

Vishal Kumar Vs. State of Jharkhand and Ors

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Court : Jharkhand

Decided On : Jul-13-2015

Appellant : Vishal Kumar

Respondent : State of Jharkhand and Ors

Advocate for Pet/Ap. : Mr. Vimal Kirti Singh

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W. P. (PIL) No. 385 of 2010 Vishal Kumar . . Petitioner Versus The State of Jharkhand and others . . Respondents ----- CORAM: HONBLE MR. JUSTICE R. R. PRASAD HONBLE MR. JUSTICE PRAMATH PATNAIK ----- For the Petitioner : Mr. Rajeev Kumar, Advocate For the State : Mr. Ajit Kumar, AAG For the Housing Board : Mr. Sumeet Gadodia, Advocate For the Respondent-Applicant: Mr. Vimal Kirti Singh, Advocate ----- I.A. No. 5945 of 2014 36/13.07.2015 This interlocutory application bearing I.A. No. 5945 of 2014 has been filed by the applicant for vacating the interim order passed on 2.2.2010 whereby and whereunder, this Court passed an order that no further execution and registration of the deed shall be done and any transfer which has been made, registration shall not be completed. Mr. Vimal Kirti Singh, learned counsel for the applicant, submits that after the Civil Services Officers Co-operative Society was formed, it got registered under the Jharkhand Self Supporting Cooperative Society Act, 1996. The said Cooperative Society has been formed to address the housing need for the officers having allocated Jharkhand cadre belonging to all India Services or Central Service Group-A numbing 240.

After its formation, the Cooperative Society sent a requisition on 15.1.2003 to the Government requesting therein to allot around hundred acres of land so that one plot of land can be allotted to each of its members. On the request made by the Society, a piece of vacant land measuring about 78.23 acres, 27km. away from the main town, was identified at Village Sanga of Kanke Circle in the district of Ranchi appertaining to Khata No. 267, Plot Nos. 34, 35 and 724, which is in the nature of Gair Mazurwa Malik land. The government determined the 2 value of the land at Rs.1,46,85,000/- taking into account the prevailing rate for housing purpose at the rate of Rs. 1250/- per decimal as well as Salami as Rs. 97,90,000/- and also tax over it. On deposit of the said amount, the government, by relaxing its earlier decision taken on 21.4.1987 relating to settlement of land to the Cooperative Society, settled it with the Cooperative Society and, accordingly, it was transferred in the name of the Cooperative Society on 22.11.2004. It was also pointed out that the land settled to the Cooperative Society is a barren land and has no vegetation and in its near vicinity there was no habitation. The land on being transferred to the Cooperative Society, the Cooperative Society allocated/transferred 18 decimals of land to each of its members who when took steps for getting the sale deed registered, the petitioner did file this writ petition (public interest litigation) raising grievance that on one hand such a big chunk of land is being transferred to the Cooperative Society whereas hundreds and hundreds of homeless persons are there who do not have even shelter and that too, in a throw away price. This Court having heard learned counsel for the petitioner and without issuing notice to the respondents passed an order on 2.2.2010 to the effect as stated above. Since then the matter is pending and number of persons who were the members of the Cooperative Society got retired who do not have any land or house and some of the members have even died. Meanwhile, the construction cost got escalated and has been increasing day by day and under the situation, this interlocutory application has been filed for vacating the interim order. Mr. Singh further submits that though the applicant has come with the case that such a big chunk of lane has been settled with the Cooperative Society on throw away price but it has failed to establish its case rather from the facts placed before this Court by way of counter affidavit, it would appear that the price of the land at the relevant time 3 was at Rs. 1250/ per

decimal whereas the price of per decimal of the land settled to the Cooperative Society would be coming to Rs. 1875/ per decimal if the total amount for which the land has been settled is taken into account and thereby it is absolutely wrong on the part of the petitioner to say that the land has been settled with a throw away price. Further, it was submitted that one member will be having in its share only 18 decimals of land after making provision for the development of the land such as internal road, open space etc. and thereby one can never say that the excessive land has been settled with the Cooperative Society. In such situation, the Court should not have granted interim stay, as prima facie case in the facts and circumstances as stated above was never there in favour of the petitioner nor the balance of convenience was there in favour of the petitioner nor the petitioner had suffered irreparable injury and in that event, the Court in view of the decision rendered in a case of Bombay Dyeing & Manufacturing Co. Ltd. Vs. Bombay Environmental Action Group and others {2005(5) SCC61 should not have granted interim order to the petitioner. Further it was submitted that the applicant during pendency of this writ petition has filed an interlocutory application wherein prayer has been made to allot a chunk of land to the members of the legal fraternity and once the application has come with such prayer, one can easily understand that the PIL has been filed for oblique purpose and the substantial public interest never gets involved and hence the writ petition (PIL) warrants its dismissal. Learned counsel in this regard has referred to a decision in a case of State of M.P. Vs. Narmada Bachao Andolan and another {(2011) 7 SCC639. Thus, it was submitted that the interim order passed on 2.2.2010 be vacated. 4 As against this, Mr. Rajeev Kumar, learned counsel appearing for the petitioner, submits that numbers of Housing Cooperative Societies have been formed but the Cooperative Society formed by the respondents and also one or two other Cooperative Societies have found favour from the government as the big chunk of land had been allocated to the Cooperative Society whereas the other Housing Cooperative Societies are bereft of such benefit. Not only that, thousands and thousands homeless persons are living without having any shelter but the government is oblivious to their miseries and in this situation, the issue which got cropped up as to whether the government does have housing policy or not? When such issue was raised before this Court, a Committee was constituted to lay down the housing policy and as per

the affidavit filed on behalf of the State, the policy has taken its shape which will finally be notified after having concurrence of the Cabinet. Thus, when larger issue gets involved in this case, the interim order passed by this Court on 2.2.2010 never warrants to be vacated, as no urgency seems to be there for the reason that the interim order was passed in the year 2010 whereas this interlocutory application has been filed in the year 2014. That apart, the land had been settled to the Cooperative Society in the year 2004 whereas steps were taken by the member of the Cooperative Society to get the sale deeds registered only in the year 2010 and under the situation, it would be desirable that since the matter pertains to larger interest of the public, it be heard on its merit after the government comes with the housing policy. Mr. Ajit Kumar, learned AAG, appearing on behalf of the State, submits that pursuant to the order passed by this Court, the Revenue and Land Reforms Department, Government of Jharkhand, has provided Housing and Habitant Policy, 2013 which would be finalized after the 5 Cabinet gives its concurrence to the policy which may take another two months. Having heard learned counsel for the parties, it does appear that though the petitioner by filing writ petition (PIL) has come to this Court on the limited point but the Court did find the instant matter of larger interest which would be evident from the order passed on 15.7.2013 which reads as under:- It is the matter of great concern that even after a lapse of more than 12 years of its reorganization, the State has not been able to frame a clear housing policy and it has no definite plan to meet the growing demand of housing accommodations, with the rapid growth of city of Ranchi as capital town of State of Jharkhand. The need of housing is one of the essential needs of human life and the citizen has constitutional right to have that facility, enshrined in Article 21 of the Constitution of India. An issue of that importance cannot be left to be decided on sole discretion of an authority. There must be a declared policy and clear provision for dealing with the request for housing plots, so that there may not be pick and choose, and complete transparency is maintained. Perhaps in view of such observations, the government undertook to have housing policy which seems to be in pipeline and as per the statement made on behalf of the State likely to be finalized within two months. It be stated that while granting interim stay this Court had expressed the same concern which would be evident from the order dated 2.2.2010 which reads as

follows: The moot question that falls for consideration is as to whether the government can settle such huge chunk of land in favour of a Cooperative Society when, in the State of Jharkhand, major portion of the population, is living in the street and they are homeless. In addition to that, further question that falls for consideration is how the Government land would be settled in absence of any Rules framed under Section 13 of the Bihar Land Reforms Act. Thus, it is evident that the Court has passed the order having regard to the larger interest of the persons living in the State of Jharkhand. In that event the submission advanced on behalf of the respondent-applicant that the Court had passed the order without taking into account the essential ingredient such as prima facie case in favour of the petitioner, balance of convenience and also irreparable injury being caused to the petitioner, is unacceptable. Since the respondent-applicant has approached this Court by filing interlocutory application for vacating the interim order passed on 2.2.2010, much after grant of stay order, we do not find any justification to vacate the order of stay particularly when the matter would be heard on its merit after the government comes with the housing policy. Hence, I.A. No. 5945 of 2014 stands rejected. W. P. (PIL) No. 385 of 2010 Post this writ application after two months before an appropriate Bench in anticipation of the governments housing policy being notified. (R.R. Prasad, J.) (Pramath Patnaik, J.) AKT

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