
(1996) 05 PAT CK 0043
In the Patna High Court
Case No : M.J.C. No. 446 of 1993

Indradeo Singh

APPELLANT

Vs

The Bihar State Housing Board and Others

RESPONDENT

Date of Decision : 01-05-1996

Acts Referred:

Bihar State Housing Board Act, 1982 — Section 59

Citation : (1996) 1 PLJR 886

Hon'ble Judges : S.N. Jha, J;Aftab Alam, J

Bench : Division Bench

Judgement

1. This application has been filed for initiating contempt proceeding against the opposite parties for violation of the order of this Court dated 5.7.1994 passed in C.W.J.C. No. 10904 of 1993. By the said order while allowing the writ petition a direction was issued to the Managing Director of the Bihar State Housing Board (in short the Board) to give effect to the decision of the Board as contained in Annexures 4 and 5 to the writ petition Copies of the letters/notice, containing the aforementioned decision of the Board have been enclosed with the contempt application marked as Annexures 2 and 3.

2. The Managing Director of the Board has filed show cause. By order dated 17.11.95 a Bench of this Court rejected the show cause and directed the Managing Director to appear with the relevant records and another show cause called "additional show cause" was thereafter filed on 18.11.95. It appears from the order passed on 18.11.95 that this Court was not satisfied with that show cause either but since the presence of Respondent No. 7 of the connected writ petition, namely, Udai Kumar was considered to be necessary, hearing of the case was adjourned with direction to the Managing Director to remain present in person. The Petitioner was permitted to add Udai Kumar as Opposite Party No. 3. At the next hearing which took place on 4.12.95, statement was made by the Managing Director that he has" passed an order on 2.12.95 calling upon opposite part No. 3 to remove the encroachments. In view of the said statement the

personal appearance of the Managing Director was dispensed with till further orders. Time was, however, allowed to opposite party No. 3 to file his show cause. Opposite party No. 3 has since filed his show cause and a supplementary show cause. Parties have been heard.

3. The origin of the dispute can be traced to allotment of plot No. F 423 at Lohianagar in the town of Patna in favour of opposite party No. 3 and the encroachment of the land adjacent South thereto, which was earmarked for road purposes, by none else than the employees of the Board themselves, who had been illegally allotted plots out of the land which had been earmarked for park in the lay-out plan. In course of time, however, the Board passed orders canceling the allotment of those plots. One of the allottees Gyaneshwar Pd. Singh filed writ petition in this Court, C.W.J.C. No. 6068 of 1983, in which an order of status quo was passed. Opposite party No. 3 filed intervention petition which was allowed on 15.2.85. The interim order was modified to the effect that all constructions on southern boundary of plot No. 423 should be cleared. The said writ petition was ultimately disposed of on 8.12.86 more or less in the same terms. It was observed that the order of status quo should be understood to mean that the authorities of the Board shall be at liberty to clear any encroachment on the public road and, if necessary, to file application before the competent authority in accordance with the provisions of Section 59 of the Bihar State Housing Board Act, 1982 for removal of the encroachment.

4. It appears that in the meantime on 3.9.85 and 29.3.86 letters/notices as contained in annexures 2 and 3 to the present application, referred to above, were issued to opposite party No. 3 asking him to remove the encroachment which he has made upon portion of plot No. F-423 situate adjacent North to plot No. F-423. It appears from the said two letters/notices that although as per the allotment letter opposite party No. 3 has been allotted an area of 801 (North-South) x 45" (East-West), actual possession had been delivered to him over an area of 70" x 45" on account of the encroachment made upon the southern portion of plot No. 423 (in the manner stated above), but he had encroached portion of plot No. 429 to make up the loss of the area. It further appears that as a result of the encroachment made on the south of the block of 4 plots, namely 422, 423, 424 and 425, the North-South length of different plots including plot No. 429 (situate North of plot No. 423) had been reduced. Treating the aforesaid encroachment as a fait accompli, as result of the reduction of the area, the North-South length of plot No. 429 was reduced to 71.3 ft, but because of the encroachment made by opposite party No. 3 upon the southern portion of plot No. 429, a lesser area of land was left. The Petitioner of the connected writ petition as well as the" present application is allottee of this plot i.e. plot No. 429.

5. After the aforesaid letters/notices dated 3.9.85 and 29.3.86 were issued to opposite party No. 3, he filed a contempt petition being M.J.C. No. 203 of 1987. By order dated 12.8.87 the contempt petition was withdrawn. This Court, however, observed that it will be open to him to pursue his remedy by filing a

separate writ petition or a suit. Opposite party No. 3 filed writ petition being C.W.J.C. No. 4621 of 1987. During the tendency of the case, however, pursuant to the resolution of the Board dated 11.7.91 a portion of plot No. 422A measuring 70.8 ft. (North-South) x 15 ft. (East- West) was allotted to him on 12.9.91. It is clear from the contents of the resolution and other documents on record that the said plot I.e. plot No. 422A was allotted to him to "compensate" for the loss of the area which he had suffered in plot No. 423 on account of the encroachment on its southern portion. The writ petition in the circumstances was withdrawn on 19.9.91.

6. Although opposite party No. 3 thus managed to obtain another plot of land measuring 1060 ft. in the aforesaid manner, he did not vacate the portion of plot No. 429 upon which he had made encroachment as stated above. The petition in these circumstances tiled the connected writ petition i.e. C.W.J.C. No. 10904 of 1993 for direction to the Board to deliver the possession of land appertaining to plot No. 429 as per the allotment order and the agreement, which was disposed of by order dated 5.9.94 with a direction to the Managing Director of the Board to give effect to the decision as contained in letters/notices, marked annexures 4 and 5 to the writ petition and annexures 2 and 3 to the present application.

7. The stand of opposite party No. 3 In substance is that he has paid the price of plot No. 423 having dimension 80 ft. x 45 ft = 3600 sq. ft. or 2.65 Kathas and is entitled to retain the possession of the said area. The Board curiously enough does not deny the entitlement of the claim of the opposite party No. 3. According to it, however, in terms of the two allotment letters with respect to plot No. 423 and 422A, he is entitled to possession over 4660 sq.ft. (3600+1060) but he is in actual possession over 4721.51 sq.ft. i.e. 61.51 sq.ft, beyond his entitlement, which alone constitutes the area of encroachment.

8. As indicated above, plot No. 422A was allotted to opposite party to compensate for the loss of the area in plot No. 423. It is significant to mention here that al; though, like opposite party No. 3, the other allottees of the contiguous plots had also, suffered loss of area on account of encroachment on southern portion, the case of opposite party No. 3 alone was considered. The reason is not far to seek. He at the relevant point of time was attached with the Minister Incharge, Housing and Urban Development. We are satisfied on the basis of the document on record that opposite part No. 3 abused his position of being security staff of the then Minister Incharge and managed to get the favour of the Board. There does not appear to be any justification to compensate only one of the allottees for the loss of area. But since allotment of plot No. 422 was not the subject matter of challenge in the connected writ petition nor any challenge thereto has been in the present application, we do not propose to examine the propriety of the action of the Board in this regard.

9. We are satisfied that plot No. 422A was allotted to opposite party No. 3 to compensate him for the loss of area in plot No. 423; which as per the allotment letter measured 3600 sq.ft. but as the position stands, by reason of

encroachment which he made upon southern portion of plot No. 429, he continues to be in occupation of " more than 3600 sq.ft., besides 1060 sq.ft. of plot No. 422A. According to the Petitioner, the encroachment upon plot No. 429 measures 10.3 ft. (North-South) x 45 ft. (East-West). As a result of the encroachment made, by the opposite party the size of plot No. 429 has been reduced to 61.3 ft. (North-South), although as per the earlier decision of the Board the revised/reduced area of plot No. 429 should measure 71" x 45". The opposite party No. 3 has taken the stand that possession over 3600 sq.ft. (80" x 45") was delivered to him on 10.2.81 but it is obvious that he is only trying to take advantage of the area shown in the document. From the documents on record there is no doubt that as a result of the encroachment on the southern side possession over an area of 70" x 45" only could be given to him. It is another matter that he encroached southern portion of plot No. 429 belonging to the Petitioner and in this manner, on his own, tried to compensate him for the loss. But having been already compensated by allotment of plot No. 422A on undertaking that he would withdraw the writ petition, namely C.W.J.C. No. 4621 of 1987 (challenging the impugned letters/notices asking him to remove the encroachment) which meant, in effect and substance, that he would comply with the notice on his own, we do not think, he is entitled to claim possession over 3600 sq. ft. by including portion of plot No. 429 as part of plot No. 423.

10. Counsel for the opposite party No. 3 during course of hearing tried to highlight the fact that he has already paid the full price i.e. Rs. 19,085.45 of plot No. 423 having an area 3600 sq.ft. for which a deed of lease in perpetuity has been executed and, therefore, entitled to retain possession over the entire land. The plea, in our opinion, is most unreasonable. Going by the prevailing market rates, the price of the land measuring 2.65 kathas should be in the vicinity of Rs. 10 Lacs or so and, therefore, we do not think it is reasonable on his part to insist that he cannot be asked to vacate the portion which admittedly is a part of plot No. 429. While considering the claim of opposite party No. 3 this Court cannot ignore the claim of the Petitioner. We have an uneasy feeling which we would like to express before proceeding further, that opposite party has already been given a favoured treatment by the Board. Allotment of plot No. 422 and execution of deed of lease in perpetuity are examples of the favour shown to him. Counsel for the Board admitted that this is not the practice in the Board. That Opposite party No. 3 continues to exercise clout and influence even now is clear from the evasive and contradictory stand taken in the show cause that only 61.50 sq.ft. area of plot No. 429 has been encroached upon for removal of which, order has been passed on 2.12.95, as if this is for the first time that such order is being passed, without taking further action to give effect to even that order. We were told that opposite party No. 3 is still attached with VIP security.

11. The connected writ petition was disposed of with a direction to the Managing Director to give effect of the decision of the Board dated 3.9.85 and 29.3.86. The said decision was challenged by the opposite party in C.W.J.C. No. 4621 of 1987, which was withdrawn. The circumstances in which the petition was withdrawn

have been mentioned above. Having already got the additional plot, which no other allottee similarly situate was given, we have no doubt in our mind that opposite party is not entitled to retain possession over encroached portion and the Board is bound to, give effect to its decision dated 3.9.85 and 29.3.86 by evicting opposite party No. 3 from the encroached portion of plot No. 429. It is admitted position that the said encroached portion is still vacant and no construction whatsoever has been made by opposite party No. 3.

12. In these circumstances, we called upon Mr. V.N. Sinha, learned Counsel for opposite party No. 3 to advice his client to himself vacate the portion and thus spare this Court of the avoidable wastage of time and himself (opposite party No. 3) from the disgrace which he might suffer when the encroachment is removed by use of force. Mr. Sinha after taking instructions informed the Court that his client would face eviction rather than vacate the portion himself.

13. We, accordingly, direct the District Magistrate and the Senior Superintendent of Police, Patna to get the encroachment measuring 10.3 ft. (North-South) x 45 ft. (East-West) on the southern portion of plot No. F-429 situate in Lohianagar removed and deliver possession thereof to the Petitioner by 18.5.96. The Managing Director of the Bihar State Housing Board shall assist the officers deputed by the District Magistrate and Senior Superintendent of Police in identifying the encroached portion and give such other assistance as may be required. It will be open to opposite party No. 3 to remove the encroachment himself in the meantime.

14. The stand of the Managing Director, Bihar State Housing Board that the encroachment-made by opposite party No. 3 measures only 61.51 sq. ft. in the circumstances mentioned above, is rejected Although as stated above, he took the stand at the stage of hearing before this Court on 4.12.95, that he has already passed an order requiring opposite party No. 3 to remove the encroachment, we do not think merely passing such an order without giving effect to it, amounts to compliance of the Court's order, prima facie, we are of the view that the Managing Director is guilty of contempt and he will be well advised, therefore, to purge himself of contempt by taking all steps as may be necessary to remove the encroachment by giving assistance to District administration of otherwise, failing which this Court will consider the question of passing an appropriate order at the next hearing.

15. This matter will be on Board for further hearing on 21.5.1996.

16. Let a copy of this order be handed over to Mr. Ganga Pd. Roy, Additional advocate General No. Ill for communication to the District Magistrate and Senior Superintendent of Police, Patna and Mr. Shravan Kumar, counsel for the Housing Board.