

THE EXECUTIVE ENGINEER, BIHAR STATE HOUSING BOARD A

v.

RAMESH KUMAR SINGH AND ORS.

NOVEMBER 22, 1995

[A.S. ANAND AND K.S. PARIPOORNAN, JJ.] B

Constitution of India—Article 226—Scope of—Show cause notice for eviction to an unauthorised occupant of Housing Board quarter—Occupant denies ownership of Housing Board—Challenge to show cause notice by a writ petition—Interference, if warranted—Bihar State Housing Board Act, 1982—Section 59. C

The appellant allotted a quarter to respondent No. 4 on hire purchase basis. Under the provisions of the Bihar State Housing Board Act, 1982 and the Bihar State Housing Board (Management and Disposal of Housing Estates) Regulations, 1983, the allottee of a quarter under hire purchase scheme remains a tenant till the payment of last instalment whereafter the ownership gets transferred to the allottee after execution of appropriate conveyance deed. Section 58 of the Bihar State Housing Board Act, 1982 makes provisions of the Bihar Building (Lease, Rent and Eviction) Act inapplicable to the tenancies created by the Board. Under section 59 of the Bihar State Housing Board Act, power is given to the Housing Board to evict persons who are in unauthorised occupation of the tenanted premises by making application to the competent authority. The Respondent No. 3 was the competent authority under the Act. D E

Respondent No. 4 complained to respondent No. 3 that respondent No.1 had forcibly and unauthorisedly occupied the first floor of the quarter allotted to him by the Board. After confirming the fact that respondent No. 4 was the allottee of the said quarter, respondent No. 3 issued a show cause notice to respondent No. 1 to explain as to why he should not be evicted from the quarter. Respondent No. 1, instead of showing cause, approached the High Court under Article 226 of the Constitution of India praying that the show cause notice may be quashed. Respondent No. 1 contended that respondent No. 4 was the owner of the quarter having purchased the same from the Housing Board and that he was a tenant under respondent No. 4 and therefore, he could be evicted only by resort to the provisions of the F G H

A Bihar Building (Lease, Rent & Eviction) Control Act and not under the Bihar Housing Board Act.

The High Court quashed the show cause notice on the ground that respondent No. 1 is not a tenant of the Housing Board and therefore, the Housing Board could not have initiated proceedings for his eviction under the Bihar Housing Board Act.

Allowing the appeal of the Housing Board, this Court

HELD : 1. On the facts of this case, the 1st respondent was unjustified in invoking the extraordinary jurisdiction of the High Court under Article 226 of the Constitution of India, without first showing cause against show cause notice before the 3rd respondent. [549-F-G]

2.1. According to the Housing Board and the 4th respondent the hire-purchase transaction is still in force, and the ownership of the building has not been finally transferred to the 4th respondent. The 1st respondent would say that the 4th respondent is the owner having purchased the building from the Board. The basic or fundamental fact is thus in dispute. The basic facts, on the basis of which jurisdiction of the 3rd respondent to initiate/continue the proceedings, require investigation and adjudication. [548-D-E; G]

2.2. There is no attack against the vires of the statutory provisions governing the matter. No question of infringement of any fundamental right guaranteed by the Constitution is alleged or proved. It cannot be said that show cause notice is ex facie a "nullity" or totally "without jurisdiction" in the traditional sense of that expression - that is to say, that even the commencement or initiation of the proceedings, on the face of it and without anything more, is totally unauthorised. In such a case, for entertaining a writ petition under Article 226 of the Constitution of India against a show-cause notice, at that stage, it should be shown that the authority has no power or jurisdiction, to enter upon the enquiry in question. In all other cases, it is only appropriate that the party should avail of the alternate remedy and show cause against the same before the authority concerned and take up the objection regarding jurisdiction also. In the event of an adverse decision, it will certainly be open to him, to assail the same either in appeal or revision, as the case may be, or in appropriate cases, by invoking the jurisdiction under Article 226 of the Constitution of

India. [549-C-F]

2.3. The appropriate procedure for the 1st respondent would have been to file his objections and place necessary materials before the 3rd respondent and invite a decision as to whether the proceedings initiated by the 3rd respondent under section 59 of the Bihar State Housing Board Act, 1982, are justified and appropriate. The adjudication in that behalf necessarily involves disputed questions of fact which require investigation. In such a case, proceedings under Article 226 of the Constitution can hardly be an appropriate remedy. [549-G-H; 550-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 11187 of 1995.

From the Judgment and Order dated 10.2.93 of the Patna High Court in C.W.J.C. No. 82 of 1993 (R).

Ranjit Kumar for the Appellant.

Amarender Sharan for the Respondent No. 1.

S.K. Verma for the Respondent No. 4.

The Judgment of the Court was delivered by

PARIPOORNAN, J. Leave granted.

2. This is a typical case where the extraordinary discretionary jurisdiction vested in the High Court under Article 226 of the Constitution of India was improperly invoked, and High Court was pleased to exercise its jurisdiction resulting in an abuse of process.

3. The appellant is the Executive Engineer, Bihar State Housing Board and represents the said 'Board' (hereinafter referred to as "Board"). The respondents to this appeals are (1) Sri Ramesh Kumar Singh (Petitioner in the Writ Petition), (2) State of Bihar, (3) Sub-Divisional Magistrate, Saraikella, District Singhbhum (the 'competent authority') and (4) Sri S.N. Pandey, Adityapur, District Singhbhum (East).

4. The first respondent assailed the show-cause notice-Annexure Ext. P-4 - dated 16.12.1992 issued to him by the 3rd respondent herein under section 59 of the Bihar State Housing Board Act, 1982 in CWJC No. 82/93

A High Court of Patna. By Judgment dated 10.2.1993 a Division Bench of the High Court quashed Annexure Ext. P-4, show cause notice, and also the Eviction proceedings no. 6/92 pending before the 3rd respondent. The Board, party-respondent in the writ petition, has filed this appeal against the aforesaid judgment dated 10.2.1993.

B 5. The broad facts relevant for the disposal of the appeal are in a narrow compass. The appellant Board has allotted quarter No. M-11/(Old) Adityapur, Near Jamshedpur, to the 4th respondent on hire-purchase basis. Under the provisions of the Bihar State Housing Board Act, 1982 and the Bihar State Housing Board (Management and Disposal of
C Housing Estates) Regulations of 1983, detailed procedure for allotment, payment of hire purchase amount, vesting of ownership on payment of the last instalment by the hirer, procedure for summary eviction of un-
D authorised occupation, etc. are provided. The hirer is a tenant of the Board till the last instalment is paid whereafter the ownership is transferred to the hirer by executing an appropriate conveyance. On this basis the 4th respondent, hirer, is a tenant of the Board. Section 58 of the Act states that the provisions of the Bihar Buildings Lease, Rent and Eviction)
E Control Act are inapplicable to the tenancy created by the Board. Section 59 of the Bihar State Housing Board Act enables the Board to evict persons in occupation in cases of sub-tenancy or any other unauthorised
F occupation, by application to the competent authority'. By notification No. 3196/Patna dated 22.11.1973 (Annexure Ext. P-1), the Government of Bihar, in exercise of powers conferred on it by section 2(10) of the Bihar State Housing Board Ordinance, had authorised all civilian Sub-divisional Officers and Magistrates, just below the rank of S.D.O.S. as competent
F authorities for the purposes of the Act. The 3rd respondent is the competent authority within whose jurisdiction the instant building-quarter No. M/11 (Old) Adityapur, Near Jamshedpur is situate.

G 6. The 4th respondent, the allottee of the quarter No. M/11 (Old), Adityapur, Near Jamshedpur, complained to the 3rd respondent by communication dated 20.10.1992 (Annexure Ext. P-2) that he has been allotted the said building by the Board, and while he was residing with his family in the said building, the 1st respondent has forcibly and unauthorisedly occupied the first floor of the building. The 3rd respondent forwarded the aforesaid communication to the appellant. The appellant by Annexure Ext.
H P- 3 dated 15.12.1992 informed the 3rd respondent, S.D.O. that House No.

Mig M/11 (Old), Adityapur, Near Jamshedpur stands allotted to the 4th respondent and the application of the 4th respondent, which is self-explanatory, praying for eviction of the portion unauthorisedly occupied by the 1st respondent, is referred for necessary action. In this back-ground, the 3rd respondent issued Annexure Ext. P-4 notice dated 16.12.1992 to the 1st respondent which is to the following effect :

"UNDER SECTION OF BIHAR HOUSING BOARD
ACT SHOW CAUSE NOTICE

To,

Shri, R.K. Singh,
Contractor,
M-11, Adityapur,
Jamshedpur.

It appears from the petition of the Executive Engineer, Bihar State Housing Board (Adityapur) Jamshedpur that you are illegally and *unauthorisedly living in House No. M-11 Old of Housing Board situated at Adityapur Housing Board.*

You are hereby directed through this notice that to explain the person or through an Advocate on 28.12.1992 at 10 A.M. in the Court of undersigned that why not an order of eviction of the house in question be passed.

Sd/-
Sub-Divisional Magistrate,
Saraikeella
16.12.1992"

(emphasis supplied)

7. It is seen that the 1st respondent instead of showing cause against Annexure Ext. P-4, straightaway approached the High Court by filing CWJD No. 82/93 and assailed Annexure Ext. P-4. According to him, 4th respondent is the owner of the building having purchased the same from the Board, that he is a tenant of the first floor under the 4th respondent, that the 3rd respondent is incompetent to initiate proceedings for eviction under the Bihar State Housing Board Act, and that only proceeding under

A the Bihar Building (Lease, Rent & Eviction) Control Act will lie for
eviction. So, he prayed for quashing Annexure Ext. P-4 show-cause notice
and the eviction proceedings.

B 8. The High Court heard the parties and took the view that the 1st
respondent is not a tenant of the Board, and so the Board will have no
jurisdiction to initiate proceedings either on its own motion or at the
instance of the 4th respondent and in this view, the proceedings, initiated
as per Annexure Ext. P-4, are unjustified and without jurisdiction. The
High Court opined that the 4th respondent may seek appropriate remedy
by bring a suit under the Bihar Buildings (Lease, Rent & Eviction) Control
C Act. In the result, Annexure Ext. P-4 and also the eviction proceedings No.
6/92 were quashed. It is from the aforesaid judgment of the High Court
dated 10.2.1993, the Board has come up in appeal by special leave.

D 9. We heard counsel. It is common ground that Quarter No. M/11
(Old) Adityapur, Near Jamshedpur, belongs to Board. According to the
Board and the 4th respondent the hire-purchase transaction is still in force,
and the ownership of the building has not been finally transferred to the
4th respondent. The 1st respondent would say that the 4th respondent is
the owner having purchased the building from the Board. The 'basic' or
E fundamental fact is thus in dispute. The 3rd respondent is the competent
authority notified by the State Government under the Bihar State Housing
Board Act, 1982 to initiate summary proceedings for eviction against the
sub-letting, unauthorised occupation by any person, of the premises, etc.
belonging to the Board. Annexure Ext. P-4, notice, is the one so issued by
the 3rd respondent. The appellant and the 4th respondent complained
F about the forcible or unauthorised occupation by the first respondent of
the premises belonging to the Board. The 3rd respondent was competent
to initiate the proceedings under the Act if the building still belongs to the
Board and the ownership has not vested in the 4th respondent. It may be,
that this basic fact is denied by the 1st respondent when he states that the
4th respondent is the owner having purchased the building from the Board
G and that he is a tenant under the 4th respondent. The basis facts, on the
basis of which the jurisdiction of the 3rd respondent to initiate/continue
the proceedings, require investigation and adjudication. If, as pleaded by
the appellant and the 4th respondent, the Board is the owner and the 4th
respondent is the hirer, it cannot admit of any doubt that the 3rd respon-
H dent has jurisdiction to initiate the proceedings as per Annexure Ext. P-4.

If that basic fact is denied by the 1st respondent, that may require investigation of disputed facts and adjudication by the competent authority - the 3rd respondent. Without showing cause against Annexure Ext. P-4, notice, the 1st respondent straightway filed the Writ Petition in the High Court and assailed Annexure Ext. P-4 and the eviction proceedings. The averments in this regard, contained in paragraph 13(H) of the Special Leave Petition, are not denied in the detailed counter affidavit filed by the 1st respondent in this Court.

10. We are concerned in this Case, with the entertainment of the Writ petition against a show cause notice issued by a competent statutory authority. It should be borne in mind that there is no attack against the vires of the statutory provisions governing the matter. No question of infringement of any fundamental right guaranteed by the Constitution is alleged or proved. It cannot be said that Ext. P-4 notice is *ex facie* a "nullity" or totally "without jurisdiction" in the traditional sense of that expression - that is to say, that even the commencement or initiation of the proceedings, on the face of it and without anything more, is totally unauthorised. In such a case, for entertaining a Writ Petition under Article 226 of the Constitution of India against a show-cause notice, at that stage, it should be shown that the authority has no power or jurisdiction, to enter upon the enquiry in question. In all other cases, it is only appropriate that the party should avail of the alternate remedy and show cause against the same before the authority concerned and take up the objection regarding jurisdiction also, then. In the event of an adverse decision, it will certainly be open to him, to assail the same either in appeal or revision, as the case may be, or in appropriate cases, by invoking the jurisdiction under Article 226 of the Constitution of India.

11. On the facts of this case, we hold that the 1st respondent was unjustified in invoking the extra-ordinary jurisdiction of the High Court under Article 226 of the Constitution of India, without first showing cause against Annexure Ext. P-4 before, the 3rd respondent. The appropriate procedure for the 1st respondent would have been to file his objections and place necessary materials before the 3rd respondent and invite a decision as to whether the proceedings initiated by the 3rd respondent under section 59 of the Bihar State Housing Board Act, 1982, are justified and appropriate. The adjudication in that behalf necessarily involves disputed questions of fact which require investigation. In such a case,

- A proceedings under Article 226 of the Constitution can hardly be an appropriate remedy. The High Court committed a grave error in entertaining the Writ Petition and in allowing the same by quashing Annexure Ext. P-4 also the Eviction proceedings No. 6/92, without proper and fair investigation of the basic facts. We are, therefore, constrained to set aside the judgment of the High Court of Patna in CWJC No. 82/93 dated 10.2.1993.
- B We hereby do so. The appeal is allowed with costs.

B.K.M.

Appeal allowed.