

(2014) 03 JH CK 0046

Jharkhand High Court

Case No: W.P. (PIL) No. 3690 of 2013

Keshava Nandan Prasad

APPELLANT

Vs

The State of Jharkhand, The
Principal Secretary, Department
of Urban Development, The
Managing Director and The
Secretary, Jharkhand State
Housing Board

RESPONDENT

Date of Decision: March 6, 2014

Acts Referred:

- Bihar State Housing Board Act, 1982 - Section 29, 29(q), 30, 30(2)
- Constitution of India, 1950 - Article 21, 226

Citation: (2014) 2 AJR 776 : (2014) 2 JLR 359

Hon'ble Judges: R. Banumathi, C.J; S. Chandrashekhar, J

Bench: Division Bench

Advocate: R. Krishna and Mukesh Kr. Sinha, Advocate for the Appellant; Vikas Kumar, J.C. to A.A.G. for the State, Mr. Sumeet Gadodia, Advocate for the Intervenor and Mr. Rishi Pallava, Advocate for the Jharkhand State Housing Board, Advocate for the Respondent

Judgement

S. Chandrashekhar, J.

I.A. No. 6397 of 2013

1. This interlocutory application has been filed by the appellant- Bridgeford School, Ranchi seeking permission to intervene in the matter on the ground that the land in question has been allotted to the applicant. It is stated that on 20.05.2013, the auction was held and the applicant was declared highest bidder and accordingly, the allotment dated 15.06.2013 was made in favour of the applicant.

2. In view of the aforesaid facts, I.A. No. 6417 of 2013 is allowed and the applicant is permitted to address the Court at the time of hearing of the main matter.

3. With the consent of the parties, this petition was heard at the admission stage itself and it is being disposed of by this order.

4. The petitioner, an allottee of MIG House No. A-44 at Harmu Housing Colony, has claimed to have espoused the common cause and problems of the residents of the Harmu Housing Colony developed by the then Bihar State Housing Board. It is stated that on 14.03.2000, a registered lease-deed was executed by the Bihar State Housing Board in favour of the petitioner in respect of MIG House No. A-44. In the schedule appended to the lease-deed, a layout plan has been given, which indicates Patel park on the western end of the house of the petitioner and 5% extra charge was realized on account of location of the house from the petitioner. It is stated that an auction sale, which was initially scheduled for 02.05.2013, was held on 20.05.2013 and a part of the park/open space was allotted to a private individual for constructing a school building. On 29.05.2013, a representation was given to the Managing Director of the Jharkhand State Housing Board seeking immediate cancellation of the allotment/auction sale. However, no action was taken by the respondent- Housing Board. It is further stated that the area which was earmarked as park/open space by the Bihar State Housing Board has been used by the children and senior citizen for recreation, enjoyment, ventilation, etc. for the last several years. In the above facts, the petitioner has challenged the auction of a portion of land in "Patel park" allegedly in gross violation of the maps, lease agreement and in the gross violation of the guidelines issued by the Hon'ble Supreme Court. A prayer has been made for a direction upon the respondent- Housing Board to cancel the allotment of the land which is for a commercial venture that is, construction of a school.

5. A counter-affidavit has been filed on behalf of the Respondent Nos. 3 and 4- Jharkhand State Housing Board stating that the petitioner has a personal interest in filing the present Public Interest Litigation. The land allotted for school was earmarked in the layout plan of the Housing Board and the house of the petitioner is far away from the land allotted for the school. It is denied that the land which was allotted for construction of the school is vacant land earmarked for park. It is further stated that there is a big plot of vacant land in which the Housing Board has earmarked the land for park and school which was approved in the Master Plan and the land which was earmarked for park is still vacant. It is stated that after acquiring land for developing the Housing Colony at Harmu and Argora, Ranchi, the Housing Board constructed the houses under different categories and adequate land was left for park, road, health centre, marketing complex, police station, community hall, commercial houses, etc. and in accordance with the Master Plan, the Housing Board is developing the land. A map has also been submitted by the Housing Board along with the counter-affidavit to demonstrate that the land which was put on auction sale on 20.05.2013 was already earmarked for school.

6. A rejoinder-affidavit to the counter-affidavit of the Respondent, Nos. 3 and 4 has been filed by the petitioner bringing on record the original layout plan and a communication dated 15.07.2013 obtained through Right to Information Act.
7. The Jharkhand State Housing Board has filed reply to the rejoinder-affidavit filed by the petitioner controverting the averments made by the petitioner. Several photographs have been annexed along with the reply dated 03.02.2014 to demonstrate that adequate open space all over the Harmu Housing Colony have been left out for common use of the residents.
8. Heard learned counsel appearing for the parties and perused the documents on record.
9. The learned counsel appearing for the petitioner has submitted that allotment of a portion of land in Patel park to a private individual is illegal in as much as, it is in contravention of the Master Plan and therefore, the Jharkhand State Housing Board was not authorized to put on sale an area of 1.03 acre of land in Patel park. It is submitted that the sale of a portion of land in Patel park would result in altering the terms and conditions of lease agreement which was executed on 14.03.2000 by the Housing Board. Relying on decisions reported in [Bangalore Medical Trust Vs. B.S. Muddappa and others](#), and [Machavarapu Srinivasa Rao and Another Vs. The Vijayawada, Guntur, Tenali, Mangalagiri Urban Development Authority and Others](#), the learned counsel appearing for the petitioner has submitted that reservation of open space for parks and play grounds is intended to protect the residents of the locality from ill-effects of urbanization and by selling a portion of the Patel park for construction of a school would be violative of the rights guaranteed to a citizen under Article 21 of the Constitution of India.
10. The learned counsel appearing for the respondent- Jharkhand State Housing Board challenged the bonafide of the petitioner and submitted that the present petition has been filed for personal interest in the garb of the Public Interest Litigation. It is submitted that in the entire area, several open space have been left out by the Housing Board. The portion of land which has been allotted for construction of the school was earmarked for a school and the rest of the area which was earmarked as park has not been touched by the Housing Board and it is still being used as park. The learned counsel has further submitted that the Housing Board has acted in accordance with the Master Plan and there is no illegality committed by the Housing Board in allotting the land in question for construction of a school. The learned counsel has supported the action of the Housing Board by producing photographs of the area and also the photograph of the portion of the land which has been sold for construction of a school.
11. Mr. Sumeet Gadodia, the learned counsel appearing for the intervenor-applicant has submitted that though the land in question was purchased by the intervenor-applicant in auction sale, intentionally the petitioner did not make the

auction-purchaser a party in the present proceeding and obtained an interim order dated 11.07.2013 by misrepresenting and not fully disclosing the fact to this Court in as much as, on 20.05.2013, the auction sale was already concluded and an allotment letter dated 15.06.2013 was already issued to the intervenor-applicant. It is submitted that all over the country only 25-30% area is left as open space in the Housing Colonies constructed by different Housing Boards whereas, in the Harmu Housing Colony more than 44% area has been left as lung space. Referring to averments made in several paragraphs in the writ petition, the learned counsel has submitted that the present petition has been filed in private interest and not in public interest and it is purely a civil dispute and while so the writ petition is not maintainable.

12. The contention of the learned counsel for the petitioner that the original plan has been unilaterally changed by Jharkhand Housing Board in the year, 2008 in contravention of the Master Plan is unfounded. A perusal of the layout plan attached with the lease-deed and the layout plan of 2008 would indicate that in both the layout plans, a space has been earmarked for school in the same area. In the original layout plan, the school is shown on the western end of the open space whereas, in the changed layout plan the area for school is shown in the eastern end of the open space. The Jharkhand State Housing Board has filed a counter-affidavit stating that the portion of land which has been sold in auction for construction of a school was earmarked in the Master Plan. Except the layout plan, the petitioner has not brought on record any material that the changed layout plan is not in accordance with the Master Plan.

13. It is submitted on behalf of the Jharkhand State Housing Board that space for park, road, health centre, school, marketing complex, police station, community hall, commercial houses, etc. have been earmarked in the Harmu Housing Colony and the Housing Board is developing the area in accordance with the Master Plan. It is further submitted that the Housing Board has provided sufficient number of parks and playgrounds in the area. Several photographs have been produced on record which indicate that the portion of land which has been allotted for construction of a school is comprised in a big plot of land. The area which is commonly known as Patel park appears to be a huge area forming part of a big plot of land and the photographs produced by the Housing Board would show-children playing cricket in the said park. Photograph No. 21:

14. The learned counsel for the petitioner has referred to Section 30 of the Bihar State Housing Board Act, 1982 (adopted by the Jharkhand State Housing Board) and contended that it is apparent that the layout plan which was originally conceived, has been changed in contravention of Section 30 of the Act and therefore, the action of the Jharkhand State Housing Board in allotting a portion of land for construction of a school is illegal. This contention merits no acceptance. Section 30 of the Bihar State Housing Board, Act, 1982 refers to a stage prior to formulation of Housing or

Improvement Scheme. It is not the case of the petitioner that the Harmu Housing Colony Scheme itself was in contravention of the Master Plan sanctioned by the Government. On the contrary, the plea taken by the petitioner is that the layout plan has been changed in contravention of the Master Plan for which, we do not find any material produced by the petitioner on record except, a layout plan which according to the petitioner was changed in the year, 2008. We do not find any contradiction in both the layout plans produced on record by the petitioner in as much as, in both the layout: plans space for school has been earmarked. It is not the case of the petitioner that shifting of the place earmarked for school from western end to eastern end was without authority of law. The layout plan on which the petitioner has placed reliance is dated 14.08.1978 and the lease-deed executed in favour of the petitioner is dated 14.03.2000 and thus, reliance on layout plans of 1978 is misplaced. The portion of the plot which was earmarked for park is still being used as a park and thus, the petitioner cannot contend that his lung space has been affected by reducing the open space originally earmarked as park.

15. Section 29 of the Bihar State Housing Board Act provides that notwithstanding anything contained in any other law for the time being in force, the housing or improvement scheme may provide for all or any of the matters stipulated in clause (a) to (r). Section 29(q) stipulates that the housing or improvement scheme is to make provision of schools, parks, swimming pools, restaurants, shops, markets, fuel depots, laundries, hair dressing, saloons and other amenities in the scheme. In terms of Section 29, the Housing Board has taken steps to provide park, play ground, school in the locality, where the allottees are residing. The action of the Jharkhand State Housing Board is in accordance with the provisions of the Bihar State Housing Board Act.

16. It further appears from the sub-Section (b) of Section 30 of the Bihar State Housing Board Act, 1982 that with respect to a dispute whether a Housing or Improvement Scheme made under the Act contains anything inconsistent with any matter included in a Master Plan, the decisions of the Government shall be final. We do not find any material on record indicating that the petitioner has approached the government raising Such a dispute.

17. In [Bangalore Medical Trust Vs. B.S. Muddappa and others,](#), the provision in Bangalore Development Authority Act, 1976 was considered by the Hon"ble Supreme Court and it was held that open space reserved for public park in development scheme duly approved and published under the Act cannot be converted into civic amenities site for the purpose of hospital/nursing home. In the present case the petitioner has not produced a copy-of master plan. The lay out plans brought on record clearly indicate that the portion of the land in the plot commonly known as Patel park was earmarked for the school. The Housing Board has categorically stated that the lay out plan in which the plot under question has been earmarked for school was duly approved in the master plan.

18. In [Machavarapu Srinivasa Rao and Another Vs. The Vijayawada, Guntur, Tenali, Mangalagiri Urban Development Authority and Others,](#) , the issued before the Hon"ble Supreme Court was whether without modifying the development plan the land use can be changed and whether the area earmarked for park in the development plan, permission to construct temple can be granted. The Hon"ble Supreme Court has held that permission to construct temple granted to a person who was having no title, by the State functionaries without making any enquiry was clearly illegal. From the aforesaid it is thus, clear that the facts in the present case are entirely different from the facts in the cases relied on by the counsel for the petitioner and the issues involved are also different.

19. Referring to communication dated 15.07.2013 obtained through the Right to Information Act, the learned counsel for the petitioner submitted that in the area which was originally earmarked for school, presently the Housing Board has set up its office there and while so, the portion of land in Patel park which has been claimed to have been earmarked for school is contrary to the information revealed by the Housing Board itself. We find that the query, "Is any area marked for school building purpose, being used as an office of Housing Board, Harmu Housing Colony", made by the petitioner was vague and misleading. The reply given by the Housing Board that the space which was originally earmarked for school is being used by the Housing Board as office, would not lead to a conclusion that the plot which has been sold in auction sale for construction of a school, was not earmarked for school. On the contrary, the layout plan produced by the petitioner himself would indicate that a portion of land in the big plot comprising Patel park, was earmarked for school.

20. Further, the reliance of the counsel for the petitioner on schedule appended to the lease agreement is also misplaced. A schedule to a sale-deed/lease-deed only confirms the area and boundaries of the property and beyond that it does not confer any right on the purchaser of the property. The purpose of detailing boundaries in the schedule to a deed is identification of the property and beyond that nothing can be inferred from the schedule appended to the lease-deed.

21. It is well settled that a writ petition is not maintainable in cases in which the dispute as to the terms of the contract has been raised or where a party to the contract seeks enforcement of a term of the contract. In [Kerala State Electricity Board and Another Vs. Kurien E. Kalathil and Others,](#) , the Hon"ble Supreme Court has held as under:

10. ...The interpretation and implementation of a clause in a contract cannot be the subject-matter of a writ petition.... If a term of a contract is violated, ordinarily the remedy is not the writ petition under Article 226. We are also unable to agree with the observations of the High Court that the contractor was seeking enforcement of a statutory contract....

22. In [State of U.P. and others Vs. Bridge and Roof Co. \(India\) Ltd.](#), the Hon"ble Supreme Court has held that when the contract itself provides for a mode of settlement of disputes arising from the contract, there is no reason why the party should not follow and adopt that remedy and invoke extraordinary jurisdiction of the High Court under Article 226. It was held that existence of an effective alternative remedy provided in the contract itself was a good ground for the Court to decline to exercise its extraordinary jurisdiction under Article 226.

23. In [The Rajasthan State Industrial Development and Investment Corporation and Another Vs. Diamond and Gem Development Corporation Ltd. and Another](#), the Hon"ble Supreme Court has held as under:

19. There can be no dispute to the settled legal proposition that matters/disputes -relating to contract cannot be agitated nor terms of the contract can be enforced through writ jurisdiction under Article 226 of the Constitution. Thus, the writ court cannot be a forum to seek any relief based on terms and conditions incorporated in the agreement by the parties.

24. In the writ petition, the petitioner has alleged that 5% extra charge was realized by the Housing Board for allotting the house to him as the house was in front of the park. The learned counsel for the petitioner has contended that by changing the layout plan, the original lease agreement executed by the Housing Board has been unilaterally changed by the Jharkhand Housing Board and therefore, the allotment of a portion of land in Patel park is contrary to the lease agreement executed on 14.03.2000. The contention raised on behalf of the petitioner thus, is that, there is a breach committed by the Housing Board, of the terms and conditions of the lease agreement. The entire effort of the petitioner appears to get reinforced the alleged terms/conditions of the lease agreement. The respondent-Housing Board has disputed the plea taken by the petitioner. It is stated that in case of any dispute the lease-deed provides a forum for resolution of the dispute in as much as, there is an Arbitration clause in the lease-deed itself. Further, as noticed above Section 30(2) of the Bihar Housing Board Act 1982 makes a provision for referring a dispute to the Government. Thus, we find that the writ petition is not maintainable.

25. In view of the aforesaid discussions, we find no public interest involved in the present writ petition and accordingly, it is dismissed. Interim order granted on 11.07.2013 is vacated.

I.A. Nos. 8362 of 2013 & 6417 of 2013

26. I.A. No. 8362 of 2013 has been filed by the petitioner seeking amendment in the prayer portion of the writ petition whereby the allotment dated 15.06.2013 has been prayed to be quashed by the Court. I.A. No. 6417 of 2013 for vacating order of stay dated 11.07.2013 passed in W.P. (PIL) No. 3690 of 2013 has been filed by the intervenor-applicant. In view of the findings recorded in the writ petition, I.A. Nos. 8362 of 2013 is dismissed and I.A. No. 6417 of 2013 is disposed of.