

(2022) 06 PAT CK 0028

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 12060 Of 2021

Saraswati Devi

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 27-06-2022

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2022) 06 PAT CK 0028

Hon'ble Judges : Ashwani Kumar Singh, J;Dr. Anshuman, J

Bench : Division Bench

Advocate : Deepak Kumar Singh, Vishal Kumar Singh, Abbas Haider, Deepika Sharma, Prasoon Sinha

Final Decision : Dismissed

Judgement

1. The petitioners have made the following prayers in the present writ petition :

"(a) Issue a writ in the nature of mandamus directing the respondents to provide complete rehabilitation to the petitioners, as per the Bihar State Slum Policy, 2011 and Affordable Housing and Slum Rehabilitation Housing Policy, 2017 (Revised).

(b) Issue a writ in the nature of mandamus directing the respondents to ensure provision of alternate transit accommodation that includes basic civic amenities, consistent with the rights to life and dignity of each of the petitioners and/or similarly situated people at the locality.

(c) Issue a writ in the nature of mandamus directing the respondents to immediately provide a shelter to safeguard the petitioners and/or similarly situated persons in the locality from this harsh weather and on-going second wave of Covid-19 infection and transmission.

(d) Issue a writ in the nature of mandamus directing the respondents to immediately make the community toilet accessible for the residents that are

found locked and inaccessible.

(e) Directing the respondents to provide immediate relief to the petitioner and/or to the residents of the said area and ensure to provide the inhabitants with food packets, potable water, power supply, education, livelihood, proper health check-up facilities including ante-natal care to pregnant women and postnatal care to lactating mothers, immunization, access to anganwardi centre to provide nutrition and to provide visitation by asha members and other services as per the ICDS scheme etc. to facilitate the petitioners.

(f) To issue a writ in the nature of mandamus directing the respondents to place on record the status of petitioners' plea under affordable housing PMAY-U Housing For All, Affordable Housing and Slum Rehabilitation Housing Policy, 2017 (Revised) with a date of final allotment of the houses under the scope of the scheme.

(g) Issue a writ in the nature of mandamus directing the respondents to place before this Hon'ble Court a proper slum rehabilitation plan that should be implemented as soon as possible.

(h) Directing the State to fulfill their constitutional and statutory obligation that is to ensure that if the jhuggi dweller is forcibly evicted and relocated, such jhuggi dweller are not worse off.

(i) Directing the respondents to appoint a Nodal Officer as per Affordable Housing and Slum Rehabilitation Housing Policy, 2017 (Revised) from Urban Local Bodies and District Administration to coordinate various measures to be taken as per provisions of these guidelines to facilitate the petitioners.

(j) Pass any such order as this Hon'ble Court may feel fit and proper in the facts and circumstances of the case."

2. During the pendency of the writ petition, the petitioners have filed an interlocutory application vide I.A. No.01 of 2021 with a prayer to add the following prayers in the writ petition :

"(k) Direct the respondents authorities to provide for transit accommodation at the earliest available opportunity to the people of slum areas who were evicted.

(l) Direct the respondent authorities to arrange for the rehabilitation of the people someplace else at the earliest available opportunity who were evicted from the slum.

(m) Direct the respondent authorities to provide for the unhindered supply of life saving drugs and medical supplies as much as possible to those people who were evicted from the slum area at the earliest available opportunity.

(n) Direct the respondent authorities to make available essential facilities such as toilet facilities and pure and potable water to the people who were evicted from the slums.

(o) Direct the respondent authorities to provide the evicted people with enough ration for them to sustain themselves until they are properly rehabilitated.

(p) Direct the respondent authorities to ensure that the evicted people are not facing any further hardships due to the present ongoing Covid pandemic and are being looked after properly in these times of Covid.”

3. It would be evident from the pleadings of the petitioners that initially, they were aggrieved by the action of the respondents whereby they were threatening to demolish jhuggi/jhopari situated at Malahi Pakri and Rainbow Field, Kankarbagh slum area, Ward No.34 where Malahi Pakri Metro Station under Patna Metro Project was proposed to be constructed. The petitioners pleaded that no prior notice was served to the residents and only announcements were made twice on 07.04.2021 and 06.04.2021 respectively for removal of encroachment upon the public land. It was the case of the petitioners that due to this imminent threat and apprehension around 150-200 families would be displaced and they would have no shelter. The petitioners contended that the demolition/displacement would infringe the constitutional rights of the petitioners and/or similarly situated people and they would suffer irreparable injury.

4. The contention of the petitioners in the writ petition is that the officials of the Patna Municipal Corporation and Patna Metro Rail Corporation Limited have been intimidating and threatening the residents to vacate their houses otherwise they would face dire consequences along with demolition drive. The further contention of the petitioners is that the denial of the benefit of the rehabilitation to the petitioners would violate their right to shelter guaranteed under Article 226 of the Constitution of India.

5. It would be evident from the pleadings made in the interlocutory application whereby the petitioners have prayed for addition of certain prayers that on 25.06.2021, the entire slum area was made encroachment free.

6. It has been argued by Mr. Vishal Kumar Singh, learned counsel for the petitioners that the action of the respondents in the eviction of people from slum area situated at Malahi Pakri and Rainbow Field, Kankarbagh slum area, Ward No.34 and not allotting them transit accommodation or rehabilitating them at some other place is violative of right to shelter guaranteed under Article 226 of the Constitution of India. It has been argued on behalf of the petitioners that before evicting the petitioners and other similarly situated persons from the aforesaid slum area, the respondent authorities ought to have made suitable arrangement for complete rehabilitation as per the Bihar State Slum Policy, 2011 and Affordable Housing and Slum Rehabilitation Housing Policy, 2017 (Revised) or under Pradhan Mantri Awas Yojna (Urban) (PMAY-U)- Housing For All.

7. A counter affidavit has been filed on behalf of respondent no.2 wherein it is contended that the petitioners are basically aggrieved with demolition and displacement from their jhuggi/jhopari made on public land near Malahi Pakri and Patliputra Sports Complex, Kankarbagh, Patna where currently work of Patna

Metro Project is in progress. It has further been contended that the reliefs claimed in the writ petition are misconceived as the petitioners under the garb of Public Interest Litigation are trying to create hindrance in the matter of removal of encroachments. They are causing obstruction in speedy implementation of a very prestigious public project, namely, Patna Metro Project. The petitioners are encroachers and illegal occupants and have no legal right much less any fundamental right to occupy over a valuable public land by encroaching upon the same in the heart of Patna Town, which is now being utilized for construction of Malahi Pakri Metro Station under the Patna Metro Project.

8. By way of filing a supplementary counter affidavit, respondent no. 2 apprised the Court regarding the initiatives/actions taken so far for the implementation of Bihar Slum Policy, 2011 and revised policy, namely, Affordable Housing and Slum Rehabilitation & Redevelopment Housing Policy, 2017.

9. Mr. Abbas Haider, learned counsel appearing for respondent-State submitted that the petitioners being encroachers and illegal occupants over public land were liable to be evicted under the provisions of Bihar Public Land Encroachment Act, 1956 in order to facilitate the construction of Malahi Pakri Metro Station under the Patna Metro Project. He submitted that no one has a right to encroach upon public land.

10. A counter affidavit has also been filed on behalf of respondent no. 6 in the present matter wherein steps taken by the Patna Municipal Corporation in compliance with direction issued by the Urban Development and Housing Department, Government of Bihar to all urban local bodies in respect of rehabilitation of the poor, houseless and landless persons residing in the slum areas situated within the municipal limits of the Patna Municipal Corporation have been highlighted.

11. Mr. Prasoon Sinha, learned counsel appearing for the Patna Municipal Corporation submitted that no person has got right to encroach or erect structures on any public land and mere continuous illegal possession cannot be sufficient to claim that they would not be liable to be evicted unless they are rehabilitated at a different location in the name of right to shelter.

12. We have heard learned counsel for the parties and carefully perused the record.

13. We find force in the submissions made on behalf of the respondents. From the pleadings made in the writ petition and the interlocutory application it would be manifest that the petitioners are primarily aggrieved by the demolition/displacement from their jhuggi/jhopari made on public land near Malahi Pakri and Patliputra Sports Complex, Kankarbagh, Patna where Malahi Pakri Metro Station under the Patna Metro Project is being constructed. It may be true that the petitioners and other similarly situated persons may have encroached over government land for a sufficient period of time. However, such encroachers would have no perpetual right to continue upon the public land even at the cost

of stopping construction of a Metro Station, which would be in the interest of the public. We are not at all persuaded with the submission canvassed on behalf of the petitioners that the petitioners and other similarly situated persons have a constitutional right to shelter and unless they would have been rehabilitated under some scheme of the government, they could not have been displaced from their jhuggi/jhopari.

14. By now, it is well settled that mere long possession over public land by way of encroachment is not sufficient to say that encroachers are not liable to be evicted as they have a right to shelter.

15. A statutory duty must exist before it can be enforced through mandamus. Further, while exercising jurisdiction under Article 226 of the Constitution of India, this Court would be justified in issuing a writ in the nature of mandamus where the Government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the Government or has exercised such discretion mala fide or on irrelevant consideration. In the instant case, the petitioners have failed to make out any case that the respondents have failed to exercise or has wrongly exercised the discretion conferred upon them by a statute or a rule or a policy decision of the Government or they have exercised such discretion mala fide or on irrelevant consideration. An encroacher upon a public land, who has erected structures like jhuggi/jhopari cannot claim that he can not be evicted unless he is rehabilitated at a suitable place.

16. We are of the considered opinion that the right to shelter pleaded on behalf of the petitioners cannot be used for the purpose of unlawful encroachment upon public land. In this regard, it would be apt to refer to para-10 of the judgment of the Hon'ble Supreme Court in Ahmedabad Municipal Corporation vs. Nawab Khan Gulab Khan & Ors., since reported in AIR 1997 SC 152, which reads as under :

"10. The Constitution does not put an absolute embargo on the deprivation of life or personal liberty but such a deprivation must be according to the procedure, in the given circumstances, fair and reasonable. To become fair, just and reasonable, it would not be enough that the procedure prescribed in law is a formality. It must be pragmatic and realistic to meet the given fact-situation. No inflexible rule of hearing and due application of mind can be insisted upon in every or all cases. Each case depends upon its own backdrop. The removal of encroachment needs urgent action. But in this behalf what requires to be done by the competent authority is to ensure constant vigil on encroachment of the public places. Sooner the encroachment is removed when sighted, better would be the facilities or convenience for passing or repassing of the pedestrians on the pavements or footpaths facilitating free flow of regulated traffic on the road or use of public places. On the contrary, the longer the delay, the greater will be the danger of permitting the encroachers claiming semblance of right to obstruct removal of the encroachment. If the encroachment is of a recent origin the need to follow the procedure of principle of natural justice could be obviated in that no

one has a right to encroach upon the public property and claim the procedure of opportunity of hearing which would be a tedious and time-consuming process leading to putting a premium for high-handed and unauthorised acts of encroachment and unlawful squatting. On the other hand, if the Corporation allows settlement of encroachers for a long time for reasons best known to them, and reasons are not far to seek, then necessarily a modicum of reasonable notice for removal, say two weeks or 10 days, and personal service on the encroachers or substituted service by fixing notice on the property is necessary. If the encroachment is not removed within the specified time, the competent authority would be at liberty to have it removed. That would meet the fairness of procedure and principle of giving opportunity to remove the encroachment voluntarily by the encroachers. On their resistance, necessarily appropriate and reasonable force can be used to have the encroachment removed. Thus considered, we hold that the action taken by the appellant-Corporation is not violative of the principle of natural justice.”

(emphasis supplied)

17. In view of the observations made by the Hon’ble Supreme Court in Ahmedabad Municipal Corporation vs. Nawab Khan Gulab Khan & Ors (supra), it can safely be said that encroachment over a public land cannot be allowed to continue by citing the pretext of right to shelter.

18. Accordingly, the writ petition being devoid of any merit, is dismissed.

19. However, before parting with the present application, we make it clear that it would be open for the petitioners to submit their respective representations before the respondent no.2 for their rehabilitation under any scheme of the Central Government or the State Government or right to shelter. In the case of filing such representations, the respondent no.2 shall be required to consider them sympathetically and find out if they fit in any policy of the State and pass orders as he deems fit and proper under the facts and circumstance of the case.