

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.22948 of 2011

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Umesh Sharma, S/o Late Baliram Singh, R/O 6H/23, Sector 6, Bahadurpur Housing Colony, P.S. - Agamkuan, District - Patna

.... Petitioner

Versus

1. The Bihar State Housing Board, 6, Mangles Road, Patna through the Managing Director
2. The Managing Director, the Bihar State Housing Board, 6, Mangles Road, Patna
3. The Estate Officer, the Bihar State Housing Board , 6, Mangles Road, Patna through

.... Respondents

With

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Civil Writ Jurisdiction Case No. 772 of 2012

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Smt. Satula Devi, W/O Sri Mahendra Prasad, R/O 6H/22, Sector 6, Bahadurpur Housing Colony, P.S. - Agamkuan, District - Patna

.... Petitioner

Versus

1. The Bihar State Housing Board, 6 , Mangles Road, Patna through the Managing Director
2. The Managing Director, the Bihar State Housing Board, 6, Mangles Road, Patna
3. The Estate Officer, the Bihar State Housing Board, 6, Mangles Road, Patna through

.... Respondents

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Appearance :

(In CWJC No. 22948 of 2011)

For the Petitioner : Mr. Shashi Anugrah Narain, Sr. Advocate
Mr. Sandeep Kumar, Advocate

For the BSHB : Mr. Anshuman Singh, Advocate

(In CWJC No. 772 of 2012)

For the Petitioner : Mr. Mr. Shashi Anugrah Narain, Sr. Advocate
Mr. Sandeep Kumar, Advocate

For the BSHB : Mr. Anand Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

C.A.V. JUDGMENT

Date: 29-01-2016

Both the writ applications raise common question of

fact and law, inasmuch as, the impugned order is the same. With the consent of the parties they have been heard together. The present order will govern them.

2. Relevant background facts for the purpose of disposal of the case shall be drawn from C.W.J.C. No. 22948 of 2011 which was argued first.

3. The writ application filed under Article 226 of the Constitution of India questions the pregnability of the order dated 11.11.2011 (Annexure-8) issued by the respondent Estate Officer, Bihar State Housing Board (for short 'the Board') cancelling the allotment of plot No. 6H/23 allotted to the petitioner in Bahadurpur Housing Colony (for short 'the Housing Colony') in the township of Patna. The order was purportedly issued in the light of an order dated 2nd September, 2008 (Annexure-9), passed by a Division Bench of this Court in a Public Interest Litigation vide C.W.J.C. No. 12376 of 2007. The petitioner was an applicant for allotment of a residential plot in the Housing Colony which was allotted to him on 30.07.1981. The Hire Purchase Agreement (Annexure-2) was entered between the respondent Board and the petitioner on 23.01.1982. He was handed over the plot on 23.05.1988. For the reasons disclosed in the order the land allotted to the petitioner was cancelled by the respondent Board which was challenged by him in C.W.J.C. No. 86 of 1986. During



pendency of the writ application the Board is stated to have resolved not to disturb the allotment of the petitioner inasmuch as a communication was issued in this context on 16.06.1990 whereafter the writ petition was withdrawn (Annexure-4). It is averred that the Board directed the petitioner to pay Rs. 3886/- on 13.05.1992 which was paid by demand draft. In the meantime, the petitioner claims to have constructed a two-bedroom house on the plot. Despite the final payment made, the respondent Board did not execute the deed of conveyance in favour of the petitioner. All of a sudden the impugned communication dated 11.11.2011 was issued by respondent no. 3 cancelling the allotment of Plot No. 6H/23. No notice was earlier issued to the petitioner before passing such order.

4. I have heard Sri S.A. Narain, Senior Counsel in support of the writ petition assisted by Sri Sandeep Kumar as also Mr. Anshuman Singh and Dr. Anand Kumar, the two Advocates who appeared on behalf of the respondent Board. Parties have exchanged pleadings.

5. Mr. Narain submitted that the order has been passed in blatant breach of the Rules of natural justice. Indisputably, no opportunity of hearing was afforded to the petitioner before the impugned order was passed. Two reasons have been assigned in the impugned order. Firstly, it refers to an order passed in C.W.J.C. No.



12376 of 2007 (Annexure-9) and secondly, breach of Clause 13 and 19(a) of the Hire Purchase Agreement entered between the petitioner and the respondent Board. In his submission, the order passed by the Division Bench would not apply to the case of the petitioner since the petitioner was not a defaulter. Given a chance, he could have demonstrated. There has not been breach of Clause 13 of the Hire Purchase Agreement as the respondent Board even after payment of all dues had not executed the deed of conveyance enabling the petitioner to construct the house as per the provisions within the time provided under the stipulations of the Hire Purchase Agreement. The impugned order is, therefore, erroneous both on facts and in law meriting interference.

6. Per contra, the counsel for the respondent Board supported the order. He would urge that the petitioner on his own showing was a rank defaulter, inasmuch as, the entire dues of the respondent Board was not paid off as per the schedule. In order to lay false claim the petitioner subsequently built temporary structure and that too without obtaining prior permission from the respondent Board within five (05) years of allotment. The petitioner was obliged to pay the entire dues. The same was not done. The writ petitioner has admitted that last payment of the pre-fixed dates was paid after long delay on 31.07.2011. As per Clause 13 of the agreement, he was

required to complete the construction for which the allotment was made. It was not done. The Division Bench had directed for taking action against such defaulters. Public notice was issued affording opportunity to all such defaulters to submit their cause, which was not done by the petitioner. The petitioner is, thus, not entitled to any relief.

7. I have considered the rival contentions and perused the materials on record. Before, I deal with them, it is advisable to survey the relevant provisions of the Agreement (Annexure-2) as also the Regulation framed by the respondent Board under Section 115 of the Act referred to.

Hire Purchase Agreement :

On initial payment of Rs. 11,214/- the Hire Purchase Agreement was entered between the parties. Clause 3(a) reads as under :

“3(a) That the settlee will pay to the Board without waiting for any demand the balance cost beginning from the 1st day of the month of February, 1982 in 60 (sixty) monthly equated instalments of Rs. 731.50/-(Rupees Seven hundred thirty one and paise fifty) only to be paid within that month. A rebate shall be allowed if the payment is made by the 7th of that month on which the instalment is due, and the equated monthly

instalments after allowing for the rebate, in such a case shall be Rs. 690.20/-(Rupees Six hundred ninety and paise twenty) only.

Clause 8 of the agreement provides as under :

“8. That after the full payment has been made and all dues cleared and if there has been no violation of the terms of this agreement or of the Board’s Regulations in these regards a Ninety years lease shall be executed in favour of the Settlee.

Clause 12 of the agreement states as follows :

“12. That the Settlee shall obtain the approval of the Housing Board and the authority prescribed in the Bihar Restriction of Uses of Land Act or any other authority prescribed in any other law for the time being in force to his building plan before starting any construction.”

Clause 13 of the Agreement provides as under :

“13. That the Settlee shall start construction within two years of having been put in possession of this plot of land and complete construction up to the ground floor within a further period of three years.

Relevant part of Clause 19 states as follows :

“19. That without prejudice to the Board’s right under any other law, Rules and Regulations and besides recovering the amount due to the Board along with interest, penalty and damages to the Board shall have in addition, the right to cancel the allotment/ settlement of the premises/ plot of

land made in favour of the Settlee and to evict him from the premises/ plot of land and resume possession thereof in the event of any one or more of the following :-

(a) Non-compliance on the part of the Settlee of any of the terms and conditions of this agreement.

(b) Violation of any of the terms and conditions prescribed in the Rules and Regulations of the Board in this regard.”

Regulation :

Regulation 2(ix) defines conveyance deed to mean an agreement in the prescribed form between the Board and the allottee or hirer or the Housing State Agency as the case may be by which the title in the property is transferred to the allottee or hirer”

Regulation 2(xviii) defines hirer to mean a person who has participated in the hire purchase system who has signed the hire purchase tenancy agreement.

Regulation 36(4) states that the Board shall have the sole and exclusive right over the hire purchase deposit till such time it is adjusted on the execution of conveyance deed or refunded with or without deduction”.

8. The main contention of the counsel for the petitioner is that the respondent Board, in spite of payments made in full, did not execute the conveyance deed enabling the petitioner to



start construction and complete the same up to the ground floor within the time frame as per the conditions set out in Clause 13 of the agreement. He has argued with vehemence that unless the title of the land was transferred by executing the deed of conveyance the petitioner could not have started construction as Clause 12 of the agreement specifically prohibits such construction unless approval of the authority prescribed in the Bihar Restriction of Uses of Land Act or any other authority prescribed in any other law for the time being in force to his building plan before starting any construction. Since in spite of payment of dues of the Board, no such deed of conveyance was executed, the petitioner was restrained from complying with Clause 13 of the Hire Purchase Agreement, as he could not have applied and obtained approval of the building plan from the authority prescribed in any other law. He was not covered by the order passed by the Division Bench of this Court. In the circumstances, the petitioner started and completed temporary construction over the plot in question. The respondent Board was obliged to execute a deed of conveyance before asking the allottee to comply with the conditions set out in Clause 13. The question is whether the Board, in the facts of the case, defaulted in executing the conveyance deed. Vide Clause 8 of the Hire Purchase Agreement the Board was required to execute a 99 years lease which is referred to by the petitioner as the conveyance

deed only upon full payment of the entire dues as per the schedule.

9. In the rejoinder to the counter affidavit the details of payment made by the petitioner furnished by the Board has been enclosed. The last payment of the instalment was made by the petitioner on 31st of July, 2011 after a delay of 294 days. The schedule of dates of payment of instalment provided by the Board was treated in blatant breach. If the dues of the respondent Board were not cleared then the Board was not obliged to execute the 99 years lease. The submission made on this aspect appears to be not well founded. The liability would shift on the respondent Board once the entire dues of the respondent Board are paid/ cleared, as per the schedule, by the allottee. The petitioner would not be allowed to take advantage of his own default. Curiously enough, nothing has been shown to this Court that the petitioner, in fact, applied for mutation or approval of the building plan before the appropriate/ competent authority to construct the house which was refused or declined in absence of the deed of conveyance or the 99 years lease document executed by the Board. To me, this appears a lame excuse of the petitioner. In a bid to overcome the apparent default, a temporary construction was got made by him over the plot which, according to the respondent Board, in course of physical verification, was found newly constructed for which no prior permission was sought and granted. The submissions of the parties on



this point would not be further noticed as they may not very relevant to decide the fate of the case. The Court shall only notice that even according to the petitioner no such prior permission was sought and granted by the respondent Board. This was again a breach of the conditions of the Hire Purchase Agreement rendering the petitioner a defaulter. The stand of the respondent Board on this point is that after the order passed by the Division Bench and the public notice issued by the respondent Board the petitioner made such construction without getting prior sanction of the respondent Board.

10. A Public Interest Litigation was filed alleging that several allottees in Sector-6H were defaulters as they did not construct building/ house as per the clause of the agreement, yet the respondent Board was failing in discharge of its duty in not invoking the relevant clause of the agreement to cancel such allotment(s). The allottees were, therefore, not in real need of housing accommodation. This Court, by a proceeding dated 2nd September, 2008, appreciating the stand of the respondent Board, disposed of the writ petition directing the respondent Board to take steps against the defaulting allottee(s). The Court also noticed that the Board had already issued a general notice on 14th of March, 2008 contemplating action under Clauses 13 and 19(a) of the agreement. The counsel for the petitioner has submitted that the petitioner was required to be noticed again



before passing the impugned order. Clause 19 clearly vests the respondent Board to take such action. It does not provide that the defaulting allottee is required to be noticed. The parties, in such matter, shall abide by the terms of the agreement. Moreover, it is not in dispute that the respondent Board had issued a public notice before taking the impugned action. In the aforesaid background the petitioner cannot be heard complaining breach of the principles of natural justice in taking the impugned action. No fault, therefore, can be found in the order passed by the respondent Board on this count.

11. Conveyance deed as per the Regulation is an agreement in the prescribed form between the Board and the allottee or hirer providing terms and conditions therein. It is not, therefore, a title or sale deed. The Hire Purchase Agreement between the parties had already been executed on 23rd of January, 1982. The Balance of the dues of the Board was required to be paid in 60 monthly equal instalments without waiting for any demand notice in this regard. The petitioner, as noticed above, defaulted in doing so. The respondent Board was not obliged to create further document until the dues are cleared. Until the payments are made by the allottee, the Board has the sole and exclusive right thereover under Regulation 36(4).

12. The discussions made hereinabove, advise me to find no good reason to interfere with the impugned order.

13. Before parting with the case, the Court would also notice the submission of the respondent Board that there is an alternative remedy to the petitioner by invoking the arbitration clause in the Hire Purchase Agreement. The petitioner ought to have resorted to the arbitral proceeding. The petitioner has, however, submitted that the issue raised herein could not have been raised and entertained by the Arbitrator. On going through the provisions contained in Clause 20, I am of the opinion that the contention of the respondent Board is not sustainable. The arbitration could have been resorted to in respect of the matter not specifically stipulated in the agreement or provided in the relevant Rules/ Regulations of the Board. This is not the case in hand.

14. The writ application(s) lacks merit. It is dismissed.

15. No order as to cost(s).

(Kishore Kumar Mandal, J.)

Rajesh/N.A.F.R.

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