

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6154 of 1993

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Smt. Namita Ojha, wife of Dr. Purnendu Ojha, resident of Kankarbagh, P.S.
Kankarbagh, Patna

.... Petitioner/s

Versus

1. The State of Bihar
 2. Secretary, Urban Development, Govt. of Bihar, Patna
 3. Vice Chairman, Patna Regional Development Authority, Maurya Lok,
Patna-1
 4. Secretary cum Executive Officer, Patna Regional Authority, Patna-1
- Respondent/s
- =====

Appearance :

For the Petitioner/s : Mr. Chittranjan Sinha, Sr.Adv.

For the Respondent/s : Mr. Sanjay Prakash Verma, Adv.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

20 29-01-2015

Heard learned counsel for the parties.

2. Let it be noted that the prayer of the petitioner in this writ application reads as follows:

“That this is an application for issuance of writ, rule or direction in the nature of mandamus commanding upon the respondents to execute the lease deed forthwith in favour of the petitioner of plot no.10A of Block A situated in Rajendra Nagar for which the petitioner has already deposited the full cost of the land and which has been allotted to her by the respondents as back as in the year 1963 and also for issuance of direction to the respondent authorities as not to change the nature of the land or make any construction till the disposal of the present writ application.”

3. From reading of the writ application it would transpire



that way back in 1963 the mother-in-law of the petitioner Late Rupwanti Devi was offered a plot by Patna Improvement Trust by its letter dated 8.2.1963. In the said letter while the mother-in-law of the petitioner was asked to deposit certain amount it was made clear that the delivery of possession of the plot could be given to him after the site was clear by the Patna Municipal Corporation. As the turn of events could be the plot in question could not become vacant and ultimately Patna Improvement Trust by resolution dated 24.8.1964 had taken the following decision:

“Considered the question of delivery of possession of the Domkahana land at Rajednra Nagar to the successful bidders. Resolved unanimously that the delivery of possession of the vacant plots be given to the successful bidders. But in case of such plots, which are not vacant at present the bidders be asked to wait till vacation of the land or in the alternative to back their money.”

4. As a matter of fact when a person similarly situated like the mother-in-law of the petitioner, namely, Ram Charitar Prasad Singh had moved this Court assailing the aforementioned resolution with a consequential relief of seeking a direction for handing over the plot his writ petition, C.W.J.C.No. 384/1968 was not held to be maintainable. The Division Bench had in this regard held as follows:

“As the right of possession which the petitioners claims is

based on a contract, it is difficult for this Court in exercise of writ jurisdiction to give adequate relief to the petitioner. Realizing that difficulty Mr. Mazhar Hussain, learned counsel appearing for the petitioner sought permission to withdraw this application. This application is accordingly permitted to be withdrawn.”

5. It would, thus, become clear that no writ petition could lie to enforce a pure and simple contractual right emanating from the letter of allotment. The resolution of Patna Improvement Trust way back in the year 1964 was very clear that either the plot could be handed over or the amount could be refunded. Today after lapse of more than 50 years it would be impossible for this Court to bring back the situation of the year 1963, especially when Patna Improvement Trust is no longer in existence and even its successor body P.R.D.A. has been abolished. The Patna Municipal Corporation, which is successor in office as per the statute to Patna Improvement Trust and the P.R.D.A. which having been bound by the earlier resolution of Patna Improvement Trust can at best return the money to the legal heirs of the mother-in-law of the petitioner. Therefore, if the legal heirs of the mother-in-law of the petitioner would approach the authorities of Patna Municipal Corporation, the decision to refund the amount will be taken and the amount shall be paid. In view of the fact that such amount has



remained in custody of Patna Improvement Trust and its successor body for a period of over 50 years, such amount will definitely be required to be refunded with simple interest at the rate of 9% per annum. If, however, the petitioner does not want to get the amount with interest, as directed above, it will be always open for him to enforce the contractual right by filing a civil suit.

6. While this part of the order has already dictated Mr. Chittranjan Sinha, learned Senior counsel appearing on behalf of the petitioner, has sought to draw attention of this Court towards an interim order passed by this Court on 14.7.1993, relevant portion whereof reads as follows:

“Having heard Mr. Rana Pratap Singh, learned Senior counsel appearing on behalf of the petitioner, Mr. Rajendra Pd. Singh, learned Senior counsel appearing on behalf of respondents 3 and 4, and learned Advocate General appearing on behalf of respondents 1 and 2 and in view of the fact that the question involved in this writ application is somewhat similar to one in C.W.J.C.No.2014 of 1993 which has been admitted and fixed for hearing on 26.7.1993, we admit this application for its hearing by a Division Bench alongwith C.W.J.C.No. 2041/93.

Learned counsel for the petitioner prays to restrain the respondents from proceeding further with the construction on the land in question.

Having heard learned counsel for the parties in regard



to the interim prayer during which learned counsel appearing on behalf of respondents 3 and 4, after taking instruction from respondents 3 and 4, who are present in Court, gave an undertaking that in the event of ultimate success of the petitioner, they will provide a suitable piece of plot of equal dimension to the petitioner to which learned counsel for the petitioner, subject to the result of this writ application, agree tentatively, we permit the respondents to proceed with the proposed construction subject to the final result of this writ application.”

7. Mr. Sinha submits that in view of above the respondents will be bound to at least consider for granting any alternative plot to the petitioner.

8. Such submission of Mr. Sinha has to be noted for its being rejected. Firstly, the writ application is not being allowed. In fact the writ petition in view of the earlier order of the Division Bench in a similar case has been held to be not maintainable. Nonetheless if the petitioner is hopeful that she can still get a plot and does not want to take her money back no one can come in the way of her such hope and aspiration. If the petitioner has waited for a period of more than 50 years and is desirous to wait more, this Court would not like to say anything which could dash her unending hopes.

9. This Court, however would fail in its duty if it does not

take into consideration the submission of the learned counsel for the respondent Patna Municipal corporation that in the counter affidavit it has been specifically asserted that no alternative plot is available for allotment of land. If the petitioner, therefore, can still demonstrate that such plot of land are available, nothing said in this order will come in the way for an alternative allotment but then it is made clear that this Court has expressed no opinion with regard to grant of alternative prayer.

10. With the aforementioned observation, this application is disposed of.

(Mihir Kumar Jha, J)

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