

The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench of this Court on 14.08.2012 whereby the allotment made in favour of the writ applicant, the present respondent no. 9, was quashed and direction was issued to the Housing Board to ensure that no mischief is caused

so far as the settlement of the writ applicant is concerned. It was also ordered that if there are any legal formalities required to be completed both on behalf of the writ applicant and the Housing Board that should be done within a reasonable time frame.

The appellant, who is not a party to the writ petition, has invoked the appellate jurisdiction of this Court against the order passed by the learned Single Bench. It is averred that he was the owner of land measuring 3250 sq. ft., bearing Survey Plot No. 517 situated in Lohiya Nagar Housing Colony, Old Kankarbagh, District-Patna. The appellant claims to be in possession of land in question i.e., MIG Plot No. V-527 which is the plot allotted by the Housing Board to respondent no. 9.

A perusal of the memo of appeal further shows that the appellant filed a writ petition bearing C.W.J.C. No. 6004 of 1992 against the State of Bihar and the Housing Board on the ground that the plot in question is part of his ancestral land which has been acquired. The appellant claims to be a displaced person and therefore entitled to a preferential treatment in terms of the plot. The said writ petition was dismissed on 28th August, 1991. The assertion made by the appellant in para-8 of the memo of appeal reads as under:

“8. For that it is relevant to bring on record that in the year 1992 this appellant had filed a writ petition bearing CWJC No. 6004/1992 Dinesh Kumar Versus State



of Bihar and others (including the BSHB and present Respondent no. 9 as Respondent no. 6 therein) in which, amongst other, he had stated that as the plot in question is part of his ancestral land, which has been acquired, so he is a 'displaced person', and, is entitled to a right of 'preferential treatment' in allotment of that plot. This appellant had also stated that since 1981 he has been approaching the Respondent BSHB for the allotment of the concerned plot but by order dated 28.08.1991 (vide Annexure-6 therein)(present Annexure-1 in the writ Court) Respondent BSHB illegally allotted that plot to Respondent no. 6 (that is, present Respondent no. 9). So a prayer was made to quash that allotment order. The said CWJC no. 6004/1992 was dismissed by their Lordships Hon'ble Mr. Justice Nagendra Rai and Hon'ble Mrs. Justice I.P. Singh on 10.11.1993, holding therein that as the entire land of this appellant was not acquired so this appellant can not be held to be a displaced person and he has no right of preferential treatment in allotment of that plot but as in Counter- Affidavit of BSHB therein it was stated that an enquiry was pending with the State Government regarding that allotment (to present Respondent no. 9) so this Hon'ble Court did not express its opinion on that allotment but if that allotment in favour of respondent no. 6 (present respondent no. 9) was reiterated by the Board or the State Government then the right to challenge it by this appellant or any other aggrieved party was kept alive. (Appellant craves leave of this Court to produce a copy of the aforesaid order of the Division Bench of this Hon'ble Court dated 10.11.1993 passed in CWJC No. 6004/1992 at the time of hearing of this Appeal)."

Learned counsel for the appellant vehemently argued that the appellant was a necessary and proper party being a person in

possession of the plot in question but without impleading him, an order has been passed which violates his legal rights.

We have heard learned counsel for the parties and find no merit in the present Letters Patent Appeal. A perusal of memo of appeal shows that the appellant was the owner of the land, the part of which was acquired by the State for the purpose of the Housing Board in the year 1951. The appellant invoked the writ jurisdiction of this Court claiming preferential right of allotment. The said writ petition was dismissed way back on 10.11.1993. The order reads as under:

“Heard the learned counsel for the petitioner and the learned counsel appearing on behalf of the Housing Board. Perused the writ petition and the counter affidavit.

The petitioner has filed the present application challenging the allotment of the land in favour of Respondent no. 6 by order dated 28.08.1991 (Anenxure-6). According to the petitioner a part of plot no. 527, belonging to his family, was acquired along with other lands by the Collector, Patna, in the year 1957 and the same was given for construction of houses to the Housing Board. According to the petitioner only an area of 37 decimals of the aforesaid plot remained with him. After partition in the family the petitioner is facing great difficulty in accommodating his family members and, accordingly, he filed an application in the year 1981 before the Housing Board for allotment of a portion of plot no. 517 on preferential basis with a requisite registration fee. According to the petitioner he is entitled to be preferred in the matter of allotment as he is a displaced person but the

Housing Board did not allot the land to him on the other hand it allotted about 2 kathas of land of the aforesaid plot to respondent no. 6 without following the procedure for allotment of plots.

A counter affidavit has been filed on behalf of the Housing Board, wherein, so far as allotment of the land to respondent no. 6 is concerned, it is stated that an enquiry is pending with the Government. As the enquiry is pending in regard to the allotment of land to respondent no. 6, we are not expressing any opinion in this case in the matter. However, in case if the allotment in favour of respondent no. 6 is reiterated by the Board or by the State Government, then it will be open to the petitioner or any other aggrieved persons to challenge the same.

So far as the case of this petitioner is concerned, the stand of the Board is that the entire land of the petitioner's family was not acquired and as such the petitioner is not a displaced person. It is for the first time in the year 1981 the petitioner filed an application for allotment of plot on preferential basis as he is a displaced person. He did not deposit the earnest money as was required to be deposited at that time, as a result of which his application was not in order and, accordingly, his name was not included in the list of applicants whose cases were considered for allotment.

From the narration of the facts, it is clear that the acquisition of the land of the petitioner's family was made in the year 1957 and from 1957 the upto 1981 the petitioner did not take any step for allotment of plot. As the entire land was not acquired, in our view, the petitioner is not a displaced person and as such is not entitled to preferential treatment. This apart, we are of the view that the application filed by the petitioner was not in order, as he has not deposited the earnest money. He has approached

this Court after a long time. For all these reasons, this is not a fit case for interference by this Court.

In the result, the application is dismissed with the aforesaid observation.”

Once the claim of preferential treatment or right over the land vesting with the Housing Board remained unsuccessful, the appellant cannot be permitted to claim any right against the Housing Board to allot plots to the 3rd person. The appellant as a land owner has lost his right over the land which stands acquired by the State. The appellant, therefore, cannot dispute the consequential allotment made by the Housing Board to respondent no. 9 over the plot in question.

The present Letters Patent Appeal is thus found to be without any merit and is accordingly, dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

P. Kumar/ Anjani

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	
Transmission Date	N/A