

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14461 of 2008

Smt. Sunila Devi, wife of Sri Ashok Prasad Singh, resident of Kanti Factory Road, Gandhi Nagar, P.S. – Patrakarnagar, town and district - Patna

.... Petitioner/s

Versus

1. The State of Bihar
2. The Secretary, Urban Development and Housing Department, Government of Bihar
3. The Town Commissioner, Patna Municipal Corporation, Patna
4. The Executive Engineer, Division-F, Patna Municipal Corporation, Patna
5. Smt. Meena, wife of Sri M.P. Singh, resident of Kasturba Niwas, Vijay Nagar (Hanuman Nagar) New By Pass, P.S. – Patrakar Nagar, town and district - Patna

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. LAXMI NARAYAN DAS
Mr. Subroteswar De
Mr. Ranjit Sharan
Mr. Subhdeep Das
For the Respondent/s : Mr. (GP4)

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
ORAL JUDGMENT
Date: 17-03-2015

17.03.2015 Petitioner was one of the persons who responded to the tender notice issued by the erstwhile Patna Regional Development Authority (referred to as “PRDA” hereinafter) for allotment of plot in Transport Nagar in the township of Patna. The allotment was to be made on the basis of first come first serve.

Application of the petitioner was filed on 24.12.1997 for allotment of Plot No. D-29. She agreed to deposit the stipulated rate, which was fixed at Rs. 216 per square feet, besides some other ancillary expenses.

On 23.02.1998, petitioner was offered Plot No. D-27 vide Annexure-3 unilaterally. The offer was made under the signature of the Estate Officer and she was asked to deposit 25 per cent of Rs. 2,83,000 /- within one month and to deposit the balance amount in monthly installments. Petitioner's case is that she deposited an amount to the tune of 1,36,750/- with PRDA. However, she made a representation that she was an applicant for Plot No. D-29 and since there was no other applicant for the said plot, an allotment should be made to her on the basis of first come first serve. She had a right to be allotted Plot No. D-29. Matter remained pending without any decision. In the meantime, an application was filed by Respondent No. 5 on 24.09.1998 for allotment of Plot No. D-29 and surprisingly the respondents allotted her the said plot on 15.05.1999, ignoring the claim of the petitioner. Since the dispute on allotment remained due to lack of indecision on the part of the respondent-authorities, rest of the formality which was required to be done by the petitioner also remained. In the meantime on 01.12.2006, Patna Municipal Corporation prepared a list of defaulters in which name of the petitioner was mentioned at Srl. No. 27. Petitioner immediately filed a representation and took a stand that she had already

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deposited half of the amount so demanded and since no decision was taken on her representation nor any further direction was given to her, it was unfair on the part of the respondents to treat her as a defaulter.

Respondents finally allotted Plot No. D-27 on 12.07.2008, vide Annexure-12, this time at the rate of Rs. 314 per square feet. It is the stand of the petitioner that the respondents ought to have charged at the rate of Rs. 216 per square feet, which was initially offered, on which the petitioner had responded and even deposited half of the demand, raised earlier. Petitioner, however, decided to deposit the entire amount at the enhanced rate, but in spite of deposit of money neither possession nor agreement has been executed till date by the respondents-Municipal Corporation, which became successor-in-interest of erstwhile Patna Regional Development Authority. The writ application, therefore, was filed for a direction upon the respondents to give possession and execute agreement with the present petitioner.

The matter was heard by different Benches and adjourned for one reason or the other. During course of hearing at a point of time the Corporation even showed inclination for delivery of possession in light of

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the fact that as far back as on 13.06.2011 petitioner had deposited the money. But nothing came to be done by the Corporation and series of adjournments were taken thereafter, which included varying stands in different counter affidavits and engagement of different lawyers as well, from time to time.

Since the Court was not satisfied with the bona fide of the respondent-Municipal Corporation, an Order was also issued on 25.06.2013, giving a direction to the Patna Municipal Corporation to ensure that possession letter as well as possession is given to the petitioner on the basis of payment already made to the petitioner. The only question which could remain for argument was whether interest was required to be paid on delayed payment for which the court was open.

Despite such clear direction to the Municipal Corporation on 08.07.2013, a new counsel steps in and takes new plea. The Court has expressed its opinion on such a position taken by the corporation in the Order, dated 08.07.2013. The matter, however, dragged on. The Court wanted to have a look at the original file which dealt with the allotment of the petitioner. The Municipal Corporation dragged its feet and showed reluctance to produce the original record.



When the matter was taken up on 17.09.2013, yet another new counsel was engaged on behalf of the corporation. However, after hearing the counsel and on an impression having been given that the matter was being looked into by the Municipal Commissioner, the Court passed the following Order on 17.09.2013:

“The Court is informed that a meeting of the petitioner with the Municipal Commissioner of Patna Municipal Corporation was held on 7th September, 2013. Matter has been examined. The objection as well as anxiety on the part of the petitioner was communicated.

It is accepted position that the petitioner had deposited a draft on 13.6.2011 on the basis of direction of this Court on the revised price of the land. That draft was not utilized but still pending with the Municipal Corporation.

The Court would like to observe that many a claims, which were initially shown against the petitioner including cost of development, maintenance charge etc. are demands, which are totally arbitrary and unreasonable in view of the fact that possession of the land never came to be given to the petitioner. So far as interest component is concerned, that also cannot be demanded after the deposit of the draft. What would be the liability and how much is attributable to the petitioner will have to be examined by the Corporation itself. The interest component cannot keep increasing by pending litigation and dragging litigation at

the cost of the petitioner. This aspect is required to be taken into consideration when a final stand of the Corporation is conveyed to this Court on the next date.”

There was a change of Bench and again it is evident from the Order-sheet that the respondent-authorities on one pretext or the other kept the matter pending and except for adjournments, nothing tangible with regard to previous directions was done.

The matter was finally referred to this Bench on a request made by yet another Bench on the Orders of Hon'ble the Chief Justice.

When the matter was taken up on 17.09.2014 to the surprise of surprises, the Court was informed that the original record relating to the petitioner's allotment has gone missing. The Court was compelled to Order personal presence of the Municipal Commissioner and directed strict action to be taken against the persons responsible, if not, even to file an F.I.R. The file could not be traced and a prayer for production of a reconstructed file was made, which was allowed. On 26.11.2014, the reconstructed file was tendered by the Municipal Commissioner and Order was reserved.

After reserving the Order, surprisingly a mention was made by yet another counsel that the



original file, bearing File No. 17 of 1999 and 157 of 1999 have been finally located and they should be permitted to tender it to the Court.

The above narration by itself indicates as to how the Municipal Corporation has conducted itself even in this judicial proceeding. The Court expresses its displeasure in the manner in which the Municipal Authorities have not only dealt with the petitioner and her claim, but the manner in which assistance has been rendered from the year 2008 till 2015. All this is verifiable from the order-sheet of this case as well as the original files relating to allotment.

The Court has gone through the original records. A look at the same will indicate that the erstwhile PRDA and the authorities have not been fair and clean in matter of decision taking in public domain.

When the petitioner had made an application for allotment of D-29, no decision was taken despite the tender having been indicated that the settlement will be done on the basis of first come first serve. Contrary to the offer given by the petitioner she was allotted Plot No. D-27. An applicant who had not even filed an application earlier, namely Respondent No. 5, came to be allotted the plot for which petitioner was a claimant. No clear cut



explanation is evident from the record or in the assistance.

The other aspect is that the respondent themselves have slept over the claim and right of the petitioner. When the Municipal Authorities were cornered from the records that the petitioner was not really at fault with regard to making payments and meeting her obligation, they themselves did not take any kind of decision for a long period of time. Even after the petitioner reconciled to the position of allotment of Plot No. D-27 and deposited the money in terms of the revised price raised against her in the year 2009, they again dragged their feet, kept changing counsels and filed misleading, if not dishonest affidavits to defeat the claim of the petitioner. The conduct of the respondent-Municipal Corporation and the authorities, therefore, are reprehensible.

The right of the petitioner for allotment of Plot No. D-27 remains since she finally decided to give up her claim on D-29 to avoid more dispute. Deposit had been made by her in full for Plot No. D-27, except may be the ancillary cost, which was required to be deposited only after delivery of possession etc. But nothing of this kind was done despite repeated direction of the Court as

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well as assurance given to the Court to examine the matter and resolve the issue.

Since the petitioner had already deposited the amount through a draft on 13.06.2011 and if the Municipal Authorities did not encash it and kept it in the file for reasons best known to them their conduct laches bona fide. They can not insist now that they are entitled for payment of interest. It is they who kept the litigation pending for years together and it is they who dragged their feet by changing counsels and changing their position before the Court of law, even after the year 2011.

If that be so, then the petitioner cannot be compelled to pay anything over and above the amount she had already deposited on 13.06.2011, which was demanded by the Municipal Authorities in the very first place after revision in the rate initially offered. In that view of the matter, she cannot be saddled with the liability of payment of any interest component after that date, which is 13.06.2011. The respondent Municipal Authorities can not draw advantage of their own illegal conduct and behaviour by keeping the litigation alive and not taking a decision despite assurance given from time to time even to this Court.

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The varying stands taken in the counter affidavit, which are one to many, itself indicates the conflicting positions which the Municipal Authorities have taken and a reading of the same only indicates that the Municipal Authorities or somebody at the helms of affairs was determined to defeat the right of the petitioner at any cost. What are the reasons thereof is for the respondents to explain and not for this Court to investigate.

In view of the above, the Writ application is allowed. The Municipal Commissioner, Patna Municipal Corporation, Patna is directed to ensure that the petitioner is given possession of Plot No. D-27 without any fail within a period of eight weeks from the date of production / communication of a copy of this Order.

The unencashed draft will be returned to the petitioner for its revalidation or for issuance of a fresh draft of the amount so demanded from the petitioner. In addition to that the respondents will be entitled to claim ancillary costs in terms of the tender and no interest will be claimed from the petitioner after 13.06.2011 by the Corporation. The Commissioner must also ensure that thereafter the appropriate deeds are executed in favour of the petitioner.

Writ application is allowed in terms of above.

The original files as well as the reconstructed file, tendered by the counsel for the Municipal Corporation, is being handed over to the counsel, for safe keeping and as an acknowledgement receipt of the files will be made by putting an endorsement in the order-sheet of the writ application, as proof thereof.

(Ajay Kumar Tripathi, J.)

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