
(1999) 12 PAT CK 0015
In the Patna High Court
Case No : C.W.J.C. No. 2779 of 1987

Kamta Prasad and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 06-12-1999

Acts Referred:

Bihar State Housing Board Act, 1982 — Section 59(i)(b), 60

Citation : (2000) 1 PLJR 802

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Advocate : Shalendra Kumar Sinha and Bijai Kumar Sinha, for the Appellant;
Ranjit Sinha for the State, for the Respondent

Final Decision : Allowed

Judgement

Aftab Alam, J.—The petitioners seek to challenge an order dated 24.3.1987 passed by the Housing Minister of the State Government in Appeal no. 11 of 1984 filed before him u/s 60 of the Bihar State Housing Board Act. The appeal was filed by the Housing Board against an order, dated 10.12.1983 passed by the competent authority in case no. 23 of 1983 in a proceeding u/s 59 (i) (b) of the Act. By the impugned order the appeal was allowed, the order passed by the competent authority was set aside and the petitioners were directed to be evicted from a piece of land on which they are living after constructing a house. The subject matter of dispute is a piece of land forming part of plot no. 313 and situate at village Bahadurpur, Police station Sultanganj in the town of Patna. The area in dispute is 150 Square metres (15 meters x 10 meters) over which the house of the petitioners is constructed.

2. According to the Housing Board the disputed piece of land is part of a vast area acquired for it in 1975 in a Land Acquisition Proceeding; that a certain Sabitri Devi (wife of petitioner no. 1 and mother of petitioners 2 and 3) was in unauthorised occupation of the disputed land and was living there with her family after having constructed a house.

3. The Board accordingly, filed a petition u/s 59 (i) (b) of the Act before the Executive Magistrate Patna-city asking for her eviction from the disputed land. The petition filed by the Board was recorded in the docket of the Executive Magistrate as Case no. 23 of 1983.

4. On notice being issued Sabitri Devi, the proceedee appeared and resisted the prayer for her eviction made on behalf of the Board. According to her case, she acquired that land, through bonafide purchase, under a registered sale deed, dated 22.8.1959 from its previous owner. In 1962 she constructed a house on the piece of land purchased by her and since then she was living there peacefully and without any interference from any quarter. As regards, the land acquisition proceeding, she claimed to be totally unaware about it. According to her, no notice was ever given to her in connection with any land acquisition proceeding concerning her land, nor was she given any compensation for the alleged acquisition of the land.

5. The Executive Magistrate by his order, dated 10.12.1983 accepted the case of the proceedee and turned down the prayer for her eviction made on behalf of the Board. The Executive Magistrate held and found that the Board failed to produce any material to show valid service of notice of the land acquisition proceeding on the proceedee; that there was no evidence of any compensation being paid to her and in those circumstances, according to the Executive Magistrate, it could not be said that the land was validly taken into acquisition.

6. It is clear that the Executive Magistrate rejected the Board's petition for the eviction of Sabitri Devi for reasons which are hardly tenable in law. It was not open to the Executive Magistrate to go behind the land acquisition proceeding and to make a declaration rendering the proceedings of the Land Acquisition case to be null and void on grounds of non-service of notice or non-payment of compensation to the land-holder. In case Sabitri Devi wished to challenge the proceedings of the Land Acquisition case it could be only done in accordance with law and before an appropriate forum, in an appropriate proceeding.

7. Be that as it may, the Board then preferred an appeal against the order passed by the Executive Magistrate. The appeal was preferred beyond the statutory period of one month, as provided u/s 60 of the Act. In the memorandum of appeal the original proceedee, Sabitri Devi was impleaded a party-respondent though according to the case of the petitioners she, in the meanwhile had died leaving behind the petitioners as her heirs and legal representatives. The appeal was registered before the Minister Housing as Appeal no. 11 of 1984 and in that appeal the impugned order of eviction was passed on 24.3.1987. According to the petitioners, they were not given any notice in the appeal.

8. The petitioners then filed this writ petition, challenging the order passed by the Minister in appeal. In the writ petition, a further plea was taken on behalf of the petitioners that the house of the petitioners, as also a number of other

houses falling within the large area of acquisition were exempted from the land acquisition proceeding on the ground that those houses were in existence from before. In support of their plea, the petitioners brought on record a map which is said to be prepared for the land acquisition proceeding. In that map within the area of acquisition, houses standing from before are shown by green mark. The house of the petitioners standing on a portion of plot no. 313 is marked as no. 16 and it is noted at the bottom of the map that houses 1 to 17 marked in green were not to be acquired. From the map of the land acquisition proceeding brought before this court, it becomes highly doubtful that the disputed land was part of the Land Acquisition Proceeding and was, in fact, acquired for the Board in that proceeding.

9. From the ordersheet of the case, it appears that having regard to the nature of the controversy, this court made a prolonged effort to finally dispose of this case at the pre-admission stage itself. The effort made by the court at that stage failed simply because no counter affidavit was filed on behalf of the Board and the Board's counsel was not given proper instruction. Finally, by order dated 7.12.1987 this case was admitted for hearing and the operation of the impugned order was stayed. It is unfortunate that even after 12 years the Board has not cared to file any counter affidavit in this case. This court has, therefore, no option but to dispose of the case on the basis of the uncontroverted averments made in the writ petition and the supplementary affidavit. In paras 6 and 8 of the supplementary affidavit, it is definitely pleaded as follows:-

6. That the petitioner made enquiry and found that by Notification issued by the Additional Collector Patna, under the provisions of the Land Acquisition Act part of plot No. 313 has been acquired for the Housing Board. According to the aforesaid Notification the map showing the lands acquired has also been incorporated. The said map specifically shows that there is a house in Plot No. 313 and which has been exempted from the acquisition.

8. That the petitioners assert that their house situated over plot no. 313 has not been acquired and the same has been exempted from acquisition.

10. In these facts and circumstances, this court is constrained to interfere in this matter. The appellate order dated 24.3.1987 passed by the Housing Minister is, accordingly set aside. In case, however, the Board has reasons to believe that the title in the disputed land vests in it, it will be open to it to seek appropriate relief(s) by filing a suit before a civil court of competent jurisdiction. In case, such a suit is filed it will be open to the petitioners to raise all the defence available to them in law, including the plea of adverse possession. If any suit is filed, no observation or remark made either in this order or in the orders passed by the Executive Magistrate and the Minister will stand in the way of the parties and the suit will be decided on its own merit and on the basis of the materials brought before the civil court. In the result, this writ petition is allowed subject to the aforesaid observations and directions.