

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.285 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 22984 of 2013**

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1. The Bihar State Housing Board, Mangles Road, through its Chairman.
 2. The Managing Director, Bihar State Housing Board, Mangles Road, Patna.
 3. The Secretary, Bihar State Housing Board, Mangles Road, Patna.

.... Appellant/s

Versus

Manik Prasad Mishra, S/o late Mahadeo Prasad Mishra resident of Mohalla-
Jyotipuram Colony , Khajpura, Bailey Road, P.O. B.V. College, P.S.- Shastrinagar,
District- Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Lalit Kishore, Sr. Advocate

Ms. Binita Singh, Advocate

For the Respondent/s : Ms. Sushmita Mishra, Advocate.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 26-04-2016

The order dated 28th July, 2014 passed by the learned
Single Judge in CWJC No. 22984 of 2013 is the subject matter of
challenge in the present Letters Patent Appeal. The learned Single
Bench has ordered allotment of flat under Higher Income Group
(H.I.G.) to the respondent-writ applicant in view of the undertaking
given before this Court in CWJC No. 643 of 2003.

The facts leading to the order impugned in the present



appeal is that an advertisement was published on 8.12.1972 by the appellant –Bihar State Housing Board (hereinafter referred to as 'the Board') for registration for allotment of plots, in response to which the respondent Manik Prasad Mishra, filed his application for registration on 12.1.1973. He submitted the application in the prescribed format on 26.12.1978. Another advertisement was published by the Board on 21.2.1985 seeking option from the desirous candidates for purchase of house/plot/flat under various schemes. The applicant submitted his option for allotment under the H.I.G, scheme at Gaya when he deposited a sum of Rs.13,000/-.

Since no allotment was made, the respondent filed CWJC No. 10027 of 1994. The writ application was disposed of on 26.2.1996 by the Learned Single Judge wherein the Board was directed to refund the sum of Rs.15,000/- along with interest @7%.

Aggrieved against the said order passed by the learned Single Judge, the applicant filed LPA No. 350 of 1996. In the said LPA an undertaking was given on behalf of the appellant for allotment of H.I.G. plot at Gaya within a period of nine months. It is thereafter, the applicant chose to withdraw the appeal on 4.3.1997. Thereafter, a letter of allotment was issued on 29.5.1998 after adjusting the earnest money of Rs.15,000/-. The letter of allotment is appended with the writ application as Annexure 3. Some of the

conditions of the letter of allotment are that the tentative price for the plot as on 30th July, 1998 is Rs.1,82,825/-. The applicant was required to be deposited within 30 days a sum of Rs.40,048/- after adjustment of Rs.15,000/- deposited by the applicant. The remaining amount was payable in equal 60 monthly installments with interest.

However, the applicant chose not to deposit any amount in pursuance of the letter of appointment but claimed interest on the amount deposited by him towards application money that is Rs.15,000/-. He asserted that he is entitled to interest on the amount deposited by him. The petitioner filed CWJC No. 7703 of 1998 claiming interest on the said amount. The writ petition was disposed of on 9.12.1998 with the direction to the Board to decide the representation already submitted by the applicant. Subsequently, another application was filed in the said writ application. It has been noticed that the representation has been finally decided and, therefore, the petition becomes infructuous. Such order was passed on 14.11.2002.

The applicant thereafter filed another writ application being CWJC No.643 of 2003 which was decided by this Court 24.7.2012 when the following order was passed:-

“Though writ application is ordered to be listed after disposal of LPA No. 500 of 2003 as per order No.4 dated 29.3.2004, an I.A. has been filed by the petitioner which has been registered as I.A.No. 3641 of 2012 seeking modification of the order, in the sense that this writ application itself may be

disposed of subject to result of the LPA because petitioner wants to settle the matter by give and take with the Housing Board.

Learned senior counsel representing the Housing Board has no objection provided petitioner is willing to pay what is due, both in terms of principal and interest over the period of time.

I.A.No. 3641 of 2012 is allowed.

Writ application stands disposed of with liberty to the petitioner to approach the Housing Board to settle the matter, which should be done within reasonable time frame subject to final result of the LPA.”

It is in pursuance of such order, a communication was addressed to the applicant on 13.6.2013, seeking response within a week as to whether the applicant is interested in refund of the earnest money or to deposit the balance amount of the plot allotted. However, the applicant responded that he wanted allotment but also sought details of the calculations of the due amount which he is required to deposit with the Housing Board. The applicant however did not deposit the amount of Rs.40,048/- communicated to him with the letter of allotment dated 29th May, 1998 or any other amount even till the decision of the present appeal.

It is in these circumstances on account of failure to deposit any amount; allotment of plot was cancelled on 13.8.2013. It is such cancellation which was challenged by the applicant by way of writ application before the learned Single Judge in CWJC No. 22984 of 2014 which has been allowed by the order impugned in the present Letters Patent Appeal.



Learned counsel for the appellants has vehemently argued that the applicant has failed to deposit the amount communicated to him through the letter of allotment dated 29th May, 1998. Thus, no concluded contract came into existence. The applicant could have deposited the amount when the applicant was called on 13.6.2013. But on account of failure on the part of the applicant to deposit even thereafter for a period of two months, the appellant had no other option but to cancel the allotment order which was issued on 29.5.1998. Reliance is placed upon a judgment of the Supreme Court in the case of ***Chaman Lal Singhal v. HUDA, (2009) 4 SCC 369***, wherein it has been held that failure to deposit the amount in pursuance of the letter of allotment does not lead to concluded contract. The Court held:-

“19. While it is true that an allotment letter was issued to the appellant by the respondent Authority, but the said allotment was subject to the conditions as mentioned in the terms and conditions of the allotment letter, some of which have been extracted hereinabove. In terms thereof the appellant was required to send a communication to the respondent Authority by registered post that he is accepting the aforesaid allotment made in his favour along with an amount of Rs 1,14,436 within 30 days from the date of issue of allotment letter. That amount was supposedly 15% of the price payable for the plot of land allotted to him. The said amount together with the amount of Rs 65,392 which was paid by the appellant applicant along with his application form would, therefore, have constituted 25% of the total tentative price of the land. If the appellant refused to accept the offer of allotment he was

required to communicate his refusal by a registered letter within 30 days from the date of issue of allotment letter failing which it was made clear that the aforesaid allotment would stand cancelled and that the earnest money deposited by him would be forfeited by the Authority and the appellant would have no claim for damages thereafter.

20. A bare perusal of the aforesaid relevant clauses of the allotment letter would indicate that the balance amount of the cost price i.e. Rs 5,39,484 could be paid either in lump sum without interest within 60 days from the date of issue of allotment letter or in six annual instalments which were recoverable in terms of the schedule given in Clause 6 of the aforesaid allotment letter. Clause 10 provides that in case the instalment which is payable is not paid by the 10th of the month following the month in which it falls due or in the case the additional price is not paid within time, the Estate Officer shall proceed to take action for imposition of penalty and resumption of plot in accordance with the provisions of Section 17 of the Act. Clause 11 of the said terms and conditions also makes a reference of Section 17 of the Act.

21. In our considered opinion the appellant failed to comply with the aforesaid clauses of the letter of allotment and, therefore, his allotment stood cancelled and the earnest money deposited by him could be forfeited by the Authority. The order of cancellation came to be passed by the competent authority after 500 days. Be that as it may, the aforesaid allotment of plot of land in favour of the appellant came to be cancelled because of non-payment of the amount as stipulated in Clause 5 and, therefore, the earnest money deposited by him could be forfeited by the Authority.

22. Since the case of the appellant comes within the ambit of Clauses 4 and 5 of the allotment letter, the provisions of Section 17 of the Act would have no application and would not apply. It is thus established that there was no agreement/contract between the appellant and the respondent Authority and there being no such agreement/contract and because of non-compliance with

requirement of Clause 5 the issue with regard to violation of principles of natural justice also would not arise. Therefore, the contentions that provisions of Section 17 of the Act are violated and that there is non-compliance with the principles of natural justice have no merit.”

On the other hand, learned counsel for the respondent-applicant vehemently argued that in terms of the order passed in subsequent writ application on 24th July, 2012, the Board has not communicated the due amount which could be deposited by the applicant. The Board has proceeded to cancel the allotment without service of notice before cancellation of the allotment.

We find that the order passed by the learned Single Judge directing allotment of a plot to the applicant cannot be sustained in law. In the judgment reported as cited above, the Hon’ble Supreme Court held that letter of allotment is an offer and has to be accepted in terms of the conditions of letter of allotment. The applicant has failed to communicate his acceptance within 30 days of the letter of appointment issued way back in the year 1998 or even after when the order was passed by this Court on 24th July, 2012. Therefore, no concluded contract came into existence.

Since there was no concluded contract, therefore, no further opportunity was required to be given to the applicant before cancellation of the allotment. The issue of cancellation of allotment will arise only after concluded contract came into existence.

In view thereof, we find that the applicant having failed to accept the offer extended to him in the year 1998 itself or in the year 2013 when the Board sought his option on 13.6.2013. Therefore, there cannot be any direction for allotment of plot after a long lapse of time when the applicant himself is a defaulter.

Accordingly, we find the order passed by the learned Single Judge cannot be sustained in law. The same is set aside. Consequently, we allow the appeal. The writ petition stands dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

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