

Hari Kishore Verma Vs. the State of Bihar and Others

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Court : Patna

Decided On : Mar-28-2014

Judge : Jayanandan Singh

Appeal No. : Civil Writ Jurisdiction Case No. 9794 of 1997

Appellant : Hari Kishore Verma

Respondent : The State of Bihar and Others

Judgement :

J.N. Singh, J.

1. Due to perennial problem of flood in Koshi river, which causes serious devastation, the State Government decided to put up embankment on its both the flanks and took up a policy decision that persons whose lands were acquired for Koshi Project would be treated as displaced persons and would be given certain privileges including employment. The Government also took the policy decision that those, who had lands, houses and properties in between the two embankments of Koshi which were regularly ravaged by floods, would also be treated as displaced persons.

2. Since petitioner claimed that he had been affected by floods, he applied for being granted the privileges under the policy including employment. For this he obtained a certificate dated 09.07.1988 from the Mukhiya of Gram Panchayat, Dinapatti, who certified that petitioner was having a shop on some Gairmazaura

land in between the embankments in a village which is regularly ravaged by floods. On the basis of this certificate, petitioner was given employment by order dated 15.06.1989, vide Annexure-4. However, later on, enquiries were made in respect of several such persons who had been given employment. In many cases it was found that persons who were given employment did not fall in the category of displaced persons under the policy decision of the State Government. Therefore, their appointment was cancelled. Petitioners appointment was also cancelled by Annexure-1 dated 06.09.1997, on that ground. Hence this writ.

3. However, some other persons whose appointments had been cancelled in 2003, moved this Court and their writ application was allowed. Against the order passed by the learned Single Judge, the State Government preferred an appeal which it lost. Finally, the State Government moved the Apex Court which, by judgment dated 13.07.2007 in Civil Appeal No.3155 of 2007, set aside both the orders of this Court and remitted back the matter for reconsideration. Accordingly, the matter was heard by a learned Single Judge and by order dated 14.12.2007, vide Annexure-11, the writ application was allowed. Against the said order, the State preferred an appeal but lost vide Annexure-12

4. Learned counsel for the petitioner submits that case of the present petitioner is identical to the cases of the petitioners of that case and hence, he should be granted the same relief.

5. Learned counsel for the respondents submits that under the policy decision, only two categories of persons were to be treated as displaced persons. He submits that, as noticed by the learned Single Judge in the order dated 14.12.2007, vide Annexure-11, the first category of persons whose land, falling between two embankments, were acquired by the State for putting up the embankments were treated as displaced persons. The second category of persons who were treated as displaced persons were those whose lands, house and properties fell between the embankments and were regularly ravaged by the floods year after year. He submits that under the policy only those two categories of persons were required to be given privileges including employment. He submits that petitioner does not come in any of the two categories. Initially, he was given

employment under some misconception but later on, on enquiry it was found that neither his land had been acquired for putting up embankments nor he had land, house or properties in between the embankments. He submits that from the certificate of the Mukhiya itself it is apparent that petitioner was having a shop on some Gairmazarua land without having any property of his own in between the embankments. Hence, he did not fall in either of the categories. Learned counsel for the respondents has also submitted that the Mukhiya was not competent to issue such a certificate and the certificate was itself illegal.

6. Learned counsel for the petitioner submits that employment was given to the petitioner on the basis of the certificate of Mukhiya with eyes open. He submits that the shop which petitioner was running on Gairmazarua land was an ancestral shop. Hence, the same should be treated as property in terms of the policy. He further submits that some of petitioners of CWJC No.9700 of 2003, whose writ application has been allowed by order dated 12.12.2011 vide Annexure-11, also fall in the same category and as they also did not had their own land, house, or property in between the embankments. Hence, he submits that this petitioner should also be meted out the same treatment and the same order should be passed in his case also.

7. Submissions of the learned counsel for the petitioner have no force. It may be so that on the basis of the certificate of the Mukhiya, initially petitioner was given employment, but it cannot be denied that when many anomalies were found in granting privileges and employment to the displaced persons under the policy, enquiries were made and appointments, granted illegally to persons not covered under the policy, were cancelled. This is also admitted that petitioner did not had any house, land or property of his own in between the embankments and the shop which he claimed to have been running was admittedly on Gairmazarua land with any valid papers, since petitioner has failed to produce any valid document authorizing him to use Gairmazrua land for putting up the shop, neither he has produced any licence or lease or any Purcha issued to him under the provisions of the Bihar Privileged Persons Homestead Tenancy Act. In the circumstances, there cannot be any dispute from the fact that the petitioner was using the land illegally and unauthorizedly and running of the shop on the land was out and out an illegal

act on the part of ancestors of the petitioner and petitioner.

8. Coming to the order of this Court dated 12.12.2011 as contained in Annexure-14, it is apparent from the order that merely by referring the some orders of this Court, the writ application was disposed of in their terms and in the order, the learned Single Judge has not considered at all the cases of petitioners, their status and their eligibility in terms of the policy decision. The earlier orders, as referred to therein, have not been referred to or relied upon by learned counsel for the petitioner in this case. In the circumstances, this Court is of the opinion that the said order of the learned Single Judge is not a binding precedent to be followed by this Court also.

9. As a result, this Court does not find any merit in the writ application. The same is dismissed but without any order as to costs.

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