

**(1996) 08 PAT CK 0058**

**In the Patna High Court**

**Case No :** Letters Patent Appeal No. 172 of 1988

Rajendra Pd. Sinha and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

**Date of Decision :** 21-08-1996

**Acts Referred:**

Bihar State Housing Board Act, 1982 — Section 29, 46  
Constitution of India, 1950 — Article 226, 227

**Citation :** (1996) 2 PLJR 550

**Hon'ble Judges :** S.N. Jha, J;M.Y. Egbal, J

**Bench :** Division Bench

**Advocate :** Ram Suresh Roy, Arjun Prasad Singh and Abhay Kumar Roy, for the Appellant; None, for the Respondent

**Final Decision :** Allowed

## Judgement

S.N. Jha, J.—This letters patent appeal is by the unsuccessful writ Petitioners. They had filed the writ petition, CWJC No. 333 of 1982, for setting aside the order of the Chairman, Bihar State Housing Board, ("the Board" in short), and the consequential settlement of a piece of land, numbered as plot No. 126A, extending over portion of public road in "U" Sector of Kankarbagh Colony, one of the quarters of Patna Town, in favour of Respondent No. 6, Smt. Mahalakshmi Devi. The facts of the case, shortly stated, are as follows.

2. The Housing Department of the Government of Bihar prepared a plan for development of a housing colony at Kankarbagh in the year 1966-67. The area was divided into several sectors. In Sector "U" provision was made for a park surrounded by roads on all sides. While the road running on the southern side of the park was to have width of 40ft., the roads on other sides including the northern side were to be 30ft. wide. The Housing Department constructed houses of different types meant for different categories of applicants, such as High Income Group (HIG) Category, Middle Income Group (MIG) Category and so on. MIGH Nos. 125 and 124 were initially settled with the two writ Petitioners on

rental basis. They came in possession of the respective houses in December, 1968 and January, 1969. In course of time, the Bihar State Housing Board was established under the Bihar State Housing Board Ordinance/Act in 1972. The two houses were settled in favour of the writ Petitioners on hire-purchase basis on 1.7.1974. MIGH 126 which is situate south of MIGH Nos. 124 and 125, across the road, intervened by a strip of land called residuary plot, was settled in favour of Respondent No. 6.

3. According to the writ Petitioners as the road in question running between MIGH Nos. 125 and 124 (Up to MIGH 119) on south and MIGH 126 and park on north was not being metalled by the Board, a joint petition was filed by the owners of MIGH Nos. 119 to 125 to the Chief Engineer of the Board of 17.7.1979. They thereafter learnt on 27.12.1979 that attempt was being made to settle the aforesaid piece of residuary land situate adjacent north of MIGH 126 by encroaching upon portion of the public road on north of it-running east to west-in favour of Respondent No. 6. They made representation before the Chairman of the Board not to settle any portion of the road in favour of any individual. After a somewhat long drawn process (details whereof are not necessary for the purpose of this appeal), when all attempts to stall the settlement of the said residuary land along with portion of road proved futile, the writ Petitioners preferred a petition under Articles 226 and 227 of the Constitution, CWJC No. 1262 of 1981, in this Court on 17.4.81. In that writ petition the Board filed counter affidavit denying that there was any attempt to settle the land with any individual. In view of the stand of the Board, the writ petition was dismissed on 12.5.1981 with observation that the Petitioners had no cause of action for the present and when such pause of action arises they may move the Court again. Notwithstanding the aforesaid stand, the officers of the Board proceeded with the process of settlement and ultimately the piece of land, numbered as MIGH 126A was settled with Respondent No. 6. Deed of settlement was executed on 21.10.81 and registered on 22.10.81.

4. From the certified copy of the aforesaid deed copy whereof, is at Annexure 15 to the writ petition, it appears that the dimensions of MIGH 126A were shown as 86 ft. east to west on the northern side, 89 ft. 3 inches east to west on southern side, 37ft. north to south on eastern side and 13ft. north to south on western side. It is relevant to mention here that according to the lay-out of the plots as shown in the Master Plan, the said residuary land (which was later converted into MIGH No. 126A) had a width of only 13 ft. on eastern side, 3 ft. on the western side and length of about 45 ft. on northern and southern sides. During course of hearing of the writ petition, the learned Single Judge by order dated 10.12.87 directed the Chief Engineer of the Building Construction Department, Govt. of Bihar and the Chief Engineer of the Bihar State Housing Board to make spot measurement and prepare a map indicating the correct location of MIGH Nos. 124, 125 and 126, the adjoining lands and roads and submit report. From the enquiry report dated 5.2.88 submitted by the said two officers, which is on the records, it appears that width of the road intervening between MIGH 124 and

125 on the one side and MIGH 126A on the other is 8ft. 9 inches on western point and 10ft. on the eastern point. The width of the same road south of plot Nos. MIGH Nos. 119 to 123, i.e. beyond MIGH 124 was shown to be 20 ft.

5. A bare glance at the sketch map, prepared on scale, enclosed with the enquiry report shows that these plots/houses, namely, MIGH 119 to MIGH 125 have been built in the same alignment and the road running east to west on their south are in straight lines. If the two sketch maps-one prepared on the basis of lay out plan and the other prepared on the basis of the spot enquiry of the said two Chief Engineers, are placed side by side and compared it becomes crystal clear that plot No. MIGH 126A extends over portion of the road reducing its width to 8.9 ft. on one side and 10 ft. on the other. Elsewhere the same road has width of 20 ft. It is relevant to mention here that as per the said enquiry report dated 5.2.88 and the sketch map annexed thereto, it appears that plot No. MIGH 126A was found to have following dimensions 86 ft. on north, 81.2 ft. on south, 37.6 ft. on east and 15.6 ft. on west. While as per the lay out plan, as stated above, the residuary land/plot had width of only 13 ft. and 3 ft. on east and west, respectively and length of 45 ft. It is obvious that the enlargement of the area was at the cost of the road.

6. Another interesting feature of the case, as it appears from the said report and sketch map, is that encroachment had been made not only on the northern side (of MIGH 126) but also on its eastern side. But since the writ Petitioners, were concerned only with the encroachment of the road portion falling south of their houses they naturally did not make any grievance in that regard. That nevertheless shows the conduct of Respondent No. 6. The difference between the encroachment of road portion on the northern side and eastern side is that while the northern side has been encroached upon with the active, overt consent of the Board, by reason of inclusion of the road portion part of newly carved out MIGH 126A, the other one, i.e. encroachment on the western side, appears to have been made on her own.

7. Counsel for the Appellants during course of hearing highlighted the fact that Respondent No. 6 managed to win over the Board's officials including its Chairman, as her son Ashok Kumar Singh arrayed as Respondent No. 7, happens to be an IAS Officer and at the relevant time was posted as Additional Secretary in the Husbandry Department of the State Government. It is suggested, and in the facts of the case there appears to be ample basis for the same, that Respondent No. 7 utilised his contacts and influence and succeeded in not only getting the adjacent strip of residuary land settled with her but also getting portion of the public road included therein.

8. The stand of the Board as evident from its counter affidavit is that the disputed land was never earmarked as road, the representation in the map or plan are mere qualitative indication of plots, road and open space displaying the intention of the planners and at no stage any decision had been taken specifying the width of the road as 39 ft. or 20 ft. or 10 ft. at or near the disputed land. The

Board is entitled to re-lay out its plan u/s 29(b) of the Bihar State Housing Board Act, and even if a wider road was in contemplation at any time in the past, it was within its jurisdiction to reduce the same in public interest. About the settlement of the MIGH 126A, the case of the Board is that Respondent No. 6 had made application for settlement of the residuary land lying in between MIGH 126 on the one side and MIGH Nos. 124 and 125 on the other, which was examined at various stages and ultimately pursuant to the order of the Chairman it was decided to settle the land.

9. From paragraphs 14, 15 and 16 of the counter affidavit of the Board it is clear that officials of the Board were conscious of the position that the proposal regarding settlement of the residuary land involved settlement of portion of the road and, therefore, objection had been raised from some quarters. In this connection it is interesting to find that the Superintending Engineer, Patna Circle of the Board during course of examination of the matter had gone even to the extent of saying that there was no need of Anr. road on the north-eastern side of MIGH 126 (meaning thereby, the southern side of MIGH 124 and 125) and if at all it was considered necessary, standard size 6 ft. wide footpath could be left. The Chief Engineer who appears to have been opposing the proposal finally gave in, agreeing to leave aside 10 ft. wide road and settle the rest with Respondent No. 6.

10. The learned Single Judge in his impugned judgment has almost in toto accepted the case of the Board and held that the disputed land was never earmarked for any road or part of road at any stage. The map/plan contained mere qualitative indication of plot, roads and open space displaying the intention of the planners but at no stage any decision was taken specifying the width of the road. The learned judge also held that the Board, in any event, has the authority to lay out and re-lay out the plan. The Engineers of the Board were competent to revise plan and design and the decision of the Chief Engineer in the present case in regard to futility of a wider road and leaving only 10 ft. road at the place in question was in consonance with the provision of Section 29(b) and Section 46 of the Act. The learned Judge also held that such re-lay out/alteration was in the interest of the Board, allottees and the public because "settling such residuary land for useful purpose and saving it from wasting land was itself in public interest".

11. Having regard to the situation, size and shape of the residuary land/plot as it originally stood, on the adjacent north of MIGH 126, I would rather agree with the learned Single Judge that it could not have served any useful purpose. If the Board, therefore, had decided to settle only the residuary land measuring 3 ft. wide on the western side and 13 ft. wide on the eastern side, as it originally stood, no objection possibly could be taken by any person. But, as seen above, in the name of and on the pretext of settlement of the said residuary land, things were maneuvered in such a way that a larger area was ultimately settled with Respondent No. 6 on the basis of bogus, untenable and collusive opinions and

reports of "friendly" officers of the Board to the effect that leaving 20 ft. wide road would be futile. The officers made it appear as if only need of Respondent No. 6 was to be considered. The fact that road in question provided a thoroughfare to the residents and public at large was kept completely aside. The writ Petitioners' case in this regard was that they wanted to construct their garage on the rear side but with a 10 ft. wide road opening, that was not possible. Curiously though at the time of settlement of residuary land (MIGH 126A), the road portion, i.e. northern side of MIGH 126A was described as "Board's land" and not as road.

12. What is more disturbing is the fact that when the writ Petitioners filed the previous case (CWJC 1262/81), plea was taken in the counter affidavit, filed on 10.5.81, that there was no proposal to settle the land with the Respondent No. 6 and "question of settlement of land earmarked for road does not arise". But it appears from the deed of agreement, as regards MIGH 126A, with Respondent No. 6 that she had made application for settlement on 28.2.81 itself. This fact was completely suppressed from this Court. On that premise the writ petition was dismissed. The learned Single Judge instead of considering this aspect, observed, "it was after observing all other steps that Chairman of the Board directed settlement to be made in favour of Respondent No. 6 in March, 1981". If that was so, how could the Board take the aforesaid plea in the previous writ petition on 10.5.81. This, therefore, appears to be a case of not only mala fide on facts but also mala fide in law.

13. The fact that portion of the road was also settled as part of MIGH 126A is clear from the averment made in paragraph-15 of the counter affidavit as hereunder:

That the matter was again technically examined by the Engineers of the Board who finally recommended for leaving aside 10ft. wide land for road to the proposed park land and to settle the rest with Respondent No. 6.

(emphasis added)

It is not in dispute that the width of the same very road towards east beyond MIGH 124, 125 and 126 is 20 ft. as found by the Chief Engineer, Building Construction Department and Chief Engineer, Bihar State Housing Board in their report dated 5.2.88, referred to above. It is difficult to find any rational basis for holding that at a particular point of the road, falling north of MIGH 126/126A (or south of MIGH 124 and 125), there was no need to have 20ft. wide road while allowing the same width on the other end of the same very road. I have no manner of doubt that the officers had connived with Respondent No. 6, at the instance of Respondent No. 7, and submitted favourable reports in order to extend undue advantage to her.

14. It would not be out of place to mention here that in the deeds of agreement executed by the Board in favour of the writ Petitioners the southern boundary was shown to be road. The same is the position in respect of other MIG houses,

namely, MIGH 119H to 123H. Road has been shown not only in the Master Plan of the area but also in the aforementioned report dated 5.2.88. It cannot, therefore, be said that the Petitioners' claim about the width of the road being 20 ft. was an ipse dixit and has no basis.

15. The learned Single Judge has referred to the provisions of Section 29(b) and 46 of the Housing Board Act and held that it was within the competence of the Board to re-lay out the plan. Firstly, no resolution of the Board in the matter of any "re-lay" out of the plan has been brought on record. Secondly, even if it is held that making settlement of road or other land of public utility amounts to "relaying out" of the plan, the same has to be in public interest, and not in any individual's interest. The learned Single Judge in para-10 of his judgment observed that "settling such residuary lands for useful purpose and saving it from wasting land was itself in public interest".

He, however, did not advert to the question whether settlement of portion of road was also in public interest. The observation of the learned Single Judge that settlement of residuary land for useful purpose saves it from being wasted and therefore is in public interest, as a general proposition, cannot be said to be wrong. But if portion of road is also included in the residuary land and then made into a full fledged plot and thereafter settled, such settlement cannot be said to be in public interest. That may serve the private interest of individual in whose favour settlement is made but that would certainly be at the cost of the public interest.

16. In para-7 of the judgment the learned Single Judge held that open space indicated in the development plan as "U" was relaid out, vide drawing No. 15 of 1968-69 and part of the space was utilised for construction of 11 MIG houses, two of which were allotted to the writ Petitioners and one to Respondent No. 6.

It is the admitted case of parties that the writ Petitioners were allotted the houses, initially on rental basis, in 1968. According to them, the construction of the houses was complete during 1966-67 for which application had been invited in April, 1965. The particulars of the application of writ Petitioner No. 1 (application No. 348 along with challan No. 24 dated 24.4.65, showing deposit of fee of Rs. one hundred, was filed on 26.4.65) have also, in fact, been given. From Annexure-2, which is an official document containing "Abstract of Development Plan of Kankarbagh For "U" Sector from Drawing No. 254 (66-67) approved by the Housing Development Board, in July, 1966," It is abundantly clear that re-lay out, if any, had been made in 1966 itself, providing for eleven more MIG houses.

17. In the present case, thus there cannot be any doubt, and this appears to be "virtually an admitted position, that the land situate south of MIGH 124 and 125 were meant for road. As a matter of fact, (sic)s noticed above, the proposal to settle the residuary land in favour of Respondent No. 6 was examined from that very angle. It was at that stage that the Engineers (sic) pinned that there was no

need for having road as wide as 20 ft. and 6ft. wide foot (sic)path could do.

18. It is significant to mention here that according to Bye-laws 33.2.1 of the Planning Standards and Building Bye-laws, 1981 framed by the Patna Regional Development Authority under the Bihar Regional Development Authority Act, 1981, the minimum width of the service road cannot be less than 7 meters which comes to more than 20 ft. In view of the said provision, this Court has held that any construction made without leaving 20 ft. wide road would be treated as "deemed encroachment" and liable to be demolished. If, thus, the law does not contemplate road having width of less than 7 meters, it is wholly ununderstandable to me as to how the Board could reduce the width of the road to 10 ft. and settle the rest with Respondent No. 6. The impugned action of the Board, therefore, was also in violation of the provision of the Regional Development Authority Act and the bye-laws framed thereunder.

19. In the above premises of fact and law I am unable to uphold the judgment and order of the learned Single Judge. I am satisfied that the writ Petitioners had made out a case and the learned Single Judge committed error in refusing to annul the settlement of the disputed plot bearing MIGH 126A to the extent of encroachment of road portion, and pass consequential order in that regard.

20. In the result, this appeal is allowed. The judgment and order of the learned Single Judge dated 7.12.88 is set aside. The settlement of MIGH 126A beyond the area of the residuary land shown in the Master (Development) Plan, i.e. beyond 13 ft. and 3 ft. wide strip of land, situate adjacent north of MIGH 126 is quashed, The Board is directed to demolish any structure, whether permanent or temporary, standing on the impugned portion by use of force, if necessary, within four weeks. The District Administration represented by the District Magistrate, Patna and Sr. Superintendent of Police, Patna are directed to provide necessary help and protection to the Board's officials in getting the structures, if any, demolished. The writ petition preferred by the Appellants (CWJC No. 333 of 1982) thus stands allowed. The Board will pay cost of the proceedings before the Single Judge as well as this appeal to the Appellants, quantified at Rs. 5000/- (five thousand) only.

21. Before I part with this judgment, I would mention that this appeal was heard ex parte. Respondent Nos. 6 and 7 did not put in appearance at all in the appeal despite valid service of notice on them. And so far as the Board and its officials, being Respondents Nos. 2 to 5 are concerned, their counsel did not appear although the hearing of the case was postponed for the day on 30.7.96 to enable them to appear and assist the Court.

M.Y. Eqbal, J.

22. I agree.