

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6404 of 2023

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Satyendra Narayan Singh Son of Late Devnandan Singh Resident of LIG.
13/460, Hanuman Nagar, Kankarbagh, Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
2. The Secretary Bihar State Housing Board, Patna.
3. The Managing Director Bihar State Housing Board, Patna.
4. The Executive Engineer Bihar State Housing Board, Patna.
5. The District Magistrate, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Atul Kumar Mehta, Advocate
For the Respondent/s : Mr. Subhash Pd. Singh (GA-3)

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT
Date: 26-06-2023

The present writ petition has been filed for quashing of letter dated 15.04.2023 issued by the Executive Engineer, Patna Division-1, Bihar State Housing Board, Patna, whereby and whereunder the petitioner has been directed to remove the encroachment made by him qua the flat in question i.e. Flat No. LIG-13/460 as also for depositing the amount of penalty/damages, as directed by the Competent Authority vide order dated 05.04.2023 passed in Eviction Case No. 7 of



2022.

2. The petitioner has also prayed for directing the respondent authorities to take immediate action and remove illegal occupants who have occupied Lower Income Group flats situated at Hanuman Nagar, Patna. At this juncture itself, it would be relevant to point out that it is not in dispute that the respondent authorities are duty bound to remove illegal occupants and in fact this Court as also co-ordinate Benches of this Court have from time to time issued appropriate directions for removal of the illegal occupants, hence no further direction is required to be issued, specially in view of the submission of the Ld. Counsel for the respondent Housing Board to the effect that respondents have already taken steps to evict the illegal occupants and further no stone would be left unturned to ensure that all the illegal occupants are evicted.

3. The learned counsel for the petitioner has raised a solitary ground in respect of the first prayer made in the present writ petition to the



effect that since the petitioner has challenged the eviction order dated 05.04.2023, passed by the Competent Authority, in Eviction Case No. 7 of 2022, by filing an appeal under Section 60 of the Bihar State Housing Board Act, 1982 (hereinafter referred to as the 'Act, 1982'), it would be deemed that the order passed by the Competent Authority in the Eviction Case has been stayed till the disposal of the said appeal, thus the impugned letter dated 15.04.2023, issued by the Executive Engineer, Patna Division-1, Patna, is not sustainable in the eyes of law, hence is fit to be set aside.

4. Per contra, the learned counsel appearing for the Bihar State Housing Board has submitted, by referring to the counter affidavit filed in the present case, that the flat in question i.e. LIG-13/460, situated at Hanuman Nagar, P.S. Patrakar Nagar, Patna was originally allotted to one Shri Dev Nandan Singh and during his life time, on his request the name of the petitioner was mutated, however, subsequently the petitioner had



constructed a room at the roof-top admeasuring 583.27 square feet without the prior permission of the Board as also without approval of the Municipal/other authorities, hence had violated Clause-13 of the Hire Purchase Agreement in question. It is also submitted that the petitioner has also constructed a balcony after encroaching the setback area on the northern side of the flat in question resulting in violation of Clause-14 of the Hire Purchase Agreement in question. It is further submitted that in view of the aforesaid encroachment made by the petitioner, notice was issued upon the petitioner, under Section 83(A) of the Bihar State Housing Board Act, 1982, vide Memo dated 27.04.2022, whereby the petitioner was asked to demolish the unauthorized construction within a period of 15 days, failing which an eviction case would be instituted against him under Section 59 of the Act, 1982, before the Competent Authority, however, the petitioner failed to demolish the unauthorized construction, hence an eviction case bearing Eviction Case No. 7



of 2022 was initiated before the Competent Authority, Bihar State Housing Board, Patna under Section 59 of the Act, 1982 and a notice was issued to the petitioner on 09.06.2022 to file his show cause, whereafter the petitioner had appeared before the Competent Authority and after hearing the counsel for the parties and perusing the materials on record, the Competent Authority has passed a reasoned order dated 05.04.2023, directing the petitioner to remove the encroachment made by him in an authorized manner within a period of 30 days and pay a penalty of Rs. 53,714.69/- calculated up to 27.04.2022, apart from imposing penalty upon the petitioner, as set out in the said order dated 05.04.2023.

5. The learned counsel for the respondent-Housing Board has further contended that since the petitioner failed to remove the encroachment in question within 30 days of passing of the aforesaid order dated 05.04.2023, the impugned notice dated 15.04.2023 was issued to the



petitioner, directing him to remove the encroachment in question and deposit a sum of Rs. 62,904.11 by way of penalty with the respondent-Housing Board. It is further submitted that the petitioner is stated to have preferred an appeal under Section 60 of the Act, 1982, however, mere filing of an appeal does not operate as a stay of the order appealed against, muchless being an impediment for the respondent-Housing Board to take steps for implementation of the order appealed against, hence the present writ petition is devoid of any merit and is fit to be dismissed with cost.

6. I have heard the learned counsel for the parties and gone through the materials on record.

7. At this juncture, it would be relevant to reproduce herein below Section 60 of the Act, 1982:-

“60.Appeal.- (1) Any person aggrieved by an order of the Competent Authority under section 59 may, within one month from the date of service of the notice of such order,



prefer an appeal to the Government or any officer duly authorised by the Government:

Provided that the Government or any officer duly authorised by the Government may entertain the appeal after the expiry of the said period of one month if they are satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) On receipt of an appeal under sub-section (1), the Government or any officer duly authorised by the Government may, after calling for a report from the Competent Authority and after making such further inquiry, if any as may be necessary pass such orders as they think fit and such orders shall be final.

(3) On such appeal being preferred, the Government or any officer duly authorised by the Government may stay the execution of the Competent Authority, for such period and on such conditions as they think fit."

8. A bare perusal of the aforesaid provision of appeal, as provided for in the Act, 1982, would



show that mere filing of an Appeal would not entail automatic stay of the order appealed against, however, it is for the appellate authority to pass appropriate interim orders/stay the order appealed against. As far as the present case is concerned, no interim order or any order staying the operation of the order dated 05.04.2023, passed by the Competent Authority in Encroachment Case No. 7 of 2022, has been passed by the appellate authority, hence the action of the respondent-Housing Board in issuing the impugned letter dated 15.04.2023 cannot either be faulted with or termed to be illegal or arbitrary.

9. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, I do not find any merit in the present writ petition, hence the present writ petition stands dismissed.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	27.06.2023
Transmission Date	N/A

