

Executive Engineer, Bihar State Housing Board

Vs

Ramesh Kumar Singh and Others

Civil Appeal No. 11187 of 1995

(Dr. A. S. Anand, K. S. Paripoornan JJ)

22.11.1995

JUDGMENT

PARIPOORNAN, J. -

1. Leave granted.

2. This is a typical case where the extraordinary discretionary jurisdiction vested in the High Court under Article 226 of the Constitution of India was improperly invoked, and the High Court was pleased to exercise its jurisdiction resulting in an abuse of process.

3. The appellant is the Executive Engineer, Bihar State Housing Board and represents the said 'Board' (hereinafter referred to as 'Board'). The respondents to this appeal are (1) Shri Ramesh Kumar Singh (Petitioner in the writ petition), (2) State of Bihar, (3) Sub-Divisional Magistrate, Saraikella, District Singhbhum (the "competent authority") and (4) Shri S. N. Pandey, Adityapur, District Singhbhum (East).

4. The first respondent assailed the show-cause notice - Annexure Ext. P-4 - dated 16-12-1992 issued to him by the third respondent herein under Section 59 of the Bihar State Housing Board Act, 1982 in CWJC No. 82 of 1993 - High Court of Patna. By judgment dated 10-2-1993 a Division bench of the High Court quashed Annexure Ext. P-4, show-cause notice, and also the Eviction Proceedings No. 6 of 1992 pending before the third respondent. The Board, party-respondent in the writ petition, has filed this appeal against the aforesaid judgment dated 10-2-1993.

5. The broad facts relevant for the disposal of the appeal are in a narrow compass. The appellant-Board has allotted Quarter No. M-11/ (Old) Adityapur, near Jamshedpur, to the fourth respondent on hire-purchase basis. Under the provisions of the Bihar State Housing Board Act, 1982 and the Bihar State Housing Board (Management and Disposal of Housing Estates) Regulations of 1983, detailed procedure for allotment, payment of hire-purchase amount, vesting of ownership on payment of the last instalment by the hirer, procedure for summary eviction of unauthorised occupation, etc. are provided. The hirer is a tenant of the Board till the last instalment is paid whereafter the ownership is transferred to the hirer by executing an appropriate conveyance. On this basis the fourth respondent, hirer, is a tenant of the Board. Section 58 of the Act states that the provisions of the Bihar Buildings (Lease, Rent and Eviction) Control Act are inapplicable to the tenancy created by the Board. Section 59 of the Bihar State Housing Board Act enables the Board to evict persons in occupation in cases of sub-tenancy or any other unauthorised occupation, by application to the

"competent authority". By Notification No. 3196/Patna dated 22-11-1973 (Annexure Ext. P-1), the Government of Bihar, in exercise of powers conferred on it by Section 2(10) of the Bihar State Housing Board Ordinance, had authorised all civilian Sub-Divisional Officers and Magistrates, just below the rank of SDOs as competent authorities for the purposes of the Act. The third respondent is the competent authority within whose jurisdiction the instant building - Quarter No. M/11 (Old) Adityapur, near Jamshedpur is situate.

6. The fourth respondent, the allottee of Quarter No. M/11 (Old), Adityapur, near Jamshedpur, complained to the third respondent by communication dated 20-10-1992 (Annexure Ext. P-2) that he has been allotted the said building by the Board, and while he was residing with his family in the said building, the first respondent has forcibly and unauthorisedly occupied the first floor of the building. The third respondent forwarded the aforesaid communication to the appellant. The appellant by Annexure Ext. P-3 dated 15-12-1992 informed the third respondent, SDO that House No. MIG M/11 (Old) Adityapur, near Jamshedpur stands allotted to the fourth respondent and the application of the fourth respondent, which is self-explanatory, praying for eviction of the portion unauthorisedly occupied by the first respondent, is referred for necessary action. In this background, the third respondent issued Annexure Ext. P-4 notice dated 16-12-1992 to the first respondent which is to the following effect :

"UNDER SECTION OF BIHAR HOUSING BOARD ACT

SHOW-CAUSE NOTICE

To,

Shri R.K. Singh,

Contractor,

M-11, Adityapur,

Jamshedpur.

It appears from the petition of the Executive Engineer, Bihar State Housing Board (Adityapur), Jamshedpur that you are illegally and unauthorisedly living in House No. M-11 (Old) of Housing Board situated at Adityapur Housing Board.

You are hereby directed through this notice to explain in person or through an advocate on 28-12-1992 at 10 a.m. in the court of the undersigned that way not an order of eviction of the house in question be passed.

#

sd/- Sub-Divisional Magistrate,16-12-1992 Saraikella"

##

7. It is seen that the first respondent instead of showing cause against Annexure Ext. P-4, straightway approached the High Court by filing CWJC No. 82 of 1993 and assailed Annexure Ext. P-4. According to him, fourth respondent is the owner of the building having purchased the same

from the Board, that he is a tenant of the first floor under the fourth respondent, that the third respondent is incompetent to initiate proceedings for eviction under the Bihar State Housing Board Act, and that only proceedings under the Bihar Buildings (Lease, Rent and Eviction) Control Act will lie for eviction. So, he prayed for quashing Annexure Ext. P-4 show-cause notice and the eviction proceedings.

8. The High Court heard the parties and took the view that the first respondent is not a tenant of the Board, and so the Board will have no jurisdiction to initiate proceedings either on its own motion or at the instance of the fourth respondent and in this view, the proceedings, initiated as per Annexure Ext. P-4, are unjustified and without jurisdiction. The High Court opined that the fourth respondent may seek appropriate remedy by bringing a suit under the Bihar Buildings (Lease, Rent and Eviction) Control Act. In the result, Annexure Ext. P-4 and also the Eviction Proceedings No. 6 of 1992 were quashed. It is from the aforesaid judgment of the High Court dated 10-2-1993, the Board has come up appeal by special leave.

9. We heard counsel. It common ground that Quarter No. M/11 (Old) Adityapur, near Jamshedpur, belongs to the Board. According to the Board and the fourth respondent the hire-purchase transaction is still in force, and the ownership of the building has not been finally transferred to the fourth respondent. The first respondent would say that the fourth respondent is the owner having purchased the building from the Board. The 'basic' or fundamental fact is thus in dispute. The third respondent is the competent authority notified by the State Government under the Bihar State Housing Board Act, 1982 to initiate summary proceedings for eviction against sub-letting, unauthorised occupation by any person, of the premises, etc. belonging to the Board. Annexure Ext. P-4, notice, is the one so issued by the third respondent. The appellant and the fourth respondent complained about the forcible or unauthorised occupation by the first respondent of the premises belonging to the Board. The third respondent was competent to initiate the proceedings under the Act if the building still belongs to the Board and the ownership has not vested in the fourth respondent. It may be, that this basic fact is denied by the first respondent when he states that the fourth respondent is the owner having purchased the building from the Board and that he is a tenant under the fourth respondent. The basic facts, on the basis of which the jurisdiction of the third respondent to initiate/continue the proceedings, require investigation and adjudication. If, as pleaded by the appellant and the fourth respondent, the Board is the owner and the fourth respondent is the hirer, it cannot admit of any doubt that the third respondent has jurisdiction to initiate the proceedings as per Annexure Ext. P-4. If that basic fact is denied by the first respondent, that may require investigation of disputed facts and adjudication by the "competent authority" - the third respondent. Without showing cause against Annexure Ext. P-4, notice, the first respondent straightway filed the writ petition in the High Court and assailed Annexure Ext. P-4 and the eviction proceedings. The averments in this regard, contained in paragraph 13(H) of the special leave petition, are not denied in the detailed counter-affidavit filed by the first respondent in this Court.

10. We are concerned in this case, with the entertainment of the writ petition against a show-cause notice issued by a competent statutory authority. It should be borne in mind that there is no attack against the vires of the statutory provisions governing the matter. No question of infringement of any fundamental right guaranteed by the Constitution is alleged or proved. It cannot be said that Ext. P-4 notice is *ex facie* a 'nullity' or totally "without jurisdiction" in the traditional sense of that expression - that is to say, that even the commencement or initiation of the proceedings, on the face of it and without anything more, is totally unauthorised. In such a case, for entertaining a writ petition under Article 226 of the Constitution of India against a show-cause notice, at that stage, it should be shown that the authority has no power or jurisdiction, to enter upon the enquiry in

question. In all other cases, it is only appropriate that the party should avail of the alternate remedy and show cause against the same before the authority concerned and take up the objection regarding jurisdiction also, then. In the event of an adverse decision, it will certainly be open to him to assail the same either in appeal or revision, as the case may be, or in appropriate cases, by invoking the jurisdiction under Article 226 of the Constitution of India.

11. On the facts of this case, we hold that the first respondent was unjustified in invoking the extraordinary jurisdiction of the High Court under Article 226 of the Constitution of India, without first showing cause against Annexure Ext. P-4 before the third respondent. The appropriate procedure for the first respondent would have been to file his objections and place necessary materials before the third respondent and invite a decision as to whether the proceedings initiated by the third respondent under Section 59 of the Bihar State Housing Board Act, 1982, are justified and appropriate. The adjudication in that behalf necessarily involves disputed questions of fact which require investigation. In such a case, proceedings under Article 226 of the constitution can hardly be an appropriate remedy. The High Court committed a grave error in entertaining the writ petition and in allowing the same by quashing Annexure Ext. P-4 and also the eviction proceedings No. 6 of 1992, without proper and fair investigation of the basic facts. We are, therefore, constrained to set aside the judgment of the High Court of Patna in CWJC No. 82 of 1993 dated 10-2-1993. We hereby do so. The appeal is allowed with costs.