

(1993) 03 PAT CK 0034
In the Patna High Court
Case No : C.W.J.C. No. 3830 of 1991

Ram Chandra Mahto and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 17-03-1993

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1994) 42 BLJR 178

Hon'ble Judges : S.B. Sinha, J; R.M. Prasad, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S.B. Sinha, J.—In this application the petitioners have prayed for issuance of a writ of or in the nature of mandamus directing the District Magistrate, Patna and Sub-divisional Magistrate, Patna City to remove the encroachment made by the respondent Nos. 5 to 9.

2. The fact of the matter lies in a very narrow compass.

3. The State of Bihar allegedly acquired lands for construction of a bridge across the river Ganga commonly known as "Gandhi Setu" and pursuant thereto the lands of the petitioners had also been acquired. A rehabilitation Scheme was framed by the State for rehabilitating the persons who had been displaced owing to acquisition of their lands for the aforementioned public purpose.

4. The petitioners have contended that in lieu of their lands which were acquired by the State of Bihar they had been given the lands by the State of Bihar in terms of the aforementioned rehabilitation scheme as described in Schedule 1 to the writ application.

5. However, it was allegedly found by the petitioners that various persons including the respondent Nos. 5 and 9 made encroachments over the lands in question.

6. The petitioners have contended that despite a legal obligation on the part of the respondents they had not yet removed the encroachment made by the said respondents.

7. A counter-affidavit has been filed on behalf of the respondent Nos. 5 to 9 wherein it has been asserted that they are also displaced persons. According to them they have also been rehabilitated by the State of Bihar and they have been in possession of the said lands by construction of hutments and have been enjoying various facilities provided to them by the Government for peaceful possession thereof since 1982. According to the said respondents the Executive Engineer, Gandhi Setu, however, tried to settle the lands in the year 1981 in favour of certain persons.

It has further been accepted that in the year 1986, some proceedings for removal of encroachment were initiated by the Collector, Patna in relation whereof certain directions were issued by the State which is contained in Annexure-B/R to the counter-affidavit.

8. It has further been alleged that some encroachment cases against several persons including the respondents Nos. 7 and 9 were initiated and the same were decided against them. The respondents Nos. 7 and 9 preferred appeals against the said orders of encroachment before the Collector, which were registered as Encroachment Appeal No. 21 of 1986 and 27 of 1990. The said appeals are laid to be still pending before the Collector.

9. It has further been contended that the petitioner No. 1 has executed a deed of gift in favour of the petitioner No. 2 on 25-9-1985 contrary to the terms of settlement made in his favour.

10. In this case, a proceeding under the Contempt of Courts Act was initiated against some of the respondents. The opposite parties of the said proceeding has filed a show-cause. It has been contended in the said show-cause that the State has executed a deed of lease in favour of the petitioner No. 1 and the possessions thereof has been delivered on 4-5-1985.

It has further been contended that pursuant to Memo No. 978, dated 30-6-1983 a registered deed of lease was executed in favour of the petitioners which is contained in Annexure-C to the counter affidavit.

11. It has further been contended that petitioner No. 1 has failed to construct a house within three months from the date of execution of the said lease and thus be not only violated conditions thereof but also sub-leased the said land in violation of the deed of lease executed in favour of the petitioner No. 2.

12. The petitioners have also filed reply to the counter-affidavit filed on behalf of the respondent Nos. 5 to 9 and has also filed a supplementary affidavit.

In the reply to the counter-affidavit, it has been contended by the petitioners that the respondents Nos. 5 to 9 are residents of Vaishli District and thus the

question of any allotment of land in their favour at Patna did not arise.

13. It has been contended that one Ramchandra Mahto of Karlaiganj who has got plot No. B/3 is not the petitioner No. 1. According to them petitioner No. 1 was allotted one plot bearing No. B/2 in Colony No. 3/C by a letter of allotment dated 8-2-1984 which is contained in Annexure-5 to the said reply.

It has been contended that it is also not clear as to in respect of what piece of land encroachment proceeding had been initiated against the Respondent Nos. 7 and 9.

14. In the supplementary affidavit filed by the petitioners, it has been contended that applications were invited from those persons whose lands or homes were to be acquired for construction of Ganga Bridge Project which is contained in Annexure-7 thereto. It has been stated that the petitioner No. 1 applied for allotment of a plot for construction of house and pursuant thereto the aforementioned plot No. B/2 in Colony C/8 was allotted. It is also stated that plot Nos. 307 and 309 measuring an area of 32 Karies and 919 Karias respectively i.e. about 1 Bigha 10 kathas of land belonging to the petitioner No. 1 had been acquired for construction of the said "Gandhi Setu".

15. Mr. M.M. Prasad, the learned Counsel appearing on behalf of the petitioner has raised a short question in support of this application.

The learned Counsel submitted that despite the fact that the lands had been allotted in favour of the petitioner as far back as in the year 1985, the possession thereof has not been delivered in their favour and the encroachments have been allowed to continue in the lands in question.

16. According to the learned Counsel the State is bound to give full effect to the rehabilitation scheme. It has further been submitted that the petitioner No. 1 did not commit any illegality in executing a deed of gift in favour of petitioner No. 2 as the same was not prohibited under the conditions of lease.

17. Mr. Jagarnath Jha, the learned Government Pleader No. 1, however, submitted that the petitioners have already been given possession of the lands in question as would be evident from Annexure-B to the counter-affidavit and thus if they had subsequently been dispossessed by the respondent Nos. 5 to 9, the respondents are not responsible therefore and thus the writ application must be held to be not maintainable.

18. Mr. Ashok Singh, the learned Counsel appearing on behalf of the respondent Nos. 5 to 9 on the other hand, submitted that the houses of the said respondents had already sub-merged under water and as such they have been in possession over the lands in question for a long time and have also been enjoying the facilities of supply of electricity and water.

19. It has further been submitted that no specific plot number has been disclosed by the petitioners so as to identified the lands in question.

20. Admittedly, some lands belonging to petitioner No. 1 had been acquired. It is also admitted that the State has framed a rehabilitation scheme and pursuant thereto a registered deed of lease as contained in Annexure-A to the show cause was executed by the Executive Engineer in respect of plot No. B/2 of rehabilitation scheme in Colony No. 3/C measuring an area of 0,062.78 acres of land as described in column 4 of the, said deed of lease. The said lease has been executed for the purpose of construction of building within three months from the date of execution of the said lease and the construction thereof was to be completed within a year therefrom.

21. Clauses 10, 11 and 14 which are relevant for the purpose of this case read thus :

10. That if the second party commits any breach of any of the conditions in clause 9 hereinbefore set forth then in case of the first of such breach the second party shall be liable to pay such composition fee as may be determined by the First party, and in case of any subsequent (sic) or further breach the licence granted by the First party shall be cancelled and the Second party shall thereafter be deemed to keep the cattle or house in an unauthorised manner for which he shall be liable to pay a penalty as under Clause 9 hereinbefore set forth.

11. That except with the previous consent of the First party in writing and subject to such terms and conditions as may be prescribed by the First party, the second party shall have no right within ten years of the date of this indenture to transfer by way of sale, exchange or otherwise the aforesaid plot including the structure constructed thereon or the right, title or interest therein, but, no such consent shall be required in matter of gift, in favour of an heir or relation, or if will, in respect of the said properties.

12. That First party shall have the right to re-enter and resume possession of the aforesaid plot including the structure thereon after paying such compensation as the First party determine in case of breach of any of the provisions set for in Clauses 3, 4, 5 and 6 and 11 of this lease.

22. Mr. Jagarnath Jha, Government Pleader No. 1 is not correct in relying upon Annexure-B to the said show-cause in support of his contention that as the said document was signed, sealed and delivered to the petitioner No. 1, delivery of possession of the lease hold has also been effected thereby. Annexure-B to the said lands merely stipulates that the instrument has been signed sealed and delivered. By reason of as execution of deed of lease an automatic delivery of possession in not effected nor the same can be presumed in view of the denial made by the petitioner in that regard.

23. Further as the State has not controverted the statements made by the respondent Nos. 5 to 9 to the effect that they had been in possession of the lands in question since 1982, the question of delivery of possession of the said lands by the State authorities in favour of the petitioner No. 1 upon execution of the deeds of lease in 1985 did not arise.

24. It is unfortunate that the authorities of the State of Bihar have shown a total callous attitude in this case. They instead of placing before the Court the entire records of the case have merely tried to confuse the whole issue. The State is in possession of all the relevant documents. If there existed any dispute as has been raised by the respondent Nos. 5 to 9 with regard to the identity of the land, it was the bounden duty of the State to clarify the same. It was also the bounden duty of the concerned Respondents to clearly state before the Court as to in relation to which properties encroachment proceeding had been initiated as against the Respondent Nos. 7 and 9, in relation whereof admittedly two appeals being Appeal Nos. 21 of the 1986 and 27 of 1990 are pending before the Collector, Patna.

25. It is also evident that the respondent Nos. 5 to 9 had filed a writ application in this Court being 1989 CWJC 5510 and by an order dated 2-3-1990 the said writ application was permitted to be withdrawn in view of the observations made therein. The said order dated 2-3-1990 reads thus :-

Heard learned Counsel for the petitioner and learned Counsel for the State. Perused the contents of the writ application and the contents of the counter-affidavit.

It is not possible to accept the ex parte statement in the writ application particularly in view of the counter-affidavit, that respondents shall take steps to remove the alleged encroachment by the petitioners without following the due procedure of law. Petitioner shall have full opportunity to defend themselves in an appropriate proceeding under the Bihar Public Land Encroachment Act. If some order, as alleged in the counter-affidavit has already been passed, petitioners shall be at liberty to appeal against such order or question the validity of such orders in accordance with law. There is no reason to believe, therefore, that respondents shall not obey the law.

In view of the observations made above learned Counsel for the petitioners prays to withdraw the application. The prayer is allowed. The application is dismissed as withdrawn.

Sd/ P.S. Mishra.

Sd/ B. Prasad.

26. From the facts as stated hereinbefore, it stands admitted that various lands encroachment proceedings had been initiated against persons responsible for making encroachment and final orders have been passed in such cases. Thus the State could have easily demonstrated before the court as to whether any proceeding under the Bihar Public Land Encroachment Act has been initiated in respect of the aforementioned plot No. B/2 situate in Colony No. 3/C, which has admittedly been leased out by the State in favour of petitioner No.1

27. It is true that the petitioner No. 1 has executed a deed of gift in favour of the petitioner No. 2 but if the same constitutes a violations of the conditions of lease,

it was open to the State to take such action as against the petitioner No. 1 in terms of the aforementioned deed of lease, in accordance with law.

However, as evidently the petitioners have not been given possession of the property leased out to them, the State is bound to do the same and if necessary by eviction the respondent Nos. 5 to 9 upon initiation of a proceeding under Bihar Public Land Encroachment Act, 1956, if not already done.

28. The State by its Act has evidently allowing persons to continue the encroachments of Public Land as also the lands which are meant for rehabilitation of persons whose lands had been acquired.

29. The State is bound to implement and give full effect to its rehabilitation scheme inasmuch as the same has been done in view of the fact that the lands belonging to the petitioners had been acquired for public purposes. Any deviation or departure from the said scheme must be held to be violative of Article 14 of the Constitution of India.

30. For the reasons aforementioned, the District Magistrate, Patna is hereby directed to apply his mind as to whether the lands which are subject-matter of deed of lease as contained in Annexure-A to the show cause are in possession of respondent Nos. 5 to 9 and/or whether the said lands are subject-matter of the aforementioned two appeals pending before him namely, Encroachment Appeal Nos. 21/86 and 27/90 filed by the respondent Nos. 7 and 9, namely, Basmatia Devi w/o Satnarain Mahto and Tapeswar Das son of Bhekari Das respectively. In the event, it is found that no encroachment proceedings had been initiated as against the persons responsible therefore in relation to the lands in question, the State must start such a proceeding immediately.

31. The Collector under the said Act should dispose of the proceedings as early as possible and preferably within a period of two months from the date of the receipt of a copy of this order.

32. However, if in the opinion of the State, owing to long lapse of time, it is not possible for them to give delivery of possession of the said land in favour of the petitioner No. 1, a similar plot of land should be allotted in his favour which should also be done within a period of two months from the date of the receipt of a copy of this order.

33. The District Magistrate, Patna is hereby directed to take all possible steps to see that the directions of this Court aforementioned are complied within the aforementioned time.

34. These applications, are thus, allowed. Let a writ of mandamus be issued accordingly.

35. In the facts and circumstances of this case, the petitioners are also entitled to costs which is quantified at Rs. 1,000 payable by the respondent Nos. 1 to 4 in favour of the petitioners.

R.M. Prasad, J.

36. I agree.