

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.99 of 2016
Arising out of
Civil Writ Jurisdiction Case No. 5044 of 2013**

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Surendra Chaudhary, Son of Sri Ram Babu Chaudhary, Resident of Quarter No. 644/800, Shastri Nagar, P.S.- Shastri Nagar, District - Patna

.... Appellant/s

Versus

1. The Bihar State Housing Board, Patna through its Managing Director
2. Managing Director, Bihar State Housing Board, Patna
3. The Executive Engineer, Patna Division No. 2, Bihar State Housing Board, Patna
4. The Estate Officer, Bihar State Housing Board, Patna.

.... Respondent/s

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Appearance:

For the Appellant/s : Mr. Binod Kumar, Advocate.
For the Respondent : Mr. Lalit Kishore, PAAG-1.
Bihar State Housing Board Mrs. Binita Singh, Advocate.

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 19-11-2016

The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench on 17.08.2015 whereby, the claim of the appellant for possession of plot in view of the allotment vide letter of allotment dated 21st of October, 1997 (Annexure-2) remained unsuccessful.

Bihar State Housing Board (for short “the Board”) acquired the land measuring 1024.52 acres of land for the purpose of implementation of the scheme for urban housing facilities. But the scheme could not proceed as there was unauthorized occupation upon the land measuring 600 acres. But without realizing the

unauthorized occupation of the plot, the Board made allotment to the various persons. The appellant is one of the allottees of the land which was acquired by the Board for the purpose of implementation of the scheme.

Faced with the difficulty of giving possession to the allottees, the State came up with The Digha Acquired Land Settlement Act, 2010 by which the allotments were annulled except all those allottees who have constructed residential or commercial buildings. The provisions of Sections 5, 6 and 7 of the Act reads as under:

“Section 5. Previous allotment deemed to be annulled.-

Notwithstanding, anything contained in this Act or in any other Act or rule or order any allotment made by the Board prior to enforcement of this Act on any portion of acquired land shall deemed to be annulled.

Provided that such allottees of the land by the Board who are in actual physical possession of the land and have constructed residential or commercial buildings shall not be subjected to annulment.

Section 6. Settlement of land limited to certain area. -

Settlement in accordance with provisions of this Act, rules or orders issued hereunder shall remain confined to an area of about 600 acres of land comprised in sector 3, 4, 5, 6, 7, 9, 11 and 12 wherein the unlawfully constructed area for residential or commercial purposes are spread over the maximum area of the Sector.

Provided that the vacant land in said sectors shall remain with Board and the land owners/transferees shall be entitled for ex-gratia payment of the land.

Section 7. Board to take possession of vacant land.-The Board shall be entitled to take possession of vacant land

comprised in an area of about 400 acres of land situated in Sectors 1, 2, 5, 8 and 10.

Provided that the constructed portion in the form of dwelling houses or commercial buildings shall be entitled for *ex-gratia* payment as well as an additional amount for the constructed areas to be determined by the Board and approved by the Government.

Provided further that while framing and implementing the scheme under Section 3, the Board may earmark a compact area for settlement in favour of only those unauthorized occupants who have constructed only their residential houses.

Provided further that unauthorized occupants shall not be entitled to settlement in the area described in Section 7, except the area which has been earmarked by the Board in the scheme for the said purpose.”

Admittedly, the appellant has not constructed any residential or commercial building on the land allotted to him vide letter of allotment dated 21st of October, 1997. Therefore, by operation of law, the allotment stands annulled.

However, the argument of the learned counsel for the appellant is that the appellant was allotted plot in Sector 5 whereas 400 acres of land indicating land in Sector 5 was not under unauthorized occupation, thus, the land allotted to the appellant was not under unauthorized occupation, therefore, the allotment could not have been annulled.

We do not find any merit in the said argument as the Section 5 of the Act has overriding effect in respect of allotments made except in respect of those allottees who are in physical

possession and have constructed residential or commercial building. Since the appellant has not constructed residential or commercial building, the allotment made in his favour stood annulled by virtue of Section 5 of the Act.

Section 6 and 7 of the Act relates to settlement of the unauthorized occupants and has no affect on the allottees who have been allotted land for residential or commercial purposes. Such allottees do not drive any benefit by virtue of Section 6 and 7 of the Act.

We do not find any error in the order passed by the learned Single Bench which may warrant interference in the present Letters Patent Appeal.

(Hemant Gupta, ACJ)

Mishra/-

(Vikash Jain, J)

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	23.11.2016
Transmission Date	