

(2015) 10 PAT CK 0028

In the Patna High Court

Case No : Civil Writ Jurisdiction Case Nos. 5418 and 6170 of 2008

Lal Babu Shah and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 01-10-2015

Acts Referred:

Bihar Agriculture Produce Market (Repealing) Act, 2006 — Section 3, 4, 5
Constitution of India, 1950 — Article 31

Citation : (2015) 10 PAT CK 0028

Hon'ble Judges : Mihir Kumar Jha, J

Bench : Single Bench

Advocate : Pramod Rajpati, for the Appellant; Pankaj Majjorwar, AC to SC,
Advocates for the Respondent

Final Decision : Dismissed

Judgement

Mihir Kumar Jha, J—Heard learned counsel for the parties.

2. Before this Court would go into the issues involved in these two writ applications, it would be necessary to record here that initially when these two writ applications were heard on 25.05.2008, relevant portion whereof reads as follows:

"In the first writ application (CWJC No. 5418 of 2008), the petitioner Lal Babu Shah has assailed the validity and correctness of the order dated 29.6.2007 passed by the Sub Divisional, East Muzaffarpur cum Special Officer of the repealed agriculture produce market committee cancelling the allotment of shop No. G-45 and has also sought consequential relief that the possession of such shop should be restored to the petitioner which has been locked under the order of the S.D.O., East Muzaffarpur cum Special Officer on 11.3.2008.

In the second writ application (CWJC No. 6170 of 2008), the petitioner Prem Kumar Choudhary has similarly sought to assail an order of cancellation of allotment of shop No. C-36 passed by Sub Divisional Officer, East Muzaffarpur

cum Special Officer, East Muzaffarpur cum Special Officer Agricultural Produce Market Committee and he too sought a consequential relief of being restored the possession of the said shop which was taken away from him on 10.03.2008 by locking the same under the orders of the S.D.O., East Muzaffarpur cum Special Officer.

It is to be noted that as soon as the counsel for the petitioner had started making submission, Sri B.K. Singh Chouhan, advocate had raised preliminary objection that both the writ applications could not have been heard as copies of the same were not served on him. When this Court wanted to know as to which of the four respondents he was representing, he had frankly conceded that he was not appearing for any one of them but was in fact the retained counsel of Bihar Agriculture Marketing Board and its market committees. According to him, service of copy on the counsel for the Board and its marketing committee was necessary. He has also placed his reliance on the provisions of Section 4 of the Bihar Agriculture Produce Market (Repeal) Act, 2006 to contend that in fact Bihar State Market Board and its marketing committees were still in existence and therefore it was necessary of the petitioners to give prior notice of any writ application relating to matters arising out of Board and its marketing committees.

In the opinion of this Court, such statement of Mr. Chouhan is absolutely misconceived. First of all, the Board and its marketing committees have been given statutory death as would be apparent from Section 3 of the Market Repealed Act which lays down that the Bihar Agriculture Produce Market Act, 1960 and Bihar Agriculture Market Rules, 1975 would stand repealed from the date the 2006 Act came into force. In fact, as the Board and administrative marketing committees had its existence under the 1960 Act and 1975 Rules and they also have now ceased to exist. In this context, Section 4 of the Act being relevant is quoted herein below:

"4. Assets and liabilities of the Board to vest in the State Government.:

(i) On and from the date of coming into force of this Act, all assets, including moveable and immoveable owned, possessed or otherwise claimed to belong to the Board or the committee or samiti shall vest in the State Government. All liabilities including statutory and non-statutory, secured or unsecured shall be the liability of the State Government.

(ii) Immediately after coming into force of this Act, Administrator" and "Special Officer" shall take possession of all the assets immovable including land, building and such other assets which is owned or possessed by the Board or the committee or over which Board or Committee has a legal claim.

Administrator or the Special Officer as the case may be shall take custody of all moveable including liquid assets in Banks, Post Office, or wherever it is kept cash in hand etc. They shall take possession of other moveable assets including vehicles, equipments, plants, furnitures etc.

(iii) Immoveable and moveable assets in possession of Administrator" or Special Officer" as the case may be shall remain in their possession for and on behalf of state government.

(iv) Administrator shall be competent to issue such direction as is deemed necessary and expedient to secure safe possession of immovable and movable assets and such direction shall be binding on the special officer and all others.

(v) The State Government may issue such direction, order, instructions as in deemed necessary and expedient to maintain security and safety of assets or to prevent any kind of injury, damage or dissipation of assets and such direction, order or instruction shall be binding on all concerned including Administrator and Special Officer.

(vi) All immovable assets of the Board or the Committee shall be utilized only for agriculture and farmer relating activities including establishment of agro-processing industries, horticulture, agro-service, agricultural marketing, storage of agricultural produce."

From bare perusal of Section 4 as quoted above and Section 5 under which State Government has been vested power, authority and jurisdiction to issue such direction, order or instruction for securing and achieving object of the 2006 Act, it would be clear that it is the State Government which become answerable for all the earlier assets of the Board and/or its marketing committees. Administrator or the Special Officer only act on behalf of the State Government and therefore if the petitioner has impleaded, the State Government and the Special Officer as party respondents of this writ application and has served the copies of the writ application on the office of Advocate General, it cannot be said that the copies of the writ applications were not served on counsel of the respondents. In that view of the matter, the grievance of Mr. Chouhan of not being served the copies of the writ application is absolutely misconceived.

Coming to the merits of the case, it appears that cancellation of allotment of the shops in favour of the petitioners was done way back in January 2007 and June, 2007 and there is no averments in the writ application as to whether the shops in question have been allotted in favour of any new person so as to create a right in them. The prayer of restoring back the possession of the shops in question would depend on the present status because if the Special Officer in continuation to this earlier orders of cancellation of allotment of shop of the petitioners has already made allotment in favour of the new person, they must be impleaded party to the writ applications. Counsel for the petitioner has himself stated that pursuant to some decision taken on 21.06.2008 i.e. after filing of this writ application, the Sub Divisional Officer, East Muzaffarpur has made allotment of the shop of the petitioners in favour of Mukesh Kumar Singh and Badri Narayan Singh for shop No. G/45 and C/36 respectively. If that be so, the petitioners must bring such subsequent event after filing of the writ application on record, by filing a supplementary affidavit.

Counsel for the petitioner under such circumstances prays for and is allowed to amend the writ application.

At this stage, Mr. Chouhan submits that he will also file an intervention application under Chapter XXI (C) of the Patna High Court Rule seeking impleadment of the repealed agriculture produce market committee. This Court without recording any findings on such submissions would only observe that if such application is filed, the same would be considered on its own merit."

3. Subsequently, by an order dated 23.05.2008, the prayer of the petitioners, for impleading Mukesh Kumar Singh and Badri Narayan Singh being the subsequent settlees of the shops in question, was allowed and notices were issued to both of them by an order dated 23.05.2008. Thereafter, when the writ applications were again taken up for further hearing in the admission matter, a Bench of this Court on 15.04.2009 had passed the following orders :

"The petitioners in both these cases were due allottees of shops in the principal market yard at Muzaffarpur. The principal market yard was created and established under the Bihar Agriculture Produce Market Act, 1960 and the Rules framed thereunder which has long since been repealed. All properties of the market committees including the principal market yard now vested in the Government and the Sub-divisional Officer was made the Special Officer to manage the said properties. It is alleged that both the petitioners were in arrear of rent. Petitioners state that they had deposited the rent prior to action taken by the authorities. Notwithstanding the same, the Sub-divisional Officer-cum-Special Officer first forcibly locked the premises and then forcibly evicted the petitioners and put respondent No. 5 in possession. It is submitted that all these actions are wholly without authority of law rather in breach of law. It is submitted that even where a civil trespasser has once perfected his possession then he cannot be evicted except by orders of Court. The Sub-divisional Officer, East Muzaffarpur had taken law into his own hands and forcibly evicted the petitioners apparently to oblige respondent No. 5 in both cases. Notices have been validly served on respondent No. 5 in both the cases but they have chosen not to appear.

Issue notice to respondent- Sub-divisional Officer, East Muzaffarpur to show cause why this application be not disposed of at the stage of admission itself and why this Court should not direct taking of action against him for taking law into his own hands for which requisites etc must be filed by Saturday (18.04.2009) failing which this application, as against him, shall stand rejected without further reference to the Bench."

4. In fact, the respondent Sub Divisional Officer had appeared and had also filed his counter affidavit whereafter the cases have been heard on 22.07.2014, when learned counsel for the State was directed to seek instruction and for apprising this Court as to whether after cancellation of allotment of shops of the petitioners, the fair rent of the shops was determined before allotment of those

shops to the private respondents in these cases. The Sub Divisional Officer-cum-Special Officer, East Muzaffarpur was directed to disclose the present status of the allotment of all the shops of the erstwhile Agriculture Produce Market Committee, Muzaffarpur. Subsequently, parties were heard on 16.09.2014 and the judgment has been kept reserved.

5. There is no dispute that the petitioners in both the cases were allottees of the shops by the erstwhile Agriculture Produce Market Committee, Muzaffarpur and that yet they became defaulter in payment of rent as also they have not renewed their licences. They were given notice on 10.10.2006 and 09.01.2007 asking them to show cause as to why the allotment of their shops should not be cancelled and when the petitioners did not file their show cause reply their allotment was cancelled by an order dated 29.06.2007.

6. It is the case of the petitioners that subsequently, on 20.07.2007, the petitioner Lal Babu Shah had deposited arrears of rent of Rs. 5946/- whereas in the case of petitioner Prem Kumar Choudhary even such arrears of rent to the tune of Rs. 8092/- was not deposited.

7. Learned counsel for the petitioners, however, assails the order passed by the Special Officer on the ground that the Sub Divisional Officer had no jurisdiction to cancel the allotment of the shops of the petitioners nor he could have locked the shops of the petitioners and ultimately dispossessed them from the shops. Reliance in this connection has also been placed by them on a judgment of the Apex Court in the case of Bishan Das and Others Vs. The State of Punjab and Others, AIR 1961 SC 1570 : (1962) 2 SCR 69 .

8. Per contra, learned counsel appearing on behalf of the respondents have taken a stand that after the repeal of Bihar Agriculture Produce Market Act, 1960, the Sub Divisional Officer, having been appointed as Special Officer, had taken action for realization of the rent as also cancellation of the allotment of shops of the petitioners and thereafter on the basis of newspaper advertisement, had made fresh settlement of all the shops in favour of the successful bidders with whom agreement was also entered into.

9. Amongst these pleadings, the first and foremost question would be as with regard to taking of action with regard to cancellation of allotment and eviction of the petitioners.

10. As noted above, under Section 4 of the Bihar Agriculture Produce Market (Repeal) Act, 2006, the assets and liabilities of the Board and its Market Committees were to vest in the State Government free from all encumbrances. To that extent, Section 4 of the repeal Act 2006 having been already quoted above, being part of the order of this Court dated 20.05.2008, would not require of its being again reproduced here but then it would be clear that while the property of the Board and its Market Committee had been vested in the State Government, the Administrator/Special Officer were empowered to take possession of all the assets.

11. Admittedly, the Sub Divisional Officer was a Special Officer and they were to remain in possession of the properties of the Board and its Market Committee including the shops in question on behalf of the State Government. It is here that this Court would find that the State Government had also issued direction in terms of Section 5 of the Repeal Act, 2006 which reads as follows:

"5. Power of State Government

"The State Government shall have power, authority and jurisdiction to issue such direction, order or instructions as is deemed expedient, to secure achieving object of this Act."

12. The direction issued by the Agriculture Production Commissioner, Patna in his letter dated 13.09.2006 (Annexure-A to the Interlocutory Application), reads as follows:

13. Apart from the above, on 26.03.2007, the Administrator had also issued office order constituting the allotment committee and fixing the norms of the allotment of the shops vide his office order No. 70 dated 26.03.2007, which reads as follows:

14. In pursuance of the aforementioned direction of the State Government in the letter of the Agriculture Production Commissioner dated 13.09.2006 read with order of the Administrator dated 26.03.2007, the Sub Divisional Officer, East Muzaffarpur in capacity of Special Officer, had issued a notice for settlement of 35 shops and settlement was made in favour of respondent No. 5 in both cases so far it relates to shops in question belonging to the petitioners. In fact, the agreement executed by the Sub Divisional Officer, East Muzaffarpur with respondent No. 5 of both the cases dated 13.05.2008 has also been brought on record by way of Annexure-E to the counter affidavit which will go to show that procedure of allotment of shops was followed in letter and spirit.

15. In presence of all these explanation furnished by the respondent, this Court would find it difficult to interfere with the cancellation of the allotment of shops to the petitioners when it is also an admitted position that the petitioners had not made payment of rent for months and years together.

16. In the present case, both the petitioners were having their allotment of shops on the basis of year to year renewal of licence and it is a matter of record that after the Repeal Act, 2006 came into force, their renewal of licence was also not made from the year 2006-07 and they were asked to show cause as to why their earlier allotment of shops should not be cancelled.

17. As noted above, the petitioner Lal Babu Sah (C.W.J.C. No. 5418 of 2008) did not file a show cause reply whereas the petitioner Prem Kumar Choudhary (C.W.J.C. No. 6170 of 2008) is claimed to have filed his show cause reply. In that view of the matter, this Court would not find any error in the impugned order cancelling the allotment of shop of the petitioner.

18. As noted above, the Sub Divisional Officer being the Special Officer was authorized, both under Repeal Act, 2006 as also under the direction issued by the State Government in the letter of the Agriculture Production Commissioner to look after the interest of the properties including the shops in question of the Agriculture Produce Market Committee of the State Government, the action of the Sub Divisional Officer in capacity of the Special Officer in cancellation of the allotment of shops cannot be said to be without jurisdiction.

19. This Court has also carefully perused the order of allotment of shops in favour of the respondent No. 5 and having regard to the fact that it was done in a transparent manner by way of issuance of an advertisement in the newspaper. It would also not find any error in such allotment of shops in the name of respondent No. 5 and other persons. The reliance placed by the learned counsel for the petitioners on the judgment of the Apex Court in the case of Bishan Das (supra) will have no application to the facts of the present case.

20. Let it be noted that the judgment rendered by the Apex Court in the year 1961 when right to property was a fundamental right can no longer be made applicable to the facts of the present case in presence of not only abolition of Article 31 of the Constitution of India from the ambit of fundamental rights but by making a provision under Article 30A of the Constitution of India to the effect that no person shall be deprived of his property save by the authority of law. Here in the present case, by virtue of Repeal Act and the direction issued by the State Government in form of letter of the Agriculture Production Commissioner, this Court would not find any error in taking action against the petitioners who were defaulters and were also not having the renewal of their allotment of shops in the year 2006-07.

21. Thus, for the reasons indicated above, both these writ applications must fail and are, accordingly, dismissed.