
(1969) 04 PAT CK 0004
In the Patna High Court
Case No : C.W.J.C. No. 1303 of 1968

Rajendra Prasad Kesri and Another

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 23-04-1969

Acts Referred:

Constitution of India, 1950 — Article 14, 19
Land Acquisition Act, 1894 — Section 11, 16, 47

Citation : (1969) 17 BLJR 983 : (1969) PLJR 275

Hon'ble Judges : S. Wasiuddin, J; N.L. Untwalia, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The petitioners have obtained a rule from the Court against the State of Bihar and two of its Officers to show cause why the notices issued u/s 4 of the Bihar Government Premises (Rent, Recovery and Eviction) Act, 1956 (Bihar Act 20 of 1956) (hereinafter called "the Act") be not quashed and why the respondents be not restrained from interfering with the title and possession of the petitioner in respect of plot Nos. 4236 and 4248 situated in the town of Saharsa, Cause has been shown by learned Standing Counsel No. 2 on behalf of the respondents. A Counter affidavit has also been filed.

2. The petitioners' case is that they have built two storeyed pucca buildings in plot Nos. 4236 and 4248 which are their tenancy lands. The impugned notices issued u/s 4 of the Act were received by them on 5-7-1968 informing them that they had occupied the Government premises in an authorised manner. They were, therefore, directed to vacate the Government premises and on their failure further actions were threatened. The petitioners filed their show cause on 23-7-1968 denying that they were in any unauthorised occupation of Government premises. They asserted that the lands over which their buildings stood were their lands and no part of it from which they were sought to be evicted was a part of the Government premises as defined in the Act.

3. The gist of the statement in the counter-affidavit filed on behalf of the respondents is that certain portions of the two plots were acquired under the land Acquisition Act, 1894 (Central Act No. 1 of 1894), awards were made, compensations were paid to the awardees and the petitioners had no right to make any construction over any piece of land which was acquired by the Government under the Central Act 1 of 1894. It is not necessary to give the details of the land acquisition proceedings as mentioned in the counter-affidavit. Suffice it to say, that the claim on behalf of the State is that certain portions of the disputed lands were acquired from the rightful owners before they were purchased by the "petitioners from them, and certain portions were acquired from the petitioners themselves. No where, however, it is specifically stated in the Counter-affidavit that possession of the lands acquired had been taken u/s 16 of the Central Act of 1894. The land acquisition proceedings are said to have been completed in one of the paragraphs of the counter-affidavit as it appears in the sense of making the award by the Collector and payment of compensation by him.

4. Mr. Radha Raman appearing in support of the rule has urged three points:

(1) That Section 4 of the Act is constitutionally invalid as, it is violative of Articles 14 and 19 of the Constitution, inasmuch as, it prescribes a procedure for taking possession of the Government premises over the above the procedure prescribed under the Central Act 1 of 1894; and the general law of taking possession by institution of a suit without indicating any guide line as to under what particular circumstances one procedure has to be followed and not the other, and also because there is no adequate machinery provided in the Act for deciding disputed questions of title if they are raised as has been raised by the petitioners.

(2) That no notice under the Act could be issued on the special facts and the circumstances of this case; and

(3) That the notices issued are not in accordance with law.

5. We do not propose to decide either the first or the third question in this case, as in our opinion, the application has got to be allowed on the ground of the second submission made on behalf of the petitioners.

6. u/s 2(c) of the Act-

"Government premises" means any premises belonging to or taken on lease or requisitioned by, the State Government.

Clause (d) says " "premises" means any land or building or part of a building and includes the garden, grounds" etc. as mentioned in Sub-Clauses (i) to (iii) of the said clause". We shall now read Section 4 of the Act.

Power to evict certain persons from Government premises-Notwithstanding anything to the contrary contained in any law for the time being in force, if the competent authority is satisfied-

(a) That the person authorised to occupy any Government premises has, whether before or after the Commencement of this Act:

(i) Sub-let, without the permission of the State Government or of the Competent authority, the whole or any part of such premises, or

(ii) Committed or is committing such acts of waste as are likely to affect materially the value or utility of the premises; or

(iii) otherwise acted in contravention of the terms, express or implied, under which he is authorised to occupy such premises;

(b) that any person is in an authorised occupation of any Government premises.

The competent authority may, by notice served by registered post or in such other manner as may be prescribed, order that that person as well as any other person who may be in occupation of the whole or any part of the premises, shall vacate the premises within fifteen days of the date of the service of the notice; and if any person refuses or fails to comply with such order, the competent authority may evict that person from, and take possession of, the premises and may for that purpose use such force as may be necessary:

Provided that before passing an order under this section the competent authority shall communicate to the person concerned the grounds on which it is proposed to pass the order and require him to show cause within fifteen days why the order should not be passed.

Section 8 provides for an appeal to the State Government from an order of the competent authority under the Act including the one which may be made u/s 4.

7. Under the land Acquisition Act for the passing of the title in the acquired property-payment, of the compensation money awarded by the Collector is not a condition precedent to its passing. Section 16 however provides-

When the Collector has made an award u/s 11 he may take possession of the land, which shall thereupon vest absolutely in the Government free from all encumbrances." Title therefore, vests in the Government on the taking of possession of the land. As we have said above, possession of the land does not seem to have been taken in this case. The title in these lands did not, therefore, vest in the Government. In absence of it the vesting of the title or taking of the possession, it is manifest that the land in question does not become Government premises as defined in the Act. That being so, the competent authority had no power to issue any notice u/s 4 of the Act. For the redress of their grievance the petitioners need not wait till the matter is decided by the competent authority or by the State Government on appeal, as was argued by learned Standing Counsel on behalf of the State. If the issuance of the notice is without, jurisdiction, it can be quashed even at this stage. If on a re-consideration of the matter, the Government thinks that the appropriate remedy on the facts and the circumstances of the case will be to institute a suit for recovery of possession it

may adopt that course. If the Government thinks that the lands from which the petitioners are sought to be evicted are the lands which were acquired under the land Acquisition Act, it may direct the Collector to proceed u/s 47 of that Act. Whatever also may be the appropriate procedure to be adopted, it is certain that the one adopted by the issuance of notice u/s 4 of the Act is ultra vires and misconceived on the facts of the case.

8. In the result, the application is allowed. The notices, copies of which are annexures 1 series issued u/s 4 of the Act are quashed and the respondents are restrained from taking any further action in pursuance of the said notices. There will be no order as to costs.