

Deepnarayan Choudhary and ors. Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Apr-01-2003

Judge : R.S. Garg, J.

Acts : Bihar and Orissa Municipal Act, 1992 - Sections 383

Appeal No. : C.W.J.C. No. 12438 of 2002

Appellant : Deepnarayan Choudhary and ors.

Respondent : The State of Bihar and ors.

Advocate for Def. : V.N. Sinha, G.P. IX and Ajatshatru, Adv., Durga Nand Jha, Adv. for Respondent Council and Aditya Prakash Sahay and Sanjay Kumar, Advs. for Respondent No. 5

Advocate for Pet/Ap. : Sarjeev Kr. Mishra, Adv.

Judgement :

R.S. Garg, J.

1. Heard learned Counsel for the parties.
2. Despite opportunities neither the Collector, nor the Municipality have filed their counters. Their right to file the counter is closed.

3. The complaint of the petitioners simply is that in pursuance of the notice published in the local newspaper the petitioners and likes made application for allotment of the shops after observing the rules of the advertisement the shops were allotted in favour of the petitioners but thereafter the Collector for the reasons best known to him simply observed that transparent procedure was not followed in making the allotments, therefore, the allotments should be cancelled. Taking the observations of the Collector to be a mandatory nature without application of mind or without looking into what was required to be done and even without issuing any notice to show-cause the municipality like a humble slave of the District Magistrate cancelled the allotments.

4. The Counsel for the Municipality submits that as they had simply observed the orders passed by the District Magistrate they are not required to say anything beyond and the Collector should be put to terms to explain his order. As already observed the District Magistrate has not chosen to file his counter or justify his action.

5. The order passed by the Collector is at Annexure-6, it simply reads that who had taken part in the meetings dated 11-11-2001 and 28-1-2002 and what particular decisions were taken was not known. The Collector also observed that on what particular basis the allotments were made was also not clear. Without any material available on the record or without referring to the said material in the order impugned the Collector simply observed that the procedure was adopted to help certain persons. In absence of any counter-affidavit from the side of the Collector it would not be proper to presume that the Collector passed the orders after giving due opportunity of hearing to the petitioners or the other allottees.

6. Learned Counsel for the Board submits that from Annexure-9, it would clearly appear that a motion was made in the meeting dated 13-9-2002 and after a great deal of discussion the resolution was passed 16/4 with the observation that the allotments made in favour of the allottees be cancelled. Learned Counsel for the respondent Board also submitted that the Collector has the powers to rescind, set aside or to annuiany order or the resolution passed by the Council as the said powers are vested in him under Section 383 of the Bihar and Orissa Municipal Act.

Section 383 of the Act reads as under:--

'383. Power to suspend action under Act.--(1) The District Magistrate may, by order in writing, suspend within the limits of the district the execution of any resolution or order of the Commissioners of any municipality, or prohibit the doing within those limits of any act which is about to be done, or is being done, in pursuance of, or under cover of this Act, if, in his opinion, the execution of the resolution or, order, or the doing of the act is likely to lead to a serious breach of the peace, or to cause serious injury to the public, or to any class or body of persons.

(2) When the District Magistrate makes any order under this Section; he shall forthwith forward a copy thereof, with a statement of his reasons for making it, to the 1[State] Government which may thereupon rescind the order or direct that it shall continue in force with or without modification, permanently or for such period as it thinks fit.

(3) The 1[Sate] Government may set aside any resolution or order of the commissioners of any municipality, if in its opinion the resolution or order is in excess of the powers conferred by law.'

7. From a perusal of Sub-section (1) of Section 383 it would clearly appear that

the District Magistrate has only the authority to suspend the execution of any resolution or order of the Commissioner of any municipality or prohibit the doing within those limits of any Act which is about to be done or is being done in pursuance of or under cover of the Act. Such powers can be exercised by the District Magistrate if in his opinion the execution of the resolution or order or the doing of the Act, is likely to lead to a serious breach of peace or to cause serious injury to the public or to any class or body of the persons. A fair understanding, of Sub-section (1) of Section 383 would make it clear that powers are vested in the Collectors to suspend the resolutions, are in relation to the Acts which are likely to affect the breach of peace or which may cause serious injury to the public or to any class or body of the persons. The questions of allotments, settlement of the land, execution of the lease etc. would not be covered under Sub-section (1) of

Section 383.

8. Assuming for a minute that Sub-section (1) of Section 383 authorises a Collector or District Magistrate to issue such an order than too the District Magistrate, under Sub-section (2) is obliged to forward a copy of such an order, forthwith with a statement of his reasons for making the same to the State Government. The State Government thereupon may rescind the order or direct that it shall continue in force with or without modification permanently or for such period as it thinks fit. Nothing has been brought from the side of the Collector to show that he has complied with the mandatory provisions of Sub-section (2) of Section 383. Unless the order passed under Sub-section (1) is approved under Sub-section (2) of Section 383 of the Act it would not become executable for all times to come, It is the State Government which has the powers to rescind the order or direct its continuance permanently. The powers vested in the District Magistrate, from a bare reading of Sub-section (2) is only to pass an interim order, refer the matters with his reasons to the State Government and final orders are to be passed by the State Government. In absence of any counter from the side of the Collector it cannot now be held that he has complied with the mandatory requirement of Sub-section (2).

9. So far as the resolution/order of the Commissioners of any municipality are concerned the same can be set aside by the State Government under Sub-section (3) of Section 383. Sub-section (3) gives blanket powers to the State Government to pass the orders. The powers vested in the State Government under Sub-section (3) are not akin to the powers which are vested in the District Magistrate under subsection (1). Undisputedly the resolutions or the order making allotments in favour of the allottees has not been annulled or set aside by the State Government.

10. So far as Annexure-9 resolution No. 6 dated 13-9-2002 is concerned it nowhere says that any motion was moved by any person requiring the Committee to reconsider the question of allotments. Learned Counsel for the Board vehemently argued that from the pleadings made in the counter it would clearly appear that in view of the general complaints of the public that they were desirous

of taking the allotments the Chairman proposed the motion, I am unable to hold that such an motion was made by the President of the Board. The resolution No. 6 nowhere refers to the fact that the motion was moved by the Chairman. It nowhere says that such a motion was in writing making a request to the Chief Executive Officer to convene a meeting to have discussions on the motion. The resolution No. 6 simply says that in accordance with the letter of the Collector bearing No. 1577 dated 24-4-2002 the allotments be cancelled. The foundation of the resolution was not the motion made by the president of the Board but the foundation was sought from the letter of the District Magistrate.

11. From the records it also does not appear that the resolution No. 6 was passed in the interest of the public. It also does not appear from the resolution No. 6 that any particular wrong was found with the allotments. In absence of the positive reasons annulling an earlier allotment, it would not be proper to hold that the resolution

No. 6 was in fact passed on a motion made by the president of the Board.

12. Virtually it appears that the Board found itself bound by the directions of the Collector, passed a resolution in accordance with the letter of the District Magistrate and thereafter issued the cancellation order.

13. It would also be necessary to see at this stage that the persons who are allotted the rights to obtain a shop in fact obtained a valuable right in their favour. Such right cannot be dislodged unless they were given an opportunity to explain their case and cause. The respondents have simply observed the letter of the District Magistrate and passed the resolutions violating every canon of natural justice. Neither the letter issued by the Collector nor the resolutions passed by the Board nor the cancellation order issued by the municipality can be approved, these deserve to and are accordingly quashed.

14. It would also be necessary to note at this stage that in terms of the allotment orders agreements were executed and some of the petitioners have spent good fortune in raising part of the construction. In case the respondent Board wants to cancel the allotments then it shall be obliged to compensate the petitioners to the

extent of the loss suffered by them.

15. It is, however, made clear that if the law permits the municipal Board to take-up the matter afresh and redecide it then the Board shall be free to take an action in accordance with law.

16. Each of the petitioners shall be entitled to his cost from the Board. The Board shall pay Rs. 500 to each of the petitioners within a period of two months from today.

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