

Sanjay Kumar Singh and anr. Vs. the Patna Regional Development Authority and ors.

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Court : Patna

Decided On : May-02-1995

Judge : Aftab Alam, J.

Appeal No. : C.W.J.C. No. 3383 of 1992

Appellant : Sanjay Kumar Singh and anr.

Respondent : The Patna Regional Development Authority and ors.

Disposition : Application Allowed

Judgement :

Aftab Alam, J.

1. The petitioners in this application seek to challenge the directions and orders contained in Annexures-8, 10 and 11. Annexure-8 is a copy of the communication dated April 2, 1987 addressed to Respondent No. 5 (from whom the petitioners had purchased the flat in question) intimating that the allotment of Flat No. 123 in Block No. 14 situated at Rajendra Nagar, Patna in her favour had been cancelled from the date of the issuance of the letter. It was stated in this letter that respondent No. 5 had transferred the flat to respondent No. 4 without obtaining prior permission from the Patna Regional Development Authority (hereinafter

referred to as 'the Authority') and had also constructed two rooms on the roof of the flat in an illegal manner. The action of the allottee, it was alleged, constituted breach of the conditions of the lease and for this reason the allotment was cancelled.

2. Annexure-10 is an order of eviction passed in purported exercise of power under Section 85(4) of the Regional Development Authority Act in Eviction Case No. 7/88 initiated against the petitioners and respondents 4 and 5. Annexure-11 is the notice of eviction following the order passed in the eviction proceeding, declaring the petitioners and respondent Nos. 4 and 5 as trespassers and also liable for damages.

3. The uncontroverted facts that emerge from the pleadings of the parties are as follows:

4. The flat in question was allotted to the husband of respondent No. 5 on 11.5.1957 and on 21.5.1958 a lease deed (copy at Annexure-1) was executed in his favour. The original allottee died on 26.4.1968 and on 9.5.1974 the name of respondent No. 5, the widowed wife of the original allottee was mutated in his place. On 6.6.1974, that is, after about 16 years from the date of the execution of the lease, she made an application for permission to sell the flat. From the counter-affidavit filed on behalf of the Authority it appears that she was given reply by letter dated 4.9.1974 pointing out that a sum of Rs. 2217.00 lay in arrear with her and again by letter dated 7.1.1975 she was asked to deposit a sum of Rs. 1310.50. It appears that respondent No. 5 finally obtained a 'No Dues Certificate' issued by the Revenue Officer of the Authority on 27.7.1977 certifying that the entire settlement money in respect of the flat in question had been paid and there were no dues under that head. The certificate, however, noted without specifying the exact amount, that respondent No. 5 had to pay, on a monthly basis, some repair charges. There is nothing on the record to indicate that any action was taken or any letter was issued by the Authority thereafter and finally on 11.12.1980, that is after about 3 years and 5 months respondent No. 5 executed the sale deed in favour of the petitioners and put them in possession of the flat. On 21.12.1980 she also gave information to the Authority about the sale and

requested that the ownership of the flat be transferred in the name of the petitioners. After the aforesaid transfer, the petitioners got their names mutated in the municipal records in respect of the flat in question and started paying municipal taxes for the same. They also took steps for mutation of their names in the office of the Authority.

5. On 24.10.1986 respondent No. 4 who was living in the flat being the mother of the two petitioners received a notice asking her to explain as to how was she living in the flat in question which had been allotted in favour of the husband of respondent No. 5 and had been recorded in her name after the death of her husband. She was further asked to show cause by 13.10.1986 in respect of the two rooms which had been constructed unauthorisedly on the roof of the flat as appeared from the report of an officer of the Authority. The petitioners make a grievance that even the aforesaid notice dated 24.10.1986 was never served on them or their mother and they could know about this notice only after they got the order dated 3.1.1992/25.1.1992 passed in Eviction Case No. 7/88, ordering their eviction from the flat in question

6. Mr. Tara Kant Jha, learned Counsel appearing on behalf of the petitioners assailed the directions contained in Annexures-8, 10 and 11 on the plea that they were based on an illegal ground that the transfer made by respondent No. 5 in favour of the petitioners was in breach of the conditions of the lease. It was also submitted that the impugned orders were further bad inasmuch as they were passed without serving any notice or affording an opportunity of hearing to the petitioners.

7. Learned Counsel appearing on behalf of the Authority submitted that the transfer of the flat in question was bad being in violation of Clause 11 of the lease dated 21.5.1958 and hence the allotment of the flat in favour of the original allottee was liable to cancellation in terms of Clause 17 of the lease agreement.

8. At this stage it will be useful to take a look at the provisions relating to the transfer of land/plot allotted by the Authority. Rule 20 of the P.R.D.A. (Disposal of Land) Rules, 1978 which deals with the transfer of the land leased by the Authority is in the following terms:

Rule 20 'No plot or part thereof leased by the Authority shall be transferred by sale or gift within a period of ten years from the date of lease without the permission of the Authority:

Provided that the intention to transfer of land alongwith the conditions of lease shall be indicated in writing to the Authority well in time before the transfer of the land takes place even in cases where a period of ten years have expired:

Provided further that the Authority shall have the first right to resume the land after reimbursing the premium paid by the allottee together with an interest at the rate of 6 percent per annum on the premium paid by the allottees:

Further that XXX XXX

Provided that XXX XXX

It may be clarified here that by virtue of the definition clause plot includes any building or flat.

9. The aforequoted rule requires a permission of the Authority only in cases of transfer sought to be made within a period of 10 years from the date of the lease. After that, the rules only require that an information in writing should be given to the Authority well in time before the transfer.

10. This limitation of 10 years appears to have been given in go by in the lease executed in this case and Clause 11 of the lease is in the following terms:

That except with the prior written consent of and subject to such terms and conditions as may be prescribed by the second party and also subject to the conditions laid down in Clause 12 following, the first party shall have no right to transfer by way of sale, gift, exchange, mortgage or otherwise the aforesaid flat No. 123 or the right, title or interest therein:

Provided that in the case of sale the second party shall have the first option of purchase on payment of an amount equivalent to the premium paid under the agreement less such depreciation as the Board of Trustees may determine.

11. It is debatable whether it was open to the Authority to supplement the statutory provision by a clause in the lease and thereby extend the period of 10 years for the entire period of lease. In this case, however, I am not required to make any pronouncement in that regard as it is sufficient for this case to note that an application for sale was made on 6.6.1974 and a 'No Dues Certificate' was issued by the Authority itself on 27.7.1977. As has been noted above, the Authority thereafter did not make any communication to respondent No. 5 in this regard, it neither refused to grant permission for sale nor did it exercise its option to resume the flat in terms of Rule 20 and Clause 11 of the agreement. The action of the Authority in sitting over the matter for about 3 years and 5 months was patently unreasonable and arbitrary and would amount to an implied waiver of its right for the exercise of option.

12. Under the circumstances, I find it very difficult to hold that the sale of the flat by respondent No. 5 was in breach of the condition of the lease or any statutory provision. It follows therefore that the petitioners or respondent No. 4 cannot be held to be trespassers in the flat in question and cannot be evicted on that score.

13. However, it may be noted at this stage that the petitioners having purchased the flat from respondent No. 5 merely stepped into her shoes and are equally bound by the terms and conditions of the original lease deed dated 21.5.1988 and the other relevant statutory provisions. In case respondent No. 5 before them or the petitioners after the purchase had made any unauthorised construction in the flat or have committed any other act in breach of the terms and conditions of the lease or any other relevant statutory provisions (s) it would be open to the Authority to proceed and to take action against them in accordance with the Rules. In case, therefore, the Authority is of the opinion that any unauthorised constructions have been made or that the petitioners have otherwise acted contrary to the terms of the lease or the statutory provisions, it would be open to the Authority to initiate a proceeding against them after giving them due notices and pass appropriate orders after affording them an opportunity of hearing in accordance with law.

14. In the result this application is allowed. The impugned directions and order contained in Annexures-8, 10 and 11 are quashed. No order as to costs.

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