

(1988) 10 PAT CK 0008

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No"s. 2200 and 4410 of 1988

Shaikh Mohammad Ali and Others and Dr. Geeta Singh and Others

APPELLANT

Vs

The Bihar State Housing Board and Others

RESPONDENT

Date of Decision : 14-10-1988

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1989) 37 BLJR 361 : (1989) PLJR 477

Hon'ble Judges : Uday Sinha, J;B.P. Singh, J

Bench : Division Bench

Judgement

Uday Sinha, J.—These two writ applications under Articles 226 and 227 of the Constitution have been heard together as they relate two sides of the same coin. The matter being allied, both of them will be disposed of by this common judgment at the admission stage itself. Counsel for the parties have been heard at length.

2. Vigorous submissions were advanced on behalf of the parties. The point, however, calling for consideration is short and simple and admits of no difficulty. In order to bring home the point I shall set the facts appearing in C.W.J.C. No. 4410 of 1988. The expression petitioners shall refer to petitioners in this writ petition.

3. Some Ministerial Officers of the Patna Secretariat formed a Housing Co-operative Society under the name and style of Patna Secretariat Ministerial Officers Co-operative House Construction Society Ltd. The eight petitioners also were members of that Society. The Society itself is respondent No. 5 to this application. The Society was allotted 10.31 acres of land in the year 1967 by the Housing Department for allotment to its members. A deed to that effect was executed by the Housing Department on 22-12-1967. The order of allotment was in respect of 321 Kathas measuring approximately 10.81 acres which was to be allotted to 127 members. The order of the State Government was conveyed by

Assistant Secretary to Government addressed to Superintending Engineer Rural Housing Cell, Housing Department, by letter dated 23-1-1967. This letter is Annexure A/1 to the counter affidavit of respondent No. 1 in C.W.J.C. No. 3200 of 1988. In this letter it had been stated that 127 plots had to be carved out. Sixty plots were to be of 2 kathas each and sixty seven plots were to be of 3 kathas each. The State Government also mentioned that till the issuing of Annexure A/1 only 122 names had been approved by the Government for allotment. The other five would be approved as and when appropriate revised affidavits of the members were received in the department, for which the Society had been requested by letter No. 120 dated 7-1-1987. In short, the grant of land by the Housing Department of the State Government was in regard to specified area meant to be allotted to specified individuals. All the petitioners were mentioned in the list annexed to the letter of the Assistant Secretary, Housing " Department (Annexure A/1). Four of the petitioners were to be allotted 3 kathas land and four of them 2 kalthas.

4. It appears that some jugglery, in the matter of allotment of plots, was committed by the powers controlling the Co-operative Society inasmuch as the eight petitioners, who had been mentioned in Annexure A/1, were left high and dry and no plot was allotted to them. Other disputes also cropped up in the matter of allotment of plots. That gave rise to disputes u/s 48 of the Bihar and Orissa Co-operative Societies Act and an award was passed by Joint Registrar, Co-operative Society on 22-9-1975. The Joint Registrar, set aside the order of the Deputy Registrar dated 21-10-1974. Four writ applications came up before the High Court relating to the disputes about the allotment of plots, They were C.W.J.C. No. 2416 of 1976, 630 of 1977, 219 of 1977 and 272 of 1977. All of them were disposed of by a common judgment by K. B. N. Singh, C. J. and P. S. Sahay J. The matter was ultimately resolved by consent order. It transpired before their Lordships that there were 136 persons out of whom the allotment had been made only to 127 persons and nine members had name of his wife/ husband or minor children had been left without any allotment. Their Lordships thinking of the situation that for the sake of nine persons the entire allotment was in jeopardy six years after registration of the deed of allotment and since construction also had been made on numerous plots their Lordships suggested that with some accommodation the nine persons left out should also be accommodated. The suggestion of the bench bore fruit and by resolution dated 11-2-1981, the Directors of the Society passed a resolution. The salient aspects of the resolution were that (i) the 3 katha plots in which construction had not been done till then should be recarved to bring out five more plots and (ii) four plots should be carved out from a, small park thus accommodating all the nine who had not been allotted. In terms of the resolution the Bench ordered as follows :-

Thus, according to the said resolution, others who have been left out will also be accommodated and will foe entitled to allotment if they do not own any house or plot either in his own name or in the name of his wife/husband or minor children.

This is in pursuance of the terms of allotment made by the Government to the Society as per paragraph 7 of the Agreement Lease entered into by the Society with the Government. It seems that in the aforesaid resolution further limitation has been put in for filling affidavit but it has been agreed by the parties that the affidavit will be on the terms and conditions on which land has been given to the Society for allotment to the members. Shri Kamalapati Singh appearing on behalf of the Society submits that the Directors of the Society not being experts had worded the resolution loosely and agrees to paragraph 7 of the terms and conditions set out by the Housing Department, Government of Bihar, as it could not be contrary to it. The submission of Shri Singh is reasonable and is accepted. The Society will carve out nine plots from the small park and by reducing the areas for three katha plots, leaving 30 ft. wide road in front of the park. We are impressed with the argument of learned counsel for the parties that this small park is not at all needed in the interest of the colony as the colony has already a large park as also open lands on the eastern side in the premises of the Central School and has a road 90 ft. wide on the northern side and 110 ft. wide road on the western side. We are satisfied that to end the long litigation it is advisable to lose this small park rather than leave everybody in uncertainty for years to come.

4. We accordingly allow this writ application and set aside the order of the Joint Registrar contained in Annexure 3 and, to be on the safe side, that of the Registrar also contained in Annexure 4 relating to the dispute in Case No. 61 of 1969. It is made clear that out of 136 members only 9 have been left out for whom these 9 plots are being carved out and will be given to them by the Society according to the terms and condition stated in paragraph 7 of the Lease Agreement; and none of them who is entitled to a plot will be left out. In case less than 9 members are found to be eligible the plots will be carved out according to that number.

5. It appears that the resolution passed by the Director of the Cooperative Society was scuttled by the recalcitrance of some of the allottees and recovering of the plots could not be done. From the order quoted above, it will be seen that the permission/direction of the Bench was to carve out plots from the small park. No order was passed to carve out any plot from the large park. What has happened is that the petitioners on their own carved out eight plots in the large park for themselves (See Annexure 3 to C.W.J.C. No. 3200/88). Annexure B-1 dated 22-2-1986, shows that Ram Sharan Rai, the Secretary of the Co-operative Society, wrote to the Housing Board that the eight petitioners had deposited rupees twenty one thousand five hundred on 10-2-1986 as price for the eight plots. By letter dated 6-6-1986, (Annexure C-1) the Secretary Housing Board, wrote to the Secretary of the Co-operative Society that the prayer made for necessary action in terms of Annexure B-1 could not be granted as the large park land which was meant for public use could not be transformed as residential plot. By letter dated 12-8-1986, Ram Sharan Rai, the Secretary, falsely wrote to the Housing Board that the allotments to the eight petitioners have been made in terms of the judgment of the High Court. Some of the petitioners started

construction on the land allotted to them by the Co-operative Society in the large park.

6. Some of the persons who had been allotted land by the Housing Department and who had paid special premium for allotment of land in front of a park, objected to the Co-operative Society helping itself by poaching upon the large park and carving out eight plots for its members. They agitated the matter in all relevant quarters. I have stated earlier that the Secretary of the Co-operative Society had written to Estate Manager of the Bihar State Housing Department in regard to the allotment of plots to the eight petitioners. In terms thereof the Secretary of the Housing Department by letter dated 6-6-1986, which is annexures 5 to C.W.J.C. No. 3200 of 1986, wrote that the park land, namely, the large park cannot be converted into housing plots and the Housing Board rejects such a proposal. Dr. Geeta Singh and six others (petitioners in C.W.J.C. No. 3200 of 1988) are some of the allottees of the Housing Board who have objected to encroachment on the park land.

7. It appears that petitioner Nos. 1 and 2 had filed plan for construction of buildings which had been approved by the Patna Regional Development Authority (hereinafter referred to as the PRDA) on 8-4-1988. Others had filed application for sanction of their building plan. When the matter came to the notice of the PRDA, it issued notice to all the petitioners in C.W.J.C. No. 4410 of 1988 (respondents in C.W.J.C. No. 3200 of 1988) to show cause why their plans sanctioned on 8-4-1988, be not cancelled as the sanction had been obtained by suppression of relevant materials and to show cause why the prayer for sanction of plan by others be not rejected. Annexure 8 is a notice issued in the pen of the Chief Engineer of PRDA to Manindra Bhushan Prasad, petitioner No. 4 in which he was informed that the sanction of the plan submitted by him for construction had been obtained by suppression of relevant materials inasmuch as the allotment of land by the Co-operative Society was in the teeth of the order of the High Court. He was, therefore, called upon to show cause why the sanction of the plan be not revoked. In the meantime he was directed not to proceed with the construction. It appears that petitioners 3 and 4 had not started construction and had only submitted plan for approval of the PBDA. Notices were issued to them by Annexures 5 and 6 dated 26-5-1988, calling upon them to show cause why the plan submitted by them be not rejected in terms of Rule 37(2) of the Bihar Regional Development Authority Act. After the petitioners had shown cause the sanctioned plan was revoked. One such order is Annexure 7 to this application. Where the plan had not been sanctioned earlier, the application for sanction of the plan was rejected. . The petitioners being aggrieved by the rejection of the plan as also by revocation of the sanction, have moved this Court in C. W. J. C. No. 4410 of 1988, for quashing Annexures 5, 6, 7 and 8.

8. The question calling for consideration now is whether the action of the PRDA in rejecting the sanction accorded to the plans a month prior to the sanction and the refusal to sanction plans in some cases, was within the powers of the Chief

Engineer of the PRDA. It was firstly contended that the authority sanctioning the plan is the Vice Chairman and not the Chief Engineer. The plan having been sanctioned earlier by the Vice Chairman, the Chief Engineer had no jurisdiction to cancel the sanction or to reject the application for sanction. The counter-affidavit on behalf of the PRDA is that the decision to stop construction or to reject the application for sanction, was taken by the Vice Chairman of PRDA and not by the Chief Engineer. The Chief Engineer had merely communicated the decision of the PRDA. We have no reason to doubt the averment on behalf of the PRDA that the decision was of the Vice Chairman and not of the Chief Engineer. Nothing was shown to us by counsel for the petitioners or by the Co-operative Society to indicate that the decision was not of the Vice Chairman. The submission urged on behalf of the petitioners, therefore, has only got to be stated to be rejected.

9. The next question is whether the PRDA had the jurisdiction to ignore the allotment of the lands to the petitioners by the Co-operative Society and to stop the construction. The answer is short and simple. At no point of time did the Housing Department or its successor the Housing Board, or the PRDA allot the large park bearing plot No. 41 to the Co-operative Society. The existence of the large park as a public plot was recognised by this Court itself in the judgment delivered in C.W. J. C. Nos. 2416 of 1976 and 219, 272 and 630 of 1977, disposed of on 24-2-1981, Annexure 1, relevant portions of which have been quoted earlier. Their Lordships observed that since there was a large park near about the lands allotted to the Co-operative Society, there was no necessity for the small park. It is a big question how far this Court was competent to declare that the small park be cut up and allotted to the Co-operative Society, Be that as it may. Since that had been declared by the Court seven years earlier we do not wish to upset the apple cart but there can be no doubt that the existence of the large park had been recognised by this Court and this High Court did not permit the Co-operative society to poach upon it. No part of the large park has been allotted to the Co-operative Society. It could not have helped itself by encroachment or occupying public land. If a piquant had arisen because of non-allotment of land to the seven petitioners who were original petitioners, that was a thing of its own making of the Co-operative Society. The entire public of Kankarbagh colony cannot be made to suffer. To permit such an act would be against the principal of environment and would be anti-ecological balance. The fact that the eight petitioners had deposited the price of the land encroached by them is of no consequence because the Housing Board explicitly rejected the prayer for converting the large park into residential land. The land allotted to the petitioners could not have been treated as land meant for housing. Nothing was brought to our notice showing that the Co-operative Society had any right to allot the lands allotted to the petitioners. That being the position, the Vice Chairman was fully justified in ignoring the action of the Co-operative Society and the allotment of the land to eight petitioners.

10. Learned counsel for the petitioners as also learned counsel for the Co-operative Society, respondent No. 5, submitted that this Court should ignore the

letter and accept the spirit of the order of this Court in its judgment Annexure 1. We regret to see any substance in this submission. It was conceded by counsel for the petitioner and the Cooperative Society that the letter of the judgment did not create any situation for taking a sympathetic view of the matter in favour of the petitioners. The spirit of the earlier judgment was to accommodate persons who had become members of the Society. They should, therefore, be accommodated by providing some other land to them. We regret, we find no force in this submission. A Court of law cannot give effect to the spirit ignoring the letter of the judgment. This Court did not permit; the Cooperative Society to take any land in any part of Patna. The Co-operative Society and the petitioners, therefore, could not have helped themselves. The entire people of Patna cannot be penalised for some fault/ fraud of the office bearers of the Co-operative Society. In our view, therefore, Annexures 5, 6, 7 and 8 of C.W.J.C. No. 4410 of 1988, are unassailable. For once the PRDA has acted to promote the benefit of Society, we should be the last persons to thwart such action of the PRDA. No quarter should be given to persons encroaching on public land and causing disappearance of public park, play ground and open space providing the breathing space to the society specially the children. The submission urged on behalf of the petitioners, therefore, has no substance and must be rejected.

11. Learned counsel for the petitioners submitted that the allotment of lands to the petitioners had been recognised by the Joint Registear, Co-operative Society. The order of the Joint Registrar, Co-operative Society clothed the petitioners with right to the land. This submission has only got to be stated to be rejected. What happened before the Co-operative authorities was a matter between the members and the Co-operative Society. The people of Kankargarh or the PRDA or the Housing Board was not concerned with it. They were not party to it. The order of the officers of the Co-operative department did not bind them. The members and the office bearers of the Society cannot take the right of others by their own flat. This submission also, therefore is accordingly rejected.

12. Learned counsel for the Housing Board and the petitioners submitted that the erstwhile office bearers who happened to be in power in 1981, acted fraudulently in providing the compromise resolution which led to passing of the judgment of this Court in 1981. The Society as a body (respondent No. 5) has no face to advance this submission. The Co-operative Society is sui juris. The Society having put forward the compromise resolution, the successor office bearers cannot impeach it. It is not open to them. If some individuals acted fraudulently, the petitioners or the successor office bearer may sue for damages or whatever the remedy may be available to the petitioners but obviously they can have no claim against the PRDA or the Housing Board.

13. The petitioners have stated in paragraph 17 that in pursuance of the judgment of the High Court, the Co-operative Society carved out plots from the small park in Sector "O" and intimated about it to the Housing Board to confirm it. In paragraph 19 it has been averred that rupees twenty one thousand five

hundred was deposited with the Board as the price for the land allotted to the petitioners. The statement in paragraph 17 is patently false. The lands had not been marked out in small part but it had been marked out in the large park. Marking out plots in large part was against the High Court judgment. The statement in paragraph 17 was meant to lull the High Court into once again overstepping its bounds. We would have ordered prosecution of Reoti Raman Prasad, deponent in C.W.J.C, No. 4410 of 1988 for that false statement but as he has been a victim of the machination of the office bearers controlling the Society in 1981, I have dropped the idea of prosecuting Reoti Raman Prasad.

14. The petitioners in C.W.J.C No. 4410 of 1988 have not averred anywhere that the large park also had been allotted to the Co-operative Society but surprisingly learned counsel for the respondent No. 5-the Cooperative Society-took up the stand at the time of argument that the large park also had been allotted to the Society. This was an astounding suggestion. If the large park also had been settled with the Co-operative Society the area settled would have been about 12 acres. Learned counsel for the petitioner, however, conceded that the land allotted to the Society was only 10.31 acres. The attitude of the Society is condemnable having played fast and loose with the petitioners, it cannot be permitted to take up that stance now, that large park also had been allotted to the Society.

15. The petitioners filed an amendment application on 21-7-1988. By this application, the petitioners added three more prayers. The prayers now advanced are that this Court declare that the judgment/ order of this Court in C.W.J.C. No. 2416 of 1976 and analogous cases was obtained by fraud on this Court by the then office bearers of the Society. Second added prayer is that this Court do give effect to the orders passed by the Joint Registrar and Registrar of the Co-operative Society which was impugned in the judgment of this Court (C.W.J.C. 2416/76 and analogous cases). The "third prayer is that the order passed by the Chief Engineer of PRDA, respondent No. 13 cancelling the sanctioned plan be quashed. In our view none of these three prayers can be granted, The third prayer for quashing the order of the Chief Engineer has absolutely no merit which I have discussed at length earlier. In regard to the declaration that the judgment of C.W.J.C. No. 2416 of 1976 of this Court was obtained by committing fraud by the office bearers of the Society cannot also be granted for the reason that there is no material before us for holding commission of fraud. Even if fraud had been practised upon this Court by the then office bearers it cannot result in the large park lands being allotted to the petitioners. The other prayer for enforcing the order of the Joint Registrar and the Registrar which had been challenged in C.W.J.C. No. 2416 of 1976 must sink with other prayers. The prayers made in the amendment petition are also, therefore, rejected as being without any merit.

16. Learned counsel for the petitioners 1 and 2 submitted that they have already constructed upto lintel level and, therefore, they should not be disturbed from

proceeding with the construction. I regret I am unable to see any substance in this submission. The petitioners cannot take advantage of their own fraud. They knew very well that the large park had not been allotted to them nor had the High Court said that the Society would be free to cut up chunks of the large park. Even then they gave unto themselves the plots which they claim. They have absolutely colluded in the illegal act of the Co-operative Society. If they have made construction, they have done so at their own risk. The people at large cannot be made to suffer for the fraud of the Society and connivance of the petitioners in the fraud. The Government had clearly approved allotment of lands to the petitioners at the time the land was being allotted to the Society and yet by some quirks of fate they did not get the lands. That is no reason why the people of the area should be made victims of the fraud of the Society.

17. For all the reasons stated above, we see no merits in C.W.J.C. No. 4410 of 1988. It is dismissed accordingly.

18. C.W.J.C. No. 3200 of 1988 is the other face of the coin. The petitioners have assailed the action of the Society and the petitioners of C.W.J.C. No. 4410 of 1988 to poach upon the large park. Since we have found no merit in the case of the petitioners of C.W.J.C. No. 4410 of 1988, C.W.J.C, No. 3200 of 1988 must succeed. Annexure 3 to C.W.J.C. No. 3200 of 1988 brings out in clear perspective the fraudulent act of the eight petitioners. They had no business to allot eight plots to the selves. The petitioners being Ministerial Officers of the Secretariat probably thought that since they run the Government nobody would be able to oppose their illegal acts. This Court cannot countenance illegal avaricp. The petitioners in C.W.J.C. No. 3200 of 1988, have rendered yeoman service to the Society at large.

19. For all the reasons stated above, C.W.J.C. No. 4410 of 1988, is dismissed as being without any merit at the admission stage itself and C.W.J.C. No. 3200 of 1988 is allowed both without costs.

20. We hope that the encroachment from the large park will be removed, even if necessary by force, by the PRDA as soon as possible. No quarter should be given to persons encroaching on park and public land.