

## Nilu Devi Vs Gopal Krishna Verma

**Court:** Jharkhand High Court

**Date of Decision:** Jan. 13, 2025

**Acts Referred:** Constitution of India, 1950 " Article 227

Transfer of Property Act, 1882 " Section 108(j)

Jharkhand Building (Lease, Rent and Eviction) Control Act, 2011 " Section 2(g), 19(1)(d)

Bihar State Housing Board (Management and Disposal of Housing Estates) Regulation, 1983 " Section 41

Jharkhand State Housing Board Act, 2000 " Section 20, 59

**Hon'ble Judges:** Sanjay Kumar Dwivedi, J

**Bench:** Single Bench

**Advocate:** Mahesh Tewari, Abhishek Kumar Dubey, Anup Kumar Sinha, Karan Shahdeo, Sachin Kumar, Surabhi

**Final Decision:** Dismissed

### Judgement

Sanjay Kumar Dwivedi, J

1. Heard Mr. Mahesh Tewari along with Mr. Abhishek Kumar Dubey, learned counsel appearing for the petitioner, Mr. Anup Kumar Sinha along

with Mr. Karan Shahdeo, learned counsel appearing for the respondent No. 1 and Mr. Sachin Kumar along with Ms Surabhi, learned counsel

appearing for the respondent No. 2-Jharkhand State Housing Board.

2. Mr. Sachin Kumar, learned counsel appearing for the respondent-Jharkhand State Housing Board submits that by order dated 29.11.2023, the

Jharkhand State Housing Board was directed to be made as a party respondent No. 2 in the present case, pursuant to that the counter affidavit has

been filed on behalf of the respondent No. 2-Jharkhand State Housing Board. He submits that the Jharkhand State Housing Board was not a party

before the learned court, who has passed two orders, which are under challenge.

3. This petition has been filed under Article 227 of the Constitution of India challenging the legality and validity of the orders dated 08.08.2023 and

18.07.2023, passed by the learned Sub-Divisional Officer-cum-Rent Controller, Seraikella under the Jharkhand Building (Lease, Rent and Eviction)

Control Act, 2011, in connection with Eviction Case No. 176 of 2022.

4. Mr. Mahesh Tewari, learned counsel appearing for the petitioner submits that the respondent No. 1 herein has instituted petition under Section 19(1)

(d) of the Jharkhand Building (Lease, Rent and Eviction) Control Act, 2011 in the court of Sub-Divisional Officer, Seraikella with a prayer for eviction

of the petitioner from the house property, situated at 7HF-2/2, HIG Flat, Dindli, Adityapur, which was leased out by the respondent No. 2 Jharkhand

State Housing Board in favour of respondent No. 1 vide lease deed No. 672/693 dated 11.02.2020. He submits that the petitioner appeared in the said

eviction case and file his written statement. He further submits that thereafter an application dated 09.06.2023 has been filed by the petitioner raising a

preliminary objection stating therein that only the Jharkhand State Housing Board has the jurisdiction to evict any person from the property belonging

to the Housing Board and the present eviction case is not maintainable before the Sub-Divisional Officer, Seraikella. He then submits that the Sub-

Divisional Officer, Seraikella by order dated 18.07.2023, rejected the said objection of the petitioner on erroneous ground and the case was directed to

be listed on 25.07.2023. He submits that thereafter the petitioner has filed a petition dated 28.07.2023, praying for grant of some time, so that the

petitioner can approach the Hon'ble High Court against the order dated 25.07.2023, however, on the said petition, no order was passed. He then

submits that subsequently by judgment dated 08.08.2023, the Sub-Divisional Officer-Seraikella, in Eviction Case No. 176 of 2022 has directed the

petitioner to vacate the premises.

5. On the above background of these facts, by way of referring Section 58 of the Jharkhand State Housing Board Act, 2000 submits that Section

19(1)(d) of Bihar Buildings (Lease, Rent and Eviction) Control Act, 2011 is not applicable and the Sub-Divisional Officer, Seraikella is not the

competent authority, as the premises in question belongs to the Jharkhand State Housing Board and in view of that the Sub-Divisional Officer,

Seraikella has erred in passing the aforementioned two orders.

6. By way of referring the further provision made in Section 59 of the Jharkhand State Housing Board Act, 2000, he submits that the summary

procedure is described therein and for violation of any terms prescribed therein, only the Jharkhand State Housing Board authority can proceed and

that authority is having the power to pass the appropriate orders. By way of referring the definition of landlord under Section 2(g) of Jharkhand

Building (Lease, Rent and Eviction) Control Act, 2011, he submits that the landlord is prescribed therein can said to be the landlord. To buttress his

argument, he relied in the case of Baburao Shantaram More Versus Bombay Housing Board and Anr., reported in 1953(2) SCC 845 and by way

of referring the said judgment, he submits that identical was the situation in that case and the Bombay High Court has decided that Rent Controller can

proceed in the matter, however, in an appeal, the Hon'ble Supreme Court has reversed the order of the Bombay High Court, as such, the case of

the petitioners is fully covered in light of the said judgment. On these grounds, he submits that both the impugned orders may kindly be quashed.

7. Per Contra, Mr. Sachin Kumar, learned counsel appearing for the Jharkhand State Housing Board submits that the property in question was

transferred to the respondent No. 1 by the Board by a registered lease deed, which has been brought on record by way of supplementary counter

affidavit, filed by the respondent No. 1. He submits that the Jharkhand State Housing Board is not the respondent in the proceeding, which is under

challenge before this Court. He further draws the attention of the court to Sections 58 and 59 of the Jharkhand State Housing Board Act, 2000 and

submits that the Board is having the jurisdiction to proceed against the person, who are directly taken over the property of the Board by way of any

means either legal or illegal or for violation of any term and condition, the Board can proceed against the person, in favour of whom the property has

been transferred. He further draws the attention of the court to Section 41 of the Bihar State Housing Board (Management and Disposal of Housing

Estates) Regulation, 1983 and by way of referring Regulation-41, he submits that once the property is transferred on the basis of hire-purchase

agreement, the person is deemed to be the owner. According to him, once Housing Board will find that there is direct confrontation with the property

of the Housing Board, the remedy is there under Section 59 of the Jharkhand State Housing Board Act, 2000. He submits that if after the transfer of

the property, further there is an agreement with the third party with the purchaser, the purchaser is having the remedy of instituted a case, in view of

that the bar made under Section 58 of the Jharkhand State Housing Board Act, 2000 is not attracted so far as present case is concerned. He submits

that the Board is having the power once it comes to the knowledge of the Board that any purchaser has violated the terms and conditions of the lease

deed and against him the Board can proceed. On these grounds, he submits that there is no illegality in both the impugned orders, passed by the Sub-

Divisional Officer-cum-Rent Controller.

8. Mr. Anup Kumar Sinha, learned counsel appearing for the respondent No. 1 submits that the petitioner is happened to be the tenant on rent of

answering respondent No. 1 and initially the tenancy was for 11 months, which was renewed for the further period of 11 months and it was month to

month tenancy. He submits that the said rent agreement between the respondent No. 1 and the petitioner, which has been brought on record in the

supplementary counter affidavit filed on behalf of respondent No. 1 as Annexure-A. By way of referring the said agreement, he submits that the

petitioner has recognized the answering respondent No. 1 as a landlord of the said house property and himself as a tenant of that property and

that he was paying the rent directly to the respondent No. 1. He further submits that the respondent No. 2 was allotted the Flat No. 7-HF

2/2 by the Jharkhand State Housing Board on 12.11.1997 by an agreement with respect thereto was executed on 13.07.2011 and after full payment of

the consideration amount, the lease deed on perpetual basis was executed and registered on 11.02.2020 in favour of respondent No. 1, contained in

Annexure-B of the said supplementary counter affidavit. By way of referring the said lease deed, particularly at the bottom of page No. 2, he submits

that it is depicted therein that the Housing Board Adityapur, Jamshedpur, H.I.G. Flat no. 7 HF-2/2 is being finally transferred in favour of the

purchaser, who is the respondent No. 1 herein. By way of referring page-3 of the said lease deed, he submits that it is further stated that the said

house property has been transferred to respondent No. 1 on the perpetual lease hold basis and further clause-1 of the terms and conditions mentioned

on the same very page that the respondent No. 1 is already in occupation of the aforesaid HIG Flat No. 7HF-2/2 on hire purchase basis. In light of

these, he submits that it is clear that the subject house property is fully and for all practical purpose belongs to the answering respondent No. 1, who

has paid total consideration amount to the tune of Rs. 6,50,000/-. He further elaborates his argument by way of saying that once the said transfer is

there, Section 108 (j) of the Transfer of Property Act, 1882 is attracted, which recognize the right of the lessee to transfer absolutely or by way of

mortgage or sub-lease, the whole or any part of his interest in the leasehold property. According to him in light of Section 2(g) of the Jharkhand

Building (Lease, Rent and Eviction) Control Act, 2011, it is the landlord-respondent No. 1, who was receiving the rent from the petitioners. On these

grounds, he submits that both the orders have been legally passed by the Sub-Divisional Officer-cum-Rent Controller and the same are valid, as such,

this petition may kindly be dismissed.

9. In view of the above submissions of learned counsel appearing for the respective parties, this court has to only answer as to whether in light of

lease deed in favour of respondent No. 1, he can institute a case under Section 19(1)(d) of the Jharkhand Building (Lease, Rent and Eviction) Control

Act, 2011 or not and is there any bar in light of Sections 58 and 59 of the Jharkhand State Housing Board Act, 2000 to invoke provision of the

Jharkhand Building (Lease, Rent and Eviction) Control Act, 2011.

10. It is an admitted position in light of Annexures brought on record in the supplementary counter affidavit of respondent No. 1 that an agreement of

sale was entered into between the Jharkhand State Housing Board and the respondent No. 1 to transfer the Flat No. 7HF-2/2 in favour of respondent

No.1 and pursuant to that finally a registered transfer lease deed was entered between the Jharkhand State Housing Board and respondent No. 1 and

respondent No. 1 was put in possession. The agreement dated 01.07.2021 between the petitioner and respondent No. 1 has been brought on record by

way of Annexure-A to the supplementary counter affidavit filed on behalf of respondent No. 1, which clearly suggests that the respondent No. 1 has

let out the said house in question in favour of petitioner on month to month tenancy basis and petitioner was paying the rent to the respondent No. 1.

11. Section 2(g) of the Jharkhand Building (Lease, Rent and Eviction) Control Act, 2011 speaks as under:-

“Definitions.- In this Act, unless the context otherwise requires—

(g) "Landlord" means the owner of the building and includes a person who for the time being is receiving or is entitled to receive the rent of the building, whether

on his own account or on behalf of another, or as an agent, trustee, executor, administrator, receiver, guardian or whoever so receives the rent, or entitled to

receive the rent, if the building were let to a tenant.”

12. In view of the above definition, it is crystal clear that the landlord means the owner of the building who includes a person includes a person who

for the time being is receiving or is entitled to receive the rent of the building, whether on his own account or on behalf of another, or as an agent,

trustee, executor, administrator, receiver, guardian or whoever so receives the rent, or entitled to receive the rent, if the building were let to a tenant.

Admittedly, the agreement for rent was entered into between the respondent No. 1 and the petitioner and the petitioner was paying the rent, in view of

that it cannot be said that respondent No. 1 is not coming within the definition of landlord in light of Jharkhand Building (Lease, Rent and Eviction)

Control Act, 2011.

13. Section-2(ix) of the Bihar State Housing Board (Management and Disposal of Housing Estates) Regulation, 1983 speaks of hire-purchase, which

speaks as under:-

“2(ix) "Conveyance Deed" means an agreement in the prescribed form between the Board and the allottee or hirer or the housing estate agency as the case

may be, by which the title in the property is transferred to the allottee or hirer or the Housing Estate Agency on the terms and conditions specified in the said

agreement.”

14. In view of the above provision, it transpires that the hire-purchaser secure the rights in a property under any of the scheme. Regulation-41 of the

said regulations speaks as under:-

41. The hirer shall cease to be a tenant and shall be the owner of the flat dwelling unit only after the last instalment of hire purchase and all other dues have

been paid by him to the Board and the transfer of the property to him has been effected through a Conveyance Deed in such form as may be prescribed by the

Board.

15. From the above, it is crystal clear that once the hirer paid the entire amount, he will be treated the owner of the said property. In the case in hand,

it is an admitted position that the property in question was leased out in favour of respondent No. 1, thus, transferring of the said property in favour of

respondent No. 1 is established.

16. Section 58 of the Bihar State Housing Board Act, 1982 [Jharkhand State Housing Board Act, 2000] speaks as under:-

58. Exclusion of the Bihar Buildings (Lease, Rent and Eviction) Control Act 1947 [Bihar Act III of 1947] [Now Act 4 of 1983]. - The provision of the Bihar

Buildings (Lease, Rent and Eviction) Control Act, 1947 (Bihar Act III of 1947), or any law corresponding therein for the time being in force in any area to which

this Act extends-

(a) shall not apply nor shall be deemed to have ever applied to any land or building belonging to or vesting in the Board under or for the purposes of this Act;

(b) shall not apply nor shall be deemed to have ever applied as against the Board to any tenancies or other like relationship created by the Board in respect of

such land or buildings;

(c) but shall apply to any land or building based to the Board:

Provided that nothing in this Section shall permit the eviction of a person in occupation of any accommodation from before the date of its acquisition by the

Board save in accordance with the provisions of that Act or of Section 59.

17. Section 59 of the Jharkhand State Housing Board Act, 2000 stipulates as under:-

59. Summary procedure for eviction and recovery of rents.-(1) Notwithstanding anything contained in the Transfer of Property Act, 1882 (Act I of 1882), the

Code of Civil Procedure, 1908 (Act 5 of 1908) or any other law for the time being in force, if the competent authority is of opinion-

(a) that the person authorised to occupy

Board premises and has-

(i) not paid rent lawfully due from him in respect of such premises for a period of not less than three months; or

(ii) sub-let, without the permission in writing of the Board, the whole or any part of such premises, or

(iii) committed, or is committing any act contrary to the provisions of clause (o) of Section 108 of the Transfer of Property Act, 1882 (Act 4 of 1882); or

(iv) made or is making material alteration to, alteration in, such premises without the previous written permission of the Board, or (v) otherwise acted in

contravention of any of the terms, expressed or implied, under which he is authorised to occupy such premises, or (b) that any person is in unauthorised

occupation of any Board premises. The competent authority may issue in the manner hereafter provided a notice in writing calling upon the person, if any,

authorised to occupy as well as any other person who may be in occupation of the whole or any part of the premises to show cause why order of eviction and

recovery of arrears of rent and damages, if any should not be made.

(2) The notice under sub-section (1) shall specify-

(a) the grounds on which the order of eviction or of recovery of arrears of rent or damages is proposed to be made; and

(b) the date by which cause against the proposed order may be shown, such date being not earlier than fifteen days from the date of issue of the notice provided

that the competent authority may on application allow further time on such terms as to payment of the amount claimed in the notice otherwise, as it deems fit.

(3) The competent authority shall cause the notice under sub-section (1) to be served by having it affixed on outer door or some other conspicuous part of the

Board premises and in such other manner as may be prescribed, whereupon the notice shall be deemed to have been duly given to all persons concerned.

(4) Where the competent authority knows or has reason to believe that any person is in occupation of the Board premises, then, without prejudice to the provisions

of sub-section (3) it shall cause copy of the notice to be served on him by registered post or delivery or tender to him or in such other manner as may be

prescribed.

(5) If, after considering the cause, if any, shown by any person in pursuance of the notice under sub-section (1) and any evidence he may produce in support of the

same and after giving him a reasonable opportunity of being heard, the competent authority is satisfied that any of the circumstances mentioned in sub-section (1)

exists, or existed on the date of the issue of the notice, it may on a date to be fixed for the purpose make an order stating reasons therein directing that the Board

premises shall be vacated by all persons who may be in occupation thereof or any part thereof and may further order that any person shall pay such amount of

arrears of rent or damages as may be specified in the order.

(6) If a person who has been asked to show cause under sub-clause (i) or sub-clause (iii) of clause (a) of sub-section (1) pays to the Board within the time

allowed, the rent in arrears together with interest thereon as fixed by the Board and such costs as may be prescribed, or as the case may be remedies to the

satisfaction of the competent authority the breach of the term violated by him, the competent authority shall, in lieu of evicting such person under sub-section (5)

discharge the notice, and whereupon such person shall continue to hold the premises on the same term on which he held them immediately before such notice was

served on him.

(7) The competent authority shall for the purpose of holding any inquiry under this chapter, have, the same powers as are vested in a Civil Court under the Code

of Civil Procedure, 1908 (Act 5 of 1908), when trying a suit, in respect of the following matter, namely:-

(a) summoning and enforcing the attendance of any person and examining him on oath; (b) requiring the discovery and production of documents; and

(c) any other matter which may be prescribed, be deemed to be a Civil Court within the meaning of Sections 345 and 346 of the Code of Criminal Procedure, 1973

(Act 2 of 1974), and any proceeding in such inquiry shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal

Code (Act 45 of 1860).

(8) If any person refuses or fails to comply with an order of eviction under subsection (5) within thirty days from the date of the order or such longer time as the

competent authority may allow, the competent authority or any other officer duly authorised by it in this behalf, may evict him from, and take possession of, the

Board premises, and may for that purpose use such force as may be necessary.

(9) Any arrears of rent or damages ordered to be paid under sub-section (5) may be recovered as arrears of land revenue.

Explanation.-For the purposes of this Section, a person continuing in occupation of any Board premises after the authority under which or the capacity in which

he was allowed to occupy the premises has been duly determined or as the case may be, has ceased shall also be deemed to be an "unauthorised occupation", and

a person shall not merely by reason of the fact that he had paid any amount as rent be deemed to be in authorised occupation.

18. In light of the provision made in Section 58 of the Jharkhand State Housing Board Act, 2000, it transpires that it has been prescribed therein that

the provision of Jharkhand Building (Lease, Rent and Eviction) Control Act, 2011 will be excluded, where the property is vested in the Board. Section

59 of the said Act speaks of summary procedure for eviction and recovery of the rents. In view of the provisions made in these two Sections, it is

crystal clear that the Jharkhand State Housing Board finds any person of violating any terms and conditions, that Board is competent to move before

the authority under the said Act for eviction and recovery of the rent.

19. In the case in hand, there is no agreement between the petitioner and the Jharkhand State Housing Board. It is also not an allegation of the

Jharkhand State Housing Board that the petitioner is in illegal occupation of the property of the Board and if such a situation is there, when the

property has been transferred in favour of the respondent No. 1 and he has entered into an agreement with the petitioner for rent, respondent No. 1

will not be the remediless and further Sections 58 and 59 of the Jharkhand State Housing Board Act, 2000 are meant for Jharkhand State Housing

Board as there is lease agreement between the petitioner and the respondent No. 1 for rent, that too based on the registered lease deed executed in

favour of the respondent No. 1 by the Jharkhand State Housing Board. In light of Regulation 2(xix) and 41, once the last installment is paid, the hirer is

said to be the owner of the property in question. As such, Sections 58 and 59 of Jharkhand State Housing Board Act, 2000 are not coming to aid of

the petitioner and it cannot be said that the Sub-Divisional Officer-cum-Rent Controller has exceeded his jurisdiction. Accordingly, the aforesaid point

is answered herein holding that there is no illegality or any jurisdictional error in the orders passed by the Sub-Divisional Officer-cum-Rent Controller,

Seraikella.

20. So far as the judgment relied by Mr. Tiwari, learned counsel appearing for the petitioner in the case of Baburao Shantaram More (Supra) is

concerned, in that case, the dispute was directly with the Bombay Provincial Housing Board and pursuant to occupied property of Board, several

persons without any authority or title occupied portion of the said came, in that background, the Hon'ble Supreme Court has held that once the

property is of the Board, then the remedy is under the Bombay Housing Board (Amendment) Act (11 of 1951) and that was the correct proposition.

21. In the case in hand, what has been discussed hereinabove, that fact is missing, as such, the said judgment, as relied by the learned counsel

appearing for the petitioner is not helping the petitioner.

22. In view of the above facts, reasons and analysis, this petition is dismissed.

23. However, this order will not preclude the petitioner to avail the remedy of appeal under the provisions of Jharkhand Building (Lease, Rent and

Eviction) Control Act, 2011.

24. If any limitation will arise in the appeal, on an appropriate petition, the appellate authority will consider the said limitation keeping in mind of the

pendency of this petition before this court.