

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9518 of 1994

=====

Bihar State Housing Board through Managing Director, Sri Ravindra Panwar, 6-Mangles Road, Patna.

.... Petitioner/s

Versus

1. Bijwanti Devi, wife of late Ramji Pandit, resident of Bahadurpur, Gandhi Nagar, P.S. Sultanganj, District Patna.
2. The Competent Authority-cum-2nd Officer, Patna City.
3. The Appellate Authority, Government of Bihar, Patna.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Anshuman Singh, Adv & Mr. Sriram Krishna, Adv

For the Respondent/State : Mr. Krishna Kumar, AC to GP-26.

=====

CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

11 29-01-2015 Heard learned counsel for the appearing parties.

Despite service of notice on more than one occasion on respondent no. 1, no one has appeared on her behalf. The case infact was called out yesterday and as no one had appeared on behalf of Respondent no. 1 this case was adjourned for today.

The prayer of the petitioner- Bihar State Housing Board (hereinafter referred to as the Board) in this writ application is to quash the order dated 29.08.1988, in Eviction Case No. 3 of 1986 as well as the appellate order dated 22.12.1992 passed in Eviction Appeal Case No. 64 of 1988, whereby and whereunder, the appeal for

eviction filed by the petitioner as against respondent no. 1 was rejected.

Mr. Anshuman Singh, learned counsel appearing on behalf of the petitioner has submitted that both the original authority and the appellate authority in exercise of their power under Section-59 and 60 of the Bihar State Housing Board Act have failed to go into the core of the issue as to whether the sale deed of respondent no. 1 dated 30.07.1982, being subsequent to the order of the State government giving possession of the acquired land in favour of the petitioner could have conferred her right title or interest in the land in question measuring 32.20 sq meter in Bahadurpur area in the district of Patna. Mr. Singh, explains that the land in question was initially acquired by the Board after undergoing the provisions of Sections-4, 6, 9 and 11 of the Land Acquisition Act and in fact the award of the land in question was also paid to the vendor by respondent no. 1, whereafter the State Government in terms of Section-16 of the Land Acquisition Act had taken the possession of the land and



hand over to the Bihar State Housing Board, the requisitioning authority. Thus, Mr. Singh submits that any subsequent sale by the vender of respondent no. 1 could not have, in any way, conferred any right, title and interest to respondent no. 1 because that has already been acquired by the State Government vested in the State Government free from all encumbrances.

As noted above, there is no appearance on behalf of respondent no. 1, but whatever case has been projected by her either before the original authority or even before the appellate authority, nothing was actually brought by her to show that she had purchased such land prior to the acquisition. This Court, however, will not like to put a final word in absence of respondent no. 1, even when she had received notice of this writ application under her own pen and signature on 13.01.2014. This Court, therefore, has to examine the validity, correctness and legality of the impugned order as they are only in the light of the fact of there being admitted position of the land in question had already

vested in the State Government and was transferred to the Board prior to execution of sale deed in favour of respondent no. 1.

It is infact the case of petitioner Board that the vendor of the petitioner had already received the amount of compensation for the land in question. This crucial aspect, being brought to the notice of both the original authority and appellate authority by the petitioner Board however has not at all been taken into account who somehow have been impressed with wholly extraneous factors such as respondent no. 1 being landless lady or belonging to downtrodden section of society or the Board not being in actual physical possession of the land. As noted above, these considerations as to whether respondent no. 1 is a landless lady or was belonging to down trodden section of society is not relevant and therefore, could not have weighed upon the original authority and the appellate authority, who were in fact only required to examine the issue as to whether respondent no. 1, had acquired any valid right, title and

interest in the land in question after its being acquired for the purposes of the petitioner-Board and its vesting in the State Government free from all encumbrances.

As a matter of fact, both the authorities have also completely been misdirected on the issue of possession because when the State Government had initiated acquisition proceeding for acquiring the land for the petitioner-Board. Under Section-16 of the Land Acquisition Act the acquired land had vested in State Government free from all encumbrances and thus on transfer of such acquired land by the State Govt. to Board the possessions of the Board shall date back on date such notification was issued. If thereafter any person has come in possession of the land either due to sale deed or otherwise, that cannot give any right to him or her.

This Court would however hasten to add that as respondent no. 1 is not present and as it is not known that she was in possession even on the date when land in question on being acquired had vested in State



Government free from all encumbrances, this issue would be required to be looked into once again by the original authority in exercise of power under Section-59 and also if necessary by the appellate authority under Section-60 of the Act. In any event, the two impugned orders being wholly cryptic order and not even addressing to the core issue must be held to be bad and they are accordingly quashed. The matter is remitted back to the original authority who now will proceed afresh against respondent no. 1, as with regard to application of eviction filed by the petitioner and dispose it of expeditiously preferably within a period of six months from the date of receipt of this order.

With the aforementioned observation and direction, this application is disposed of.

(Mihir Kumar Jha, J)

Ranjan/-

U			
---	--	--	--