

(1999) 06 PAT CK 0027

In the Patna High Court

Case No : Civil Writ Jurn. Case No. 5212 of 1988

Smt. Chanda Devi

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 28-06-1999

Acts Referred:

Bihar State Housing Board Act, 1982 — Section 59
Constitution of India, 1950 — Article 14

Citation : AIR 2000 Patna 16 : (1999) 9 PLJR 888

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Advocate : P.N. Singh and Amar Nath Mishra, for the Appellant; Rajiv Nayan Singh, Shola Sandhwar, Anil Kumar Jha and Sharvan Kumar, for the Respondent

Final Decision : Allowed

Judgement

Aftab Alam, J.—The petitioner prays for quashing of the direction, cancelling allotment of a plot of land earlier made in her favour, as contained in letter No. 1187/A, dated 3-6-1986 (Annexure-6) issued by the Manager Estate-cum-Additional Secretary of the Bihar State Housing Board".

2. It may be stated at the outset that there is no suggestion or hint in this letter that the order of cancellation of allotment was passed by some other superior officer and the Manager Estate was only communicating that decision to the petitioner through his letter. On the contrary, from the impugned letter it appears that the decision of cancellation of allotment was taken by the Manager Estate himself for the reasons stated in the letter.

3. In the impugned letter it is stated that the petitioner was allotted plot No. U-469, situate at Lohlanagar Housing Colony, Patna as If the plot In question was one of the random left over ("chit put") plots. The plot In question, however, did not belong to that category and in the lay out plan it was left out as park. It was further stated that underground drainage passed through It. It was also alleged that the petitioner had made some constructions over the plot without obtaining

prior approval of the Managing Director of the Board and thus in violation of Section 78 of the Bihar Housing Board Act. It was further stated that by an earlier letter No. 2214, dated 28-7-1984 issued by the Board's Executive Engineer the petitioner was directed to vacate her unauthorised occupation of the plot and to pay damages for her unauthorised occupation of the land failing which proceedings under Sections 83A and 59 would be initiated against her but the petitioner by her letter dated 10-8-1984 denied that she was in unauthorised occupation of the land and proceeded with the construction. It was further alleged that the constructions made by the petitioner were causing obstruction in the smooth flow of traffic on the adjoining roads, it was then repeated in that letter that underground sewage line and storm drainage line passed through that plot and the actions of the petitioner had been in contravention of Clauses 2 and 5 of the lease deed executed in her favour. The letter concluded by saying that the allotment of plot No. U-469 made earlier in her favour was accordingly cancelled.

4. According to the petitioner she was allotted plot No. U-469 in the Lohianagar Housing Colony, Patna by allotment letter, dated 26-5-1980. From the allotment letter, a photo-slat copy of which is at Annexure-1, it appears that the allotment was made on the basis of an application made by the petitioner on 30-1-1980, that is to say, within four months from the date of making the application. What is even more remarkable and highly curious is that on the same day (26-5-1980) a deed of lease for 90 years in respect of the plot in question was executed in favour of the petitioner by Manager Estate cum Dy. Secretary purporting to act on behalf of the Board. The deed was presented for registration on 28-8-1980 and in due course registration was completed. According to the petitioner she constructed a boundary wall around the plot and also put up a temporary shed for storing construction materials e.g. cement, steel etc. It is stated by the petitioner that this structure was purely temporary and was constructed with the sole object of storing materials which would be used in the construction of the building on that plot. Her further case is that she submitted a building plan for the Board's approval on 20-5-1983 but did not get any reply from the Board. In due course of time she also got a building plan duly sanctioned by the P.R.D.A. but before she could start construction over the plot allotted to her, its allotment in her favour was cancelled in a wholly illegal and arbitrary manner. The petitioner denies that she made any encroachment over any adjacent land of road or road flanks etc. It is further her case that it was possible to make construction over plot No. U-469 without in any manner disturbing the underground sewage line and the storm drainage line passing through the plot.

5. At this stage some further relevant facts are to be noted that come to light from the counter-affidavit filed on behalf of the Board. It appears that when the petitioner started making construction over the plot in question some local people made written complaints to the Officer-Incharge, Kankarbagh P.S. on 15-2-1984 and before the Managing Director of the Board on 18-2-1984. On enquiry it was then found that the allotment of the plot in question was made in

the petitioner's favour in a completely irregular and Illegal manner. Plot No. U-469 is triangular In shape. It was not one of the random left over (Chit put;) plots and underground sewage line and storm drainage line passed through it. For all these reasons it was not meant for being allotted to an Individual for housing purpose but was left out in the lay out plan as park. Further, the manner in which the allotment was made and the lease was executed in the petitioner's favour also cast grave shadow on the legality and validity of the allotment. It also transpired that the petitioner had made constructions over the plot without obtaining prior approval of the Board and thus in violation of Section 78 of the Housing Board Act. Accordingly the Managing Director by his letter dated 21-2-1984 (Annexure 4) asked the petitioner to show cause within a week why her allotment be not cancelled for the aforesaid reasons.

6. Another letter dated 24-7-1985 (Annexure 5) was issued by the Executive Engineer of the Board asking the petitioner to remove her unauthorised occupation from the plot within 15 days falling which appropriate proceedings would be initiated against her.

7. It is further stated in the counter-affidavit that It came to the notice of the Board that in the year 1980 the then Chairman had made a number of irregular allotments and the Board In its 91st meeting held on 14-9-1984 examined and scrutinised all such allotments. The Board then took the decision to accord its approval for the regularisation of those allotments on payment of consideration at commercial rates provided that the plot was not triangular in shape and the allotment did not cause any obstruction in the flow of traffic and sewage line and drainage line did not pass through the plot. It Is evident that plot No. U-469 did not qualify for regularisation of allotment as It failed to satisfy all the three conditions. It was in these circumstances that the allotment of the plot In question In favour of the petitioner was cancelled.

8. It was further stated in the counter affidavit that recently i.e., shortly before the case was taken up for hearing, the Managing Director constituted a committee of some senior officials of the Board to make a spot inspection of the site. The committee on Inspection of the site prepared a site plan a copy of which is at Annexure-A. From the site plan it is apparent that plot No. U-469 is triangular in shape and the storm drainage line and the sewage line passed through it. In the lay out plan the plot was flanked by 40 wide roads both on its northern and southern side but as a result of carving out of the plot the road on the northern side was reduced to 28' 10" to 36'6" and the road on the southern side to 31'4" to 27'7". It was also found that there was pucca construction with asbestos sheet roofing on a substantial portion of the plot for which no building plans were sanctioned either by the P.R.D.A. or by the Housing Board. It is the case of the respondent Housing Board that in those circumstances its action in cancelling the allotment of the plot in question in favour of the petitioner was fully Justified.

8A. Mr. P. N. Singh, learned Sr. Counsel appearing for the petitioner tried to make

the registered lease deed executed in favour of his client as the sheet anchor of his arguments. Learned counsel submitted that the rights and obligations of the parties were governed by the registered lease deed and as long as the lease remained subsisting, the petitioner's possession over the plot could not be called unauthorised and the petitioner could not be legally asked to vacate the plot. Learned counsel submitted that cancellation of allotment, as was purported to be done by the Impugned letter, was quite meaning less Inasmuch as the allotment had ripened Into a lease for 90 years in favour of the petitioner and unless and until the lease was held to be invalid or Illegal and the lease deed was declared to be inoperative and unenforceable, the Board could not be allowed to evict the petitioner from the plot. Learned counsel further submitted that a lease deed could be avoided only by a declaration made by a competent Court of civiljurisdiction in a suit filed before it seeking appropriate reliefs).

9. On the other hand, Mr. Shrawan Kumar, learned counsel appearing for the Board brought to my notice the provisions of Section 59 of the Housing Board Act. Learned counsel submitted that the Housing Board was not required to file a suit before the Civil Court and it was open to it to evict the petitioner on any qf the grounds enumerated in Section 59 of the Act and following the summary procedure laid down in that section.

10. Mr. P. N. Singh submitted that a registered deed could not be avoided under the provisions of Section 59 of the Act. But Mr. Kumar relied upon the non obstante clause In Sub-section (1) of Section 59 and submitted that notwithstanding the registered sale deed in favour of the allottee he could be evicted in terms of Section 59 of the Act in case his actions (or omissions) attracted any of the grounds enumerated in that section.

11. In this case it is not required to interpret the true scope of Section 59 of the Act and to make a pronouncement whether Section 59 is wide enough to avoid and nullify a registered lease deed executed in favour of the allottee and I propose to leave that, question open to be decided In an appropriate case. This is for the simple reason that in this case the impugned order, cancelling the petitioner's allotment does not seem to have been passed in a proceeding u/s 59 of the Act.

12. At this stage it will be necessary to examine Section 59 of the Act which is a long section with a number of Sub-sections. Sub-section (1) of Section 59 has a non obstante clause and it is as follows :--

59. Summary procedure for eviction and recovery of rents :-- (1) Notwithstanding anything contained in the Transfer of Property Act, 1882 (Act I of 1882), the Code of Civil Procedure, 1908 (Act 5 of 1908) or any other law for the time being in force, if the competent authority is of opinion --

xx xx xx

After the aforesaid non obstante clause Sub-section (1) splits up in two parts.

Clause

(a) deals with a person whose initial occupation of the premises was authorised but who made himself liable to eviction on grounds enumerated in Sub-clauses (i) to (v); Clause

(b) of Sub-section (1) deals with a person whose occupation of the Board's premises was unauthorised from the beginning; Sub-section (1) further provides for issuance of notice in writing to the person proceeded against and/or the person who is in actual occupation of the premises. Sub-section (2) of Section 59 specifies the contents of the notice etc. Sub-sections (3) and (4) lay down the manner of service of notice. Sub-section (5) provides that an order to vacate the premises would be passed only after considering the cause, if any, shown by the proceedee and any evidence he may produce in support of his case and after giving him a reasonable opportunity of being heard.

13. In the facts of this case It is evident that none of these requirements were satisfied. Even if the letter dated 21-2-1984 (Annexure-4) issued by the Managing Director is to be treated as a notice u/s 59 (1) of the Act it is evident that no opportunity to lead any evidence or of being heard was given to the petitioner nor was the final order of eviction (Annexure-6) passed by the competent authority.

14. In this regard it may be noted that in the counter-affidavit filled on behalf of the Board it is stated (In paragraph 9) that the allotment in question was cancelled by the Managing Director and the same was communicated by the Manager, Estate cum Additional Secretary of the Board vide letter No. 1187 dated 3-6-1986 (i.e. the impugned order). This statement, however, cannot be accepted. In the first place the order said to have been passed by the Managing Director is not brought on the record. Secondly, as noted earlier there is no suggestion or hint in the letter dated 3-6-1986 (Annexure-6) that the order of cancellation of allotment was passed by some other superior officer and the Manager Estate was only communicating that order to the petitioner through his letter. It must, therefore, be held that the order of cancellation of allotment was passed by the Manager Estate himself. He was not competent to pass such an order. Further, the order was passed without holding any proceeding u/s 59 of the Housing Board Act. The order of cancellation of allotment as contained in the impugned letter dated 3-6-1986 (Annexure-6) is therefore plainly unsustainable in the eyes of law. It is accordingly set aside.

15. It is, however, made clear that this Judgment, setting aside the order passed by the Manager Estate will not come in the way of the Board in proceeding against the petitioner in accordance with law. It will be open to the Board either to institute a suit in order to avoid the lease deed executed in favour of the petitioner or to initiate a proceeding u/s 59 of the Housing Board Act. In case a suit is instituted or a proceeding u/s 59 is initiated the Board may also pray for suitable interim relief/take interim measures against the petitioner.

16. The order passed in the suit or in the proceeding u/s 59 of the Act if assailed before this Court, will be Judged on their own merits and in accordance with law.

17. In the result this writ petition is allowed subject to the aforesaid observations and directions and with no order as of costs.