

(1982) 10 PAT CK 0008

In the Patna High Court

Case No : Civil Writ Jurn. Case No. 3728 of 1981

Ram Rup Singh and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 14-10-1982

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1983 Patna 71 : (1983) PLJR 82

Hon'ble Judges : S. Shamsul Hasan, J; Hari Lal Agrawal, J

Bench : Division Bench

Advocate : Balbhadra Prasad Singh, Alakh Raj Pandey, Shiwesh Misra and Surendra Pd. Sharma, for the Appellant; Ram Janam Ojha and Mahesh Prasad, (for No. 2), Shravan Kumar, (for Nos. 3 and 4) and Dharendra Kumar and Dayanand Singh, (for Nos. 5 to 7), for the Respondent

Final Decision : Dismissed

Judgement

S. Shamsul Hasan, J.—The dispute in this application is quadrangular. The subject is land with no right to own it yet but obstructing others from doing so.

2. The petitioners are residents of various premises in P. I. T. Colony, Kankarbagh, in the town of Patna. The respondents are, apart from the State of Bihar. the Bihar State Housing Board (in short, "the Board"), Patna Regional Development Authority (in short, "the Authority") and the Secretary, P. R. D. A., on the one hand and those who claim to be settlees of the land in the same colony as the petitioners, on the other.

3. A writ of mandamus is sought from this Court commanding respondents 1 and 2, i. e., the State of Bihar and the Board, and other respondents, not to take steps for construction of houses in the park area, said to have been carved out by the Authority, now known as the Patna Regional Development Authority, formerly Patna Improvement Trust, and to effect formal transfer of 7.10 acres of land to P. R. D. A. by respondent No. 2, the Board.

4. The dispute arose because a vacant plot of triangular land across the road from the houses allotted to the petitioners has been allotted to respondents 5, 6 and 7 by the Board, the contention being that the Board having transferred the land to P. R. D. A. cannot make the settlement as the land is meant to be an open space.

5. It may be stated here that the petitioners are living on rent awaiting the sale of these houses on hire purchase basis which has so far not been done because admittedly there is no formal transfer of the land in question by the- Board to the Authority. It may also be further stated that there is no dispute that there has been no formal transfer of the land by the Board to the Patna Improvement Trust, as it then was.

6. Since there is no agreement on facts in the stand taken by the petitioners, the Board and the Authority, it will be relevant to set out briefly the various stands taken by them. According to the petitioners, it was decided by the Board to transfer 7.10 acres of land in P. I. T. Colony, Kankarbagh, to the Authority. In this area after the above decision 130 houses of two types were constructed by the Authority for allotment on hire purchase basis. The deposit of 20% was directed to be made by the Authority to the Board in response to which a sum of Rs. 1,40,000/- was deposited, being 25% of the total value of the land, which was accepted by the Board. This was followed by constant reminders by the Authority to the Board to make formal transfer of the land which has not been done till today. These communications are annexures to the writ petition. As I have stated above, these houses have been allotted to the petitioners on monthly rental and the rent is being accepted by the Authority. Subsequently, it is claimed by the petitioners that hire purchase allotment was also made, though not finalised. The petitioners are relying on the doctrine of part performance to base their entitlement to the relief sought for. Subsequently, the Board allotted three plots, being plot Nos. V-466, V-467 and V-468, to the respondents 5 to 7, which are comprised in triangular pieces or vacant land opposite the houses allotted to these petitioners, which I have stated above. This was done by the Board. It is stated that the Secretary of the Authority protested to the Board with respect to the said allotment stating that the Board had no right to make these transfers.

7. A counter-affidavit has been filed by the Board. Its stand is that the petitioners are month to month tenants living in P. I. T. Colony, Kankarbagh, and they have no right whatsoever to raise any objection to the allotment of the plots to respondents 5 to 7. Its further case is that the right of the petitioners cannot be higher than that of the Authority through whom they claim their right and further that the disputed plots have not been transferred to the Authority by the Board. Its further case is that the land in Kankarbagh Colony was acquired by the Housing Department and then transferred to the Board when it was brought into existence and the land is in complete control of the Board. When the Congress Session was held in Patna, the Patna Improvement Trust, as it then was, constructed some tenements to accommodate visitors from outside and

thereafter it was decided by the State Government to settle an area of 4 acres with the Patna Improvement Trust for that purpose. Relevant extract from the memorandum of Cabinet meeting has been annexed. The land was subsequently transferred to the Board, who, adhering to the decision of the State Government, intended to transfer the aforesaid land to the Patna Improvement Trust but formal transfer could not materialise because of the inaction of the Authority, and, therefore, the right, title and interest still vest with the Board in the land concerned. In any event, according to the Board, the disputed land does not form part of the land claimed to be transferred to the Authority. Facts justifying settlement of the lands to the respondents 5 to 7 have also been averred in the counter-affidavit but they are not relevant to be set out in this judgment.

8. Counter-affidavit has also been filed by the Authority. Its case is that the petitioners are occupying the houses on rental basis and have been offered houses on hire purchase basis in pursuance to which they have deposited necessary advances. Lease of hire purchase could not be executed because the Board has not effected formal transfer of the land in question. The area so intended to be transferred, according to the Authority, is 5.14 acres of land. The Authority has also objected to the transfer of the lands to respondents 5 to 7 on the ground that the land in question has already been transferred to the Authority and initial cost of the land has already been paid and it is due to the lapse on the part of the Board that the lease has not been executed.

9. It may be stated here that no accurate and relevant map has been brought on the record by either party, though during arguments large number of maps were placed before us giving conflicting details regarding the actual portion of the land said to have been transferred and the extent of its area, particularly with regard to the land in question. I may elaborate this further that none of the maps was of any assistance to us to come to any definite findings as to the portion and the quantity of the land claimed to have been transferred.

10. It was suggested by us that solution of this dispute could be achieved by getting the entire area, said to have been transferred to the Authority by the Board, measured, but, that also was of no avail because the parties could not agree on what should be included in the measurement. According to the Board, roads should be calculated in the lands transferred. According to the Authority, it was submitted that the lands that were transferred included all appendages, that is, the disputed land, which is vacant. According to the petitioners, the disputed land was comprised of the area that was transferred which could be divided into two lots -- one consisting of the road and the other consisting of the area meant for houses and parks, making it a total of 7.10 acres.

11. The total effect of all this is that there is substantial variance on facts and there is practically no area of agreement. The quantity, the manner and the portions of the land of the purported transfer are all unascertainable, in regard to the land in question. The rights of the Authority and the Board also have yet to be determined. The only thing that appears to be definite is the status of the

petitioners that they are tenant on month to month basis and the intended transferees on hire purchase basis which is yet to be made, the rent being paid to the Authority and no formal transfer of land has yet taken place by the Board to the Authority.

12. Learned counsel for the petitioners submitted that the petitioners have a right to maintain this writ because (i) they have citizen's right to safeguard the ecological situation in the area; (ii) the Board could not make the transfer and nothing could be really built on the disputed land because it was always intended to be park land or vacant space; and (iii) the Board has no right in the land having already transferred it to the Authority.

13. In my view, without going into the merits of these submissions, it is very difficult to grant the intended relief because of the nebulous situation in regard to the claim of the parties and the extent of the disagreement on important aspects of the dispute. I felt that these questions cannot be decided in an application under Article 226 of the Constitution. It could be decided only between the two agencies of the Government, that is, the Board and the Authority themselves, or, in a suit. Once that is decided, then the rights of the parties also become investigate in a proper proceeding. Learned counsel for the Board has submitted that the petitioners have no right to maintain this writ being mere tenants and intended purchaser from an Authority who has no right to sell. The petitioners rely on the right flowing from the transactions with the Authority. As I have said, these contentious questions have also to be similarly determined in a proper processing particularly, since they depend on the nature of the contract between the petitioners and the transferor Authority. The Board and the Authority will be well advised to settle this question between themselves, instead of indulging in divergent action causing inconveniences and litigations all round. I may also clarify that various materials have been placed by the parties before us in support of their case, like correspondence between the Authority and the Board, memorandum of Cabinet meeting, report of the Special Committee constituted for making enquiry in respect of the irregularities in the allotment of lands in Kankarbagh Colony, particularly para 8 of the recommendations contained therein, but, as I have stated, it is very difficult and beyond the scope of this application to come to any decision on their basis in view of the total absence of any agreement in regard to the state of affairs.

14. In regard to the claim of respondents 5 to 7 I do not wish to say anything as the success of their stand depends on the establishment of the claim of the Board.

15. In the above state of affairs, therefore, I do not consider it to be a fit case in which this Court should issue the writ sought for by the petitioners. The application is, accordingly, dismissed, but, without costs.

Hari Lal Agrawal, J.

16. I agree.