

(1997) 12 PAT CK 0075
In the Patna High Court
Case No : C.W.J.C. No. 9747 of 1995

Krishna Kumar Sinha and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 19-12-1997

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (1997) 12 PAT CK 0075

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Advocate : Rajendra Prasad Sinha and Manu Shankar Mishra, S.P. Mukherjee, Shanti Pratap and G. Roy, for the Appellant; Ramanuj Prasad Singh, Rameshwar Prasad and Shanti Bhushan Kuar, for the Respondent

Final Decision : Dismissed

Judgement

Aftab Alam, J.—This writ petition arises from a dispute relating to the eviction of the petitioners from a piece of land belonging to the Patna Regional Development Authority, situate near Patna Junction railway station and commonly known as "the Ashok Market" where the petitioners, 22 in number, along with others, were running their shops, hotels, eating houses etc. This writ petition was filed on 16.11.1995 seeking a direction restraining the respondent authorities from demolishing the structures housing the petitioners shop, hotels etc. and from evicting the petitioners from premises in their respective occupations. Two days later on 18.11.1995 a supplementary affidavit was filed bringing on record (as Annexure 10 series), in order to assail them, the notices dated 15.11.1995 asking the petitioners to vacate the land of the Authority failing which they would be evicted without any further notice.

2. This writ petition was then listed for admission on 23.11.1995 but on that date a learned Judge of this court declined to pass any interim order of stay in the petitioners' favour. Later, on 19.1.1996 this writ petition was admitted for hearing, once again without any interim protection to the petitioners. During the

pendency of this writ petition, the petitioners were admittedly removed from the land in question and consequently, Mr. S. P. Mukherjee, learned Senior counsel appearing on behalf of the petitioners, in modification of the earlier reliefs prayed for a direction for restoring the petitioners' possession over their respective premises and for payment of damages for the destruction of their shops etc.

3. It appears that at the beginning of the 1960s large areas of land were taken in acquisition in two land acquisition cases. The acquisitions were made for the widening of the road going to the railway station and for a number of other projects for the development and beautification of that part of the town. The subject of acquisition included houses, portions of which were being used as shops or for carrying on other commercial activities. The acquisition of such houses led to the displacements of a number of persons, in occupation of those houses as owners or tenants, and running their shops etc. there. In their regard the development scheme envisaged the construction of a municipal market complex, on a rather ambitious scale, in which all such displaced shop owners were proposed to be finally accommodated. Till the market complex was constructed a proposal was made to temporarily allow them to run their respective shops, hotels, eating houses etc. in stalls installed over another nearby piece of land (i.e., the land forming the subject matter of dispute in the present case) situate near the Patna Junction railway station and belonging to the Patna Improvement Trust, the predecessor of the present Authority. Stalls on the land in question were accordingly allotted to the petitioners and to similar other persons, displaced by the land acquisition proceedings on the condition, inter alia, that they would pay 25% of the arrears of rent of the acquired house from the date of payment of compensation to its owner(s) till the allottee gave vacant possession of the acquired house to the Trust and paid the balance of the arrears of rent in 12 equal monthly instalments along with the current rent of the stall allotted to him on the land of the Trust. The stalls were allotted on the basis of a deed of licence executed by the Chairman of the Patna Improvement Trust as the licensor and the allottee as the licensee. It was in this manner that the petitioners, or in the case of some of the petitioners their respective fathers, came to occupy the stalls/ premises over the land in question in or about the year 1965.

4. By the deed of licence the allottee was granted permission for the use of the stall on payment of a daily licence fee of 0.69 paise and subject to the terms and conditions enumerated therein. It will be useful here to note the terms contained in clauses 2 and 9 of the deed which are reproduced below :

"2. That the license will be on the basis of a daily license but the period for which the licensee will be allowed to continue in the aforesaid stall shall be at the option of the licensor and the licensee agrees to vacate the stall at any time the licensor wish, and if he does not so vacate, the licensee shall be deemed to be a trespasser, and will be liable for damages at the rate of Rs 10/- per day till the licensor gets actual vacant possession of the stalls."

"9. That in the event of any breach of the condition or conditions herein set forth by the licensee the licensor shall have the right of taking possession of the stall forthwith, without any notice to the licensee, and the licensor shall be at liberty to break open the lock or devise that may be put by the licensee, prepare an inventory of the articles, if any, and remove them anywhere his licensor likes and the licensee agrees to exonerate the licensor of all liability."

5. It is the case of the Authority, the statutory successor of the Patna Improvement Trust that during the past 30 years there has been a very rapid growth in the population of the town and added to this is the many fold increase in the day time population of the town as a result of the construction of the bridge over the Ganges connecting the capital city with North Bihar. It is further stated that the stalls allotted to the petitioners for use in terms of the licence were installed on very small pieces of land but over the years the petitioners had encroached upon much larger areas and had also made unauthorised constructions as a result of which the entire traffic system in that part of the town had collapsed. It is further stated that in the Master Plan prepared by the then Patna Improvement Trust and approved by the statutory authority in the year, 1967, the land in question was marked for development in Scheme No 2 and It was for this reason that the Improvement Trust had granted licences to the allottees on a day to day basis.

6. Having regard to these facts and circumstances the Authority took the decision to undertake an organised development of that part of the town and to provide enough space for the smooth and easy flow of traffic there. It thus became, necessary to have the land vacated from the petitioners. It is also stated that most of the petitioners were in default in payment of even the nominal license fee of 0.69 paise per day. As regards the details concerning the default in payment of the licence fee and the encroachments made by the petitioners, it is stated in para 9 of the counter affidavit as follows:

9. That it is further relevant to state here that none of the petitioners has stated anywhere in the writ application regarding allotted area to them. So far petitioner No. 1 is concerned, he encroached upon 232 sft. land; petitioner No. 2, 1527 sft., petitioner No. 3, 731 sft., petitioner No. 4, 297 sft., petitioner No. 5, 933 sft., petitioner No. 6, 198 sft. petitioner No. 7, 2629 sft., petitioner No. 8, 58 sft., petitioner No. 9 438 sft., petitioner No. 10, 605 sft., petitioner Nos. 11 and 12, 692 sft., petitioner No. 13 is encroacher, petitioner No. 14, 410 sft., petitioner No. 15, 31 sft., petitioner No. 16 totally encroacher, petitioner No. 17, 18 sft., petitioner No. 18 totally encroacher, petitioner No. 19, 678 sft., petitioner No. 20, 74 sft., petitioner No. 21, 131 sft., and petitioner No. 22, 1535 sft. It is also relevant to state here that petitioner No. 1 has not paid licence fee from July, 1993, petitioner No. 3 from April, 1995, petitioner No. 4 from November, 1992, petitioner No. 6 from May, 1995, petitioner No. 7 since more than five years, petitioner No. 8 since January, 1995, petitioner No. 9 since 1965, petitioner No. 14 from April, 1992, petitioner No. 15 since February, 1977, so far petitioner No. 16 is concerned, he is encroacher but he used to pay license fee

without any allotment and due is from May, 1984. So far petitioner No. 18 is concerned, he is encroacher but some time he used to pay rent in the name of one Lakhan Lai, still nothing has been paid by him since September] 1993. Petitioner No. 19 has not paid licence fee since 1994, petitioner No. 20 since July, 1994, petitioner No. 21 since January 1994 and petitioner No. 22 since September, 1995."

7. It is contended on behalf of the Authority that non-payment of the licence fee and the encroachments made by the petitioners were in gross violation of the terms and conditions of the licence and by committing infraction of the terms of the licence the petitioners reduced themselves to the status of trespassers and thus made themselves liable to eviction from the land and the Authority acted accordingly as provided u/s 85 of the Regional Development Authorities Act. It will be useful here to take a look at the provisions contained in Section 85A of the Act which is as follows :

8. It is in the light of the afore-quoted legal provision and the facts and circumstances discussed above that the submissions made by Mr. S. P. Mukherjee appearing for the petitioners in this case is to be considered.

9. Mr. Mukherjee first made the eviction notices dated 15.11.1995 the target of his attack and submitted that the petitioners' eviction from their respective premises on that basis of those notices was wholly arbitrary, bad and illegal. According to Mr. Mukherjee, the notices were quite untenable because they overlooked the fact that the petitioners were bonafide allottees and were rehabilitated on that land after their displacement as a consequence of the acquisition of house/land made earlier in the 1960s. He further submitted that the allegation made in the notices that the petitioners had encroached upon lands in excess of the area allotted to each of them was wholly vague as the notices did not specify the details of the encroachments made by each of the allottee by giving the area and the four boundries of the alleged encroachment. Similarly, no details were furnished regarding the months for which licence fee was not paid by the petitioners.

10. In my considered view, the objections raised on behalf of the petitioners in respect of the notice are to be noted only to be rejected. It may be noted here that it was not contended on behalf of the petitioners that they had encroached upon any portions of land in excess of the area allotted to each of them or that the licence fee was paid upto date by them. Mr. Mukherjee, however, contended that the details of encroachments and the default in the payment of the licence fee should have been stated in the notices and the omission to do so had rendered the notices unsustainable in law. No provision of law was brought to my notice which would require that such details must also be furnished in the notice for eviction.

11. Mr. Mukherjee then submitted that the eviction notices were issued and the petitioners were actually evicted from the land even without passing an order for

their eviction. The submission is factually unfounded. The original record from the Authority was produced before me and from a perusal of the record, it appears that an order of eviction was actually passed on 15.11.1995 following which the eviction notices were issued.

12. Learned counsel next submitted that the -order of eviction was passed without affording the petitioners an opportunity of hearing or to show cause and at no stage in the proceeding the petitioners were allowed any participation. As a corollary to this submission, Mr. Mukherjee further submitted that even if the licences were determined, the Authority could not evict the petitioners forcibly but only through a civil court. He relied upon a number of decisions in support of his submission which I do not consider necessary to refer here because both the submissions over-look the provisions contained in Section 85A of the Act which empowers the Vice-Chairman of the Authority to have the encroachment removed even without any prior notice and by taking the help of the police officials,

13. At this stage, it is further to be noted that the vires of Section 85A is not being questioned in this case.

14. It was then submitted that although the instrument on the basis of which the petitioners were inducted on their respective premises was described as a licence but in fact the relationship between the Authority and the petitioners was that of a lessor and lessees and the Authority was, therefore, lawfully obliged to determine the lease and then to move the civil court for the petitioners' eviction in accordance with law. There is nothing to suggest that the relationship between the petitioners and the Authority was that of a lessor and lessees and I find no substance in the submission that the Authority was first required to determine the lease in terms of the provisions of the Transfer of Property Act and then to proceed with the petitioners' eviction in accordance with law.

15. It was lastly submitted that the action of the Authority in having the petitioners evicted forcibly amounted to an infraction of their right to earn their livelihood guaranteed under Article 21 of the Constitution. An answer to this submission is to be found in the decision of the Supreme Court in *Municipal Corporation of Delhi Vs. Gurnam Kaur*, . For the reasons discussed above, I find that the petitioners have not been able to make out a case for any interference by this Court in this matter. I, thus, find no merit in this application and it is accordingly dismissed, however, without any order as to costs.