

(1982) 04 PAT CK 0004

In the Patna High Court

Case No : Civil Writ Jurn. Case No. 1018 of 1981 (R)

Temu Aspi Gabba and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 05-04-1982

Acts Referred:

Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 101, 102, 103, 104, 114

Citation : AIR 1982 Patna 236 : (1982) 30 BLJR 357

Hon'ble Judges : S. Roy, J;Lalit Mohan Sharma, J

Bench : Division Bench

Advocate : S.N. Roy and Narayan Roy, for the Appellant; Prabha Shankar Mishra and V.P. Singh, (for Nos. 4 and 5), Debi Prasad and A. Sahay, (for Nos. 2 and 3), T. Bodra and M.M. Pal, (for Nos. 1 and 2), for the Respondent

Final Decision : Dismissed

Judgement

Lalit Mohan Sharma, J.—The petitioners claim to be settlees of some of the quarters in a colony in Adityapur, Jamshedpur of the Bihar State Housing Board (hereinafter referred to as "the Board") (respondent No. 2) and pray by this writ application for issuing a direction to the Board to maintain the open space, as shown in the site plan, Annexure "1" to the writ application, and not to settle it for constructing buildings thereon. The Board is a statutory body formed for the purpose of making provision for housing facilities. According to the petitioners' case, a prospectus had been issued giving out the terms and conditions for allotment of houses and house plots in detail and the petitioners in response thereto made applications and have been granted settlements. The settlements were proposed to be made by reference to a site plan, a photostat copy whereof has been annexed to the writ application as Annexure "1". On the north-western side of the plan, a piece of land running from east to west has been described as "reserved for other utility". This space has been marked out by the petitioners by red lines and is the subject-matter of the present case. According to their case, the open space was exclusively meant for the common benefit of about 70

settlees including the petitioners and they utilized the same by holding social functions and using it as children's play ground. A public water tap also was installed there by authorities. The space was not intended for putting up dwelling houses, but the respondents 2 and 3 attempted to settle the same with strangers which led to several disputes. In the circumstances, the writ application has been filed.

2. The petitioners' allegations regarding the nature of the space in dispute were denied on behalf of the Board and its Executive Engineer (respondent No. 3) and it was stated in their counter-affidavit that it had already been settled under registered deeds in favour of three persons. The fact that a water tap was fitted by the P. H. E. D. was admitted but it was said that it was at a corner of the plot and the P. H. E. D. people did not and could not by installing the tap determine the nature of the land. The respondents also challenged the claim of the petitioners as settlees. Annexure "1" is not accepted as the correct plan. According to their case, the correct plan is Annexure "A" to the counter-affidavit.

3. The respondents 4 and 5 were added as respondents as they are claiming their right to build on the disputed space.

4. Mr. Narayan Roy, appearing in support of the application, has contended that the petitioners are entitled to the relief claimed on the basis of the principle of promissory estoppel. He relied upon the decisions in Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd., and Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, .

5. So far as the respondents' challenge to the petitioners' right as settlees is concerned, I do not find sufficient support in favour of the respondents' case. Even if the plea against the petitioner No. 4 be assumed to be well founded, the writ application must be held to be maintainable at the instance of the other petitioners or at least on behalf of petitioners 2 and 3. But, as will be discussed below, the writ application has to be dismissed on merits itself.

6. The burden to prove that the area in dispute was reserved for other uses of the settlees including the petitioners is on the petitioners. They have not been able to produce any material to sustain their claim excepting the site plan (Annexure 1). Ignoring the denial of the respondents, I will assume in favour of the petitioners that Annexure "1" is the correct site plan. Mr. Narayan Roy argued that the description of the disputed area as "reserved for other utility" establishes that the same was for common use of the settlees of the flats. As in the case of the roads shown in the plan, the learned counsel argued, a presumption arises in favour of the petitioners. Apart from Annexure "1", Mr. Roy has not relied either on the prospectus or any other material. On the first impression the argument appeared to be convincing, but on a close scrutiny, it is not possible to uphold it.

7. Mr. Prabha Shanker Mishra, appearing for the respondents 4 and 5, emphasised the inherent difference between a road running through the colony

and the open land, The right of passage of the residents to get out of the colony has necessarily to be presumed and, therefore, their right to use the roads cannot be denied. A similar presumption may be raised in favour of a park which must be presumed to be there for the use of the inhabitants. So far as the area in dispute is concerned, it is not possible to raise any presumption as the description is too vague and from its position in the plan, it is not possible to draw any inference. The petitioners have emphasised the words "other utility" for which it is indicated as reserved. Mr. Mishra said that it is not indicated that the description is connected with the utility of the settlees of the quarters. It is said that the beneficiary of the "utility" is the Board itself of the general public and by permitting the respondents 4 and 5 to build thereon by getting a settlement of the open land, the purpose for which it was reserved has been allotted built up flats and so Mr. Roy suggested that settlement of land for erecting buildings by settlees is not in contemplation in regard to this colony. There is no support for such an assumption. On the other hand, in paragraph 6 of the writ petition itself, the settlement of house plots is mentioned apart from allotment of houses. There appears to be considerable force in the submission of Mr. Mishra. Even assuming that a final conclusion as to the nature of the utility for which the area was reserved is not possible to be reached, still the petitioners cannot succeed as they have failed to establish their case in this regard.

8. In the result, the writ application is dismissed, but without costs.

S. Roy, J.

9. I agree with the order proposed.