

(2013) 04 PAT CK 0108

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 20457 of 2012

Indu Devi

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 10-04-2013

Acts Referred:

Citation : (2013) 3 BLJud 86

Hon'ble Judges : Ramesh Kumar Datta, J.

Bench : Single Bench

Advocate : Mr. Ajay Kumar Sharma, Advocate, for the Petitioner; Mr. Ravi Bhardwaj, A.C. to S.C.1, for the State; Mr. Nikki Singh, Advocate, for the Intervener; Mr. Bashishtha Narayan Mishra, Advocate, for the Respondent Nos.3 &4

Final Decision : Dismissed

Judgement

Ramesh Kumar Datta, J. (Oral)—Heard learned counsel for the petitioner and learned counsels for the State and for the Zila Parishad, West Champaran.

2. The petitioner has filed the writ application for a direction upon the respondents to refund an amount of Rs. 5,31,000/- deposited by her with the respondent Zila Parishad, West Champaran for grant of lease and allocation of land for three shops pertaining to plot No.101 in Nawalpur market. A prayer has also been made for initiating suitable criminal and departmental actions against the erring officials who have been instrumental in getting the allocation of land for commercial purposes (shops) in Nawalpur market by the Zila Parishad, West Champaran on lease by way of bid to the petitioner and public in general suppressing the factual aspect and litigation over the land.

3. I.A. No.2459 of 2013 has been filed by one Binod Kumar Srivastava seeking to be added as intervener respondent No.9 to the writ petition.

4. It is admitted in the interlocutory application itself that the intervener has no grievance for return of the amount to the petitioner but only to the extent of

giving possession to the petitioner over the plot in question, the intervener is opposing the said track and thus the interlocutory application appears to be wholly misconceived.

5. I.A. No.2459 of 2013 is accordingly, rejected.

6. Pursuant to a public notice dated 1.3.2012 for grant of lease of different plots of land for the construction of 76 shops over plot No.101 issued by the Zila Parishad, West Champaran, Bettiah, the petitioner also applied. As many as 76 shops were settled to the respective highest bidders. The petitioner was also successful in getting the lease of as many as three shops bearing Nos. 11, 12 and 15 in Nawalpur Bazar. The petitioner deposited the amounts for the said shops on 30.3.2012 at the rate of Rs.1,35,000/-, Rs.2,00,000/- and Rs.1,66,000/- respectively totalling to Rs.5,31,000/-. It is the claim of the petitioner that thereafter the petitioner has been running from pillar to post for getting possession over the allotted land which, according to the petitioner, was to be given within three months but the same was not done and the petitioner learnt that the same is under litigation and a civil suit is pending in the Court of Munsif, Bettiah, West Champaran filed by one Girendra Prasad Srivastava and others being Title Suit No.28 of 2008, in which the Zila Parishad and its officials have been made respondents. It is also stated in the writ petition that the respondent Zila Parishad and its officials had already entered their appearance in the said suit on 26.6.2008 and the case is still pending. The petitioner, accordingly, filed a representation on 12.7.2012 stating that despite deposit of the amounts, 37 months have passed but the plots have not been allotted to her and further she learnt about the litigation with respect to the land and thus since the plots having not been allotted in time, therefore, she claimed refund of the amount of Rs. 5,31,000/- deposited by her. On receiving no reply from the respondents, the petitioner has filed the present writ application for the aforesaid claims.

7. In the counter affidavit filed on behalf of the respondents, it is stated that the writ application has been filed with wrong and misleading statement as it is the petitioner who has not come forward to take possession of the land, whereas the respondents have repeatedly been sending notices to her and informing that all the other allottees of 73 shops, except the petitioner have taken their possession of the same. It is submitted that several notices were sent to the petitioner by speed post but she has managed that all of them are returned. It is the further case of the respondent Zila Parishad that the title suit is not with respect to any challenge to the title of the Zila Parishad over the land in question, rather a right of easement has been claimed therein but as yet there is no interim order of injunction against the Zila Parishad for not making construction or making bid over the plot in question. It is, thus, submitted that the petitioner has come to this Court with oblique motive as there was a clear provision in the general notice dated 1.3.2012 itself that the amounts would not be refunded and thus to avoid forfeiture of the same the petitioner is litigating the matter before this

Court.

8. Learned counsel for the petitioner submits that the respondent Zila Parishad having failed to allot and deliver the possession of the land to the petitioner within three months, the petitioner was entitled to receive refund of the amount deposited with respect to the three shops in question. It is further submitted that the respondent Zila Parishad having failed to mention the fact about the litigation in the public notice, the petitioner cannot be compelled to take possession of the land in question.

9. In support of the same, learned counsel for the petitioner also relies upon certain representations purportedly filed by five of the allottees on 5.3.2013 before the respondent Zila Parishad in which they have said about the disturbance caused over the land allotted to them by one Lalit Kumar Srivastava on 4.3.2013 at 6" O Clock in the evening. It is, thus, submitted by learned counsel on the strength of the said representations that the petitioner cannot be compelled to take possession of the land in question and the amount deposited by her should be refunded.

10. Learned counsel for the Zila Parishad, on the other hand, submits that the title suit merely claims a right of easement which is a weak right as per the established law and as a matter of fact nearly five years have passed from the date of filing of the title suit, but hardly any step has been taken by the plaintiffs to get the matter decided nor they could get any interim order of injunction in their favour although an application was filed for such temporary injunction also and thus merely filing of a title suit by the plaintiffs with respect to easement cannot stand in the way of the Zila Parishad in putting the plot in question on auction for settlement of lease.

11. It is further submitted by learned counsel for the Zila Parishad that the petitioner has changed her mind after taking the allotment of the plot/shops in question as she is in connivance with the plaintiffs of the title suit and somehow or the other she wants refund of the amounts deposited by her which cannot be permitted in terms of the public notice in which it is clearly mentioned that no refund will be made of the amount deposited.

12. It is also the contention of learned counsel for the Zila Parishad that had the petitioner backed out immediately, then the Zila Parishad could have been in a position to settle the plots in question with the second highest bidder and thus any such refund of the amount at this belated stage would not only be contrary to the principle and practise in settlement of a public bid but would also affect the interest of the Zila Parishad.

13. It is also urged that it is the petitioner who has deliberately avoided taking the possession of the land in question as she is the only person among all the allottees of 76 plots who has not yet taken possession and all the statements contrary to the same by the petitioner are false and a fabrication and there is no laches on the part of the Zila Parishad in allotting the land.

14. I have considered the submissions of learned counsels for the parties. It is evident from the facts brought on the record that it is not a case where the Zila Parishad has failed to hand over the possession of the land in question to the petitioner. The same would also be evident from the fact that all the other allottees of remaining 73 plots have taken possession of the plots in question and the petitioner is the only allottee who has not yet taken possession thereof. Thus, it appears that the statement made in this regard by the petitioner is a mere excuse for not taking over the possession of the plot in question. This is also evident from the various materials brought on the record by the respondents showing that the petitioner has not received any notice till date for taking over possession as repeatedly sent to her.

15. So far as reliance placed by learned counsel for the petitioner on the representations dated 4.3.2013 of certain other allottees is concerned, the same can be of no avail, as all the representations relied upon by the petitioner are identical and I find that none of the representationists has sought any refund of the amounts rather they have requested that security should be provided for making construction of the shops.

16. Further the title suit itself is not with respect to title over the land in question rather only a right of easement is claimed therein with respect to which it has been clearly stated in the counter affidavit that 10 feet passage has been provided to the plaintiffs of the title suit for going to their shops which, as a matter of fact, the Zila Parishad was not obliged to provide but after considering all aspects of the matter, the same has been done and thus the title suit has lost all its significance.

17. It is submitted that the only interest of the plaintiffs is to create disturbance so that no construction of the shops is made in front of their shops and any disturbance by any person to the allottees cannot be a ground for withdrawal of the amount deposited, as admittedly a title suit has been filed but there is no order of any court of law permitting them to exercise any such right. The same therefore cannot be a ground for the petitioner to back out from the settlement to which she has entered with open eyes. The submission of learned counsel for the petitioner that there is no mention about the title suit in public notice cannot be of any help to the petitioner as no title over the land in question has been claimed by the plaintiffs in the title suit and only the right of passage has been claimed. With respect to the same also, the plaintiffs have not been able to obtain any interim order of injunction even after five years since the date of filing of the suit.

18. Thus, on a consideration of the facts and circumstances of the case, this Court does not find any merit in the writ application and it is, accordingly, dismissed.