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Jharkhand High Court

Case No: CWJC No. 1130 of 2000 (R)

Yadunath Dutta and Others		APPELLANT
	Vs	
Bihar State Housing Board and Others		RESPONDENT

Date of Decision: March 21, 2001

Acts Referred:

- Bihar State Housing Board Act, 1982 - Section 59
- Constitution of India, 1950 - Article 226, 227

Hon'ble Judges: M.Y. Eqbal, J

Bench: Single Bench

Advocate: Anil Kr. Sinha, S. Arun and R. Krishna, for the Appellant; I. Sen Choudhary and A.K. Sahani, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

M.Y. Eqbal, J.
Heard Mr. A.K. Sinha, learned senior counsel appearing for the petitioners, Mrs. I Sen Choudhary, learned counsel appearing for the respondent-Housing Board and Mr. A.K. Sahani, learned counsel for the respondent No. 5.

2. In this writ application the petitioners have prayed for quashing the order as contained in memo No. 307 dated 30.3.2000, by which respondent No. 4, Sub-Divisional Officer, Bermo issued the order for eviction of flats/houses and also for quashing the notice dated 7.4.2000 published in the newspaper by which petitioners alongwith others have been directed to vacate the quarters by 22.4.2000.

3. Petitioners" case inter alia is that they have been provided quarters/houses from their employer, namely, Indian Explosive Limited, Gomia. It is stated that all the petitioners

except petitioner Nos. 1, 2, 6 and 16 were allotted different quarters description of which have been given in the petition. So far petitioner Nos. 1. 2, 6 and 16 are concerned they have got the quarters allotted in the name of their family members. It is stated that petitioners have paid rents through their employer I.E.L. till they were under their employment. Petitioners took voluntary retirement from I.E.L. in the year 1995. Under the Voluntary Retirement Scheme, the rent has been deducted since 1998. It is stated that petitioners are always ready to pay monthly rent to the Housing Board but the Board without any rhyme and reason is taking coercive steps against the petitioner alongwith other persons. The Sub-Divisional Officer. Bermo issued general notice published in the news-paper and directed the petitioners and others to vacate the quarters, failing which coercive action will be taken for their eviction. Petitioners made representation to the Housing board for allotment of the quarters in their favour but nothing has been done.

4. A counter-affidavit has been filed on behalf of the respondent-Housing Board. The respondents" case is that petitioners are in unauthorised occupation of the quarters owned by the Board and they were directed to vacate the quarters by their employer I.E.L. as soon as they retired under the Voluntary Retirement Scheme. The employer of the petitioners I.E.L. surrendered the quarters to the Housing Board by letter dated 21.7.1999 including all these quarters which are illegally occupied by the petitioners. It is stated that the respondent-Board is suffering huge loss because of the houses/quarters were given to the employer on a very low rent which was not even enough for maintenance of the colony.

5. Mr. A.K. Sinha, learned counsel mainly contended that the action of the respondent-Board in forcefully evicting the petitioners from the quarters in question is illegal inasmuch as Board has to comply with the requirements of Section 59 of the Bihar State Housing Board Act. Learned counsel submitted that the respondent-Board can not forcefully compel the petitioners to vacate the quarters without taking recourse of Section 59 of the Act.

6. Mr.A.K. Sahani, learned counsel for the Indian Explosive Limited (Respondent No. 5), employer of the petitioners has submitted that the Company has already surrendered the quarters in question in favour of the Housing Board. Mr. Choudhary, learned counsel appearing for the Housing Board submitted that after taking Voluntary retirement under the Voluntary Retirement Scheme, they are bound to vacate the quarters but even after retirement they are illegally continuing occupation of the quarters.

7. Before expressing my view, I would like to quote paragraph 20 and 21 of the counter-affidavit filed by the respondent-Housing Board, which reads as under :

"Para 20: That with regard to statements made in para 17 & 18 the writ petition it is stated that they are wrong and denied. The action taken by the respondent-Board u/s 59 of the Bihar State Housing Board Act by giving notice to the petitioners for vacating the houses are proper and just. The petitioners have mala fidely occupied the houses even after their

retirement and as such the Board has rightly took a decision to get the quarter vacated and for which notices have been given to them. It is further stated that the employer of the petitioners have also passed order for vacating the quarters in question."

Para 21: That with regard to submissions made in paras 19 to 21 it is stated that the submissions made therein are wrong and denied. The action taken by the Board is legal and valid. Section 59 of the Act provides for a summary procedure for eviction and recovery of rent ."

8. Admittedly, the petitioners offered to retire under the Voluntary Retirement Scheme and they took voluntary retirement from the respondent I.E.L. in the year 1995. Petitioner"s own case is that under the Voluntary Retirement Scheme the rent has been deducted till 1998 considering the fact that the amount under the Voluntary Retirement Scheme has to be given to the petitioners phase-wise. It is not the case of the petitioners that they have not received benefits of the Voluntary Retirement Scheme. Admittedly, petitioners retired under the aforesaid scheme and they have been paid all the benefits. Now the petitioners want that they should continue to occupy the quarters and the Housing Board should settled the quarters in question in their favour. Undisputedly the petitioners were bound to vacate the quarters after receiving all the benefits under the Voluntary Retirement Scheme. In the back-ground of these facts the question that arises for consideration is as to whether it would be proper for this Court to issue mandamus directing the respondent-Housing Board to settle the quarters in favour of the petitioners or this Court would be justified in issuing writ quashing the notice issued by the Housing Board for getting eviction of the petitioners from the quarters in question. The answer in my considered opinion would be negative. This Court by exercising power under Article 226 and 227 of the Constitution of India can not and shall not issue such prerogative writ by restraining the Housing Board from evicting the petitioners whose occupation of quarters became unauthorised after their retirement from service. This Court also can not interfere with the action taken by the Housing Board against the petitioners for their eviction from the quarters in question. The Housing Board in the counter-affidavit has categorically stated that they have taken action against the petitioners u/s 59 of the Act for the eviction from the quarters in question. In such circumstances. I am of the view that this Court cannot come in aid of the petitioners by granting any relief which the petitioners are not entitled to under the law.

9. For the reasons aforesaid, there is no merit in this writ application, which is accordingly dismissed.

10. Application dismissed.