
(1982) 12 PAT CK 0017

In the Patna High Court

Case No : Civil Writ Jurn. Case No. 2034 of 1982

Hari Prasad Jalan

APPELLANT

Vs

The District Magistrate, Champaran at Motihari and Others

RESPONDENT

Date of Decision : 04-12-1982

Acts Referred:

Bihar Buildings (Lease, Rent and Eviction) Control Act, 1977 — Section 12(2)
Constitution of India, 1950 — Article 226

Citation : AIR 1983 Patna 90 : (1983) PLJR 113

Hon'ble Judges : Nagendra Prasad Singh, J; Anand Prasad Sinha, J

Bench : Division Bench

Advocate : K.D. Chatterjee and Arun Chandra Mitra, for the Appellant; K.K. Prasad, R.B. Mahto, A.A.G., Jagannath Jha and Gajendra Kumar Jha, (Jr. Counsel to Sr. Counsel No. II), for the Respondent

Final Decision : Allowed

Judgement

Nagendra Prasad Singh, J.—This writ application has been filed on behalf of the petitioner for quashing an order dated 12-4-1982 passed by the respondent District Magistrate in purported exercise of the powers u/s 12 (2) (a) of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1977. A copy of the said order is Annexure-7 to the writ application. By the aforesaid order the learned District Magistrate has proceeded to decide the question as to whether the house belonging to the petitioner should be allotted to respondent No. 2, who is the Superintendent of Central Excise and Customs. I may mention at the outset that this dispute has a long history starting from the year 1964. But, it shall be proper to first refer to the relevant provisions of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 (hereinafter to be referred to as "the Act"), under which different orders have been passed which are subject matter of controversy in the present writ application. The said Act has been replaced by the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1977.

2. Section 11 of the Act was in two parts. Section 11 (1) dealt with the ground

for eviction of tenant other than Government servant's. Section 11 (2) contained the provision regarding allotment of a house to the Government servant by the District Magistrate and restoration of the possession of the house to the landlord in absence of further allotment. Section 11 (2), which is relevant for the present case, is as follows.

"2. (a) Where a servant of the Government in possession of any building as a tenant intends to vacate such building, he shall give fifteen days" previous notice in writing of his intention to do so to the landlord and to the District Magistrate who shall under intimation to the landlord, within a week of the receipt of the notice, either allot the building to any other servant of the Government whom the District Magistrate thinks suitable subject to the payment of rent, and the observance of the conditions of the tenancy by such servant of the Government, or direct that the landlord shall be put in possession of the building:

Provided that when no such order is passed by the District Magistrate, the landlord shall be deemed to have been put in possession of the building.

(b) Where a building is vacated by a servant of the Government any person occupying such building other than the persons referred to in Clause (a) shall be liable to be evicted by the District Magistrate in such manner as may be prescribed:

Provided that, after a landlord has been, or is deemed to have been, put in possession of such building, he may let it to any person.

Explanation -- In this sub-section "District Magistrate" includes the Additional Deputy Commissioner of Dhanbad."

On a plain reading, Sub-section (2) (a) of Section 11 vests power in the District Magistrate to allot any building to any other Government servant whenever such a building is vacated by a Government servant. This power has to be exercised within a week of the receipt of the notice from the Government servant who is vacating the building in question. If no such allotment is made by the District Magistrate, he shall direct that the landlord be put in possession of the building. The proviso thereto says that when no such order is passed within the period prescribed then it shall be deemed that the landlord has been put in possession of the building. Clause (b) of Sub-section (2) enables the District Magistrate to evict any other person occupying such building when the building is vacated by the Government servant. This has to be done in the manner prescribed by rules. Rule 3 prescribes the mode of eviction by the District Magistrate. Rule 3 (6) is as follows;

"If the person occupying the building fails to vacate the building, or to show cause to the satisfaction of the District Magistrate, within the period specified in the notice, the District Magistrate may evict such person from the building and may, for that purpose, use such force as may be necessary."

In view of Rule 3 (6), if the person occupying the building fails to vacate, the

District Magistrate may evict such person from the building and for that purpose use such force as may be necessary.

3. It is an admitted position that in the year 1964 one Block Development Officer was occupying this building. He vacated the said building on 6-4-1964. On 6-4-1964 this petitioner addressed a letter to the District Magistrate saying that he had decided not to let out the building to any one because he has his own pressing necessity for the same.

However, on 8-7-1964 the then District Magistrate allotted the said building to respondent No. 2 in exercise of the powers u/s 11 (2) (a). Being aggrieved by that order this petitioner filed a writ application before this Court which was numbered as M.J.C. 1034 of 1964. This Court on 27-7-1966 dismissed the said writ application holding that there has been substantial compliance of the aforesaid Section 11 (2) (a) while making the allotment in favour of respondent No. 2. Thereafter, the petitioner filed an appeal before the Supreme Court which was numbered as Civil Appeal No. 1886 of 1968. The Supreme Court on 7-12-1976 allowed the said appeal and set aside the judgment passed by this Court. a copy of the judgment of the Supreme Court is Annexure-1 to the writ application. From the order of the Supreme Court it will appear that after quoting the order of allotment aforesaid dated 8-7-1964 the Supreme Court considered the question whether that order was in accordance with Section 11 (2) (a). It was held that as no notice was given to the petitioner before making the allotment in favour of respondent No. 2 the appeal was being allowed and the judgment of this Court was being set aside. Thereafter, it was directed as follows:

"It is open to the District Magistrate to invoke the provisions of the Act in regard to the premises in question. Before the District Magistrate will make any allotment he will give intimation to the appellant and will hear the appellant. The District Magistrate will thereafter pass such appropriate orders in accordance with law as are permissible."

4. It may be mentioned that in the year 1977 Bihar Buildings (Lease, Remand Eviction) Control Act, 1977 came in force containing virtually a similar provision like Section 11 (2) although numbered as Section 12 (2). When no order was passed by the District Magistrate in connection with the allotment of the building in question, for about three years, the petitioner filed an application on 10-9-1979 saying that as no steps had been taken for the allotment of the building, the respondent No. 2 has forfeited the claim for any allotment and as the petitioner needed the building for his personal use, the respondent No. 2 may be evicted from the building in question. A copy of the said application is Annexure-2 to the writ application. The District Magistrate fixed different dates for hearing the parties concerned, but the case was adjourned from time to time at the instance of the respondent No. 2. On 21-4-1980 again a prayer for adjournment was made on behalf of the respondent No. 2. The District Magistrate rejected the said prayer and he passed an order directing respondent No. 2 to vacate the premises in question within three months from the date of

the said order. A copy of this order is Annexure-3 to the writ application. Against this order respondent No. 2 filed a revision application before the Commissioner which was dismissed on 11-8-1981. On 21-10-1981 another application was filed on behalf of the petitioner saying that as respondent No. 2 has failed to vacate the building in question within the time allowed, police force may be deputed to evict respondent No. 2. A copy of this petition is Annexure-6 to the writ application. In the meantime another District Magistrate was posted who passed the impugned order dated 12-4-1982. By the order which is under challenge, he has held the earlier order dated 21-4-1980 passed by his predecessor-in-office directing eviction of respondent No. 2 as a nullity because, in his opinion, that order had not been passed in accordance with the direction given by the Supreme Court. Having said so, he has purported to consider the question as to whether a fresh order of allotment should be made in favour of respondent No. 2. He has asked the petitioner to show cause as to why the allotment be not made in favour of respondent No. 2. A copy of this order is Annexure-7 to the writ application.

5. Learned counsel appearing for the petitioner submitted that the District Magistrate had exercised power under Sub-section (2) of Section 12 of the 1977 Act while passing the order dated 21-4-1980 and, as such, it was no more open to the successor District Magistrate to ignore that order and to pass a fresh order act-Ing as an appellate court. If it is held that order dated 21-4-1980 is an order passed pursuant to the aforesaid direction of the Supreme Court in exercise of the powers under Sub-section (2) of Section 12 of the 1977 Act and if it is not a nullity so as to be ignored altogether, then there should not be any difficulty in holding that the District Magistrate again could not have passed a fresh contradictory order on 12-4-1982 which is under challenge. It is an admitted position that under the relevant Act no power to review has been vested in the District Magistrate. It is well known that power of review is a creature of statute. As such, I shall examine as to whether the order dated 21-4-1980 will be deemed to be an order u/s 12 (2), pursuant to the direction of the Supreme Court.

6. Learned Additional Advocate General, who has appeared for the respondent-Superintendent of Central Excise and Customs, urged that order dated 21-4-1980 shall not be deemed to be an order in exercise of the powers conferred on the District Magistrate under Sub-section (2) of Section 12 of the Act because the said order has been passed not in conformity with the direction given by the Supreme Court. According to the learned Additional Advocate General, as the Supreme Court had directed the District Magistrate to consider the question of allotment of the said house afresh in favour of respondent No. 2 after hearing the petitioner and the then District Magistrate without considering the question of allotment of the house to respondent No. 2 has directed respondent No. 2 to vacate the premises within three months from the date of the said order, the said order was not in conformity with the direction given by the Supreme Court. However, learned Additional Advocate General fairly

conceded that the order dated 21-4-1980 cannot be held to be a nullity so as to be ignored altogether. He further conceded that the Act does not vest any power of review in the District Magistrate so that by order dated 12-4-1982 the earlier order dated 21-4-1980 could have been recalled. According to the learned Additional Advocate General, as the earlier order was not in conformity with the direction of the Supreme Court and the order dated 12-4-1982 which is being questioned in this writ application is in accordance with the direction of the Supreme Court, this Court should not interfere with the order dated 12-4-1982 although passed without jurisdiction, because the effect thereof will be that an illegal order dated 21-4-1980 shall be revived. In support of this contention, reliance has been placed to the well known judgments of the Supreme Court and of this Court in the cases of Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others, , Abdul Majid and Others Vs. The State Transport Appellate Authority and Others, , Devendra Prasad and Others Vs. State of Bihar and Another, and Hari Prasad Mandal v Addl. College, Monghyr 1978 BBCJ (HC) 575. It is almost settled that writ jurisdiction of this Court is discretionary and it should not be exercised for quashing an order which may have been passed without jurisdiction if that order has purported to set aside another illegal order. If it is held that the order dated 21-4-1980 is either illegal or without jurisdiction, then there should not be any difficulty in accepting the contention raised on behalf of the respondents.

7. I have already pointed out that the Supreme Court passed an order on 7-12-1976 setting aside the judgment of this Court and the order of the District Magistrate making allotment in favour of respondent No. 2 and directed the District Magistrate to consider afresh the question of allotment in presence of the petitioner. When no step was taken till 10-9-1979 for about three years, the petitioner applied to the District Magistrate giving background of the case and requesting him to pass an order directing eviction of respondent No. 2. That petition was heard by the District Magistrate on 21-4-1980, when the Government pleader and the counsel for respondent-Superintendent of Central Excise and Customs, appeared before him. In the order dated 21-4-1980 the then District Magistrate has noted that the respondents were always praying for time and as a last chance the case had been adjourned on 1-4-1980 to enable the respondents to file show cause. Thereafter, he has observed that the case has been lingering for more than a decade and when the Hon''ble Supreme Court directed him to consider the question of allotment the State was praying for unnecessary time. Thereafter, he has observed as follows:--

"If this is the state of affairs that even the highest law court's directions do not get implemented this will have a very poor light and adverse effect, on the law abiding citizens specially those who seek relief within the legal frame work. Therefore, I would not like to interfere with the reasonable demand of the petitioner armed with Hon''ble Supreme Court order and it is hereby ordered that the Hon''ble Supreme Court order be carried out at once."

Thereafter, he directed the respondent No. 2 to vacate the premises within three months from the date of the order. In my view, it is difficult to hold that when the District Magistrate passed the order dated 21-4-1980 aforesaid, he was not considering the question of allotment in favour of respondent No. 2 Or release of the house in favour of the petitioner in light of the direction of the Supreme Court He has repeatedly observed in the said order that as in spite of several adjournments the respondents have not filed their show cause, meaning thereby, putting forward the claim for allotment of the house in question, he was directing that the house be restored to the possession of the petitioner. The Supreme Court while quashing the allotment in favour of respondent No. 2, had directed the District Magistrate to invoke the provision of Section 11 (2) of the Act then in force, and to consider both the questions as enjoined by Section 11 (2), now Sub-section (2) of Section 12, i. e., whether to allot the building to respondent No. 2 or to direct that the petitioner should be put in possession of the building. He preferred to pass an order directing that the petitioner be put in possession of the building. In my view, this order is clearly covered by Sub-section (2) of Section 12. That order cannot be held to be an illegal order merely because he has not considered the claim of allotment made on behalf of respondent No. 2 in detail, for which the respondent No. 2 is responsible, because in spite of several adjournments no show cause was filed on his behalf. This fact has been noted by the District Magistrate more than once. If no claim for allotment was put forward on behalf of respondent No. 2, the District Magistrate had no option but to direct that the petitioner be put in possession of the building. I have already mentioned that against this order a revision application was filed before the Commissioner, which was dismissed. Thereafter, a writ application could have been filed before this Court questioning the validity of that order on any ground whatsoever, but no such writ application was filed. When On 21-10-1981 the petitioner applied to the District Magistrate for getting the premises vacated with the police help because the order dated 21-4-1980 had become final, the present District Magistrate has purported to consider afresh the question of allotment in favour of respondent-Superintendent, Central Excise and Customs. In my opinion, under the circumstances mentioned above, it is difficult to hold that the impugned order has purported to set aside any illegal order. On the other hand, in my view, the District Magistrate has assumed the jurisdiction of an appellate or revisional court while declaring that the order dated 21-4-1980 is a nullity. In the impugned order he has observed as follows:

"It is clear that the Hon'ble Supreme Court order has not been complied with and the order dated 21-4-80 is therefore, without jurisdiction and a nullity. It now remains for this court to make a fresh order on the allotment matter in terms of Supreme Court direction."

This was not permissible.

8. From a bare reference to Sub-section (2) of Section 12 of the 1977 Act it will appear that the framers of the Act have prescribed definite period within which a

District Magistrate has to decide either to allot the building to any other servant of the Government or to direct that the landlord shall be put in possession of such a building. This decision has to be taken within a week of the receipt of the notice from the earlier Government servant. Even if this period is held to be not mandatory, still the framers of the Act never conceived that the decision either to allot the house to some other Government servant or to release to the landlord has to be taken in years. The dispute as to whether the house should be released to the petitioner is pending since 1964. The order dated 21-4-1980 which is in favour of the petitioner itself was passed after about three years from the date of the remand by the Supreme Court and two years, thereafter, the District Magistrate has passed the impugned order dated 12-4-1982. Section 12 (2) fixed a period of seven days for taking a decision regarding allotment and the proviso thereof says "when no such order is passed by the District Magistrate, the landlord shall be deemed to have been put in possession of the building". In view of the aforesaid provisions can it be said that when the District Magistrate passed the impugned order on 12-4-1982, after five years of the order of the Supreme Court, he was observing the mandate of the Legislature either in letters or in spirit?

9. It was then submitted on behalf of the respondents that in any case the then District Magistrate could not have directed by his order dated 21-4-1980 to vacate the premises within the period fixed by him. In my opinion, this argument is without any substance. Sub-section (2), Clause (a) says in clear terms "direct that the landlord shall be put in possession of the building." Clause (b) of Sub-section (2) of Section 12 vests power in the District Magistrate to evict any person who is occupying the building without an order of allotment in accordance with Sub-section (2) (a), in such manner as may be prescribed. The manner for eviction has been prescribed in the Bihar Buildings (Lease, Rent and Eviction) Control Rules, 1955. Rule 3 (6) of the said Rules has been quoted above. The District Magistrate was well within his jurisdiction when by order dated 21-4-1980, (he) directed respondent No. 2 to vacate the house in question. Perhaps, in view of this rule, in the petition dated 21-10-1981, which was filed on behalf of the petitioner, a prayer was made to evict respondent No. 2 with the help of police force and Magistrate.

10. I am unable to appreciate as to why the respondents are not able to arrange another house for the office or residence of respondent-Superintendent in the last 18 years and respondent No. 2 is occupying the said house without there being any order of allotment in his favour. In my opinion, order dated 12-4-1982 (Annexure-7) is without jurisdiction and liable to be quashed by this Court.

11. Accordingly, I allow this writ application and quash the impugned order dated 12-4-1982. I further direct through a writ of Mandamus to respondent-Superintendent, Central Excise and Customs to vacate the house in question within six months from today failing which the respondent-District Magistrate shall exercise his power under Sub-section (2) (b) of Section 12 of the 1977 Act

read with Rule 3 (6) of the Rules and get the premises vacated and shall put the petitioner in possession thereof. In the circumstances of the case, however, the parties shall bear their own costs.

Anand Prasad Sinha, J.

12. I agree.