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(2024) 05 PAT CK 0042

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 13692 Of 2022

Sitaram Prasad — APPELLANT

Vs

State Of Bihar — RESPONDENT

Date of Decision : 10-05-2024

Acts Referred:

Citation : (2024) 05 PAT CK 0042

Hon'ble Judges : K. Vinod Chandran, CJ;Harish Kumar, J

Bench : Division Bench

Advocate : Gautam Kumar Kejriwal, Atal Bihari Pandey, Alok Kumar Jha, Mukund Kumar, Aditya Raman, Akash Kumar, Anjani Kumar

Final Decision : Disposed Of

Judgement

1. The above writ petition filed, as a public interest litigation, sought removal of the encroachments on the water bodies namely "Kalkalia Pokhar" alias "Badki Pokhar" spread in an area of 20 acres situated in village Sonsa, P.S. Rahui, Nalanda.

2. The petitioner contended that this was the source of water for agricultural purpose in the several villages of the adjoining area. The scope of the writ petition was expanded by an order dated 04.11.2022, which noticed the response of the State specifically speaking of removing of encroachment in 125 water bodies. The Court, hence, thought it fit to direct the Divisional Commissioner, Patna to file a personal affidavit on restoring and reviving water bodies as also removal of encroachments.

3. There were various orders passed and eventually three orders were passed on 24.08.2023, 17.10.2023 and 02.02.2024, which are extracted hereunder:-

Order dated 24.08.2023

The writ petition is with respect to the restoration of a water body after removing the encroachers. About 125 encroachers were identified, who had build pucca

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residential structures that too with aid under the Indira Awas Yojana. It is after the writ petition was filed, proceedings were taken against the encroachers but the State Government and its officials met with stiff opposition and also violence purportedly unleashed by the so called encroachers.

2. The learned Government Advocate submits that despite use of police force only 20 encroachments could be removed and the structures demolished. Further proceedings for removal of encroachment could not be carried out since there was stiff opposition from the persons residing over the filled up water body.

3. Learned counsel for the petitioner also submits that the State by a policy of 1971 had decided to resettle those encroachers who are from the marginalized sections of society. The encroachers in the present case are said to be persons belonging to the Scheduled Castes, Scheduled Tribes and other backward communities and in such circumstances, though alternate plot was offered, the encroachers refused to take it.

4. Learned counsel for the encroachers submits that the resettlement was offered 5 kms away and there is adjacent property available for the resettlement of these persons who had continued in the same village for long.

5. We are not impressed with the submissions made by the intervenors that they should allotted an adjacent property of their choice. The State has framed a policy to resettle people from the marginalized section of society, who are found to be rank encroachers, but that cannot lend to a situation where the encroachers hold the State to ransom and decide the property to which they are resettled. However, we are concerned with the fact that the structures, which are demolished, were built with aid from the Government.

6. The learned Government Advocate submits that all the 125 encroachers were not given aid and some of them were so given aid. At least with respect to those encroachers who are given aid under the Indira Awas Yojana, the Government should come-forth with some proposal to provide them suitable assistance to rebuild their residences especially since the fact of Government aid having been given to build houses on the encroached land, is admitted by the State Government in its counter affidavit at paragraph No. 4.

7. The State Government shall file a counter affidavit with respect to the specific point raised herein above, within a period of three weeks.

8. Post this matter on 04.10.2023.

Order dated 17.10.2023

The learned AAG-4, based on the affidavit and on instruction, submits that as of now based on the previous order of this Court dated 24.08.2023, the resettlement procedure is being proceeded with and those who have valid claims would be allowed to apply under the Mukhyamantri Aawas Yojana for building houses on resettlement. It is specifically pointed out that though in Paragraph-8

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of the affidavit, it stated that 120 affected families have been targeted, Annexure-A indicates otherwise. Many of the encroachers are family members and they have made separate encroachments; all of whom cannot claim under the Awas Yojana whether it is issued by the Central Government or the State Government.

2. In such circumstance, the AAG-4 submits that a better affidavit would be filed specifically speaking on the proposals of providing aid only to those persons who were actually entitled and who were given aid under the Indira Aawas Yojana.

3. We also notice that the intervenors/encroachers have not appeared today.

4. Post on 08.12.2023.

Order dated 02.02.2024

Secretary, Rural Development Department had been given target to give home under the Mukhyamantri Awas Yojna to be earmarked only 62 persons. An affidavit has been filed on 7.12.2023 by District Magistrate Nalanda that 120 encroachers were identified, out of which 62 persons were given the benefit of Indira Awas Yojna. It is also stated that Deputy Development Commissioner, Nalanda has addressed the Secretary, Rural Development, Govt. of Bihar to allot funds for ensuring construction of residences under the Mukhyamantri Awas Yojna to the earmarked 120 encroachers including the 62 persons who had already given the benefit of a scheme. The status of the proposal shall be placed on record, through an affidavit in two months.

2. List this case on 19.04.2023

4. As per the last direction issued, a supplementary counter affidavit has been filed on behalf of respondent No.4-7; by the District Magistrate, Nalanda, under whose jurisdiction comes the water body, restoration of which was the issue agitated in the writ petition. We extract paragraph 4-8 of the supplementary counter affidavit dated 17.04.2023 hereunder:-

4. That it is pertinent to mention here that altogether 120 families belonging to the schedule caste were earmarked as encroachers over the land bearing plot no. 1616 nature Bhind (Pokhar) by way of constructing houses out of them 62 encroachers were provided their houses under Indra Awash Yojna. It is reported by the Revenue Officers that all the encroachers are landless against them final order for removal of the encroachment has been passed in connection with Encroachment Case No. 06/2022-23. In view of the above circumstances the homestead lands were arranged and allotted to the landless encroachers through record no. 03/2022-23, 01/2023-24, 02/2023-24 and 03/2023-24 and purcha were issued and served upon the landless encroachers, but even after herculean efforts they did not received the purcha and on account of aggressive protest made by the encroachers, encroachment could not be removed completely in apprehension of serious problem of law and order.

5. That it is pertinent to mention here that in pursuance to the proposal sent by

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the B.D.O, Rahui vide letter no. 144, dated 19-02-2024 as well as in the light of departmental letter no. 2354203, dated 07-12-2023, sanction for giving benefit of Awash under Mukhyamantri Gramin Awash Yojana has been approved provisionally for all 112 landless encroachers by the D.D.C, Nalanda vide order contained in memo no. 799, dated 09-03-2024. It was directed by the D.D.C, Nalanda to the B.D.O, Rahui to obtain the required necessary documents of the beneficiaries to register them on Awash Software. It is stated that in survey 112 family were found eligible for awash yojana and eight(08) family were not found eligible for awash yojana because 02 family found dead and without legal heir, 03 had their family members in list already and were repetitive and 03 family had retired from government service and were found not eligible. This was communicated by B.D.O., Rahui vide letter no 419 dated 17.04.2024.

A photocopy of memo no. 799, dated 09- 03-2024 issued by the D.D.C, Nalanda and letter no 419 dated 17.04.2024 issued by the B.D.O., Rahui are annexed herewith as annexure R/A and R/B respectively.

6. That it is respectfully stated and submitted that in pursuance to the direction given by the D.D.C, Nalanda, all the beneficiaries (landless encroachers) were noticed with direction to submit the required documents such as Ration Card, Adhar Card, Bank Passbook, Photo etc. for their registration on Awash Software, which has not been received as yet.

7. That it is relevant to mention here that even after issuance of notice and oral request made by the B.D.O, Rahui, no beneficiaries took trouble to produce the relevant documents i.e. Ration Card, Photo, Adhar Card, Passbook etc. then notice was sent to them through registered post.

However, till 10 days of the issuance of registered notice when none produced the relevant documents then the beneficiaries were contacted by the B.D.O, Rahui personally and requested them to produce the required relevant documents for processing to provide them first installment amount under the scheme, but neither they produced any documents nor became ready to receive the notice. It is important to mention here that the entire exercise was made on 13.04.2024 under videography as it appears from the report submitted by the B.D.O, Rahui vide letter no. 412, dated 13.04.2024 as well as letter no. 1064, dated 15.04.2024 submitted by the D.D.C. Nalanda.

A photocopy of letter no. 412, dated 13.04.2024 issued by the B.D.O, Rahui, C.D of videography and letter no. 1064, dated 15.04.2024 1064, issued by the D.D.C. Nalanda are annexed herewith as annexure R/C, R/D and R/E respectively.

8. That it is prayed that one month time be provided so that notice can be served two to three times to the beneficiary of awash yojana and necessary documents for registration can be taken from them and awash yojana can be given to beneficiary/encroachers. Even after that they do not provide papers then they will be forcefully removed.

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5. We record the said affidavit as an affidavit of undertaking and dispose of the writ petition. The writ petition stands disposed with the aforesaid observations.

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