

(1994) 09 PAT CK 0015
In the Patna High Court
Case No : C.W.J.C. No. 1609 of 1984

Shayamrishi Singh

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 08-09-1994

Acts Referred:

Bihar Regional Development Authorities Act, 1981 — Section 54(1)

Citation : (1995) 2 PLJR 39

Hon'ble Judges : R.M. Prasad, J

Bench : Single Bench

Advocate : Rajendra Prasad, for the Appellant; . Madhu Shankar Mishra, for the Respondent

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—In the present writ application, the grievance of the Petitioner is that the order dated 29-7-1982, passed by the Vice-Chairman of the Patna Regional Development Authority in case No. 294/82 in exercise of the powers u/s 54(1) of the Bihar Regional Development Authority Act, 1974 (hereinafter referred to as "the Act") is ultra vires the aforesaid provisions in as much as the Petitioner, who claims to be the real owner was never given any notice in regard to the said proceeding yet the impugned order has been passed directing demolition of the building in question.

2. In short, the case of the Petitioner is that initially one Ramgati Singh of village Shekhpura was recorded tenant of plot No. 1004, Khata No. 208, Tauzi No. 5767 having an area of 71.5 decimals of land. After the death of said Ramgati Singh in the year 1963 a Khangi partition took place in the family constituting Rajmani Singh (Respondent No. 4) and Ras Bihari Singh, father of the Petitioner and the portion of the land, which remained after acquisition of 69 decimals of land by the State of Bihar came in the share of the father along with other co-sharers of the property. It is claimed that in the Patna Municipal Corporation also the name of the Petitioner who is the owner, is recorded as the tax-payer. In support of the

said claim, the Petitioner has filed photostat copies of the receipts granted by the Patna Municipal Corporation as Annexures 1 and 1/1.

3. Mr Rajendra Prasad, learned Counsel appearing for the Petitioner contended that proviso to Sub-section (1) of Section 54 of the Act provides that no order of demolition of building shall be made unless the owner or the person concerned has been given a reasonable opportunity to show cause why the order should not be made. According to the learned Counsel, in the present case notice was given to the said Rajmani Singh who was neither owner, nor can even be called to be the person concerned as the Petitioner is the owner and also recorded as the tax-payer in the record of the Municipal Corporation. Thus according to him, the Petitioner was entitled for reasonable opportunity to show cause before the order of demolition was passed.

4. On the other hand, Mr. Manu Shankar Mishra, learned Counsel for the P.R.D.A. submitted that it is true that the notice was given to Rajmani Singh, but in fact, during the enquiry the father of the Petitioner filed an affidavit that the building in question was given in the mutual partition to said Rajmani Singh, who all through the said proceeding contested without raising any objection that the building in question did not belong to him. Thus, according to Mr. Mishra, there has been no illegality committed by the Authority in passing the order of demolition.

5. The claim of the Petitioner regarding Khangi partition as also the fact that the land in question came in the share of the father of the Petitioner namely, Rash Bihari Singh have not been disputed. However, in paragraph 9 of the counter-affidavit it is stated that the property in question is in the name of Ramgati Singh and along with the father of the Petitioner, Rash Behari Singh and Rajmani Singh, son of Ramgati Singh are co-sharers in the property. The said statement in the verification portion, as contained in paragraph 21 of the counter affidavit is stated to be based on the information derived from the office of Respondent No. 2 and with relevant records, which he believed to be true. In my opinion, on such verification, it is difficult to accept the aforementioned statement made in paragraph 9 of the counter affidavit.

6. Moreover, from the receipts issued by the Patna Municipal Corporation, as contained in Annexure 1 series, appears that the house, which is constructed over the land in question is in the name of the Petitioner. Accordingly I am of the view that the Petitioner was entitled for a notice in terms of proviso to Sub-section (1) of Section 54 of the Act. Admittedly, no such notice was given to the Petitioner. In that view of the matter, in my opinion, the impugned order of demolition cannot be sustained and the same is accordingly quashed.

7. However, the P.R.D.A. shall be at liberty to proceed with the proceedings in question afresh after serving notice upon the Petitioner and take action u/s 54(1) of the Act in respect of the property in question in accordance with law.

8. In the result the application is allowed, but without costs.