

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13678 of 2010

With

Interlocutory Application No.8707 of 2014

And

Interlocutory Application No.1325 of 2015

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Poonam Sinha, W/O Sri Sanjay Kumar Sinha, R/O Teena, P.O. Teena, P.S. Chandi, Distt.- Nalanda, At Present - 4m/168, Bahadurpur Housing Colony, Patna

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Urban Development Department, Government of Bihar, Patna
2. Managing Director, Bihar State Housing Board, Patna
3. The Bhu Sampada Padadhikari Bihar State Housing Board, Patna
4. The Secretary, Bihar State Housing Board, Patna
5. The Executive Engineer, Bihar State Housing Board, Patna
6. The Assistant Engineer, Bihar State Housing Board, Patna
7. The Revenue Officer, Bihar State Housing Board, Patna
8. Ranjan Prasad, son of late Kishori Prasad, at present resident of mohalla-4/M/168, Bahadurpur Housing Colony, Patna, permanent resident of mohalla-Bichli Bazar, Kali Asthan, Harnaut, P.S.-Harnaut, District-Nalanda
9. Sunaina Devi, wife of Sri Amit Kumar, resident of Daniawan, P.O.+P.S.-Daniawan, District-Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Yogesh Chandra Verma, Sr.Adv. Mrs.Prem Sheela Pandey
For the Respondent no.1 :		Mr.Amarjeet Prabhakar, AC to AAG-11
For the Respondent nos.2to7:		Mr.Anshuman Singh Mr.Siddhartha Shakar Pandey
For the Respondent no.8	:	Mr.Deepak Kumar Sinha
For the Respondent no.9	:	Mr. Shanti Kumar Mr.Dhananjay Kumar Tiwary

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

11 12-03-2015

Heard the parties.

The petitioner has filed the present writ petition under Article 226 of the Constitution of India seeking a direction to the Managing Director of Bihar State Housing Board, Patna (in short 'Board') to take steps for cancellation of the lease deed dated 15.05.2008 executed in favour of Smt. Urmila Devi, the widow of late Kishori Prasad, the original allottee of a plot of land bearing

no. 4M/168 situate at Bahadurpur, P.S.-Agamkuan, District-Patna (hereinafter referred to as the 'property in question'). The petitioner further prays for issuance of a direction to the respondent no.3 not to grant permission to the lessee Urmila Devi (not impleaded as party respondent in the present proceeding) to transfer the property in question in favour of any other person.

It is not in dispute that the property in question was allotted by the Board in favour of aforesaid Kishori Prasad vide allotment letter no.2191/Aa dated 15.06.1988 and, accordingly, hire purchase agreement was executed by the Board in favour of aforesaid Kishori Prasad on 22.07.1988, which was duly registered on 23.08.1988 and whereafter the allottee Kishori Prasad came in possession over the property in question. It is also not in dispute that subsequently the aforesaid Kishori Prasad died on 24.02.2007 leaving behind him his heirs and legal representatives including his widow Urmila Devi and his son Ranjan Prasad, newly added respondent no.8.

It is the case of the writ petitioner that the original allottee Kishori Prasad sold the property in question to one Rajmani Prasad and he was put to possession over the same and whereafter he is said to have made certain construction over the same. Subsequently, aforesaid Rajmani Prasad is said to have executed an agreement for sale in favour of the writ petitioner on 10.04.2002, whereafter she claims to have come in possession over the property in question.

However, the writ petitioner has not brought on record any valid document showing transfer of the property in question by original allottee Kishori Prasad in favour of aforesaid Rajmani Prasad after obtaining permission from the respondent Board. No

valid document in favour of the writ petitioner either has been brought on record in which the Board was a party. The only basis of the claim of transfer of property in question and possession over the same either of the writ petitioner or the aforesaid Rajmani Prasad are execution of unregistered agreements for sale, referred to above, in which admittedly the Board is not a party.

I.A.No.9398 of 2010 was filed on behalf of the Ranjan Prasad, son of original allottee Kishori Prasad, with a prayer for impleading him as a party respondent no.8 in the present writ petition. In the aforesaid Interlocutory Application, the claim of the writ petitioner with respect to property in question has been disputed. It has been asserted that his father late Kishori Prasad was original allottee of property in question and hire purchase agreement was signed in his favour by the Board on 22.07.1988. It has further been stated that after the hire purchase agreement was registered on 23.08.1988 his father came in possession over the same, who subsequently died on 24.02.2007 and after his death property in question was transferred in favour of Urmila Devi, the widow of late Kishori Prasad and mother of the aforesaid intervenor. The perpetual lease deed was executed on 15th May, 2008 in favour of aforesaid Urmila Devi by the Board, which has been brought on record as Annexure-3 to the aforesaid Interlocutory Application. It has also been claimed that the aforesaid Rajmani Prasad @ Rajmani Singh filed Title Suit No.127 of 2008 in the court of learned Sub-Judge 1st, Patna City in which the aforesaid Urmila Devi, the widow of original allottee and others was a party. The aforesaid suit was brought for decree for specific performance of contract dated 04.06.1990. It has been pleaded that the aforesaid Title Suit No.127 of 2008 was dismissed

by the order dated 17.07.2008 by the learned Sub-Judge 1st, Patna City against which the Title Appeal No.89 of 2008 was preferred which is still pending. In view of the averments made in the aforesaid I.A.No.9398 of 2010, the aforesaid Ranjan Prasad was directed to be added as respondent no.8 by the order dated 03.12.2014 passed by a Bench of this Court.

I.A.6984 of 2014 was also filed on behalf of one Sunaina Devi for adding her as party respondent in the main writ petition. In her aforesaid Interlocutory Application, she has supported the averments made in the I.A. No.9398 of 2010 filed on behalf of Ranjan Prasad. But, according to her, she subsequently purchased the property in question from aforesaid Ranjan Prasad, son of original allottee. It has also been asserted that the registered tripartite lease in perpetuity was executed in her favour on 23.05.2012/25.05.2012 by the Board. Thereafter, she claims to have come in possession over the same. In view of the aforesaid averments made in the aforesaid Interlocutory Application No.6984 of 2014, the aforesaid Sunaina Devi was also directed to be added as respondent no.9 by the order dated 03.12.2014 passed by a Bench of this Court, since the facts asserted in the aforesaid I.A.No.6948 of 2014 were not controverted by the writ petitioner.

Now I.A.No.8707 of 2014 has been filed on behalf of the writ petitioner seeking amendment in the writ petition and seeking further relief as enumerated in paragraph no.1 of the aforesaid Interlocutory Application. In the aforesaid Interlocutory Application, a prayer has been made for setting aside the order contained in memo no.108 dated 11.04.2014 passed by the Board in Eviction Case No.19 of 2013, whereby the writ petitioner has

been declared encroacher over the property in question. The further prayer is sought to be made for setting aside the order contained in memo no.109 dated 07.11.2014, whereby the Executive Engineer of the Board has been directed to ensure removal of the petitioner from property in question with the assistance of police force. It has also been stated in the aforesaid I.A.No.8707 of 2014 that the order dated 11.04.2014 passed in Eviction Case No.19 of 2013 is appealable one.

A rejoinder affidavit was also filed on behalf of the newly added respondent no.9 Sunaina Devi controverting the averments made in the I.A. No.8707 of 2014, wherein it has been asserted that the against the order passed in Eviction Case No.19 of 2013, the petitioner filed a separate writ petition before this Court vide CWJC No.12278 of 2013. It has further been claimed that in compliance of the order passed in Eviction Case the writ petitioner was evicted and respondent no.9 was put in possession over the property in question on 24.11.2014.

Yet another I.A.No.1325 of 2015 has been filed on behalf of the writ petitioner seeking further amendment in paragraph no.1 of the writ petition by adding the prayer for seeking a direction to the respondent authorities of the Board to put the petitioner back in possession over the property in question and pay adequate compensation to her on the ground of illegal demolition of structure from the plot in question.

So far I.A.No.8707 of 2014 and I.A.No.1325 of 2015, filed on behalf of the writ petitioner, are concerned, no formal order has been passed till date by this Court.

From the facts enumerated above, it is apparent that during the pendency of the present writ petition several material



developments have taken place with respect to property in question, but all those material developments have not been brought on record by the writ petitioner. It further appears that the reliefs sought for on behalf of the writ petitioner in the main writ petition have practically become infructuous in view of the subsequent developments noted above. The amendments sought for on behalf of the petitioner in I.A.No.8707 of 2014 and I.A.No.1325 of 2015 are, in fact, independent cause of action and for that separate writ petition could have been filed by the petitioner, which, in fact, has been filed. The reliefs sought for in the aforesaid two Interlocutory Applications cannot be treated to be the part of the reliefs sought for in the main writ petition, as detailed in paragraph no.1 of the writ petition. This Court also finds that all the necessary parties for grant of an appropriate relief to the petitioner have not been impleaded as party respondent in the main writ petition. Smt.Urmila Devi, the widow of the original allottee Kishori Prasad, is not at all party in the present writ petition. In her absence, the issues of facts raised on behalf of the petitioner cannot be effectively and properly gone into.

It has been asserted on behalf of the newly added respondent that Rajmani Prasad from whom the present petitioner claims to have purchased the land in question on the basis of the agreement for sale is said to have filed a Title Suit in the court of learned Sub-Judge 1st, Patna City, which was dismissed, against which Title Appeal is said to be pending before the learned District Judge, Patna.

From the averments made in the writ petition as also different Interlocutory Applications, referred to above, this Court finds that the claims raised on behalf of the petitioner are based on

several disputed questions of facts. Therefore, relief sought for on behalf of the petitioner cannot be granted in the present writ petition on the ground of non-joinder of necessary parties as also on the ground of non-bringing of all the material facts on the record.

Consequently, the present writ petition has to fail and is, accordingly, dismissed, but without costs. I.A. No.8707 of 2014 and I.A.No.1325 of 2015 stand accordingly disposed of.

However, the petitioner, if so advised, shall be at liberty to pursue her remedy before the appropriate forum/court for grant of an appropriate relief. She shall also be at liberty to pursue her alternative remedy in Title Appeal no.89 of 2008 pending before the learned District Judge, Patna or in alternatively, after getting the disputed questions of facts settled by appropriate forum/court, she shall be at liberty to file a fresh writ petition in the same subject matter with well crystallized reliefs enumerated in paragraph no.1 of the writ petition and after impleading all the necessary parties as respondents in that writ petition. If such a writ petition is filed on behalf of the petitioner, the same shall be considered and decided on its own merits, without being prejudiced and/or influenced by the present order.

Arvind/-

(Birendra Prasad Verma, J)

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