

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.73 of 2014
Arising out of
Civil Writ Jurisdiction Case No. 5511 of 2011**

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Kameshwar Prasad Ojha, S/O Late Someshwar Nath Ojha, R/O Village + P.O.-
Katiya, P.S.- Bihiya, District- Bhojpur.

.... Petitioner-Appellant

Versus

1. Bihar State Housing Board through its Managing Director, Mangles Road, Patna.
2. The Chairman, Bihar State Housing Board, Mangles Road, Patna.
3. The Managing Director, Bihar State Housing Board, Mangles Road, Patna.
4. The Estate Officer, Bihar State Housing Board, Mangles Road, Patna.
5. The Secretary, Bihar State Housing Board, Mangles Road, Patna.
6. The Executive Engineer, Bihar State Housing Board, P.H. Division, Patna, Mangles Road, Patna.

.... Respondents-Respondents

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Appearance :

For the Appellant/s : Mr. K. N. Choubey, Senior Advocate
Mr. Homa Yunus, Advocate
Ms. Reeta Priyadarshiny, Advocate

For the Respondent/s : Mr. Tej Bahadur Singh, Senior Advocate
Mr. Ram Kishore Singh, 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: 20-09-2016

The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench of this Court on 26th June, 2012 whereby, the claim of the appellant for allotment of a commercial plot remained unsuccessful.

A perusal of the record shows that in the year 1972, the respondent- Bihar State Housing Board floated a Scheme for allotment of



Middle Income Group residential Plots. The appellant was one of the applicants and was allotted a plot on 25th February, 1982. The appellant, in the meantime, started asserting his claim for allotment of a commercial plot as Chairman of Board on 30th of January, 1981 decided to allot plot No. NC-10/A at Lohianagar, Patna to the appellant. The said plot was not allotted to the appellant but it was allotted to one Smt. Meena Sahay. The petitioner filed a writ application bearing C.W.J.C. No.512 of 1981 claiming allotment of the said commercial plot which was dismissed on 23rd of April, 1981. It is thereafter, the petitioner filed a Special Leave Petition before the Supreme Court in which the following order was passed on 9th of August, 1982.

“The special leave petition is dismissed as withdrawn with these observations:-

The offer of the residential plot at Bahadurpur, Patna under middle income group scheme which has been allotted to petitioner that allotment will not be disturbed. Pending consideration of a fresh application made by the petitioner to the authorities concerned for the allotment of a commercial plot of Krishna Nagar or Lohia Nagar, if such application for commercial plot is made within a week from today it will be sympathetically considered by the authorities concerned expeditiously. In case a commercial plot is allowed to the petitioner, the allotment of residential plot in Bahadurpur locality will stand cancelled. But if the application for the allotment of commercial plot is not favourably considered the allotment of residential plot in Bahadurpur, Patna will continue to be in force and will remain with the petitioner.”



The residential plot as per his application was allotted to the appellant on 25th of February, 1982. The tentative price of the plot was assessed at Rs.24,180/-. The appellant had deposited Rs.2000/- as earnest money and was required to deposit a sum of Rs.5,150/- within thirty days of the issuance of the letter of allotment and the balance Rs.17,180/- was payable in 60 monthly installments along with interest. It appears that the appellant had not deposited the said amount as he started dreaming of a commercial plot in terms of the decision of the Chairman of the Board. There is no assertion in the writ application that the condition of the allotment was complied with by the appellant within the time granted.

It appears that thereafter on account of default on the part of the appellant to deposit the initial amount of Rs.5,150/-, the plot was allotted to one Bindeshwar Singh on 19.11.1984. It is thereafter, the appellant in terms of the order of the Supreme Court started claiming allotment of a commercial plot as the residential plot was not allotted to him.

Ultimately, the appellant has been allotted another plot on 5th of January, 2010 in the same locality at the same cost but adding interest thereon when a sum of Rs.6,47,274/- was demanded from him. The appellant submitted a representation, Annexure-11, on 19th of January, 2010 for waiving of the interest on the price of the plot allotted,

but, ultimately, the appellant deposited 30% of the tentative cost and executed an agreement on 22nd of February, 2010. It is thereafter, the appellant invoked the jurisdiction of this Court claiming allotment of a commercial plot.

We have heard learned counsel for the parties and find the present Letters Patent Appeal is without any merit. Firstly, the appellant never applied for allotment of a commercial plot. The applications were invited for Middle Income Group residential plots in the year 1972 and the plot was allotted to the appellant on 25th of February, 1982. The appellant has not accepted the offer as is required by the letter of allotment. In view of the judgments of the Supreme Court in Chaman Lal Singhal v. HUDA, (2009) 4 SCC 369, and in U.P. Avas Evam Vikas Parishad v. Om Prakash Sharma, (2013) 5 SCC 182, no legal enforceable binding contract came into force. Therefore, the Board was within its jurisdiction to allot plot to another applicant.

As a matter of fact, since the appellant was not an applicant of a commercial plot, the chairman of the Board could not consider the appellant for allotment of the commercial plot by itself. The public property can be disposed of only after inviting applications and not by the Chairman as his personal property. Therefore, the claim of the appellant for commercial plot is wholly misconceived and untenable.

Though, in view of the failure of the appellant to accept

the offer within the time granted in the year 1982, he has lost his right for allotment of a residential plot as well, but the Board accepted the request of the appellant and allotted him the plot, but claimed interest from the year 1982. Such claim for interest was to accommodate the appellant though he has already lost his right for allotment of residential plot.

In view thereof, we do not find any merit in the present Letters Patent Appeal. The same is, therefore, dismissed.

(Hemant Gupta, J.)

(Ahsanuddin Amanullah, J.)

Sunil/-

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