
(1989) 08 PAT CK 0036

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No's. 4841 of 1982

Ram Prit Singh and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 09-08-1989

Acts Referred:

Bihar State Housing Board Act, 1982 — Section 23

Citation : (1992) 2 PLJR 528

Hon'ble Judges : B.K. Roy, J

Bench : Single Bench

Advocate : R.S. Pradhan and S.C. Jha, in 4841/1982, Radha Mohan Pd., in 205/1983, Umesh Pd. Singh and R.N. Pandey, in 6026 and 6039/1983 and 586/1984 and Manmohan, in 5991/1983, for the Appellant; R.B. Mahto and Ram Swaroop Prasad, in 4841/1982, S.K.P. Sinha in 5991, 6026 and 6039 /1983 and 586/1984 and Anil Kumar Singh in 205/1983, for the Respondent

Final Decision : Allowed

Judgement

Binod Kumar Roy, J.—Since all these writ applications were directed to be heard together and the main question of law to be decided in these cases is common, namely whether there has been violation of principle of natural justice, they are being disposed of by this common judgment.

The Petitioners pray to quash the notification No. 1 /Estt./3040/81-4288, Patna dated 12th November, 1982, issued under the seal and signature of the Governor of Bihar, by which the Department of Urban Development and Housing in the Government of Bihar, has set aside the allotments in their favour in exercise of the powers conferred u/s 23 of the Bihar State Housing Board Act, 1982, the follow up direction dated 26th November, 1982 of the Bihar State Housing Board issued to its Managing Director, cancelling the various allotments of the Petitioners with immediate effect, the letter No. 452 dated 6.2.1982, issued by the Executive Engineer, Bihar State Housing Board, the order issued by the Manager-cum-Additional Secretary, Bihar State Housing Board (Respondent No.

3), vide his letter No. 5933, dated 9th November, 1982, the letter No. 111/An.-2029/80-10655 dated 15th November, 1983, issued by the Managing Director of the Bihar State Housing Board (Respondent No. 3) the notification dated 12th February, 1982, issued by the Joint Secretary, Urban Development Government of Bihar (Respondent No. 2), and the order dated 15.12.1983, passed by the Managing Director, Bihar State Housing Board (Respondent No. 3). In C.W.J.C. No. 586 of 1984 the Petitioner's grievance is that the Respondents have published a notice as contained in Annexure-2 settling the land by auction already allotted to him by a registered deed of lease dated 21.1.1982 which is in his possession after giving a different number and thus the action of the Respondents is mala fide. The common ground is that the aforesaid notifications etc., have been passed without giving any opportunity of hearing to the Petitioners, which is an admitted position.

2. Whether the State Government, while exercising its power u/s 23 of the Act or the Board can pass any order nullifying the earlier allotment to the prejudice of the various Petitioners, without hearing them and/or without giving any opportunity of hearing to them? This was the moot question raised during the hearing of these applications which stands already covered by a decision of our own High Court and thus it is not necessary to state the facts in detail.

3. The Petitioners place reliance on a judgment of this Court in Smt. Krishna Sinha v. The Bihar State Housing Board, C.W.J.C. No. 1197 of 1982 (R), decided on 25th August, 1985, reported in 1986 B.B.C.J. 417. In the said case, it was held that the State Government was bound to follow the principle of natural justice, after repelling the contention of the learned Advocate General that it is not necessary to do so as there is no provision in the said case for following the principles of natural justice.

4. In C.W.J.C. No. 4130 of 1982, Smt. Meena Singh v. The State of Bihar and Ors., decided on 11.4.1988, this Court again held that before passing the order u/s 23 of the Act, it was mandatory to give an opportunity of hearing to an allottee.

5. In C.W.J.C. Nos. 234/82, 2821/82 and 4657/82, disposed of on 2nd May, 1988, it has been held by this Court to the following effect:

This Court has taken the view that the power given to the State Government u/s 23 of the Act to set aside any resolution or order of the Board has to be exercised quasi judicially and every affected person, before any order setting aside a resolution or order of the Board is passed by the State Government, must be given opportunity of hearing, and the State Government must make a speaking order. This approach is relevant in the context that any order of the State Government in exercise of its power u/s 23 of the Act shall necessarily visit any beneficiary of the resolution or order of the Board with a civil consequence, even though a right of hearing is not statutorily provided in Section 23 or any other section of the Act, such requirements of natural justice have to be impliedly read in the power that the State Government may exercise. The Act

does not bar a hearing or provide any other mode of disposal of any proceeding taken by the State Government in exercise of its power u/s 23 of the Act It is not necessary to go into any detailed discussion of this aspect of the law as presence of natural justice has been recognised as a necessary incident or consequence of the right of equal protection of law and equality before law and the Courts have always held that arbitrariness of any State is not different from discrimination. A right of hearing to the affected person in view of the principle thus evolved is no doubt inherent in Section 23 of the Act.

6. In *State of Uttar Pradesh v. Mohd. Nooh*, AIR 1958 S.C. 86, it was laid down by the Supreme Court to the effect that the order passed contrary to the rules of natural justice is *ex-facie* a nullity.

7. Recently in *Raghunath Thakur v. The State of Bihar and Ors.* 1989 B.L.J.R. 529 : 1889 P.L.J.R. 17 (SC) the Supreme Court, while repelling somewhat a similar argument while deciding a case of black listing a person without any notice to him held as follows:

In so far as the contention that there is no Rule specifically of giving any notice is concerned, the Respondent is right but it is an implied principle of the Rule of law that any order having civil consequences should be passed only after following the principle of natural justice... Even if the Rules do not express so, it is an elementary principle of natural justice that parties affected by any order, should have right of being heard and making representations against the order.

In so far as the contention that there is no rule specifically of giving any notice is concerned, the respondent is right but it is an implied principle of the Rule of Law that any order having civil Consequences should be passed only after following the Principle of natural justice ... Even if the Rules do not express so, it is an elementary principle of natural justice that parties affected by any order , should have right of being heard and making representation against the order.

(emphasis added)

8. I am of the view that the cancellation of allotments or a further direction to re-allot by auction of flats/lands by the Bihar State Housing Board involved infringement of the civil rights of the Petitioners and had civil consequences. In that view of the matter, I hold that the impugned notification and directions/orders/notices were violative of the principles of natural justice.

9. For the aforementioned reasons, the impugned notifications/notices/directions as contained in Annexures 14 and 15 to C.W.J.C. No. 4841 of 1982, in Annexures 16, 18 and 19 of C.W.J.C. No. 205 of 1983, in Annexure 1 and 2 of C.W.J.C. No. 6039 of 1983, in Annexures 1 and 2 of C.W.J.C. No. 6026 of 1983, in Annexure 1 of C.W.J.C. No. 5991 of 1983 and in Annexure 2 of C.W.J.C. No. 586 of 1984 are quashed in so far as they relate to the allotments of Petitioners' flats/lands etc. However, it will be open to the State of Bihar and/or the Bihar State Housing Board, to give an opportunity of hearing to the Petitioners, if they intend to

nullify their allotments.

10. These writ applications are allowed to the extent indicated above with costs. Hearing fee assessed at Rs. 250/- only, in each case.

11. Let writs in the nature of certiorari issue accordingly.