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Court : Patna

Decided On : Jun-26-2000

Judge : Sachchidanand Jha, J.

Appeal No. : Civil Writ Jurisdiction Case No. 5431 of 1999

Appellant : Vivek Arora and anr.

Respondent : Patna Regional Development Authority and ors.

Disposition : Appeal Dismissed

Judgement :

Sachchidanand Jha, J.

1. The petitioners are tenants in a portion of a building bearing holding No. 599A standing on plot No. 821 of Fraser Road in Patna town owned by respondent Nos. 5 and 6 Ehsan Raza and Talat Raza (hereinafter referred to as 'private respondents'). They are aggrieved by the order of the Vice-Chairman, Patna Regional Development Authority (PRDA) directing demolition of their tenanted portion of the building. The relevant facts are as follows:

2. The private respondents constructed the building after getting sanction of the building plan from the PRDA in Plan Case No. 593/80 on 5.3.82. The building is a market complex. Two rooms thereof, which are subject-matter of the dispute, were

let out to the petitioners in 1982. They have been doing business in the premises in the name of 'Vinayak Furniture', now 'Sri Vinayak Foods'. On 1.11.95, the private respondents got another building plan sanctioned with respect to a seven storied building (G+7) vide case No. PCA/8-48/95. In the said building plan, the disputed premises was shown as 'set-back' area of the proposed building. The case of the petitioners is that the sanction was obtained suppressing the fact that part of the building was under their tenancy. On 23.8.97, they filed application for review of the order dated 1.11.95 and cancellation of the sanction. They also filed intervention application in Vigilance case No. 136A/96 which had been instituted against the private respondents on the complaint of one Keshav Prasad Singh alleging that they were making construction in violation of the sanctioned building plan in case No. PCA/8-48/95. On 26.8.97 the Vice-Chairman passed the impugned order in Vigilance Case No. 136A/96 directing the private respondents to demolish part of the projection/balcony beyond the sanctioned 0.6 metre and the old existing structure in accordance with the building plan sanctioned in case No. PCA/8-48/95, failing which the PRDA would demolish the unauthorised construction and recover the cost of demolition from the respondents as arrear of land revenue. No order on the application dated 23.8.97 filed by the petitioners seeking review of the order and cancellation of the sanction, apparently, was passed. The petitioners preferred appeal being appeal No. 34 of 1998 before the Appellate Tribunal against the said order which was dismissed on 9.6.99. The private respondents, it seems, had also challenged the order dated 26.8.97 in Appeal No. 27 of 1997 before the Appellate Tribunal which too was dismissed on the next day, i.e., 10.6.99. The petitioners in the circumstances came to this Court in the present writ petition seeking direction upon the Vice-Chairman, PRDA to decide the review application, and quashing of the said impugned orders dated 26.8.97 and 9.6.99. Copies of the orders have been enclosed as Annexures 1 and 2 to the writ petition.

3. The case came up for preliminary hearing on 27.4.2000. This Court found substance in the grievance of the petitioners as to non-disposal of their review application. The hearing was adjourned to enable the Counsel for the PRDA to take instructions regarding the fate of the review application. On 2.5.2000, the Vice-Chairman passed order rejecting the review application. The petitioners filed

IA No. 2815 of 2000 challenging the said order. The matter came up for consideration on 3.5.2000. On the ground that the order had been passed without giving intimation and opportunity of hearing to the petitioners, the order was quashed. The Vice-Chairman JTS directed to pass fresh order. The review application was thereafter heard in presence of the Counsel for the petitioners, the private respondents as well as the PRDA on 9.5.2000. On 13.5.2000 the Vice-Chairman passed order rejecting the application. The validity of the said order was challenged vide IA No. 3233 of 2000. The matter came up for hearing on 17.5.2000 when the parties were heard at length.

4. The grievance of the petitioners as put forward by Shri Y.V. Giri is three-fold. It is contended that sanction of the new building plan in case No. PCA/8-48/95 was obtained by suppressing the fact that the portion of the existing building was in possession of the tenants. According to the Counsel, had this fact been mentioned, in view of the provisions of Section 37(2) of the Bihar Regional Development Authority Act, 1981 (in short the 'BRDA Act) and Section 11 of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 (in short, 'the BBC Act) sanction would have been refused, for in terms of Section 37(2) where the proposed erection or alteration is in contravention of any provision of the BRDA Act or any regulation made thereunder or under any other law, which would include the BBC Act, sanction of the proposed plan has to be refused. Secondly, construction of a new building in the garb of addition is really a device to evict the petitioners which cannot be allowed in view of the mandatory provisions of Section 11 of the BBC Act. It is said that the private respondents have already instituted suit being Eviction Suit No. 50 of 1997 for eviction of the petitioners from the disputed premises in the Civil Court at Patna. Thirdly, as the petitioners were in possession of the disputed premises, they were entitled to notice and opportunity of hearing not only before passing the impugned order directing the private respondents to demolish the disputed premises failing which it would be demolished by the PRDA, but also at the stage of sanction. It has been contended that under Section 54 of the BRDA Act, which is the only provision of the Act under which PRDA has jurisdiction to demolish a building or part thereof, the new ongoing or complete construction alone can be demolished and not old building in respect of which there is no allegation of any contravention. No part of the existing

building can therefore, be demolished under Section 54.

5. The private respondents have denied the petitioners' case that the object of the construction of the new building of demolition of the disputed premises is eviction of the petitioners. It is said that land on the rear of the existing building was lying vacant which the respondents wanted to develop by constructing a multi-storied building thereon. As per the Building bye-laws, some land is required to be left vacant on different sides of the building as 'set-back' area. The portion of land on which the disputed premises of the existing building stands, as it would have it, came to be the part of the set-back area on the front of the proposed building. The building plan, thus submitted was sanctioned. The petitioners were fully aware of the sanctioned plan and the construction of the new building which is evident from the recitals of the lease-deed executed between the parties. On 26.8.97, the Vice-Chairman passed the impugned order. The time of the lease had expired in the meantime on 30.11.96. After the Vice-Chairman passed the said impugned order, on 23.9.97 they gave legal notice to the petitioners to vacate the premises to which the petitioners did not respond. The respondents in the circumstances had no option but to institute the eviction suit. They have denied the petitioners' case regarding making any misrepresentation or suppressing any material fact in getting sanction with respect to the plan for the new multistoried building.

6. The PRDA has also filed counter-affidavit in which it has challenged the focus standi of the petitioners, contending that a tenant has no legal right to insist upon prior notice or to challenge the order of demolition with respect to a building in which he is a tenant. The PRDA has also denied the petitioners' case that the respondents had made any material suppression or misrepresentation pointing out that on the day when the sanction was granted, i.e., 1.11.95, no suit or proceeding with respect to the land/building was pending before any Court or authority. The suit was filed much later in 1997. Had the suit been pending at the time of grant of sanction and the fact been suppressed, this could amount to suppression of material fact warranting cancellation of the sanction. The PRDA has also questioned the maintainability of the review application contending that the RDA Act does not contain any provision for review.

7. The legal position, I think, is settled that where the object of the demolition or reconstruction of a building is eviction of the tenant such demolition cannot be said to be in accordance with law. Rent Control Acts have been enacted in different States to protect the interest of the tenants. In the State of Bihar, the BBC Act has been enacted 'to regulate the letting of building and the rent of such buildings, and to prevent unreasonable eviction of the tenants therefrom'. Section 11 of the Act lays down that notwithstanding anything contained in any contract or law to the contrary, a tenant in possession of any building shall not be liable to be evicted therefrom 'except execution of a decree passed by the Court' on one or more of the grounds specified thereunder, namely (a) breach of the conditions of tenancy including subletting without the consent of the landlord, (b) causing material deterioration in the condition of the building by acts of waste, negligence or default, (c) reasonable and bona fide requirement of the landlord for his own occupation, (d) default in payment of rent, (e) expiry of the period of tenancy and (f) carrying out any building work at the instance of the Government or the Municipality, etc. While dealing with the cases of eviction on the ground of reconstruction of the building, under the relevant Rent Control Acts, the Courts have often declines to grant relief to the landlord where, in the facts and circumstances of the case, the real object was found to be eviction of the tenant. Thus, if the case of the petitioners that the real object of demolition is their eviction, is true, I would have no hesitation in striking down the impugned orders. In the facts of the case, however, I do not find any substance in the petitioner's case. From the materials on record, it appears that a two-storied building on the front portion of the land appertaining to plot No. 821 was constructed earlier pursuant to sanction of the building plan in case No. 593/80. A chunk of land on the rear side however, remained vacant. If the landlords, i.e., the private respondents wanted to utilise the vacant land by constructing a multi-storied building and such construction necessitated demolition of part of the existing building, it cannot be said that the object was eviction of the tenants in possession of the particular portion of the existing building. It was just a matter of chance or co-incidence that the petitioners happened to be the tenants.

8. From the inspection report, Annexure-B to the counter-affidavit of respondent Nos. 5 and 6, it appears that the old building comprised of two stores (G+1),

whereas the new proposed building is multi-storied building comprising of seven stories (G+7). The building plan provides for addition of stories (2nd to 7th) on the existing G+1 building and construction of G+7 stories on other portion, which apparently means vacant portion. The question is whether the real object behind the construction of a seven-storied building is eviction of the petitioners? If the landlord wants to make addition to the existing building by constructing more stories on it or utilise the vacant land by making new construction on it, the object by no stretch can be said to be mala fide. The object rather is to make better use of the resources and earn more money. As far as the demolition of the portion of the existing building is concerned, it appears, the same become necessary as in terms of the Building bye-laws, in the case of multi-storied building of seven stories, a larger area has to be left vacant as 'set-back' area and where requisite set-back area is not provided for, the building plan cannot be sanctioned. This legal position was not disputed at the bar nor it was contended that if a seven-storied building (G+7) had to be constructed on the land the particular portion of the building would not fall within the 'set-back' area. As stated above, it was a matter of chance that the petitioners happened to be the tenants in the particular shops of the building which fell in the set-back area of the proposed building. If the private respondents had not undertaken to demolish them, in order to provide suitable set back, the PRDA would have declined to accord its sanction which obviously would not have been in their interest. I do not think the owner of a building can be denied right to make addition to the existing building merely on the ground that such addition may jeopardise the possession of a tenant. Section 11 of the BBC Act prohibits 'eviction' except pursuant to a Court's decree on one or more grounds mentioned therein but where the object is not eviction as such, the provisions would not be attracted. The provisions of Section 11, in my opinion, cannot be invoked to pre-empt a landlord from bona fide augmenting his resources by making addition to the existing building. Of course, the ideal situation would be that after the constructions are complete the old tenants are adjusted. But, this would depend on the personal relationship between the landlord and the tenant and the latter agreeing to the terms. In the facts of the case, I do not find any substance in the contention that the respondents got the building plan sanctioned in 1995 in order to evict the petitioners.⁹ Adverting to the plea of suppression of

material facts constituting misrepresentation, it would be useful to refer to the provisions of Sections 36, 37 and 38 of the BRDA Act, so far as they are relevant. Section 36 provides that every person, including local authority, body corporate constituted under any law and a department of Central or State Government, intending to carry out a development plan or any other development work or making any addition or alteration thereto, has to apply for sanction giving notice in writing of his intention to the Vice-Chairman in such form and containing such information as may be prescribed by regulations made in this behalf. Section 37(1) lays down that the Vice Chairman shall sanction the erection of a building or addition or alteration thereto if such erection of the building or addition or alteration thereto would not contravene any provision of the Act or any regulation made thereunder. Section 37(2) lays down that if the proposed erection, alteration would be in contravention of the provisions of the Act or any regulation made in this behalf or under any other law, sanction of the plan shall be refused. Section 38 provides that if at any time after the sanction to erection of any building or addition or alteration thereto has been accorded, the Vice-Chairman is satisfied that such sanction was accorded in consequence of any material misrepresentation or fraudulent statement contained in the notice given or information furnished under Section 37, he may by order in writing and for reasons to be recorded cancel such sanction, and erection of any building or addition or alteration thereto shall be deemed to have been done without such sanction.

10. Shri Giri in support of the contention that the private respondents had suppressed the fact that the disputed portion was in possession of the tenants which amounted to material misrepresentation within the meaning of Section 38, relied on the words 'or under any other law' occurring in Section 37(2) and submitted that as the proposed erection would be at a tangent with the provisions of Section 11 of the BBC Act and therefore, in contravention thereof, if the fact regarding petitioners' tenancy had been disclosed, the Vice-Chairman would have refused to give his sanction. The point is whether demolition of a building which is in possession of tenant amounts to his eviction and, secondly, whether it amounts to contravention ,of the provisions of Section 11 of the Act. As I have indicated above, where the teal object of demolition is eviction of the tenant, the case would stand on different footing. Any action done in bad faith cannot be sustained. I have

already dealt with this aspect of the matter and held that the action of the private respondents was not in bad faith. The question is whether grant of sanction resulting in demolition of part of existing building amounts to contravention of Section 11 of the BBC Act? In my opinion, the expression 'contravention of any other law' in Section 37(2) has to be understood ejusdem generis to mean contravention of some law having nexus with the construction of buildings. The Bihar Municipal Act, 1922 contains regulatory provisions relating to construction of buildings under sub-head 'Buildings' in Chapter V. The Patna Municipal Corporation Act, 1951 also contains provisions relating to building control in Chapter XIV of the Act. The Bihar State Housing Board Act, 1982 too contains provisions relating to housing and development Schemes. Particular reference may be made to Section 29 of the Act. There may be other cognate legislations on the subject the reference of which is not presently available. If the building plan submitted under Section 36 of the BRDA Act is found to be contravening the provisions of any of these Acts or such other Acts holding the field, apart from the provisions of the BRDA Act or regulations thereunder, the sanction of the plan shall be refused. Occurring in the context, as it does, I do not think, the expression 'any other law' in Section 37 can be interpreted to also mean law relating to eviction of tenants under the Rent Control Act.

11. In the above view of the matter, I do not think, the respondents made any material suppression amounting to misrepresentation of facts so as to justify cancellation of sanction under Section 38 of the BRDA Act. It is significant to point out that under Section 36 of the Act, a person desirous of erecting a new building or making addition or alteration is required to apply for sanction in a prescribed form and furnish such information as may be prescribed by regulations made in this behalf. No such provision requiring the person/applicant to disclose the fact that portion of the building to which additions are sought to be made is in possession of tenant(s) was brought to my notice on behalf of the petitioners. The submissions of the Counsel in this regard are accordingly rejected.

12. I do not also find any substance in the contention that the petitioners were entitled to notice or opportunity of hearing. The rights and liabilities of the lessor and lessee in respect of the immovable properties against each other have been

mentioned in Section 108 of the Transfer of Property Act. So far as lessees are concerned, their rights have been mentioned in Clauses (d) to (j) and there is nothing in them to suggest that the lessee has any special right where the lessor proposes to develop his property. Where such an Act of the lessor is likely to cause any detriment to the lessee, under the general law it is open to him to institute a suit and seek relief. The petitioners did nothing of the kind. As a matter of fact, the lease-deed suggests that the petitioners were aware of the fact that the respondents were contemplating to make addition to the existing building which is evident from paragraphs 17 and 18 of the lease-deed executed between the parties on 1.1.96, that is, after the grant of impugned sanction on 1.11.95, It may be useful to quote the said paragraphs of the leaser deed as under:

That the lessee covenants not to block the passage leading to the main building at any time.

That the lessee covenants not to interfere in the construction of the 1st., 2nd., 3rd., 4th. or 5th floor going up as the said building under construction is to be multi-storied one.

13. In *S.K. Pari Boring Road Vyapari Sangh v. State of Bihar* 1999(1) PLJR 418, a Division Bench of this Court has held that in the matter of proposed demolition of a building under Section 54 of the Act, the only persons entitled to opportunity of hearing are the owner of the building or the person at whose instance the construction, erection or development work has been or is being carried on. The plea that tenant is also entitled to similar opportunity was categorically ejected. Shri Giri attempted to distinguish the case contending that the structures in which the shop-keepers, i.e., tenants in that case were doing business was illegal structures whereas the building in question in the present case was constructed by the private respondents under a valid sanctioned building plan. Shri Giri relied on *Hindustan Petroleum Corporation Ltd. v. State of Bihar* 1996 (2) PLJR 621. That decision, I find, was distinguished in more or less similar case as the present one, namely, *Shishir Kumar Jain v. PRDA* 1998(3) PUR 677. The Court noted that in *Hindustan Petroleum Corporation Limited* case the tenant, i.e., *Hindustan Petroleum Corporation Ltd.* had made construction and installed a petrol pump

after proper sanction of the competent authorities including the District Magistrate and the PRDA and it was in this background that steps taken by the PRDA for demolition of structure without notice to such a tenant was found to be illegal and arbitrary. This Court thus, distinguished the cases of tenants who had made constructions themselves and tenants who were in possession of the building constructed by the owner within the meaning of Section 54 of the Act. Shri Giri submitted that the correctness of the decision in Shishir Kumar Jain's (supra) case is pending consideration before the Division Bench in LPA No. 1192 of 1998 which has been admitted for hearing. I am not impressed by this submission. Until and unless the Judgment is set aside, I do not think, merely on the ground of pendency of appeal, the Judgment cannot be read as precedent.

14. Shri Giri also relied on *State of U.P. v. Maharaja Dharmandra Prasad Singh* : [1989]1SCR176 and *Samir Sobhan Sanyal v. Tracks Trade Put. Ltd. and Ors.* : AIR 1996 SC2102 . In paragraph 15 of the Judgment in the former cases, the apex Court reiterated the legal position laid down in the earlier cases that even with the best of title a lessor has no right to resume possession extra judiciously by use of force from a lessee even after expiry or earlier termination of the lease by forfeiture or otherwise. He can do so by taking recourse to the legal remedy. The facts of the latter case were completely different. The appellant-landlady had sold the premises which was in occupation of the tenant. The purchaser filed suit for specific performance of contract, and though he was aware of the tenancy he did not implead the tenant as party in the suit. After the purchaser obtained decree for specific performance and put the decree to execution, the tenant filed an application under Order XXI, Rules 89 and 99, C.P.C. At that stage, the purchaser assigned his rights under the decree and the tenant was dispossessed. The Supreme Court held that the tenant's dispossession from the premises without any decree or order or eviction was unlawful being without any due process of law. The legal position in this regard, if I may say so, is unexceptionable. I have taken similar view in the case of *Amrit Varsha Hindi Dainik v. The Bihar State Agriculture Marketing Board* 1999(1) PLJR 1. The present case, however, neither appears to be a case of eviction nor forcible dispossession with mala fide intention. The action of the private respondents, i.e., the landlords having been found to be in good faith, the decision aforesaid can be of no help to the petitioners.

15. Shri Giri also relied on Ram Nath Arorra v. State of Bihar and Ors. 1997(2) PLJR 847. That was as case of demolition of a building, constructed as per the sanctioned plan, for the purpose of widening of roads. This Court held that as the building had been constructed as per the sanctioned plan, it could not be demolished to facilitate widening. The only option was to acquire the land under the provisions of the Land Acquisition Act. The decision was rendered on different facts and has no relevance in the present case.

16. The petitioners cannot draw any help from the pendency of the eviction suit. The Eviction suit came to be filed only after the PRDA passed order directing the private respondents to demolish the impugned portion and the legal notice served by them on the petitioners failed to elicit any response. It may be mentioned here that though in the event of owner or the person at whose instance the erection or development work had been done or is being done, failing to carry out the direction of the Vice-Chairman, it is open to the PRDA to demolish the building or portion thereof by its own means, the owner or the other person concerned is liable to be prosecuted. The private respondents had, therefore, little option but to institute the eviction suit against the petitioners for their eviction to show their bona fide, after the Vice-Chairman, PRDA passed the impugned order on 26.8.97.

17. The contention that in terms of Section 54 of the BRDA Act new erection or development work with respect to which building plan has been sanctioned and contravention has been alleged alone can be demolished and not the old existing building at first blush seems to be attractive but on deeper consideration found to be without any substance. It is true that the use of the word 'such' before the words 'erection or development work' in Section 54 Prima Facie seems to refer to the erection or development of the building with respect to which the building plan has been sanctioned and contravention of any conditions of such sanction is alleged; in the present case, however, it would appear that as per the sanctioned building plan vide case No. PCA/8-48/95, the land on which the portion of the old building comprising the disputed premises stands, has been marked as 'set-back' area, that is to say, open area. Continuance of construction of the multi-storied building without making provision for proper set-back would undisputedly be in contravention of the building bye-laws. It was on the condition that the land would

be left open as set-back on the front of the building that the building plan was sanctioned. It would thus not be correct to say that the old existing building is not the part of the building plan sanctioned in case No. PCA/ 8-48/95. As noted above, while on portion of the old building additional stories (2nd to 7th) are proposed to be constructed, a new building (G+7) is to be erected on the land contiguous so as to make one multi-storied building. I, therefore, do not find any substance in the contention that the portion of the building with respect to which impugned order has been passed does not come within the mischief of Section 54 of the BRDA Act.

18. The contentions of the Counsel for the petitioners having thus been rejected, this writ petition must fail which is accordingly dismissed, but without any order as to costs.

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