
(1975) 10 PAT CK 0003

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2286 of 1972

Ram Charan Prasad

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 31-10-1975

Acts Referred:

Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 — Section 11(2)
Constitution of India, 1950 — Article 226, 227

Citation : AIR 1976 Patna 182

Hon'ble Judges : S.K. Choudhuri, J;B.D. Singh, J

Bench : Division Bench

Advocate : Krishna Prakash Sinha and Nageshwar Sharan, for the Appellant;
S.B.N. Singh, Govt. Pleader No. II and B.K. Singh, Jr. Counsel to Govt. Pleader
No. II, for the Respondent

Final Decision : Allowed

Judgement

B.D. Singh, J.—This application under Articles 226 and 227 of the Constitution of India by petitioner Ram Charan Prasad is directed against an order dated the 25th January, 1972 (Annexure 6) passed by the District Magistrate (Respondent No. 2) u/s 11 (2) (a) of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 (hereinafter to be referred to as the "Act"). The relevant portion of the said order reads thus:

"It was, therefore, not proper on the part of the house owner to occupy the house without the permission of the Collector. The record may be sent to the Magistrate, Incharge General section for taking legal action against the landlord under law. The petitioner may also be informed accordingly."

The petitioner, therefore, prayed in this application chiefly for quashing the impugned order. His application was admitted by this Court on the 6th March 1972 and the operation of the impugned order contained in Annexure 6 was stayed till the disposal of this application.

2. In order to appreciate the point involved in this application, it will be necessary to state briefly the facts. As stated by the petitioner in his application, the petitioner owns and possesses a residential house standing over plot No. 118, khata No. 115, bearing holding No. 486 in Ward No. 9 of the Notified Area Committee, Gopalganj, district Saran (now Gopalganj). The said house was under the occupation of Sri Indrajit Mishra, Munsif Magistrate, First Class. Gopalganj, till the 30th June. 1971. Mr. Mishra vacated the house under intimation to the District Magistrate of Saran (Respondent No. 2), through the District Judge of Saran, Chapra, with a copy to the petitioner. A true copy of the letter dated the 30th June, 1971, has been marked Annexure 1 to this application. On the 12th July, 1971, the petitioner occupied the said premises. On the 15th July, 1971, the petitioner filed a petition before the Respondent No. 2 for the release of the premises on the ground that the petitioner himself required the same for his own use and also for reconstructing the same into a pucca house as the old premises had become unfit for human habitation. A copy of the said petition has been marked as Annexure 2. On the said petition, Respondent No. 2 called for a report along with the relevant papers from the Sub-Divisional Officer. Gopalpur. A copy of the order of respondent No. 2 is Annexure 3. The Sub-Divisional Officer entrusted the enquiry to Sri Ramashish Trivedi, Magistrate. First Class. Gopalganj, who held local inspection of the premises in question on the 5th of August 1971 and submitted Ms report on the 6th August 1971. A true copy of the report is Annexure 4. The Sub-Divisional Officer then submitted his report to the District Magistrate on the 6th of August, 1971. A copy of that report is Annexure 5. Thereafter respondent No. 2 passed the impugned order.

3. In this case no counter-affidavit has been filed on behalf of Respondents 1 and 2 who are State of Bihar and the District Magistrate respectively. Therefore, the facts alleged by the petitioner in his application remained un-controverted.

4. Learned counsel for the petitioner has assailed the impugned order mainly on two grounds, namely (i) under the provision contained u/s 11 (2) (a) of the Act, the allotment of the house in question should have been made by respondent No. 2 within a week of the receipt of the notice contained in Annexure 1, and (ii) even till 6th of March 1972, as no allotment of the house in question was made by Respondent No. 2 to any other servant of the Government whom he thought suitable, the petitioner-landlord would be deemed to have been put in possession of the premises.

5. Learned counsel for the petitioner contended that the impugned order passed by respondent No, 2 was without jurisdiction. It will be convenient to deal with both the points together.

6. The relevant provision contained in Section 11 (2) (a) of the Act reads thus:

"Where a servant of the Government in possession of a building as a tenant intends to vacate such building, he shall give fifteen days" previous notice in

writing of his intention to do so to the landlord and to the District Magistrate who shall under intimation to the landlord, within a week of the receipt of the notice either allot the building to any other servant of the Government whom the District Magistrate thinks suitable subject to the payment of rent, and the observance of the conditions of the tenancy by such servant of the Government, or direct that the landlord shall be put in possession of the building:

Provided that when no such order is passed by the District Magistrate, the landlord shall be deemed to have been put in possession of the building."

On the basis of the said provision, learned counsel appearing for the petitioner contended that it was mandatory on the part of the respondent No. 2 to have re-allotted the premises within the prescribed period of one week after the receipt of the notice contained in Annexure 1. The respondent No. 2 having not done so, according to the proviso of Section 11 (2) (a) referred to above, the petitioner shall be deemed to have been put in possession of the building. According to the learned counsel, the provision is mandatory and it admits of no exception, and the re-allotment of any building has got to be made within a week.

7. In our opinion, the provision for re-allotment of a building within one week of the receipt of the notice is not mandatory, but merely directory as held by a Bench of this Court in Smt. Ram Adhikari Devi Vs. District Magistrate and Others, where Untwalia, C. J. (as he then was) (now Hon"ble Judge of the Supreme Court), who delivered the judgment for the Court observed in paragraph 6, while construing the provision contained u/s 11 (2) (a) of the Act, as follows :

".....it has to be held in this case that the time-limit of one week for making the order of allotment cannot be held to be mandatory. It is directory. I must, however, hasten to add that a directory provision as repeatedly pointed out in many cases, is not meant to be violated. It is also meant to be obeyed and as far as possible strictly according to law. But there may be circumstances that a public officer is not able to follow the time-limit strictly, due to various reasons beyond his control. It would be highly unjust to say that orders by a public officer beyond time-limit should be invalidated merely on that ground. It will depend upon the facts and circumstances of each case whether the delay made by the District Magistrate beyond the period of one week in making his order of allotment is reasonable or unreasonable; in other words, whether the District Magistrate has substantially complied with the directory requirement of the law or, not. If it is found that there is no substantial compliance and the delay made by him in making the order of allotment was unreasonable, then the order will be liable to be struck down for not complying with the requirement of the law at all even though the law is directory."

8. It may be noticed that in that case, there was only one day's delay which his Lordship observed that that could not be said to be unreasonable and, therefore, the requirement of the law was substantially complied with and for that reason the order in that case could not be knocked down. But in the instant case, from

the facts enumerated above, it is clear that re-allotment of the building was not made by respondent No. 2 even till the 6th of March 1972 when the stay order was passed by this Court, as mentioned above. In that view of the matter, the application of the petitioner has got to be allowed.

9. In the result, we allow the application and quash the impugned order contained in Annexure 6 passed by respondent No. 2 and the petitioner would be deemed to have been put in possession of the premises in question. In the circumstances of the present case, however, we make no order for costs.