

IN THE HIGH COURT OF JUDICATURE AT PATNA

Binay Kumar

vs

Dr. Shankar Nath

Second Appeal No. 393 of 2022

21 June 2024

(Hon'ble Mr. Justice Khatim Reza)

Headnotes

Second Appeal - filed challenging the judgment passed by the learned Court of Munsif whereby, the suit was decreed.

The matter arises out of Eviction Suit which was filed by the plaintiff for eviction of the defendant from the property for requirement to comply with the Hire-Purchase Agreement between the Plaintiff and Bihar State Housing Board as the Plaintiff had constructed three commercial shops unauthorisedly and so, the Final Conveyance Deed was not being executed in favour of the Plaintiff by Board due to non-demolition of the unauthorized shops by the plaintiff.

Held - There is a special procedure prescribed under Section 59 of The Bihar State Housing Board Act, 1982, which provides special provision for eviction on certain grounds. It further prescribes that if any person is in unauthorized occupation of any Board premises, the Housing Board is competent authority to vacate such premises. (Para 38)

The application of provision of BBC Act, 1982, is excluded by statutory provision and the suit is not maintainable as special statutory provision has been prescribed under The Bihar State Housing Board Act, 1982 for eviction of a person in occupation of property of Housing Board. Any person subletting without written permission of Board can also be vacated, under the said Act. (Para 40)

Accordingly, the civil court has no jurisdiction to try the suit under the BBC Act, 1982 with regard to property belonging to the Bihar State Housing Board. (Para 42)

Appeal is allowed. (Para 45)

Case Law Cited

M/S. Variety Emporium Vs. V.R.M. Mohd. Ibrahim Naina, **AIR 1985 SC 207**; Union of India Vs. Ibrahim Uddin & Anr reported in **2013 (1) PLJR 48 SC para 69(vii)**; Ram Naresh Pandey Vs. Sita Ram Yadav and Ors reported in **PLJR 2003 (2) 133 V. Satyanarayana Vs. Sandeep Enterprises** reported in **2004 (7) KARLJ 541**;Gaya Prasad vs. Shri Pradeep Srivastava reported in **AIR 2001 SC 803**;Om Prakash Suri Vs. M/s. Chemiequip Ltd. reported in **2017 (4) Mah LJ 706**

List of Acts

Section 34 of Specific Relief Act; Section 58, 59 of Bihar State Housing Board Act; Section 11(1)(f) and 11(1)(c) of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982; Section 9 of Code of Civil Procedure

Appearances for Parties

For the Appellant/s: Mr. Jitendra Kishore Verma, Advocate

For the Respondent/s: Mr. Surendra Kishore Thakur, Advocate

Headnotes prepared by reporter: Amit Mallick, Advocate

Judgment/Order of the Hon'ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.393 of 2022

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Binay Kumar, (Male) aged about 55 years, Son of Shri Ayodhya Prasad
Resident of Mohalla - H- 30, Doctor's Colony, Lohia Nagar, M/s Laxmi
Kirana Store, P.S. - Patrakar Nagar, District - Patna.

... .. Appellant/s

Versus

Dr. Shankar Nath, Son of Late Ram Lakhan Lal, Resident of H.No. H - 30,
Doctor's Colony, Lohia Nagar, P.S. - Patrakar Nagar, District - Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Jitendra Kishore Verma, Advocate
For the Respondent/s : Mr. Surendra Kishore Thakur, Advocate

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CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL JUDGMENT

Date : 21-06-2024

Heard Mr. Jitendra Kishore Verma, learned counsel
for the appellant and Mr. Surendra Kishore Thakur, learned
counsel for the respondent.

2. This Second Appeal has been filed by the
defendant-appellant-appellant challenging the judgment and
decree of affirmance dated 16.09.2022 passed by the learned
Additional Judge XVI, Patna in Title Appeal No. 65 of 2015
affirming the judgment and decree dated 26.06.2015 passed by
the learned Court of Munsif III, Patna in Title Suit No. 36 of
2011 whereby, the suit was decreed.

3. The matter arises out of Eviction Suit No. 36 of



2011, which was filed by the plaintiff/respondent for eviction of the defendant from the suit premises for bonafide requirement to comply the terms and conditions of the Hire Purchase Agreement between the Plaintiff/Respondent and Bihar State Housing Board (in short 'Board') as the Plaintiff/Respondent has constructed three commercial shops unauthorisedly so, the Final Conveyance Deed was not being executed in favour of the Plaintiff by the Bihar State Housing Board due to non demolition of the unauthorized shops by the plaintiffs.

4. The learned Trial Court decreed the suit. The defendant/appellant preferred Title Appeal No. 65 of 2015. The said Title Appeal was dismissed by the lower appellate court affirming the judgment of trial court.

5. Being aggrieved by the judgment and decree dated 26.06.2015 passed in Title Appeal No. 65 of 2015, this Second Appeal has been filed by the defendant/appellant.

6. On 14.02.2023, the following substantial questions of law were framed while admitting the appeal:-

i. Whether the notice (Ext. 2/B) to demolish the tenanted premises does not stand waived in view of the conduct of the Bihar State Housing Board to register the final deed of Conveyance/lease (Ext. B) during pendency of the suit?



ii. Whether lease deed registered on 29.05.2013 wherein Clause 7 mentioned commercial cum residential which vitiate the Section 11(f) on the point of registration of lease deed?

iii. Whether the present suit for eviction under BBC Act was maintainable and not barred in view of Section 58 of Bihar State Housing Board which aspect was not considered by either of the Court below?

iv. Whether in view of clause 8 and 16 of the registered deed of conveyance/lease dated 29.05.2013 (Ext. B) does the alleged cause of action for the suit survives and have the courts below not acted perversely in still decreeing the suit?

7. In order to determine the matter in its correct perspective, it is necessary to briefly re-state the case of the plaintiff.

8. The plaintiff filed the Title Suit No. 36 of 2011 for the following reliefs:-

a. The decree of eviction be passed in favour of the plaintiff and against the defendant with respect to the shop in question as detailed in Schedule 'B' of the plaint.

b. The defendant be directed to vacate the shop in question as detailed in Schedule 'B' of the plaint within the time



as fixed by this court failing which the same be vacated through the process of court.

c. Any other relief or reliefs which the plaintiff is deemed entitled to in the estimation of the court be awarded to the plaintiff.

d. The cost of the suit be awarded to the plaintiff.

9. It is pleaded that the plaintiff has purchased the Schedule A property from the Bihar State Housing Board for constructing his residential house under Hire Purchase Agreement dated 09.02.1976 duly executed and registered by the Board.

10. It is contended that the plaintiff has constructed his residential house over Schedule A land and also constructed three shops in front of northern boundary of his residential house. One shop of suit (Schedule B), out of the three shops was let out to the defendant for running his business of *Kirana goods* in the name and style of M/s. Laxmi Kirana. On 01.09.1994, the same shop was let out to the defendant on monthly rent of Rs. 1000/-, to be paid by the 10th of every succeeding month for which the rent is due which was enhanced from time to time and since 01.09.2006, the defendant is paying rent at the rate of Rs. 1,575/- per month. The plaintiff has



purchased the land on Hire Purchase basis and was paying due installments to the Board. After paying the last installment, the plaintiff wrote letter to Board to execute and register the final deed of conveyance in his favour. The Bihar State Housing Board informed him *vide* Letter No. 3617 dated 01.11.2002 that a sum of Rs. 19,835 has remained due with the plaintiff and asked the plaintiff to pay the said amount and thereafter, the process of execution of final conveyance deed would take place. It is further contended that after paying the due amount i.e. Rs. 19,835/-, a request was made to the Board to execute the final deed of conveyance with respect to the Schedule A property in favour of the plaintiff. Thereafter, the Board got the spot verification of the Schedule A property and found that plaintiff has constructed three shops unauthorizedly and is using the premises for commercial purpose which is in violation of the terms and conditions of the Hire Purchase Agreement. Hence, the final conveyance deed would not be executed until the Plaintiff demolishes unauthorized shops and as such the plaintiff has requested the defendant/appellant to vacate the shop as detailed in Schedule B of the plot but, the defendant always took time on one pretext or the other to vacate the shop, in question. Ultimately, the plaintiff has brought a suit of eviction for



bonafide requirement to comply the terms of agreement as perpetual lease of deed was not being executed by the Board. It is further contended that a notice was also issued by the Patna Municipal Corporation for removal of illegal construction and as such, the plaintiff has bonafide requirement to comply the condition of the Board.

11. On summons, the defendant appeared and contested the suit by filing the written statement, wherein, he contended that the suit as framed is not maintainable. It is further contended that under provision of Bihar State Housing Board Act, 1982, the present suit is not maintainable and is impliedly barred and being a purely legal plea based on admitted facts, the courts below ought to have examined this aspect also especially in view of Section 58 of Bihar State Housing Board Act. The suit is also barred under Section 34 of Specific Relief Act. Further case of the defendant is that, he took the suit premises on rent in the year 1990 at the rate of Rs. 300 per month. The other shops were also let out to other tenants. The defendant is regularly paying the rent to the plaintiff who was increasing the rent from time to time. At present, he is paying rent at the rate of Rs. 600/- per month. Now, the business of the defendant has flourished and he has



taken loan from his well wishers for expanding his business. When the plaintiff saw that the business of the defendant is flourishing, he started disturbing him and demanded rent at the rate of Rs. 1,000/- per month. Thereafter, the plaintiff started saying that he is in need of the suit shop for starting his business of medicine but suddenly in the year 2008, the plaintiff changed his version and started saying that Bihar State Housing Board is going to stop the commercial use of all the plots of the locality. The Plaintiff has also got the electricity connection of the suit shop disconnected. Thereafter, the defendant filed a case before House Controller, Patna Sadar for restoration of electricity bearing case no. 17 of 2011 and now BBC Appeal No. 9 of 2011-2012 is pending for disposal before the Collector, Patna. It is further contended that the Plaintiff has got no necessity of the suit premises. It is further submitted that during the pendency of the suit the only ground for eviction as pleaded is to the effect that the final deed of Conveyance is not being executed and there is threat of demolition as the suit shop and other shops has been unauthorizedly constructed, which has by subsequent event vanished in view of the execution of final deed of Conveyance in favour of the plaintiff/respondent on 29.05.2013 (which got marked as Ext. B) during pendency of



the appeal which is an admitted fact and this fact was deliberately not disclosed by the plaintiff before the trial court nor final deed was brought on record when the suit was decided much thereafter on 26.06.2015. It is pleaded that in view of execution of final conveyance deed, the cause of action so pleaded got vanished and no longer exists and the suit has become infructuous as instead of demolishing the unauthorized construction in pursuance of the notice, the act of unauthorized construction was condoned inasmuch as giving a go by to the notices to demolish, which was the cause of action for the suit, the conveyance deed was registered unconditionally and that too permitting commercial use by giving the final conveyance deed for commercial cum residential purposes as opposed to pure residential purposes and thus supersedes the Hire Purchase Agreement. Now, in the changed facts, the final deed of conveyance having been executed, there is a waiver of previous notice to demolish the construction and as such the very basis of ground of eviction as pleaded no longer survives.

12. After analyzing the case of the parties, materials available on record and the evidences adduced by the parties, the learned trial court decreed the suit and held that there is a relationship of landlord and tenant between plaintiff and



defendant. Under the provisions of Section 11 (1) (c) of the BBC Act, the landlord can file an eviction suit on the ground that the suit premises is reasonably and in good faith required by him for his own occupation. In the present case, the fact shows that unless and until the suit shop is not demolished, the landlord will face the danger of his agreement cancelled. Hence, the suit is maintainable under provision of Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982. The defendant has failed to prove that the plaintiff wants to increase the rental amount and let the shop to other tenant. Aggrieved thereof, the defendant/respondent filed Title Appeal No. 65 of 2015.

13. The learned appellate court after considering rival submissions affirmed the judgment and decree of the learned Trial court dated 26.06.2015 passed in Eviction Suit No. 36 of 2011 by the learned Munsif III, Patna and accordingly dismissed the appeal by holding that the premises in question was bonafide required by the landlord for the immediate purpose of demolition of the suit shop, that too, when the final deed of conveyance has already been executed and registered in favour of the landlord by the Board on 29.05.2013 during the pendency of the suit itself. The plaintiff is bound by the term and condition of the Board wherein, the said plot can only be used



for residential purposes. If the suit shop in question, is not demolished the Board would have taken action against the plaintiff. It is further held that the plaintiff is under the statutory obligation to get the defendant vacated from the shop, in question, and the suit as framed is maintainable and affirmed the judgment of trial court.

14. The learned counsel for the appellant vehemently submitted that the provision of Section 11(1)(f) and 11(1)(c) of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 (hereinafter referred to as 'BBC Act') operate in different field altogether whereas Section 11(1)(c) of BBC Act deals with own personal requirements of the plaintiff, on the other hand Section 11(1)(f) is applicable not to the requirement of the plaintiff rather to the requirement of Regional Development Authority or any Building Construction Regulatory Authority or the like and that too for building work. The Housing Board by no stretch of imagination is a Building Construction Regulatory Authority, rather, a body created for providing a shelter to homeless persons. In the present case, on the plain reading of the pleadings of the plaintiff, the suit could not have been decreed on the ground of Section 11(1)(f) of BBC Act, which is not at all attracted as the requirement as pleaded is not regarding



building work nor of the Building Construction Regulatory Authority rather the requirement pleaded is of the plaintiff on account of non registration of his final conveyance deed or by the Housing Board on account of unauthorized construction and such requirement does not come under the ambit of building work to be carried out at the instance of Building Construction Regulatory Authority. On the wrong notion both the courts below have decreed the suit on the ground of Section 11(1)(f) of the BBC Act, which is wholly perverse as the same is not at all attracted.

15. Learned counsel for the appellant submitted that the suit was filed by the plaintiff for vacating the shop in question being unauthorized construction and due to non vacation, the final conveyance deed is not being registered and there is a threat of demolition at the instance of Housing Board and the eviction is sought under Section 11(1)(c) and Section 11(1)(f) of BBC Act as the premises is required to be demolished being unauthorized as per notice of Bihar State Housing Board.

16. It is further submitted that the final conveyance (lease) deed was executed and registered on 29.05.2013 (marked as Ext. B). During pendency of appeal the Conveyance Deed



has been brought as an additional evidence, which was executed and registered during pendency of suit itself and its non registration was the basic cause of action for filing the present suit alleging that the tenanted shop and other two shops are unauthorized construction and the plaintiff tried to take advantage of own wrong and it was further alleged that the Housing Board has given a notice (Ext. 2/B) to the effect that until the unauthorized shops are demolished, the Final Conveyance Deed cannot be registered.

17. The plaintiff suppressed the material fact that the Final Conveyance deed was registered on 29.05.2013 and he did not bring it on record in order to save his suit as he very well knew that once the same is brought on record the suit might be dismissed. It is further submitted that from perusal of Ext. B the Final Conveyance Deed, it clearly reveals that the same has been granted for commercial cum residential purposes as against the residential purposes by treating the plot in question as commercial cum residential plot and rightly so as the Hire purchase agreement was entered into in 1976 for residential purposes and with the passage of time when Ext. B was registered in 2013 the entire area has become commercialized.

18. Any restriction in the initial Hire Purchase



Agreement of 1976 which are in conflict with present day Final Conveyance Deed executed in 2013 gets superseded and cannot be enforced and now the parties, wherever there is conflict in clauses and terms and conditions, would be governed by the terms of 2013 deed. Final Conveyance Deed was executed without insisting for demolition before registration and even without a clause that the registration is being made, subject to demolition even after the decree of eviction and went ahead with final registration unconditionally even though such condition was proposed by a letter dated 16.04.2013 as discussed in para 6 of trial court's judgment, specially clause 7 of the letter but, no such condition was incorporated in the Final Deed of Conveyance (Ext. B) which confirms that the authorities despite being aware of such alleged illegal user and construction and requirement of its demolition and pendency of the present eviction suit, did not incorporate this condition as pre-condition or even as a condition subject to which the final deed was registered.

19. Under the situation, the said ground was waived by the authorities and there is no case of the plaintiff that threat of demolition is still there nor it can be pleaded that the requirement of final registration survives as final registration



has already been done unconditionally. Thus, the cause of action as pleaded stood vanished due to subsequent event which has to be taken into account by courts of law while deciding an eviction suit as settled by the Hon'ble Apex Court in various decisions including the decision reported in **AIR 1985 SC 207 (M/S. Variety Emporium Vs. V.R.M. Mohd. Ibrahim Naina)** in para 16 & 17 it is categorically laid down that the ground for eviction must be shown to exist and subsist not only on the date of the institution of the suit but also on the date of the decree of the trial court as well as the appellate court and higher courts and if because of subsequent event the same has vanished the court would be justified in non suiting the plaintiff landlord on the said ground. The requirement must be shown to exist till the dispute is finally adjudicated by appellate or revisional court.

20. Learned counsel for the appellant further submits that in the present case there is no attempt to plead fresh cause of action after registration of the final deed of conveyance in 2013. No amendment has been sought for to make out a fresh case in the changed circumstances nor there is amendment to mould the relief and rely on any other grounds of personal requirements etc. Learned courts below misdirected itself in



making out a third case for the plaintiff which was never pleaded that the plaintiff lease/settlement would be cancelled if the shops are not demolished which was never the case of the plaintiff pleaded in plaint nor evidences were led on this aspect and as such the findings on this aspect without pleading and evidence are perverse and cannot be sustained in view of the decision in the case of **Union of India Vs. Ibrahim Uddin & Anr** reported in **2013 (1) PLJR 48 SC para 69(vii)**. Even otherwise the alleged breach regarding unauthorized construction on account of which the suit has been decreed on the apprehension that the lease might be cancelled, apart from a non pleaded ground, is a baseless apprehension as such unauthorized construction and user has already been condoned.

21. Final deed of conveyance specifically mention the said premises house as commercial cum residential. This expression has been used several times in the said deed (Ext. B) and the nature of lease clearly fall under commercial cum residential. The threat of demolition of a pre insisting unauthorized construction cannot furnish a ground for eviction on ground of apprehension of cancellation of lease on such ground raising objection to such construction. Its demolition was not existing in the Final lease deed. The plaintiff has not



proved that any building development authority like Patna Municipal Corporation is still requiring the demolition even after registration of final conveyance deed. No such evidence is on record nor there is any pleading or amendment to substantiate that aspect.

22. Learned counsel for the appellant further submits that the appellate court further illegally and perversely ignored the undisputed photographs Ext. C to C/3 of the plot in question showing existence of other tenanted shops of the plaintiff including one medical shop apart from the tenanted shop by simply saying that they are irrelevant which is perverse inasmuch as this shows the unexplained malafide conduct of the plaintiff and his ulterior motive instead of a genuine need. The lower appellate court has consciously referred the nature of Ext. B which will be apparent that in para 7, it has mentioned the plot as residential cum commercial (which is infact commercial cum residential) in Ext. B. But, at all subsequent places and finally in para 11 it has passed the decree by treating the plot in question as residential contrary to the terms of Ext. B. Clause 7 of Ext. B clearly shows that the plot of plaintiff is a commercial cum residential plot and can be exclusively used for commercial cum residential purpose and not for any other purposes.



23. Learned counsel for the appellant further submitted that so far third substantial question of law is concerned, the plaintiff's case is exactly that he being a lessee of the Housing Board had sublet the tenanted shop premises to the defendant/appellant and for such subletting the plaintiff never made out a case that it was done with permission in writing of the Board. In view of the pleadings, the plaintiff himself pleaded that he made unauthorised construction of shop and let out to the defendant/appellant and thus in view of provisions of Section 58 read with Section 59, the applicability of provisions BBC Act is excluded by statutory operation and the suit is not maintainable as special statutory procedure has been prescribed under the Housing Board Act for eviction of a person in occupation of property of Housing Board and particularly a sublessee without written permission of the Board and as such the present suit is not maintainable in view of such special procedure and statutory exclusion of provisions of BBC Act to the subject matter of this suit in view of Section 9 of Code of Civil Procedure, which provides that the suit will not lie if bar is express or by necessary implication. The present suit was not maintainable and as such both the courts below erred in decreeing the suit. The issue of maintainability based on



admitted fact being a pure question of law and going to the root of the matter is permissible to be raised in the second appeal also being a pure question of law.

24. On the other hand, learned counsel for the respondent submits that there is a condition mentioned in Clause 8 and 14 of the Hire Purchase Agreement dated 09.02.1976 between plaintiff and respondent housing Board which reads as under:-

“8. The Settlee shall not sublet or transfer his right or interest either in the land or in the building to be constructed by him there as on to a third party without the previous written permission of the Housing Board.

14. The Housing Board shall have right to cancel these settlement for the breach of any of these terms and conditions and particularly in the event of the following



contingencies:-

(a). In case it is found subsequent to the settlement that the settlement was a Farzidar or he took settlement on behalf of any other person or persons or that he has subject or was subletting it or transferring his right and interest in the land to a third party without the previous written permission of the Housing Board.”

25. Learned counsel for the plaintiff-respondent further submitted that on plain reading of Clause 8 and Clause 14 of the Deed of Agreement, it appears that there is a condition not to sublet or to make any construction without approval of the Housing Board. It is admitted position that the suit premises was sublet as well as construction of shop, which is subject matter of the suit, is without permission of the Housing Board. There is similar clause in Ext. B (perpetual lease deed dated 29.05.2013) and in continuation of Ext. 1, it is found that there



is condition in the Clause 7 of the perpetual lease deed (Ext. B) *that the allotted Commercial cum Residential plot of land shall be exclusively used for Commercial cum Residential purposes and not for any other purpose. There will be clinic on the ground floor and residence at upper floor. The lessee shall not keep any animal or poultry in the said commercial premises.* It is apparent from the above clause that at the time of allotment or entering into an agreement (Ext. 1) or at the time of execution of the perpetual lease of deed, the Board was very much conscious about the use of land or its purposes mentioned in Ext. B reading altogether with Ext. 1. It is also submitted that there is an embargo in Clause 12 of perpetual lease deed which reads as under:-

“12(a) Non-compliance of any terms and conditions of this Indenture or of the terms and conditions of the hire purchase agreement executed on 09.02.1976.”

This would lead to cancellation of allotment/settlement of the premises and to evict.

26. It is further submitted that there is an impediment



in Clause 13 of the perpetual lease deed which reads as under:-

“13. that event (sic) even after the execution of these presents all other terms and conditions incorporated in the previous deed of Hire Purchase Agreement duly executed shall also be applicable fully and be binding and enforceable against both the parties in same manner.”

27. Learned counsel for the plaintiff/respondent further submits that in clause 16 of the perpetual lease deed (Ext. B), consequence of non compliance of the terms and conditions is enumerated, which reads as under:-

“Validity of this lease deed is subject to the findings of physical verification of the property. If anytime in future it is found that allottee has violated the norms of construction as specified by the Board or the competent authority, this allotment will automatically stand cancelled.”



28. Learned counsel for the plaintiff/respondent further submitted that while entering into the perpetual lease deed, the Housing Board time and again has inserted a word that the lessee shall not transfer, assign, sublet or otherwise part, meaning thereby that in any manner if there would be a clinic that should be used exclusively by the allottee and even the clinic shall not be sublet to other.

29. Learned counsel for the plaintiff/respondent submitted that so far the argument of the appellant is concerned that by changing circumstances and execution of the Perpetual Deed of Lease, there is no threat and there is no cause of action remain appears to be vanished from the plain reading of this condition as mentioned in Ext. 1 and Ext. B that if there would be any violation and or found to be violated at the time of physical verification, action shall be taken against the allottee and it appears to be continuing threat of cancellation of his allotment by the Board and as such still there is requirement of the plaintiff to comply the said condition to save his property/allotment. So far other arguments advanced by the appellants that the documents produced by the plaintiff has not been marked and has been considered by the trial court as well as appellate court, there are judgment of this Hon'ble Court.



Reference may be made to the judgment in the case of **Ram Naresh Pandey Vs. Sita Ram Yadav and Ors** reported in **PLJR 2003 (2) 133** which held that even though the document is not exhibited but if it is on record and is a public document, the Court while deciding the suit or the proceeding can look into for the ends of justice. This aspect admittedly relied by the trial court as well as appellate court. Letter dated 16.04.2013 was issued by the authority of the Housing Board in discharge of his official capacity and may be treated to be a public document under the domain of Section 74 of the Evidence Act and the same view has already been affirmed by a Division Bench of Karnataka High Court in the case of **V. Satyanarayana Vs. Sandeep Enterprises** reported in **2004 (7) KARLJ 541** wherein, it has been held that since the complaint petition is already on record even though the same is not exhibited, the same can be used, looked into for consideration.

30. It is submitted that so far the bonafide requirement and its continuance is concerned, reliance has been placed in the case of **Gaya Prasad vs. Shri Pradeep Srivastava** reported in **AIR 2001 SC 803** wherein, the hon'ble Apex Court has held that the cause of action cannot be vanished by the subsequent development as the son of the plaintiff died for whose purposes



the plaintiff has filed a suit for eviction on the ground of bonafide requirement and it is still continuing holding that *‘considering all the aforesaid decisions, we are of the definite view that the subsequent events pleaded and highlighted by the appellant are too insufficient to overshadow the bona fide need concurrently found by the fact finding courts’*. **(Paragraph 17)**. In the present case, there is a concurrent finding of both the courts who have found that plaintiff has bonafide requirement in view of the conditions mentioned in Ext. 1 and Ext. B.

31. It is submitted that similar view has been taken in the case of **Om Prakash Suri Vs. M/s. Chemiequip Ltd. reported in 2017 (4) Mah LJ 706** decided on 23 June 2017 by the Hon’ble Bombay High Court wherein, the Hon’ble Bombay High Court has held that the plaintiff has filed the suit for eviction on the ground of bonafide requirement for demolition of unauthorized construction which was let out to the tenant. The court has held that if the party is residing under threat to demolish their houses being unauthorized part construction, he has right to evict the tenant on the ground of personal necessity and in the present suit also, there is a threat perception in cancellation of his allotment in violation of terms and conditions mentioned in Ext. 1 and Ext. B. It is submitted that the allotted



land has not been declared freehold and the allottee is still under the supervision of Housing Board and still there is a threat, the plaintiff has bonafide need to comply the said condition. It is also submitted that except the present suit premises other unauthorized construction has already been demolished. Hence, the learned counsel for the respondent has stated that the judgment and decree of affirmance is legal and proper and it needs no interference.

32. In view of the submissions made by the learned counsels for the parties and materials on record, I will firstly consider the, substantial question of law no. I, II and IV as they are interrelated and as such are being taken up together. The perpetual lease deed (Ext. B) was executed and registered on 29.05.2013 during the pendency of suit. Ext. 2/B is a notice issued by the Secretary cum Estate Manager to the Executive Engineer, Bihar State Housing Board asking information with regard to use of residential plot no. H-30, which is commercially used by the allottee. The said perpetual lease deed (Ext. B) was executed by Executive Engineer Division I, Bihar State Housing Board, Patna in favour of plaintiff-respondent. In the recital, it is mentioned that in pursuance of its allotment letter dated 17.07.1975 and Hire Purchase Agreement executed on



09.02.1976. Board has agreed to transfer the aforesaid commercial cum residential plot on perpetual lease hold basis for 90 years lease renewable with discretion of the Board in favour of the lessee. In Clause 7 of the said perpetual lease, it is manifest that the allotted commercial cum residential plot of land shall be exclusively used for commercial cum residential purpose and not for any other purpose. It is also mentioned that there will be a clinic on ground floor and residence on upper floor. It is specifically mentioned in Clause 12 (a) of the perpetual lease deed that non compliance of any terms and conditions of this Indenture or of terms and conditions of the Hire Purchase Agreement executed on 09.02.1976, the Board shall have in addition, the right to cancel the allotment/settlement of the premises made in favour of the lessee and to vacate him from the premises allotted to the lessee and resume possession thereof in event of any violation of anyone or more terms and conditions. In Clause 13 of the perpetual lease deed, it is also mentioned that even after the execution of the present deed all other terms and conditions incorporated in the previous deed of Hire Purchase Agreement duly executed shall also be applicable fully and be binding and enforceable against both the parties in the same manner. In Clause 16 of the said perpetual



lease deed, it is specifically mentioned that validity of this lease deed is subject to the findings of physical verification of the property. If anytime in future it is found that allottee has violated the norms of construction as specified by the Board or the competent authority, this allotment will automatically stand cancelled.

33. It is necessary to clarify the status of perpetual lease deed (Ext. B), the conditions mentioned in the Hire Purchase Agreement dated 09.02.1976 which exist or part of the perpetual lease deed in addition mentioned in Hire Purchase Agreement violated by the allottee, it amounts to cancellation of perpetual lease. In clause 8 of Hire Purchase Agreement dated 09.02.1976, it is specifically mentioned that *“The Settlee shall not sublet or transfer his right or interest either in the land or in the building to be constructed by him there as on to a third party without the previous written permission of the Housing Board.”*

Clause 14 of the Hire Purchase Agreement reads as under:-

“The Housing Board shall have right to cancel these settlement for the breach of any of these terms and conditions and particularly in the event of the following contingencies:-



(a). In case it is found subsequent to the settlement that the settlement was a Farzidar or he took settlement on behalf of any other person or persons or that he has subject or was subletting it or transferring his right and interest in the land to a third party without the previous written permission of the Housing Board.”

34. It is admitted fact that the plaintiff-respondent without permission of the Housing Board subletted the shop to defendant-appellant as well as constructed the shop which is subject matter of the suit, without permission of the Housing Board.

35. The perpetual lease deed executed and allotted the lands for commercial cum residential purpose and not for any other purpose. It is specifically mentioned that clinic will be constructed on the ground floor and residence will be at the upper floor. It is also clear from the terms and conditions mentioned in perpetual lease deed (Ext. B) that if the allottee violates the terms and conditions of this deed as well as Hire Purchase Agreement dated 09.02.1976, the perpetual lease deed shall not continue as legal document, therefore, plaintiff has continuous threat of cancellation of his allotment by the Housing Board. So far applicability of Section 11 (1) (f) of the



BBC Act is concerned, the restrictions, right of obligation imposed under perpetual lease deed as well as Hire Purchase Agreement were of enduring nature. Under the aforesaid restrictions and terms and conditions, the landlord can demolish the premises on his own cost and construct a clinic. This clause relates to compulsory demolition at the instance of authority as per the terms and conditions. The requirement for the demolition of the said premises is necessary to protect the interest of the landlord and as per the Hire Purchase Agreement, Clause 8 clearly prohibits from subletting any part or the portion of the allotted lands to third party. It is also clear from the records that the said shop (suit premises) was not constructed with the permission or approval of the concerned authority. The terms and conditions in Ext. B and Ext. 2/B are obligatory on the part of the plaintiff. Therefore, Section 11 (1) (f) of the BBC Act is very much applicable to comply the requirement of bonafide necessity under the BBC Act.

36. So far substantial question of law no. III is concerned, the question of maintainability of the suit under Section 58 of the Bihar State Housing Board Act, 1982, is barred by law has not been considered by the courts below.

37. Before going to decide this issue, it is relevant to



mention the provisions contained in Section 58 and Section 59 of the Bihar State Housing Board Act & Rules which reads as under:-

“58. Exclusion of the Bihar Buildings (Lease, Rent and Eviction) Control Act 1947 [Bihar Act III of 1947].- The provision of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 (Bihar Act III of 1947), or any law corresponding therein for the time being in force in any area to which this Act extends-(a) shall not apply nor shall be deemed to have ever applied to any land or building belonging to or vesting in the Board under or for the purposes of this Act;(b) shall not apply nor shall be deemed to have ever applied as against the Board to any tenancies or other like relationship created by the Board in respect of such land or buildings;(c) but shall apply to any-land or building based to the Board:

Provided that nothing in this Section shall permit the eviction of a person in occupation of any accommodation from before the date of its acquisition by the Board save in accordance with the provisions of that Act or of Section 59.

59. Summary procedure for eviction and recovery of rents. (1) Notwithstanding anything contained in the Transfer of Property Act, 1882 (Act I of 1882), the Code of Civil Procedure,



1908 (Act 5 of 1908) or any other law for the time being in force, if the competent authority is of opinion-

(a) that the person authorised to occupy Board premises and has-

(i) not paid rent lawfully due from him in respect of such premises for a period of not less than three months; or

(ii) sub-let, without the permission in writing of the Board, the whole or any part of such premises, or

(iii) committed, or is committing any act contrary to the provisions of clause (o) of Section 108 of the Transfer of Property Act, 1882 (Act 4 of 1882); or

(iv) made or is making material alteration to, alteration in, such premises without the previous written permission of the Board, or

(v) otherwise acted in contravention of any of the terms, expressed or implied, under which he is authorised to occupy such premises, or

(b) that any person is in unauthorised occupation of any Board premises. The competent authority may issue in the manner hereafter provided a notice in writing calling upon the



person, if any, authorised to occupy as well as any other person who may be in occupation of the whole or any part of the premises to show cause why order of eviction and recovery of arrears of rent and damages, if any should not be made.

(2) The notice under sub-section (1) shall specify-

(a) the grounds on which the order of eviction or of recovery of arrears of rent or damages is proposed to be made; and

(b) the date by which cause against the proposed order may be shown, such date being not earlier than fifteen days from the date of issue of the notice provided that the competent authority may on application allow further time on such terms as to payment of the amount claimed in the notice otherwise, as it deems fit.

(3) The competent authority shall cause the notice under sub-section (1) to be served by having it affixed on outer door or some other conspicuous part of the Board premises and in such other manner as may be prescribed, whereupon the notice shall be deemed to have been duly given to all persons concerned.

(4) Where the competent authority knows or has



reason to believe that any person is in occupation of the Board premises, then, without prejudice to the provisions of sub-section (3) it shall cause copy of the notice to be served on him by registered post or delivery or tender to him or in such other manner as may be prescribed.

(5) If, after considering the cause, if any, shown by any person in pursuance of the notice under sub-section (1) and any evidence he may produce in support of the same and after giving him a reasonable opportunity of being heard, the competent authority is satisfied that any of the circumstances mentioned in sub-section (1) exists, or existed on the date of the issue of the notice, it may on a date to be fixed for the purpose make an order stating reasons therein directing that the Board premises shall be vacated by all persons who may be in occupation thereof or any part thereof and may further order that any person shall pay such amount of arrears of rent or damages as may be specified in the order.

(6) If a person who has been asked to show cause under sub-clause (i) or sub-clause (iii) of clause (a) of sub-section (1) pays to the Board within the time allowed, the rent in arrears together with interest thereon as fixed by the Board and such costs as may be prescribed, or as the case may be remedies



to the satisfaction of the competent authority the breach of the term violated by him, the competent authority shall, in lieu of evicting such person under sub-section (5) discharge the notice, and whereupon such person shall continue to hold the premises on the same term on which he held them immediately before such notice was served on him.

(7) The competent authority shall for the purpose of holding any inquiry under this chapter, have, the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (Act 5 of 1908), when trying a suit, in respect of the following matter, namely: - (a) summoning and enforcing the attendance of any person and examining him on oath; (b) requiring the discovery and production of documents; and (c) any other matter which may be prescribed, be deemed to be a Civil Court within the meaning of Sections 345 and 346 of the Code of Criminal Procedure, 1973 (Act 2 of 1974), and any proceeding in such inquiry shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code (Act 45 of 1860).

(8) If any person refuses or fails to comply with an order of eviction under subsection (5) within thirty days from the date of the order or such longer time as the competent



authority may allow, the competent authority or any other officer duly authorised by it in this behalf, may evict him from, and take possession of, the Board premises, and may for that purpose use such force as may be necessary.

(9)Any arrears of rent or damages ordered to be paid under sub-section (5) may be recovered as arrears of land revenue.

Explanation.- *For the purposes of this Section, a person continuing in occupation of any Board premises after the authority under which or the capacity in which he was allowed to occupy the premises has been duly determined or as the case may be, has ceased shall also be deemed to be an "unauthorised occupation", and a person shall not merely by reason of the fact that he had paid any amount as rent be deemed to be in authorised occupation."*

38. On plain reading of Section 58 of the Housing Board Act, the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982, which is corresponding Act of Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947, shall not been applied to any land or building belonging to or vesting in the Board under or for the purpose of this Act. There is a special procedure prescribed under Section 59 of The Bihar



State Housing Board Act, 1982, which provides special provision for eviction on the ground of subletting, without permission in writing from the Board, the whole or any part of such premises and Section 59 (b) of the said Act also prescribes that if any person is in unauthorized occupation of any Board premises, the Housing Board is competent authority to vacate such premises and demolition order can also be passed under Section 59 (8), if no appeal is filed against the eviction order passed in terms of Sub-section 8 of Section 59 of the Bihar State Housing Board Act, 1982.

39. It is apparent from the record that the plaintiff-respondent is a leasee of the Bihar State Housing Board therefore, he does not come under the definition of landlord. Moreover, the plaintiff has no locus to initiate proceeding either on its own motion or at the instance of Board and in this view, the proceeding, initiated under Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 by the plaintiff-respondent is not justified and legally valid, particularly in view of Bihar State Housing Board Act, 1982 and Section 32 of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982.

40. The application of provision of Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982, is excluded by



statutory provision and the suit is not maintainable as special statutory provision has been prescribed under The Bihar State Housing Board Act, 1982 for eviction of a person in occupation of property of Housing Board. Any person subletting without written permission of Board can also be vacated, under the said Act.

41. In view of special procedure and statutory exclusion of provision of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982, to the subject matter of the suit as also in view of Section 9 of the Code of Civil Procedure which provides that the suit will not lie, if bar is expressed or by necessary implication, this substantial question of law is decided in favour of the appellant and against plaintiff-respondent.

42. Accordingly, the civil court has no jurisdiction to try the suit under the BBC Act, 1982 with regard to property belonging to the Bihar State Housing Board.

43. In the result, the judgment and decree dated 16.09.2022 passed by learned Additional Judge XVI, Patna, in Title Appeal No. 65 of 2015 as well as judgment and decree dated 26.06.2015 passed by the learned Munsif III, Patna in Title Suit No. 36 of 2011 is hereby set aside.

44. Plaintiff is at liberty to file complaint before the



competent authority under the Bihar State Housing Board Act, 1982.

45. Accordingly, this appeal is allowed.

46. There shall be no order as to costs.

(Khatim Reza, J)

Sankalp/-

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