

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5044 of 2013

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Surendra Chaudhary son of Sri Babu Ram Chaudhary Quarter No. 644/800, Shastri Nagar, P.S. Shastri Nagar, Distt. Patna

.... Petitioner

Versus

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

.... Respondents

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Appearance :

For the Petitioner : Mr. BINOD KUMAR, ADVOCATE

For the Respondents : Mr. ANSHUMAN SINGH, ADVOCATE

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 17-08-2015

Heard learned counsel for the petitioner and the respondent-
Bihar State Housing Board.

It appears from the record that on 09.04.2013 a Coordinate Bench of this Court, on a prayer made by the respondent-Bihar State Housing Board (hereinafter to be referred to as “the Board”), had granted two weeks’ time to seek instruction and file counter affidavit. It also stands recorded in the aforesaid order that pendency of this this application shall not come in the way of the respondent-Board in considering the option given by the petitioner through his letter dated 17.07.2003 and taking an appropriate decision in accordance with law. Again time was granted on 20.07,2015 and

then on 12.08.2015 but no counter affidavit could be filed. This attitude of the authorities of the respondent-Board is strongly deprecated.

However, this Court, despite non-filing of the counter affidavit by the respondent-Board, has decided to proceed in the matter in view of the nature of the order which is going to be passed in this case after hearing the parties.

The Digha Acquired Land Settlement Act, 2010 (hereinafter to be referred to as “the Act”) was enforced vide notification dated 27.11.2013. Thus, after passing of the order dated 09.04.2013 in this case, the situation has completely changed and the case of the petitioner has to be tested in view of the provisions contained in the aforesaid Act which was notified subsequent to the order dated 09.04.2013.

It appears from the Preamble of the Act that, in view of the fact that the acquired area of 1024.52 acres of land for the purpose of implementation of the scheme of the respondent-Board for urban housing facilities to the citizens for residential-cum-commercial buildings could not succeed due to unauthorized occupation existing upon 600 acres of land despite the direction of this Court as well as the steps taken by the State Government and the Board and further, in view of the stiff resistance put by the unauthorized



occupants in collusion with the erstwhile land owners leading to serious law and order problems, and the observation of this Court that the State Government and the Board should make an endeavour to frame a scheme embracing within it interest of the unauthorized occupants and the applicants for allotment of plots of land under different categories, the legislature has come up with this Act.

The relevant provisions of sections 4 and 5 of the Act are extracted as under for better appreciation:-

“S. 4. Cancellation of allotments and refund of the deposits made by allottees/applicants, with the Board along with interest. - The Board may cancel the allotment/allotments made over the acquired land under the Bihar State Housing Board (Management and Disposal of Housing Estates) Regulation, 1983 framed under the Bihar State Housing Board Act, 1982 and make refund of the deposits made by such allottees/applicants along with compound interest @ 8% per annum from the date of its deposit till the date of refund,

Provided that any allottee of the plot of land forming part of acquired land, who have accepted refund from the Board prior to enforcement of this Act shall have no claim for any additional amount.

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S. 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 be 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.”

It would appear from section 5 of the Act that any allotment made by the respondent-Board prior to the enforcement of the Act on any portion of the acquired land shall be deemed to have been annulled. The language of the provision clearly indicates that it would have overriding effect not only upon the provisions contained in the Act but also on any other Act or rule or any other order. The proviso to the aforesaid section lays down that such allottees of the land who are in actual physical possession of the land and have constructed residential or commercial buildings would not be subjected to such annulment under section 5 of the Act. Section 4 of the Act lays down that the Board may cancel the allotment/allotments made over the acquired land under the Bihar State Housing Board Act, 1982 and well as the Regulation framed thereunder and make refund of the deposits made by such allottees/applicants along with compound interest @ 8% per annum to be calculated from the date of its deposit till the date of refund.

Learned counsel for the respondent-Board has submitted

that, in view of the provisions contained in section 5 of the Act, petitioner's allotment automatically stands annulled by the operation of the law and he would only be entitled for refund of the deposits made by him along with compound interest @ 8% per annum.

Per contra, learned counsel for the petitioner submits that in view of the provisions contained in section 4 of the Act for the refund of the deposit, the respondent-Board is required to cancel the allotment of the petitioner which has not been done as yet. Secondly, it is contended that, in view of the provisions contained in section 6 of the Act, the settlement in accordance with provisions of the Act would remain confined to an area of about 600 acres of land comprised in Sectors, 3, 4, 5, 6, 7, 9, 11 and 12 wherein the unlawfully constructed areas for residential or commercial purposes are spread over. However, the remaining 400 acres shall remain with the Board and, in view of the provisions contained in section 7 of the Act, the Board would be entitled to take possession of vacant land of an area of about 400 acres of land situated in Sectors 1, 2, 5, 8 and 10. In the aforesaid background, it is contended that the petitioner's application for allotment was in Sector No. 5 and though unauthorized occupation was also in Sector No. 5 but there are areas which are free from such unauthorized occupation also, it should be explained by the respondent-Board as to whether the plot

allotted to the petitioner is free from unauthorized occupation or not. If it is free from unauthorized occupation then the physical possession of the same should be delivered to the petitioner.

On consideration of the rival contentions of the parties, I do not find substance in the submission made on behalf of the petitioner. The Act nowhere states that the Board has to act in a manner that first it has to ascertain as to whether there is unauthorized occupation upon the concerned plot of an applicant or allottee or not and only in case there is unauthorized occupation only then the allotment would be annulled otherwise possession of the land should be given to the allottees. Section 5 of the Act in clear terms lays down that, 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 be deemed to be annulled.

Thus, in my considered opinion, the provision of section 5 of the Act would have overriding effect on all the provisions and that apart, there is no provision under the Act which grants liberty to the Board to Act in the manner as has been submitted by the petitioner discussed above. Further, section 5 of the Act lays down in clear terms that all the previous allotments would be deemed to have been annulled. In view of the aforesaid, one would have to

come to irresistible conclusion that, in view of such annulment and further in view of the provisions contained in section 4 of the Act, the petitioner can only be entitled for getting his deposited amount along with compound interest @ 8% per annum from the date of its deposit till the date of refund. More so, the provisions of the Act are not under challenge in this writ application.

Accordingly, this writ application is disposed of with a direction to the respondent-Board to refund the deposit made by the petitioner along with compound interest @ 8% per annum calculating it from the date of its deposit till the date of refund as stated in section 4 of the Act within a period of three months from the date of receipt/production of a copy of this order.

(Dr. Ravi Ranjan, J)

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