

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.604 of 2016

In

Civil Writ Jurisdiction Case No.772 of 2012

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Smt. Satula Devi wife of Sri Mahendra Prasad resident of 6H/22, Sector 6,
Bahadurpur Housing Colony, P.S. Agamkuan, District Patna.

... .. Appellant/s

Versus

1. The Bihar State Housing Board, 6, Mangles Road, Patna through the Managing Director.
2. The Managing Director, The Bihar State Housing Board, 6, Mangles Road, Patna.
3. The Estate Officer, the Bihar State Housing Board, 6, Mangles Road, Patna.

... .. Respondent/s

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with

Letters Patent Appeal No. 747 of 2016

In

Civil Writ Jurisdiction Case No.22948 of 2011

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Umesh Sharma, S/o Late Baliram Singh, R/o 6H/23, Sector 6, Bahadurpur
Housing Colony, P.S.- Agamkuan, District- Patna.

... .. Appellant/s

Versus

1. The Bihar State Housing Board, 6, Mangles Road, Patna through the Managing Director.
2. The Managing Director, The Bihar State Housing Board, 6, Mangles Road, Patna.
3. The Estate Officer, The Bihar State Housing Board, 6, Mangles Road, Patna.

... .. Respondent/s

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Appearance :

(In Letters Patent Appeal No. 604 of 2016)

For the Appellant/s : Mr. Chitranjan Sinha
Sr. Advocate
Mr. Alok Kumar @ Alok Kr Shahi
Advocate
Mr. Sandeep Shahi
Advocate

For the Housing Board : Mr. Lalit Kishore
Sr. Advocate
Mrs. Binita Singh
Advocate

(In Letters Patent Appeal No. 747 of 2016)

For the Appellant/s : Mr. Chitranjan Sinha
Sr. Advocate
Mr. Alok Kumar @ Alok Kr Shahi
Advocate



For the Housing Board : Mr. Sandeep Shahi
Advocate
Mr. Lalit Kishore
Sr. Advocate
Mrs. Binita Singh
Advocate

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 19-12-2017

Heard learned senior counsel, representing the appellants in both the Letters Patent Appeals, arising out of a common judgement, dated 29.01.2016, passed in C.W.J.C. No. 22948 of 2011 and C.W.J.C. No. 772 of 2012.

2. We have also heard learned senior counsel, representing the Bihar State Housing Board and its authorities, who are respondents in the present appeals.

3. Appellants are aggrieved by the judgement, dated 29.01.2016, passed by a Learned Single Judge of this Court, refusing to interfere with the order, dated 11.11.2011 (Annexure – 8 to the writ application), issued by the respondent – Estate Officer, Bihar State Housing Board (hereinafter referred to as “the Board”), canceling the allotment of Plot No. 6H/23 and Plot No. 6H/22, respectively, allotted to the petitioners individually in both the cases in Mohalla Bahadurpur Housing Colony in the township of Patna.



4. The brief facts, which have appeared from the materials available on the record, would show that there was an allotment of a residential plot in the aforesaid Housing Colony in favour of these two petitioners-appellants separately sometime in the year 1981. A Hire Purchase Agreement was also executed between the petitioners – appellants and the Board handed over the plots in question to the petitioners – appellants. Initially a dispute arose, leading to filing of C.W.J.C. No. 86 of 1986 at the instance of the petitioners – appellants, when Respondent – Board decided to cancel the allotment made in favour of the petitioners – appellants. During the pendency of the writ application, the Board issued a communication, declaring their intention not to disturb the allotment of the petitioners – appellants, therefore, the petitioners – appellants withdrew their writ applications.

5. It is the case of the petitioners – appellants that they had paid the requisite amount at the time of entering into the Hire Purchase Agreement and had also paid the amount of Rs. 3886 /- on 13.05.1992 in favour of the Respondent – Board. It is, however, an admitted position that the petitioners – appellants did not construct a house which was required and was an obligation upon them in terms of the Hire Purchase Agreement.



6. It further appears that while this Court was dealing with a Public Interest Litigation in C.W.J.C. No. 12376 of 2007, a complaint was made that huge number of defaulters allottees in the Housing Board were occupying the lands despite the defaults. A Division Bench of this Court in the said PIL passed an order, giving direction to the Respondent-Board to take action against the defaulters. Thus on the strength of the order passed by the Division Bench of this Court in the said PIL, the Respondent – Board came out with a public notice, a copy of which is placed on the record and has also been taken note of by the Learned Single Judge, calling upon the defaulters to make good the default and to construct the building within the prescribed period. It is again not in dispute that despite said notice no construction of building could take place by these petitioners – appellants.

7. It is also the case of the Respondent – Board that even though the petitioners – appellants were under an obligation in terms of Clause 3 (a) of the Hire Purchase Agreement to pay the cost in 60 equal monthly installments of Rs. 731.50/- without waiting for any demand from the Respondent – Board, they had not paid the installments as required and on the date of cancellation the petitioners – appellants were in default. This fact



has, however, been contested by the learned senior counsel representing the petitioners – appellants.

8. In the aforementioned background, the writ application in which the impugned judgement has been passed came to be considered by the Learned Single Judge. After hearing the parties, the Learned Single Judge noticed Clause 3 (a) of the Hire Purchase Agreement, which unequivocally says that it is the obligation of the settlees to pay the installments without waiting for any demand of the balance amount. The Learned Single Judge has found that while the contention of the appellants was that despite payments, the Board had not executed the deed, enabling the petitioners to start construction. But the same has got no substance, inasmuch as in terms of Clause 13 of the said agreement, a time-frame has been fixed within which the allottees / settlees have to take action for construction of building. In the present case, it has been found that the petitioners – appellants had not even applied for and obtained approval of the building plan from the authority, which they were obliged to, in terms of the agreement.

9. Learned Single Judge has, therefore, found that it is a case of Breach of Contract and the terms of Hire Purchase Agreement have been violated by the petitioners – appellants.



10. In fact having discussed the materials on the record the Learned Single Judge found that the petitioners had defaulted in payment also which led to exercise of right by the Respondent – Board in terms of Regulation 36 (4).

11. The writ applications have been dismissed for the reasons indicated above for both the reasons.

12. At this stage, while arguing the Letters Patent Appeal before us, the learned senior counsel, representing the petitioners – appellants, have arguments more on the equity and not on law. The breach of the terms of Hire Purchase Agreement as alleged is not in dispute. In fact, the contest in the appeal on those issues are not there. However, learned senior counsel submits that the appellants may be given an opportunity by prescribing some time-frame to construct the building and only because the building has not been completed within the prescribed period in terms of the Hire Purchase Agreement, cancellation of allotment would not be just and proper and the same should be interfered with by us on principle of equity.

13. In order to appreciate the submission of learned senior counsel, we attempted to find out as to whether there is any statement even at this stage in the appeal before us that these appellants have no other residential house available in the



township of Patna, because we have in our mind the object behind setting up of the Bihar State Housing Board and the considerations being given by the Board at the time of allotment, the slogan which we remember "*Begharon Ko Ghar*", was the motto of the Bihar State Housing Board, which is reflected in the time-frame for completion of construction by an allottee. It is for this reason that the Board is made available the financial assistance by the Banks and financial institutions at a certain rate of interest and while fixing the price of the land or house the same is taken care of by the Board. It is not running to earn profit.

14. Thus while giving a thought to the equitable considerations as sought for by the learned senior counsel, it was necessary to find out whether the appellants had or has any residential house in the township. Unfortunately in the entire Memorandum of Appeal there is no such statement nor such plea is being taken on behalf of appellants before us. It is also well settled in law that if the appellants have failed to make out a case on law and if they have been found in violation of the breach of Hire Purchase Agreement, the principle of equity would not come to their rescue. We have found that they are in breach of Hire Purchase Agreement and to that extent we agree with the finding



given by the Learned Single Judge and the equitable consideration sought for is not available to the appellants.

These appeals have no merit and are, accordingly, dismissed.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

skm/-

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