

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11863 of 2015

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1. M/s Belbanwa Machhua Toli Sahkari Grih Nirman Sahyog Samiti Motihari, through its Secretary, Sri Prem Nath Bhagat, Son of Late Bengali Bhagat, Resident of Belbanwa Machhua Toli, P.S. - Motihari, District - East Champaran
 2. Prem Nath Bhagat, Son of Late Bengali Bhagat, Resident of Belbanwa Machhu Toli, P.S. - Motihari, District - East Champaran.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The District Magistrate, Patna - cum - Official Liquidator, Bihar State HOusing Co-operative Federation Ltd. (under Liquidation).
3. The Assistant Liquidator, bihar State HOusing Co-operative Federation Ltd. (under Liquidation).
4. The Registrar, Co-operative Society, New Secretariat, Patna.
5. The President, Bihar State Housing Co-operative Federation Ltd. Lalit Bhawan Jawahar Lal Nehru Marg, Patna.
6. The Administrator, Bihar State HOusing Co-operative Federation Patna, Office at Lalit Bhawan, Bailey Road, Patna.
7. The Assistant Development Officer, Bihar State HOusing Co-operative Federation, Patna.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Awadhesh Kumar Mishra, Advocate
Mr. Shivpujan Sahay, Advocate
For the Federation : Mr. Purushottam Jha, Advocate
For the Respondent/s : Mr. AJAY BIHARI SINHA, SC-19
Mr. Neeraj Raj, A.C. to SC-19

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 18-02-2016

Heard the parties.

This writ petition was filed questioning the order dated 30.5.2015 issued by the District Magistrate-cum-Official Liquidator, Bihar State Housing Cooperative Federation Limited (hereinafter referred to as the 'Housing Federation') whereby the representation filed by the petitioner pursuant to an order passed by this Court in



CWJC No. 1345 of 2004 had been disposed of and the District Magistrate-cum-Official Liquidator, Bihar State Housing Cooperative Federation Limited *inter alia* while rejecting the plea of the petitioner for waiver of the interest has directed him to pay entire outstanding amount which according to the District Magistrate, Patna-cum-Official Liquidator was to the tune of Rs. 1,37,67,151.00.

The contest in between these parties has seen many rounds of litigation. While it is the charge of the petitioner that it is on account of failure of the 'Housing Federation' to release the entire loan so prayed for by the petitioner that the project remained incomplete, it is the stand of the respondent Federation that it is the petitioner himself who has defaulted in repayment and which left no option to the 'Housing Federation' to release any further loan. The document on record manifests that a loan agreement was entered in between the parties way back in 1994 whereby a sum of Rs. Fifty lakhs was to be released by the 'Housing Federation' for completion of the project undertaken by the Society and which was to be repaid in terms of the stipulations present in the agreement itself which also obliged the 'Housing Federation' to fix up equal monthly installment to enable the petitioner to make repayment thereof. The matter reached the Assistant Registrar in Award Case No. 239 of 1995 and a direction was issued to the petitioner to refund the dues of Rs.

28,31,201/-. The award is dated 17.10.1996 and has been placed on record vide Annexure-B to the counter affidavit.

According to Mr. Purushottam Jha appearing for the 'Housing Federation' this order has attained finality and was never questioned by the petitioner before any other forum. Notwithstanding the said position, the pleadings on record demonstrate that the petitioner moved this Court in CWJC No. 6884 of 1998 seeking a direction to the 'Housing Federation' to disburse the balance amount. A coordinate Bench of this Court taking note of the stand of the 'Housing Federation' holding the petitioner a defaulter and considering the nature of the dispute, relegated the matter to the jurisdiction of the Registrar for its resolution under Section 48 of the Bihar Cooperative Societies Act, 1935 (hereinafter referred to as 'the Act').

According to Mr. Awadhesh Kumar Mishra appearing for the petitioner the Additional Registrar vide order passed on 25.1.2001 in Dispute Case No. 175 of 2000 directed the Federation to consider the claim of the petitioner for release of balance amount as well as for relaxation in the rate of interest as done in the case of other societies. He submits that it is following the order that of the balance loan amount, only five lakhs was disbursed which did not help the petitioner in completing the project which led to a second round of



litigation in CWJC No. 1435 of 2014. During the pendency of the writ petition, the 'Housing Federation' went into liquidation. A Bench of this Court taking note of the circumstances as well as the grievance of the petitioner disposed of the writ petition with liberty to the petitioner to raise his grievance before the Liquidator so appointed and it is following such liberty that the petitioner represented before the District Magistrate, Patna-cum-Liquidator, Bihar State Housing Cooperative Federation Limited who has rejected the plea of the petitioner.

While the matter is pending before this Court that the issue of liquidation of the 'Housing Federation' fell for consideration before this Court in CWJC No. 16760 of 2012 which was heard along with CWJC No. 1766 of 2015. This Court in consideration of the provisions of the Multi State Cooperative Societies Act, 2002 (hereinafter referred to as 'the Act') as well as the fact that the activities of the respondent Federation cuts across the State, held the order of liquidation so passed by the Registrar under Section 42 of 'the Act', contrary to the statutory provisions as well as the legal position so settled under the judgment of this Court as well as the Apex Court. In consequence the order of liquidation was set aside vide judgment passed on 04.12.2015.

In view of the judgment and order passed in CWJC No.

16760 of 2012 and since the very order of liquidation has been set aside as being contrary to the statutory provisions hence all acts done thereafter including the order so passed by the District Magistrate as the Liquidator, Bihar State Housing Cooperative Federation Limited dated 10.6.2015 would be rendered illegal and is accordingly set aside.

The next question is what happens to the grievance of the petitioner for waiver of interest and release of balance loan. In my opinion, considering the changed circumstances, the only option available for the petitioner is to raise his grievance either before the 'Housing Federation' or the authorities of the Cooperative Societies for waiver of interest as well as for fixation of reasonable installment for refund of the loan amount or for any other relief enclosing the documents which he relies upon and which shall be considered and disposed of in accordance with law by the authority concerned.

The writ petition is allowed with the directions/ observations aforementioned.

(Jyoti Saran, J)

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