

(1966) 10 PAT CK 0007
In the Patna High Court
Case No : Misc. Judl. Case No. 939 of 1964

Smt. Santi Devi

APPELLANT

Vs

Deputy Commr., District Magistrate and Others

RESPONDENT

Date of Decision : 10-10-1966

Acts Referred:

Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 — Section 11(2)
Constitution of India, 1950 — Article 14, 31
Transfer of Property Act, 1882 — Section 108

Citation : AIR 1967 Patna 333

Hon'ble Judges : R.L. Narasimham, C.J;K.K. Dutta, J

Bench : Division Bench

Advocate : Sudhir Chandra Ghosh and Shyama Prasad, for the Appellant; A.G., Standing Counsel and B.D. Singh, for the Respondent

Final Decision : Dismissed

Judgement

Narasimham, C.J.—This is an application to quash the order of the Deputy Commissioner (District Magistrate) of Hazaribagh, dated the 5th June, 1964, (annexure N), allotting the house of the petitioner in Giridih town to one Sri R.P. Singh, Additional Subdivisional Agriculture Officer. The order was made purporting to be in exercise of the power under Clause (a) of Sub-section (2) of Section 11 of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 (hereinafter referred to as the Act). For the previous history of the dispute on the subject my judgments in Miscellaneous Judicial Case no. 432 of 1964 and Miscellaneous Judicial Case No 692 of 1964, which have been disposed of today, may be seen. The District Magistrate had made the allotment of the house in the name of another Magistrate Sri C. Jha, on the 17th March, 1964. Sri C. Jha occupied the house and then gave notice of his intention to vacate fee house with effect from the 10th June, 1964. (annexure M).

He also forwarded a copy of his vacation notice to the petitioner by his Memo No. 1208, dated the 27th May, 1964. He thus gave 15 days notice as required by the

said statutory provisions, and the District Magistrate's order allotting the house to Sri R.P. Singh was passed on the 5th June, 1965. The time-limit required by the said clause of the Act was substantially complied with, and as pointed out in the Full Bench decision, Shiveshwar Prasad Sinha Vs. The District Magistrate of Monghyr and Another, even if there is a delay of a few days as regards the duration of the notice, that will not affect the validity of the order.

2. Two new points were, however, taken up in this petition. It was urged that the said provision of the Act was unconstitutional as offending Articles 14 and 31 of the Constitution. It is true that Sub-section (2) of Section 11 of the Act is a special provision intended for the benefit of the public servants. In the aforesaid Full Bench decision the main object of the section has been explained. But merely because there is a statutory provision intended to benefit the Government servants as a class such a provision cannot be held to be violative of Article 14 of the Constitution. It is well known that in the Penal Code, Criminal Procedure Code and the CPC special provisions have been made for the benefit of the public servants, and there are several decisions of the High Courts and the Supreme Court to the effect that such provisions do not contravene Article 14 of the Constitution (see The State of Bombay Vs. Bhanji Munji and Another,) There is reasonable nexus between the basis of the classification for the purpose of differentiation and the object sought to be achieved by the offending provision.

3. Similarly, reliance on Article 31 of the Constitution is quite futile. Here there is no attempt to deprive the petitioner of her right to property. Her freedom to choose any tenant she likes is taken away and the District Magistrate is authorised by law to allot the house to another public servant, subject to certain safeguards. As no property right is infringed, there is no question of violating Article 31 of the Constitution. It may be urged with some justification that there is some restriction on the right to hold property, but the restriction must be held to be reasonable for the very reasons for which I have held that the offending clause does not violate Article 14. Public servants are liable to transfer from place to place at very short notice and unless power is conferred on a competent authority to provide suitable accommodation for them the efficiency in the discharge of public duties will suffer.

4. Mr. Ghosh then argued that the outgoing tenant Sri C. Jha has not paid the rent due to the petitioner, amounting to Rs 540/-. and that the arrear due from the present tenant, Sri R.P Singh. is Rs. 1500/-. It is difficult to say without hearing those persons whether this statement about the arrear rent due from them to the landlord is correct. It was, however, urged that the absence of any provision in the Act casting on the District Magistrate the responsibility of realising rent from the tenant whom he is foisting on the landlord is itself sufficient to show that the provisions were unconstitutional

It is difficult to accept this extreme contention. The ordinary rights of a landlord and tenant, as provided in the Transfer of Property Act, are not affected in any way. If the tenant does not pay rent, it is always open to the landlord to realise

the same according to law. The impugned provision deals only with the right of the landlord to choose his own tenant, In other respects the normal machinery is left untouched. I cannot, therefore, accept the extreme contention that merely because there is no drastic provision for summary realisation by the District Magistrate of the rent due to the landlord from the Government servant to whom he allots the house the statutory provision itself must be held to be unconstitutional.

5. But at the same time I should point out that it will not be proper to confer statutory power on the District Magistrate to foist a public servant as a tenant on the landlord and at the same time completely absolve him from the responsibility of assisting the landlord in the realisation of the rent from that tenant. It will be better if the Government issues a circular to the effect that whenever public servants are allotted houses for occupation as tenants by virtue of the said statutory provision, their failure to pay the rent due to the landlord will be treated as an act of misconduct for disciplinary purposes, and the District Magistrates should also be told to promptly enquire into allegations of non-payment of rent made by the landlord and take effective steps for the realisation of such rent. If necessary, the question of amending the statutory provision for this purpose may also be taken up.

6. The petition is dismissed with these observations, but without costs.

Dutta, J.

7. I agree.