Krishna Kumar Sinha and ors. Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Oct-09-2007

Judge : Barin Ghosh and Navaniti Prasad Singh, JJ.

Acts : Bihar Regional Development Authority Act, 1974 - Sections 35, 36, 37, 54 and 85Ka; Bihar Town Planning and Improvement Act, 1951; Bihar Municipal Act, 2007

Appeal No. : Letters Patent Appeal No. 135 of 1998

Appellant : Krishna Kumar Sinha and ors.

Respondent : The State of Bihar and ors.

Advocate for Def. : S.K. Ghosh, Sr. Adv. and S.S. Mishra, JC to GA and Rajendra Pd. Singh, Sr. Adv. for Respdt. No. 8Chandrashekhar, Sr. Adv. and Bishwa Bibhuti Kr. Singh, Adv.

Advocate for Pet/Ap. : Sanjeet Kumar, Adv.

Disposition : Appeal allowed

Judgement :

Barin Ghosh, J.

1. In 1960 under two land acquisition cases, large tracks of land were acquired. Some of such lands were built up. The object of such acquisitions was to widen the road going to the Railway Station and for a number of other projects for development and beautification of that area. Part of the built up lands so acquired were under tenants, who were carrying on commercial activities therefrom. The object of the acquisitions of such lands included setting up of a Municipal Market Complex in which the people who were carrying on commercial activities from the built up acquired lands were to be accommodated. In order to obtain vacant possession of the acquired lands quickly, while the object of acquisition expressly held out that the people carrying on commercial activities at and from the built up areas of the acquired lands would be accommodated in the Municipal Market Complex to be set up, they were also told that until the Market Complex is finally set up, they would be allowed to run their commercial activities at and from the lands situate nearby and then belonging to Patna Improvement Trust, i.e. for whom the acquisitions were made. Those tenants were told that they would be required to pay 25% of the rent of the acquired built up lands from the date of payment of compensation to their landlords till they give up vacant possession of the acquired built up lands in their possession to the Trust and the balance by 12 equal monthly instalments along with the current rent of the stalls to be constructed on the nearby lands, which would be allotted to them. The said state of affairs clearly depicts that the tenants of the acquired lands, who were carrying on commercial activities therefrom, were kept out of the acquisition proceedings. In fact, the acquisition was made to rehabilitate them in a better Market Complex to be set up upon acquisition of the lands in question and during the interregnum each of them was to be provided a stall to be constructed on a nearby land, which they would be entitle to occupy upon payment of 25% of the rent accrued from the date of payment of compensation to their landlords till vacant possession of their tenanted portions in the acquired land are handed over and the remaining rent by 12 equal monthly instalments along with the current rent of the stalls to be allotted to them. Each of the appellants is one of those tenants of the acquired land, who was carrying on commercial activities therefrom and each one of them was allotted a stall at a nearby land upon complying with the terms of the said allotment, as mentioned above. While the said allotment was made, a deed of licence was

issued in favour of each of the appellants. The same provided that they would be required to pay a daily licence fee of Rs. 0.69 paise. Clauses 2 & 9 of the said deed of licences are as follows:

2. That the licence will be on the basis of a daily licence but the period for which the licensee will be allowed to continue in the aforesaid stall shall be at the option of the licensor and the licensee agrees to vacate the stall at any time the licensor wishes, and if he does not so vacate, the licensee shall be deemed to be a trespasser, and will be liable for damages at the rate of Rs. 10/- per day till the licensor gets actual vacant possession of the stalls.

9. That in the event of any breach of the condition or conditions herein set forth by the licensee, the licensor shall have the right of taking possession of the stall forthwith, without any notice to the licensee, and the licensor shall be at liberty to break open the lock or devise that may be put by the licensee, prepare an inventory of the articles, if any, and remove them anywhere his licensor likes and the licensee agrees to exonerate the licensor of all liability.

2. In terms of the provisions contained in the Bihar Regional Development Authority Ordinance, which Ordinance was continued by succeeding Ordinances and was ultimately converted into the Bihar Regional Development Authority Act, 1974 (hereinafter referred to as 'the Development Act') made on 25.1.1982, the Patna Regional Development Authority (hereinafter referred to as 'PRDA') was constituted. By reason of the Development Act, the Patna Improvement Trust constituted under the Bihar Town Planning and Improvement Act, 1951 ceased to exist and all properties, rights, titles, interests, obligations and liabilities of the said Trust vested in PRDA. In the year 1990-91, Case No. 10/1990-91 was initiated by Circle Officer for the purpose of removal of the appellants from the stalls which came to be possessed by them in the background as above. It was the contention of the Circle Officer that the land belonged to the State Government which has been encroached upon unauthorisedly by the appellants. The Circle Officer ultimately dropped the case by holding that the land in question is owned by PRDA and not by the State Government and the appellants are licensees of PRDA.

3. According to the appellants, on 11.11.1995 the stall allotted to one Ranjit Singh, who was carrying on business under the name and style of M/s Asha Engineering Works was demolished, when the appellants were told by the Sub Divisional Officer (Sadar), Patna to vacate their stalls by 13.11.1995 otherwise their stalls will also be demolished. In this background the appellants filed the Writ Petition on 16.11.1995. In the writ petition it was contended that no legal step has been taken to evict the appellants from the stalls allotted to them and, accordingly, they cannot be evicted by demolishing the stalls.

4. On 18th November, 1995, the appellants filed an application in the writ petition and thereby sought stay of operation of notice dated 15th November, 1995. By the notice dated 15th November, 1995 brought on record by the said application, PRDA held out to the appellants and each one of them as follows:

You have encroached upon land of PRDA beyond the allotted stall, which is against the terms of the deed of licence. You have also violated the terms and conditions by not paying the rent in accordance with the agreed terms and conditions. The Project No. 2 has to be carried out.

You are, therefore, directed to vacate the land of PRDA by 30.11.95 otherwise without any information you will be ousted from the land of PRDA.

Treat it as urgent.

5. On 23.11.1995 the writ petition was taken up for consideration when the said application was also noticed. While considering the notice dated 15.11.1995, the Court felt that PRDA has required the appellants to vacate only from such areas (specified therein) as have been encroached upon by them by 30.11.1995. In view of such feeling of the Court, a prayer was made on behalf of the appellants that measurement should be ordered to be made so that the portion of encroachment may be ascertained first and then only steps should be taken for removing the encroachments. The Court found that since it has not been specifically stated in the writ petition and as no document has been annexed thereto which would show which specified land had been allotted to the petitioners, they should bring on record the documents with supplementary affidavit indicating definitely and

categorically the specified piece of land with area and description which had been allotted to them on 28.11.1995. The counsel appearing on behalf of PRDA was also permitted to obtain instructions in the matter and to file counter affidavit. When a prayer was made to Court by the appellants for restraining PRDA from taking actions in pursuance of the notices, the Court refused to restrain PRDA since it appeared to the Court from the notice dated 15.11.1995 that vacation has been ordered only in regard to the portion encroached upon and not from any allotted area.

6. On 23.11.1995 the stalls were bulldozed and grounded on the earth. On 28.11.1995 an affidavit was filed on behalf of PRDA wherein it was stated that the land in Question belonged to PRDA which became owner thereof as the successor of Patna Improvement Trust. It was stated that the appellants encroached upon more lands beyond their allotments, as a result traffic system collapsed. It was stated that subject land was part of Development Scheme No. 2 in which appellants were given licences for smaller size. It was stated that the plan for development of the subject land has been prepared and work has to be started in near future and under the situation PRDA informed the district administration for removal of the appellants as they were fully informed to vacate the land since in spite of that the same was not being done. The affidavit furnished the parts of the encroachments allegedly made by the appellants and outstanding licence fees allegedly due from them. It was stated that this Court in a public interest litigation has issued directions to remove all encroachments from public road and public places and since the appellants are encroachers on public land, the encroachments made by them have been removed. With that it was stated that all structures standing over the land in question have already been removed.

7. On 8.1.1996 the appellants filed a rejoinder to the said counter affidavit. On 16.1.1996 the appellants filed a supplementary affidavit and thereby brought on record some of the allotment letters issued in favour of the appellants and some of the rent receipts issued by PRDA in favour of some of the appellants. Allotment letters show that while stalls were allotted in favour of some of the appellants, earmarked open spaces were allotted in favour of others for construction of stalls thereon. In the said supplementary affidavit, the appellants brought on record the

area of the stalls allotted to them as well as the amount of licence fee then remaining unpaid by the appellants to PRDA. According to the said statement, the stalls of the appellants as allotted were situate on the following square feet of the subject land:

Sl.No.

Name of the allottees

Area in sq.ft.

1.

Sri Ram Charan Ram

350

2.

Sri Dinanath Prasad (Predecessor of Appellants No. 2

& 3)

350

3.

Sri Basudeo Prasad (Appellant No. 4)

250

4.

Smt. Manju Shrivastava (Appellant No. 5)

104

5.

Sri Gopal Das (Appellant No. 6)

104

6.

Sri Arun Kumar

204

7.

Sri Shyam Narayan Prasad

408

8.

Sri Banarsi Lal (Appellant No. 8)

104

9.

Sri Hari Thakur

112

10.

Sri Mul Sharan Singh

364

11.

Sri Baxi Ram Gandhi (Predecessor of Appellants No. 10

& 11)

2266

12.

Sri Vanshi Singh

224

13.

Sri N.N. Ghosh

112

14.

Sri Chandrika Prasad

1 12

15.

Sri Ram Babu

224

15.

Sri Nand Bihari Singh

224

16.

Sri Krishna Kumar Singh

224

17.

Sri Abdul Matohid @ Happu Miya

112

18.

Sri Ram Chandra Yadav

320

19.

Sri Lok Par Presh

1740

20.

Sri Lakhan Lal

418

21.

Sri Suraj Pd. Gupta Predecessor of (Appellant No. 15)

386

22.

Sri Desh Raj Hanuman (Appellant No. 12)

135

23.

Sri Kedar Nath (Appellant No. 16)

180

24.

Sri C.P. Malhotra

147

25.

Sri Sita Ram Mistri

300

26.

M/s Patna Kirana Store, Prem Nath

507

27.

(I) Sri Hira Lal Mistri

(II) Ahmad Hussain

520

28.

Sri Sita Sharan Lal &. Sukhdeo Mistri

780

OPEN SPACE

29.

Sri Khub Lal

10230.

Sri Ramji Prasad

6431.

Sri Ram Jiwan Prasad (Appellant No. 13)

6632.

Sri Ram Awdhesh Prasad

4533.

Sri Jagdish Ram

5434.

Sri Om Nath Prasad

2535.

Sri Mahangu Prasad

3636.

Sri Vijay Kumar

37537.

Sri Amar Nath

2086

8. On 19.1.1996 the writ petition was admitted and the rule was made returnable six months. PRDA did not file any affidavit contradicting to the allotment letters or the particulars of allotment as were furnished in the said supplementary affidavit. The writ petition was ultimately considered by a learned Single Judge of this Court when His Lordship noticed Clauses 2 & 9 of the Deed of Licence, as set out hereinabove, and assertions in the counter affidavit as regards alleged encroachments made by the appellants as well as the alleged outstanding licence fees as had been particularized in the counter affidavit and then noted Section 85-Ka of the Development Act, but rejected the contentions of the appellants to the effect that only eviction notices were issued and the appellants were actually evicted even before expiry of the notice period without passing an order of eviction by looking into the original records as were produced before the learned Judge by PRDA wherefrom it appeared that an order of eviction was actually passed on 11.11.1985 following which the eviction notices were issued. The writ petition was ultimately dismissed.

9. During the pendency of the appeal, by the Bihar Municipal Act, 2007 (hereinafter referred to as 'the Municipal Act'), the Development Act was repealed and all rights, obligations, liabilities etc. of PRDA vested in Patna Municipal Corporation and all assets and properties of erstwhile PRDA too vested in Patna

Municipal Corporation (hereinafter referred to as 'PMC').

10. As the records of PRDA, as were looked into by the learned Judge, who dealt with the writ petition, were not retained as a part of the records of the writ petition, we directed production thereof. Accordingly the same were produced by PMC. From those records it appears that a file noting had been made stating that PMC is taking steps to demolish nearby stalls and, accordingly, in order to safeguard the interest of PRDA on the land in question it would be appropriate to demolish the stalls of the appellants as quickly as possible and to take possession thereof. It appears that on 15.11.1995 the appellants wrote a letter to PRDA stating that as PMC is carrying out demolition work in the vicinity, PRDA should take steps to protect its own stalls which had been let out to the appellants and on the same day the aforementioned notices were issued pursuant to a decision taken to issue such notices. No eviction order was passed.

Section 85-Ka of the Development Act is as follows:

85-Ka. Prevention of pollution and encroachments on the road, pavements and other places of public purposes and order for removing the same: No person shall install or keep any stall, hut, gumati, chair, bench, box, boat, peg, animals, stairs, sign board or any other articles on any road, pavement, other routs of transportation, nullah (culvert) or gumati-under-ground nullah and any other place of public purposes situate within PRDA area in contravention of the conditions laid down in written permission of any officer authorised by the Vice Chairman or the authority and the Vice Chairman, besides such any other action that can be taken under this Act or any other law or rule, may pass order for removal of pollution and encroachments from any place without giving prior notice and may expect from any police officer to remove such pollution and encroachments within the period specified in that requisition and the said police officer shall comply that requisition accordingly.

Therefore, power granted by Section 85-Ka of the Development Act could not be used by PRDA for the purpose of removal of the stalls constructed by it on its own land or permitted to be constructed by it on its own land for the purpose of allotment thereof. The other power of PRDA to remove construction has been

granted by Section 54 of the Development Act. The said Section authorizes PRDA to remove construction which has been constructed in contravention of the regional plan or the master plan or zonal plan or without permission, approval or sanction, referred to in Sections 35, 36 and 37 of the said Act or in contravention of any conditions subject to which such permission, approval or sanction had been granted. Since those stalls were constructed or permitted to be constructed before the Development Act came into being by the predecessor in interest of PRDA, in terms of the provisions contained in Section 54 of the Development Act the stalls in question could be demolished only if the same were in contravention of the regional plan or master plan or zonal development plan. No such plan was brought on record before the Writ Court by PRDA or before us. As aforesaid, the stand of PRDA in its counter affidavit was only to carry out the work of Development Scheme No. 2 and for that it asked the State Administration to demolish the stalls in question. Development Scheme No. 2 envisaged construction of Municipal Market Complex where the appellants were to be rehabilitated. This Municipal Market Complex was to be set up on a different piece of land. Until the Municipal Market Complex is set up on that different piece of land, which was acquired under the aforementioned two acquisition cases, the appellants were provided stalls on the subject plot of land. How the subject plot of land was to be used under the Development Scheme No. 2, if at all, was not brought on record before the Writ Court or before us. Furthermore, Section 54 of the Development Act requires a 30 days' notice to remove the construction ordered to be removed. No provision of the Development Act authorized PRDA to carry out any other demolition work. It also did not authorise PRDA to recover possession of stalls licensed by it without due process of law. The Development Act did not devise a due process of law by which possession of stalls licensed by PRDA could be taken over by it. Therefore, PRDA could fall back on the contract contained in the Deeds of Licences.

11. Though the licences were granted on daily basis and could be put to an end at any time at the option of PRDA, the licences granted in favour of the appellants were not put to an end on any day before 23.11.1995. By the notice dated 15.11.1995, the licences were put to an end on the expiry of 30.11.1995. The appellants were asked by the notice dated 15.11.1995 to remove themselves on or before 30.11.1995. Before that on 23.11.1995 all the stalls were grounded on the

earth and despite Clause 9 of the Deeds of Licence specifically obliging PRDA to take an inventory of the articles of the licensees and to remove the same, PRDA did nothing. It is astounding that when the matter was pending before the Court and it was in seisin of the matter and it felt to the knowledge of PRDA that PRDA is interested only to remove encroachments, PRDA called upon the district administration and bulldozed the stalls in question along with whatever articles of the licensees were then lying in their licensed stalls.

12. The actions, as above, of PRDA, as it appears to us, was not only barbaric but extremely high-handed and deplorable. It adopted a jungle raj. It acted in a manner atrocious. We, therefore, wanted to know the name of the Officer, who on behalf of PRDA took the decision to bulldoze the stalls in question and, accordingly, noticed the then Vice Chairman of PRDA, Mr Madan Mohan Singh. He filed an affidavit before us and stated that he did not pass any order for demolition of the stalls in question. He stated that on 15.11.1995 a proposal was placed before him for issuance of notice giving time till 30.11.1995 for removal of the stalls in question and that a decision for removal of licensees had already been taken on 28.11.1991 by the then Vice Chairman of PRDA, Sri A.K. Sarkar. He stated that the stalls were removed by the Administrator, PMC and the district administration. We, therefore, noticed PMC as well as the district administration, who also filed affidavits before us. PMC stated in their affidavit that they have done nothing in the matter of bulldozing the stalls in question. The district administration stated in their affidavit that they are unable to inform the Court at this juncture as to at whose instance it provided logistic support for bulldozing the stalls in question.

13. In the meantime the appellants have filed an affidavit and thereby have brought on record that though the stalls in question were demolished on 23.11.1995, until date no development work has been carried out on the land in question and PRDA has let out the land in question from time to time to various merchants to hold fairs. This assertion has not been disputed either by PRDA till it was in existence or by PMC.

14. Although the licences were on daily basis, but in the background of the case it must be understood that the licences could only be put to an end upon the licensees being allotted space in the new Municipal Market Complex which was envisaged to be set up under Development Scheme No. 2 and not before. The predecessor in interest of PRDA as well as its successor is estopped from contending to the contrary. The fact remains that these licensees were no part of the acquisition proceedings. Accordingly, no compensation was paid to them. The acquisition was made for their benefit and for the purpose of housing 'them in a developed market complex. By reason of the acquisition, the acquiring authority Patna Improvement Trust, being the predecessor of PRDA, became the landlord of these allottees in respect of the portion of the acquired built up land. Their tenancy did not come to an end. Being alive of the situation, the Patna Improvement Trust requested these allottees to obtain the allotments upon payment of rent payable by them for the acquired built up land and the allottees having paid the same and thereupon having obtained the allotments on the clear understanding that they will ultimately be accommodated in the Municipal Market Complex, facilitated construction of the new Market Complex. Neither the Patna Improvement Trust nor its successor could remove the allottees from their allotments without taking step to construct the new Market Complex. All ingredients of promissory estoppel are clearly present in the instant case. In those circumstances, the conclusion would be that the notices dated 15.11.1995 are invalid. It would be appropriate to record that no adjudication of alleged outstanding licence fees was made, nor the same was demanded and at the same time the evidence of alleged encroachment has been oblitered by PRDA.

15. It is now well settled in law by reason of a judgment of the Hon'ble Supreme Court rendered in the case of Vannattankandy Ibrayi v. Kunhabdulla Hajee, reported in (2001) 1 SCC 564 that a tenant is not entitled to squat on the land or build thereon where a building was situate, which has been destructed by natural course, but when the landlord has himself pulled down the building, the same would be different.

In the instant case having regard to the fact that the landlord itself pulled down the stalls in Question before the right of the appellants to remain therein came to an

end, the appellants in law are entitled to squat on the land and should be deemed to be in constructive possession thereof and at the same time entitle to build thereon.

16. We have proceeded on the basis that the appellants were asked to remove themselves from the stalls in question by 30.11.1995 by the notice dated 15.11.1995, but the fact remains that before expiry of 30.11.1995 the stalls were bulldozed and grounded to earth and with that whatever wares of the allottees were lying in those stalls were lost to them forever. This action having no sanctity of law, we wanted to know who decided to bulldoze the stalls in question on 23.11.1995, but apart from the admission given in the counter affidavit filed to the writ petition that it was PRDA who took that decision, we have not been able to locate the person acting on behalf of PRDA who actually took the decision in view of total' non-cooperation by Mr Madan Mohan Singh, the then Vice Chairman of PRDA as well as the State Administration. Accordingly, we are unable to pinpoint the liability of damages to be awarded by us upon the person who purported to wield power of the State or its authority by such dastardly act causing damages to the appellants and are thus constrained to impose, such liability upon PRDA and its successor, the PMC, who is at liberty to identify the person/persons, who took the said decision and caused the stalls to be bulldozed, and recover such damages from him/them.

17. In the facts and circumstances of the case, the question arises as to what would be the damages. There appears to be no convenient mode for ascertaining the same. The appellants were carrying on business. All their records and books of accounts have perished along with their assets kept at the stalls. In those circumstances as and by way of anguish for such dastardly act, we are constrained to assess damages at the rate of Rs. Two lacs to be awarded to each of the appellants for the sufferings met to them, which the PMC as the successor in interest of PRDA is bound to compensate to each of the appellants,

18. In the premises we allow the appeal, set aside the judgment and order under appeal as well as all the notices dated 15.11.1995 issued by PRDA to the appellants and direct the PMC to pay a sum of Rs. Two lacs to each of the

appellants as and by way of damages for destruction of their wares on 23.11.1995. We also allow the appellants to reconstruct the stalls on the land in question to the extent of the area mentioned above at their own costs and direct the PMC to allow the appellants to remain in such stalls until they are rehabilitated in the new Municipal Market Complex to be set up as envisaged in Development Scheme No. 2 on the same terms and conditions as mentioned in the subject Deeds of Licence. The cost of construction of such stalls shall be adjusted by the appellants from the licence fees to be paid in respect thereof at the first instance.

19. Let the records as produced be returned to the learned Counsel for PMC upon retaining photocopy of each page of the same which shall form part of the records of this appeal.