Committee, and sufficient representation was made to the intending applicants that the procedure laid down in these rules would, as far as possible, be edhered to, the contention of learned counsel for the Trust or the Development Authority, respondent No. 3, that the rules were never followed in the matter of allotment of plots for residential purposes after 1963 cannot give the Trust or its officers immunity to the acts being dubbed by persons aggrieved as arbitrary in nature.

6. Be that as it may, since the petitioner has not been able to make out any legal right in him nor a corresponding statutory obligation on the part of the Trust, ,a writ of mandamus cannot issue. It is hoped that the Development Authority will consider the case of the petitioner for allotment of any plot in any of its colonies at Patna suitable for toeing leased out to him. But that again is a different matter. As the position stands, this application has to be dismissed but with the observations above made. There shall be no order as to cost.

S.N.P. Singh, C.J.

I agree.