

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1802 of 2012

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1. The Bihar State Housing Board through its Chairman.
 2. The Chairman-Cum-Managing Director, Bihar State Housing Board, Patna.
 3. The Executive Engineer, Bihar State Housing Board, Division No.3, Patna.
 4. The Manager Estate, Bihar Housing Board, Patna.

.... Respondents/Appellants.

Versus

1. Navin Kishore Prasad Sinha, S/o Late Awadh Kishore Prasad, Advocate R/O Flat No. K.S.F. A3, 2/13 Lohiya Nagar, Patna, now known as Madhuban Apartment of the Bihar State Housing Board, Lohiya Nagar, P.S. Patrakar Nagar, District- Patna. Petitioner/Respondent.
2. The State of Bihar.
3. Smt. Padmalata Sharma, W/o Sri K.K. Thakur, R/O Flat No. 202, Raj Kishore Apartment, Nageshwar Colony, P.O.- Patna, District-Patna.

.... Respondents/Respondents.

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Appearance :

For the Appellants : Mr. Anshuman Singh, Adv.
For the Respondent No.1 : Mr. Binay Kumar, Adv.
For the Respondent No.2 : Mr. Ashhar Mustafa, Adv.
Mr. Murad Ashraf, Adv.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

And

HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 26-02-2016

The present Letters Patent Appeal has been preferred
by the Bihar State Housing Board (for the sake of brevity 'Board')

against the order dated 19.07.2012 passed in C.W.J.C. No.15169 of 2005, whereby the Board was directed to execute the tripartite lease deed within six weeks and, on failure to do so, to pay a cost of Rs.20,000.00, on account of harassment meted out to him.

2. Respondent no.3 herein was allotted a flat, in question. An agreement was executed by the appellants in her favour on 26th February, 1997. A copy of the agreement has been placed on record by learned counsel for the appellants during the course of the argument today.

3. Respondent no.3 sought permission of the appellants for transfer of the flat in favour of Navin Kishore Prasad Sinha, respondent no.1 herein. The permission was granted on 28th October, 1997, inter alia, on the following four conditions:

- (i) The allottee will deposit Rs. 26,314/- towards the balance price of the said flat by 31.10.1997.
- (ii) The allottee will have to get the tripartite lease deed registered on deposit of the said amount.
- (iii) The transferee will file an affidavit to effect that neither he nor any of his dependants have any residential accommodation within 8 K.M. of the Patna Municipal Corporation.
- (iv) The conditions of allotment applicable

to the original allottee will also apply to the transferee.

4. Admittedly, a sum of Rs. 26,314.00 was deposited as also the affidavit as sought for was filed within the time granted, but the tripartite lease deed was not executed. When the tripartite lease deed was not executed for a considerable long period, in spite of numerous requests and representations, the transferee filed a writ application before this Court wherein a direction has been issued for executing the tripartite lease deed.

5. Learned counsel for the appellants has vehemently argued that in terms of Clause-14 of the lease agreement executed by the appellants with the allottee i.e. respondent no. 3 herein, the appellants are entitled to 50% of the unearned increase i.e. difference in the allotment price and market price. Since an amount of Rs.3,79,752.00, has not been deposited, therefore, the tripartite lease deed cannot be executed. The relevant Clause 14 reads as under:

“14. That the allottee shall not sublet or part with the possession or transfer his right, title and interest in the demised house/flat in whole or part by way of sale, exchange gift or mortgage or otherwise without the prior permission of the Board in writing. Which it shall be entitled to refuse in its sole discretion or in the event of consent being given the Board may impose such terms and conditions as it thinks fit and proper

and the Board shall be entitled to claim and recover a portion of the unearned increase in the value (i.e. the difference between the cost paid and the market value of the House/premises) at the time of sale transfer by way of gift, mortgage, assignment or parting with the possession the amount to be recovered being 50% of the unearned increase. The decision of the Board regarding the market value of the land/premises shall be final. The Board shall also have the pre-emptive right to take back (purchase) the house/flat premises from the lessee after paying an amount equal to the cost paid to the allottee (less depreciation) and 50% of the unearned increase in the value of the said allotted house/flat No. K.S.F.A.3-2/13 determined in the manner indicated above.”

6. We have heard learned counsel for the parties and find this Letters Patent Appeal to be frivolous and misdirected. The agreement with the original allottee was executed on 26th February, 1997, whereas permission to transfer the flat was granted on 28th October, 1997. However, the unearned increase is calculated up to February, 2012, which is evident from paragraph-5 of the counter affidavit of Sri Nawal Kishore Pandey, which reads as under:

“5. That the calculation of increased value at the market rate up to February 2012 will come to Rs. 3,79,752.00 (Three lacs seventy nine thousand and seven fifty two) only as the petitioner or settlee have not deposited the amount of increased

value in time.”

7. We fail to appreciate how the Board can claim unearned increase up to February 2012, when the transfer was permitted in October 1997 i.e. almost within 8 months of the agreement having been executed by the Board i.e. the original allottee. The action of the Board in raising demand lacks *bona fide*.

8. Since the only objection is non-payment of the unearned increase, which is found to be wholly unjustified, we find that there is no error in the order passed by the learned Single Bench, which may warrant interference in this Letters Patent Appeal. The Board shall execute the tripartite lease deed immediately within two weeks.

9. Accordingly, this appeal is dismissed.

(Hemant Gupta, J.)

(Navaniti Prasad Singh, J.)

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