

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.135 of 2014
Arising out of
Civil Writ Jurisdiction Case No. 7740 of 1992
Along with
Interlocutory Application No. 585 of 2014
And
Interlocutory Application No. 586 of 2014

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Sri Ram Tiwary, S/O- Late Jagarnath Tiwary, Resident of M.I.G. House No.- 192,
Hanuman Nagar, P.S.- Kankarbagh, District- Patna

.... Appellant/s

Versus

1. The State of Bihar
2. The Bihar State Housing Board through Its Chairman
3. The Managing Director, Bihar State Housing Board, Patna
4. The Manager of Estate-Cum-Additional Secretary, Bihar State Housing Board,
Patna
5. The Executive Engineer, Bihar State Housing Board, Patna Division-1,
Kankarbagh, Patna- 20

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Dharendra Kumar Gupta, Advocate.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

Date: 10-05-2016

Re.: Interlocutory Application No. 585 of 2014

The Interlocutory Application has been filed under
Section 5 of the Limitation Act, 1963 seeking condonation of delay of
01 day in filing of the L.P.A.No. 135 of 2014.

2. In view of the averments made in the Interlocutory
Application and submissions in support thereof, we find that sufficient

cause has been shown to explain the delay in the filing of the Appeal. Consequently, such delay is condoned.

3. Interlocutory Application No. 585 of 2014 stands disposed off.

Re.: Interlocutory Application No. 586 of 2014

The Interlocutory Application has been filed for staying of operation of order dated 03.12.2013 passed in CWJC No. 7740 of 1992, which is impugned in the present Letters Patent Appeal.

2. Since the appeal itself is being disposed off, we do not find the necessity to pass any order on the present Interlocutory Application and accordingly, the same stands disposed off.

Re.: Letters Patent Appeal No. 135 of 2014

Heard learned counsel for the parties.

2. The present intra court appeal, under Clause X of the Letters Patent of Patna High, has been filed by the appellant against the judgment dated 3.12.2013 of learned single Bench by which CWJC No. 7740 of 1992, originally filed by his wife, has been dismissed.

3. The appellant claims that his wife namely late Jagmuni Devi (hereinafter referred to as the “applicant”) had deposited a sum of Rs. 100/- for allotment of house/flat offered by the Department of Housing, Government of Bihar in the year 1967.



Thereafter, upon creation of the Bihar State Housing Board (hereinafter referred to as the "Housing Board") in the year 1972, it was advertised to renew the claim by depositing Rs. 50/-, upon which, the applicant claims to have deposited Rs. 50/- on 10.11.1978. Subsequently, she claims to have deposited earnest money of Rs. 6,500/- on 25.11.1978 for allotment of MIG House at Lohia Nagar. When the applicant failed to get allotment in the year 1981, she claims to have occupied MIG House No. 192 at Hanuman Nagar on the verbal direction of the Chairman of the Housing Board to occupy any vacant house at Hanuman Nagar. The applicant was subsequently informed about allotment of Flat No. 6MF 2/2 at Bahadurpur by Letter dated 19.12.1986 of the Housing Board and was asked to get the said flat registered in her name. However, no allotment of the house in question was made in her favour leading to eviction order being passed against her which in appeal was remanded for fresh hearing, when the matter is pending.

4. The applicant filed CWJC No. 6452 of 1998, which was disposed off on 3.11.1988 with a direction to the Housing Board that if any representation is pending the same should be disposed off at an early date. On the representation filed pursuant to the direction of the Court, the Housing Board, in its Resolution dated 22.12.1989, communicated to the applicant through letter dated 18.01.1990 that as



she had already been allotted MIG Flat at Bahadurpur, for which agreement has also been entered into, and thus, she had no claim for any house/flat at Hanuman Nagar and that she was in wrongful possession and it was further directed that steps be taken to vacate the house, which was under her unlawful possession. It is this order which was impugned in the writ petition.

5. Learned counsel for the appellant submits that the Chairman of the Housing Board, being the highest authority, had granted permission to the applicant to occupy the house in question on the assurance that it will be allotted to her and thus, the applicant could not be said to be in unlawful possession. It is further submitted that though she being at sl. No. 68 in the list of applicants, as juniors to her had been allotted house, her claim could not have been ignored. Learned counsel submits that even the so called allotment of a flat at Bahadurpur is not in favour of the applicant as it is a different lady, though having the same name, but different husband. Learned counsel has referred to a decision of the Rajasthan High Court in the case of *M/s Chandra and Co. vs. State* reported as *AIR 1981 Rajasthan 217* for the proposition that Government cannot dispossess any person in juridical possession of property otherwise than in due course of law.

6. Learned counsel for the Housing Board submitted that right from the beginning, the applicant has played fraud and in



fact had planned out a master strategy for the same. It is submitted that from a mere glance to the initial money receipt of Rs. 100/-, which is claimed to have been deposited by the applicant on 20.01.1967, shows that she has mentioned the name of her husband as “S.K.Pandey” which was later on, by interpolation, made to appear as “S.K.Tiwary”. It is submitted that since she was actually the wife of “Sri Ram Tiwary”, but had given the name “K.N.Pandey” which by interpolation was made to look like “R.S.Tiwary” and thereafter in the year 1978, she has given her address as “C/o Sri Ram Tiwary”. It is submitted that in the allotment letter, only her name has been shown with “C/o Sri Ram Tiwary” without there being any mention of the name of the husband and only in the Hire Purchase Agreement, at her instance, the name of K.N.Pandey has been mentioned as her husband and thus, she cannot now say that the person to whom the flat has been allotted is someone else as her husband’s name is “Sri K.N.Pandey”. It is submitted that pursuant to the agreement executed, she has also taken possession of the flat on 25.05.1989. Learned counsel submits that in any view of the matter, the applicant cannot be allowed to retain the house in question as, on her own showing, she has taken possession only on the verbal direction of the Chairman, Housing Board, which is patently illegal as the Chairman has no such power and also there is nothing on record to show that even such

permission was given by the Chairman.

7. Having considered the rival contentions, we do not find any merit in the submissions of learned counsel for the appellant. The very foundation of the case, based on the admitted position by the appellant, that the applicant has entered into the house in question on the verbal direction of the Chairman of the Housing Board, is nothing short of a patently illegal act. Thus, any justification or assertion of right based on this basic illegality is not tenable. The stand of the applicant that she was at sl. No. 68 and persons below her in seniority, have been allotted house/flat, is also misconceived for the simple reason that the allotment of house/flat depends upon the availability of the same, together with seniority and the result of the lottery, since for any scheme, the number of applicants is far in excess of the availability.

8. Bare perusal of the receipt of deposit of Rs. 100/- by the applicant *ex facie* reveals that there has been manipulation with regard to name of the husband of the applicant, as initially it was written as "S.K.Pandey" which has been overwritten as "S.K.Tiwary". Further, perusal of various documents, copies of which have been annexed to the writ petition, also indicate that the applicant has written "C/o Sri Ram Tiwari", indicating that she has tried to play smart. Even in the allotment letter with regard to flat which has been



allotted to her, it is only written “C/o Sri Ram Tiwary” but in the Hire Purchase Agreement, it has been written as “W/o Sri K.N.Pandey” which has been explained by the Housing Board that it was at her instance. Thus, we are not inclined to accept the contention of learned counsel for the appellant that applicant is the wife of Sri Ram Tiwary, i.e., himself, whereas the allottee of the flat, having similar name, is the wife of K.N.Pandey, as we have *prima facie* found substance in the stand of the Housing Board that both the persons are one and the same.

9. As far as the case of *M/s Chandra and Co.* (supra), relied upon by the learned counsel for the appellant, is concerned, we find that the same has no bearing on the facts of the present case since there is specific provision under sub-sections (8) and (9) of Section 59 of the Bihar State Housing Board Act, 1982, empowering the Housing Board to evict any person and take possession of the house by use of force and also to recover arrears of rent or damages as arrears of land revenue, which was not so in the case before the Rajasthan High Court.

10. For the reasons aforesaid, we find no merit in the appeal and the same stands dismissed.

11. Before parting with the order, the Court expresses its deep anguish at the state of affairs, where a person, without any

authority of law, has managed to take possession and occupy the house since 1981 till date and the authorities of the Housing Board have not been able to evict her. Such position, besides being a comment on the prevailing malaise, has also caused injustice to other *bona fide* applicants who did not have any property or shelter to live in, and have been denied the right to consideration for allotment of the house occupied by the applicant moreso, when she has already been allotted a flat and after agreement has taken possession of the same.

12. We thus, deem it appropriate to direct the Housing Board to take immediate steps and get the house in question vacated and thereafter allot it to a *bona fide* applicant in accordance with law.

(Ahsanuddin Amanullah, J)

Hemant Gupta, J I agree.

(Hemant Gupta, J)

Sujit/-
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