

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10437 of 2012

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Kumar Brajendra Nath, Son Of Late Satya Narayan Lal, Resident Of 'Sadhna Kutir', Mohalla - Choudhary Tola P.S. Mahendru , P.S. Sultanganj, District - Patna, At Present Residing At 14, Adarsh Colony, Shrikrishna Nagar, P.O.- G.P.O., P.S. Budha Colony, District Patna

.... Petitioner

Versus

1. The State Of Bihar
2. The Principal Secretary, Urban Development and Housing Department, Govt. Of Bihar, Patna
3. The Bihar State Housing Board, through Its Chairman-Cum-Managing Director, Kranti Marg, Patna
4. The Executive Engineer, Bihar State Housing Board, Patna Division No. 2, Patna
5. The Estate Officer, Bihar State Housing Board, Patna
6. The Revenue Officer, Bihar State Housing Board, Patna

.... Respondents

with

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Civil Writ Jurisdiction Case No. 17508 of 2013

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Shanti Devi, Wife Of Dr. Brajnandan Prasad, D/O Late Yugal Kishore Resident Of Doctor's Colony, Alalpatti, P.S. Alalpatti, District - Darbhanga

.... Petitioner

Versus

1. The State Of Bihar
2. The Principal Secretary, Housing Deptt., Govt. Of Bihar, Patna
3. The Principal Secretary, Urban Development Department, Govt. Of Bihar, Patna
4. The Bihar State Housing Board, Patna Through Its Chairman
5. The Chairman, Bihar State Housing Board, Patna Through Its Chairman
6. The Estate Manager, Bihar State Housing Board, Patna
7. The Estate Officer, Bihar State Housing Board, Patna

.... Respondents

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Appearance :

(In CWJC No.10437 of 2012)

For the Petitioner : Mr. Rajendra Nath, Sr. Advocate,
Mr. J. S. Pathak,
Mr. S.C. Jha, Advocates
For the State : Mr. Rakesh Prabhat, A.C. to S.C. 9
For the B.S.H.B. : Mr. Lalit Kishore, Sr. Advocate,
Mr. Anshuman Singh, Advocate

(In CWJC No.17508 of 2013)

For the Petitioner : Ms. Alka Verma, Advocate
For the Respondent
Nos. 4 to 7 : Mr. Lalit Kishore, Sr. Advocate,
Ms. Binita Singh, Advocate
For the State : S.C. 1

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 09-11-2016

Identical issues being involved, both the writ petitions, have been heard together with the consent of the parties and are being disposed of by a common judgment.

C.W.J.C. No.10437 of 2012:

The petitioner, in response to an advertisement published in local daily newspaper by the Bihar State Housing Board (hereinafter referred to as “the Board”) made an application by depositing registration fee for allotment of a piece of land for the purpose of construction of a house. In the year 1978, the petitioner deposited a sum of Rs.2,000/- by way of earnest money. Acknowledging the same, a money receipt dated 23.12.1978 (Annexure 2) was issued by the Board. Vide Annexure 3, which is



a letter no.2878 dated 26.09.1991, the Board informed the petitioner regarding its decision to allot him plot no. 5M/388 measuring an area of 1430 square feet at MIG, Digha. The petitioner, as per the demand, deposited Rs.21,269/- as the tentative price of the land was fixed at Rs.76,897/-. 30% of that was to be deposited at once and rest was required to be deposited in 60 instalments. On 13.01.1996, Hire- Purchase agreement was executed between the Board and the petitioner, a copy of which has been appended as Annexure 5. The petitioner claims that, despite paying the entire instalments, the Board did nothing between 1996 to 2005. The petitioner further claims that, on 31.08.2005, the Board asked him to deposit an amount of Rs.3,19,185/- again without any basis. On 14.10.2008, the petitioner requested the Managing Director, Housing Board to allot a vacant plot, if possible, at Shri Krishna Nagar, Bahadurpur or any other alternative residential colony in place of Digha and also protested the demand of Rs.3,19,185/-. He was again informed by the Board vide Annexure 10 dated 29.12.2005 to deposit the amount so that possession of the plot could be delivered to him. The Board, vide Annexure 11, through its Estate Officer, informed the petitioner that, in view of the recurrent litigation, it would not be possible to deliver possession of the Digha plots to the allottees, however,



construction of apartment upon encroachment free land of Digha was being examined for allotment of flats to such persons who were allotted the plots at Digha, if they so desire, depending upon the decision which would be taken by the State Government. In the meantime, if any allottee wants to take back his deposited money, the same would be given along with statutory interest. The petitioner, thereafter, approached the Managing Director by writing Annexure 12 series for making allotment at some other convenient place. The petitioner also approached the Principal Secretary, Urban Development and Housing Department vide Annexure 15 and again on 22.06.2011 vide Annexure 16 to take similar decision in the case of the petitioner which has been taken in the case of the one **Kumudini Sinha** in view of the direction given by the Hon'ble Supreme Court vide order dated 6th September, 2010 rendered in **Civil Appeal No.7386 of 2010** as well as the order dated 8th July, 2011 passed in **Contempt Petition (C) No.74 of 2011** contained in Annexure 13 and 14 respectively. The petitioner urged the department to give similar treatment to him also as his case was also on identical footing. When the petitioner did not receive any assurance or reply then the present writ petition was filed *inter alia* for grant of following reliefs:-

“(i) For quashing letter no.1723, dated 31.8.2005, issued under the signature of Estate Officer,



Bihar State Housing Board, Patna (Ann.8), whereby the petitioner has been asked to deposit a sum of Rs.3,19,185/- in the office of the Executive Engineer, Housing Board, Patna Division No.2 towards arrear of the cost the land in question with interest thereon calculated upto 31.8.2005 and take possession of the land bearing plot No.5M/388 of Middle Income Group (M.I.G.) situated at Digha, Patna as also the Board's letter no.3344, dated 29.12.2005 (Ann. 10) whereby in reply to petitioner's application dated 9.9.2005, he was asked to deposit the aforesaid amount of Rs.3.19.185/-.

(ii) For quashing Board's letter no.7085, dated 20.8.2009 (Ann. 11), whereby the petitioner has been asked to take back the deposited money with interest since it is not possible for the Board to hand over possession of the plot allotted to him.

(iii) For a direction to the respondent authorities for allotment of an alternative vacant plot of land in some other area of the Patna Town, like S. K. Nagar and Kankarbagh (Bahadurpur) as indicated hereinbelow. If it is not possible for them to hand over possession of the plot allotted to him at Digha;

(iv) For granting any other relief or reliefs to which the petitioner is deemed entitled in the facts and circumstances of the case."

The petitioner also filed I.A. No.6174 of 2013 for amendment in the writ petition by permitting the petitioner to induct additional relief for quashing the letter no.IV/Aa.Pr.-1015/05-5994, dated 22.7.2013 by which, he was informed by the

Board that the issue concerned is under active consideration of the State Government in view of the provisions of the **Digha Acquired Land Settlement Act, 2010** (hereinafter referred to as “the Act”) and any decision can be taken by the Board only after the response of the State Government, therefore, his request was turned down.

C.W.J.C. No.17508 of 2013:

In this petition also, the petitioner claims that her father deposited Rs.50/- as registration fee on 12.12.1972 and applied for allotment of plot. Her father had further deposited Rs.10,000/- on 23.05.1978. A receipt was granted by the Board which is appended as Annexure 3. It is also contended that on 07.04.1979, her father requested for allotment of plot under Higher Income Group Scheme in Bahadurpur. Vide Annexure 5, he was offered plot at Digha upon payment of initial amount of Rs.35,530/- for execution of Hire-Purchase agreement. The petitioner deposited the said amount and a money receipt was granted vide Annexure 6. He was later on informed about allotment of H.I.G. Plot at Digha, Patna vide Annexure 7. The Hire-purchase agreement was eventually executed on 09.04.1997 and necessary direction was given by the Executive Engineer to the Assistant Engineer for handing over the possession of the land. The petitioner's father died on 14.11.1999 without delivery of



possession of the plot in his lifetime. After the death of her father, the petitioner applied for transfer of the allotted plot in her name which was eventually done. She received letter in this regard issued by the Estate Officer of the Board. However, possession of the plot could not be delivered in favour of the petitioner. The petitioner vide Annexure 13 had written to the Board to assist her to obtain loan from the Bank so that the balance due amount could be paid by her in one instalment but she did not receive any communication. Thereafter, she has filed the present writ petition *inter alia* for grant of following relief(s):

“(i) For issuance of an appropriate writ, order, direction to the respondents to give possession of allotted plot in favour of petitioner’s father, to the petitioner for which necessary steps have been taken on behalf of petitioner have been taken on behalf of petitioner but respondents are sitting tight over it and to execute necessary documents in favour of petitioner with respect to allotted plot.

(ii) For issuance of an appropriate writ, order, direction to the respondents to allot any other plot of land having same area and facility to the petitioner if the plot allotted to petitioner’s father is not available at present and to hand over the possession of the same in favour of petitioner to give effect of the allotment made through order No.-10450 dated 25.09.91 and communicated to the petitioner’s father vide memo No.921 dated 30.04.1997.

(iii) For issuance of an appropriate writ, order, direction to

the respondents granting any other reliefs for which the petitioner is found entitled.”

Learned counsel appearing for the petitioners have submitted that despite several decades having been passed after making an application and allotments have been made in favour of the petitioner of C.W.J.C. No. 10437 of 2012 and the father of the petitioner in C.W.J.C. No.17508 of 2013, possession of the land could not be delivered upon any of the writ petitioners. Even their request for allotment of alternative plot at any other place could also not find favour of the authority concerned. The petitioners, placing reliance upon a decision of the Apex Court in **Kumudini Sinha (supra)**, have submitted that, apart from being deficiency in service, the conduct of the respondent Board indicates towards arbitrary manner in which it has proceed with the matter and even though the Apex Court has taken a decision in the case of Kumudini Sinha directing the Housing Board to allot alternative plot at the rate which was prevalent in the year 1991 itself, the petitioners are not being given similar treatment.

Counter affidavits have been filed on behalf of the Board in both the cases taking almost identical stand that after enforcement of the Act on 27.11.2013, the Board is helpless to give any assurance save and except to return the entire amount

deposited by the petitioners along with compound interest @ 8% per annum in view of the provision contained in Clauses 4 and 5 of the Act.

Per contra, Mr. Rajendra Nath, learned Sr. counsel appearing for the petitioner in C.W.J.C. No.10437 of 2012 has submitted that such stand cannot be taken by the Board in view of the decision of the Apex Court rendered in the case of **Kumudini Sinha**. Learned counsel for the Board had informed the Hon'ble Supreme Court regarding enactment of the aforesaid statute but, even after noticing that, the order was passed in favour of the allottee. In such background of the matter, it has been contended that the only course open to the Board is to give similar treatment to the petitioner also. It has further been submitted that this is a peculiar enactment by which the persons, who had deposited the amount and waited for delivery of possession of plots after respective allotments for decades, have been denied such privilege and the law breakers are being benefited as even after the acquisition of the land, the transferee from erstwhile landowners are to be benefited. Lastly, it has been urged that the provision contained in Clause 6 (c) of the General Clauses Act, 1987 saves the right and privilege of the petitioner and also the obligation or liability of the Board incurred or accrued under the Bihar State



Housing Board Act, 1982 as, admittedly, the Board has floated the scheme and the petitioner had applied and have paid substantial amount and the Board had made allotment in favour of the petitioners also.

In the aforesaid factual matrix, in my view, for reaching to just and logical conclusion, the relevant provisions of the Act would have to be examined.

It is apparent from the preamble of the Act that about 1024.52 acres of land was acquired by the Government of Bihar at Digha with an object to develop and provide urban housing facilities to the citizens. The lands were acquired but the acquisition was challenged by some of the landowners and the matter went up to the Apex Court wherein the acquisition proceeding was upheld and ultimately the acquisition was completed and the Award was pronounced and the Board for the aforesaid development obtained loan from the Government/Financial Institutions. The Board had deposited a sum of Rs.17.42 crores with the Collector, Patna towards the acquisition cost. However, during the process of acquisition and even after acquisition, the erstwhile landowners unlawfully delivered possession of the portions of the acquired land to various societies or individuals through deed of transfer or other



written instruments though they did not have any title in the land of transfer. Such illegal occupation has been assessed upon 600 acres of acquired land on which encroachers have either already constructed their houses and are living there or have constructed commercial buildings for such use. About 400 acres of land are largely free from unauthorized construction. It has been referred that public interest litigation was also filed in the Patna High Court in the year 1987 for the alleged inaction on the part of the State Government and the Patna High Court passed several orders time to time for removal of unauthorized occupations but that has proved to be futile in view of the response made by the unauthorized occupants in collusion with the erstwhile landowners which had led to serious law and order problem. Thus, taking into the aforesaid factual position and in view of the observations of the High Court, to solve the vexed problem, the present statute has been enacted. For the present purpose, Sections 4 and 5 would be relevant which stand extracted and quoted for better appreciation of the matter.

“4. Cancellation of allotments and refund of the deposits made by allottees/applicants, with the Board along with interest. – The Board may cancel the allotment/allotments made over the acquired land under the Bihar State Housing Board (Management and Disposal of

Housing Estates) Regulation, 1983 framed under the Bihar State Housing Board Act, 1982 and make refund of the deposits made by such allottees/applicants along with compound interest @ 8% per annum from the date of its deposit till the date of refund:

Provided that any allottee of the plot of land forming part of acquired land, who have accepted refund from the Board prior to enforcement of this Act shall have no claim for any additional amount.

5. Previous allotment deemed to be annulled. – Notwithstanding, anything contained in this Act or in any other Act or rule or order any allotment made by the Board prior to enforcement of this Act on any portion of acquired land shall deemed to be annulled,

Provided that such allottees of the land by the Board who are in actual physical possession of the land and have construed residential or commercial buildings shall not be subjected to annulment.”

It would be apparent from Section 5 of the Act that any allotment made by the Board prior to enforcement of the Act on any portion of acquired land shall deemed to be annulled. Though, after the aforesaid annulment of the earlier allotment, there was no requirement for cancellation of allotment, however, Section 4 provides that the Board may cancel the allotments made over the acquired land under the Bihar State Housing Board (Management and Disposal of Housing Estates) Regulation, 1983 framed under



the Bihar State Housing Board Act, 1982 and make refund of the deposits made by such allottees/applicants along with compound interest @ 8% per annum from the date of its deposit till the date of refund. The proviso to Section 5 has clarified that the allottees who are in actual physical possession of the land and have already constructed residential or commercial buildings stand saved.

Mr. Rajendra Nath, learned Sr. counsel, has submitted that the Act has been enforced on 27.11.2013, i.e., much after the filing of C.W.J.C. No.10437 of 2012, thus, the same would not be applicable to the petitioner having been enforced during the pendency of the writ petition and also in view of the decision of the Apex Court in the case of **Kumudini Sinha** after noticing its provisions.

Mr. Lalit Kishore, learned Sr. counsel appearing for the Board has countered the aforesaid submission by stating a stand that the Apex Court had passed the order on 6th September, 2010. On that date, though the Legislature had passed the Statute and the same was published in the Bihar Gazette (EX. Ord.) No.291 dated 26th April, 2010 but it was not enforced. Section 1(2) lays down in clear terms that the Act shall come into the force on such date as the Government may fix by notification in the official gazette. Such



notification was published by the Government on 27.11.2013. Therefore, it has been urged that in fact the law was not in force when the matter of **Kumudini Sinha** was being examined by the Supreme Court, it had rightly not examined the different provisions of the Act though its enactment was brought to its notice. It has not formed any opinion regarding the validity or otherwise of the different provisions thereof. For better appreciation, the relevant passage from the aforesaid judgment of the Apex Court are extracted and quoted as under:

“On 12.07.2010, Learned counsel for the Board had sought adjournment to seek instructions on the issue of allotment of alternative plot to the appellant. Today, Mr. Sharvan Kumar, learned senior counsel appeared and invited our attention to the provisions contained in Digha Acquired Land Settlement Act, 2010 and submitted that in view of the provisions contained in that Act, possession of the plot cannot be given to the appellant because the Board is required to regularize unauthorized occupation of the land.

We have not at all felt impressed by the submission of the learned counsel. Rather, we are convinced that failure of the Board to deliver possession of the plot allotted to the appellant amounted to deficiency of service. Once, the Board had, after satisfying itself that the appellant was eligible for allotment of plot issued allotment letter, it was bound to deliver possession of the allotted plot to her.

Unfortunately, the State Commission dismissed the complaint without even looking into the nature of the grievance made by the appellant. The National Commission also



committed grave error by not entertaining the appellant's prayer for issue of a direction to the Board to deliver possession of the allotted plot or give her an alternative plot. In our view, the affidavit filed by the Estate Officer of the Board that possession could not be given to the appellant because some litigation was pending in the matter of removal of encroachments from the land and some orders were passed by the High Court in respect of the land out of which plot was allotted to the appellant was not sufficient for negating the appellant's right to get possession of the allotted plot or an alternative plot. A public authority like the Board cannot be absolved from its obligation to fulfill the promise made to a consumer like the appellant, who had waited for more than three decades for getting a piece of land.

In the result, the appeal is allowed, the impugned orders of the State Commission and the National Commission are set aside and the Board is directed to deliver possession of the plot allotted to the appellant in the year 1991 or an alternative plot of similar measurement in the same area within a period of eight weeks from today and submit a report to this Court.

If the Board fails to comply with this order, the Court may have to suo motu initiate proceedings against its functionaries and officers under the Contempt of Courts Act, 1971.”

From perusal of the aforesaid decision, it would appear that the appeal was filed for setting aside the orders passed by the State Consumer Disputes Redressal Commission, Bihar in Complaint No.22 of 1992 and the National Consumer Disputes Redressal Commission in First Appeal No.412 of 2003. The National Commission disposed of the appeal preferred by the



appellant by directing the Board to refund Rs.40,530 with interest @ 18% per annum from the date of deposit. However, the Apex Court has held that the action of Board amounts to deficiency in service and had directed the Board to deliver the possession of the concerned plot or the alternative plot to the petitioner at the rate which was prevalent in the year 1991.

Now, the question which would arise for determination by this Court as to whether the petitioner would be entitled for similar treatment even after enforcement of the Act subsequently on 27.11.2013 ?

In my considered opinion, the answer would have to be in negative. Of course, Learned counsel, who had appeared for the Board before the Supreme Court, had drawn attention of the Court towards the provision contained in the Act but the Apex Court, without examining and recording any finding upon the various provisions of the Act, had simply expressed that it was not at all impressed by the submission of learned counsel for the Board and had given the aforesaid direction, however, it has to be kept in mind that the date on which the aforesaid order was being passed, the statute concerned was not enforced which admittedly was enforced later on 27.11.2013. That may be a reason why the same

was not scrutinized by the Apex Court i.e, since the child was yet to be born.

Thus, in my opinion, it would have no binding precedent as admittedly the Act was enforced subsequently on 27.11.2013 and Section 5 of the Act lays down in clear terms that notwithstanding anything contained in this Act or in any other Act or rule or order, any allotment made by the Board prior to enforcement of this Act on any portion of acquired land **shall deemed to be annulled.** The petitioners have not challenged the validity of the Act or any of its provisions including Sections 4 and 5. Thus, in my view, unless such provision is declared ultra virus, that would be binding upon the parties including the Board as well as the petitioners. The submission made on behalf of the petitioners that, since the Act was enforced during the pendency of the writ petition, it would not be binding, is also noted only to be rejected. Section 5 talks about all the previous allotment made and mere filing of the writ petition would neither suspend or would nullify the will of the Legislature. So far the provisions contained in Section 6(c) of the General Clauses Act, 1987 is concerned, of course it provides that repeal shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed, however, the aforesaid provision would also

not come to the help of the petitioners in view of the fact that Section 5 of the Act declares in clear terms that all previous allotments made in any circumstances, stand annulled. That apart, section 17 of the Act provides that in case of any conflict/contradiction with the provisions made under the Land Acquisition Act, 1894, Transfer of Property Act, 1882, Bihar State Housing Board Act, 1982 and/or/any other laws/rules/regulations for the time being in force, the provision of the Act shall have the overriding effect. Though the orders, notifications circular, schemes or resolution made in regard to the acquired land prior to enforcement of this Act, have been saved by Section 17(2) but only to the extent so far it is not inconsistent with this Act.

As a result, both the writ applications fail and are accordingly, dismissed. However, there would be no order as to cost.

(Dr. Ravi Ranjan, J)

Sanjay-II/-

AFR/NAFR	AFR
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