

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.2333 of 2016

IN

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- Chaudhary Tola, P.O. Mahendru, P.S. Sultanganj, District- Patna at Present resident at Quarter No. 139, Road No. 10, Shrikrishna Nagar, P.S.- Budha Colony, District- Patna.

.... Appellant

Versus

1. The State of Bihar
2. The Principal Secretary, Urban Development and Housing Department, Government 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

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Appearance :

For the Appellant : Mr. Rajendra Narayan, Sr. Advocate
Mr. Sunil Srivastava, Advocate
For the Housing Board : Mr. Lalit Kishore, Sr. Advocate
Mrs. Binita Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

C.A.V. JUDGMENT

(Per: HONOURABLE JUSTICE SMT. NILU AGRAWAL)

Date: 06-02-2018

Appellant assails the order dated 09.11.2016, passed by the learned Single Judge, by which his claim for allotment of a piece of land by the respondent Bihar State Housing Board has been rejected along with another analogous matter.

2. The appellant in pursuance to an advertisement made an application for allotment after depositing registration fee in the year 1978, preference being given of Bahadurpur area. The respondent



Housing Board herein intimated a decision to allot plot No. 5M/ 388 measuring an area of 1430 sq. ft. of MIG plot at Digha. A Hire Purchase Agreement was executed between them on 13.01.1996 wherein the tentative price was fixed at Rs. 76,897/-, 30% of which was to be deposited immediately and rest of which had to be deposited in equal monthly installments beginning from 1996 to 2005. In the year 2005, the petitioner was asked to deposit Rs. 3,19,185/- over and above what had been deposited by the appellant. The appellant protested the enhanced price and also requested the Managing Director of the respondent Housing Board to allot a vacant plot either at Sri Krishnanagar, Bahadurpur or any other alternative residential place instead of Digha. Subsequently, in the year 2009, the appellant was informed that due to recurrent litigation and encroachment of Digha land the appellant was free to take refund of his deposited amount along with admissible interest. It is this decision of the respondent Housing Board, which brought the appellant before the Writ Court.

3. Mr. Rajendra Narayan, learned Senior Counsel appearing for the appellant submits that he is ready to take an alternative plot and even the Hon'ble Supreme Court in *Civil Appeal No. 7386 of 2010* in the case of *Kumudini Sinha Vs. Bihar State Housing Board* by its order dated 06.09.2010 had directed the



Housing Board to deliver possession of the plot allotted or an alternative plot of similar measurement in the same area be made available to him. His contention is that since the respondent Housing Board is not in a position to deliver possession of his allotted plot at Digha, an alternative plot be made available to him in any other residential locality.

4. However, Mr. Lalit Kishore, learned Senior Counsel representing the Housing Board submits that now with regard to Digha allotments, Digha Acquired Land Settlement Act has been enacted and as per the said enactment, which has been made effective with effect from 27.11.2013, according to Sections 4 and 5, all allotments are to be cancelled and previous allotment deemed to be annulled, the allottees/ applicants are entitled to compound interest @ 8 per cent per annum from the date of its deposit till the date of refund. Sections 4 and 5 of the enactment are being extracted hereinbelow for ready reference :

“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.”

5. Learned Senior Counsel for the Housing Board also submits that with the enforcement of the said Act all acquired land or any portion shall be deemed to be annulled. His further contention is that the order passed in the case of ***Kumudini Sinha*** (supra) was before the coming into force of the new Digha Land Settlement Act and the said Act could not have been possibly brought before the



notice of the Hon' ble Apex Court. However, he agrees to refund the entire deposited amount of the appellant with 8% compound interest as envisaged in Section 4 of the new Act.

6. Learned Single Judge had observed in the concluding paragraph as such :

*“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.”

7. We do not find any infirmity in the order of the learned Single Judge. Appeal is dismissed, however, with a direction upon the respondent Housing Board to refund the deposited amount with 8% compound interest without any further delay preferably within three



months of the date of the order provided the appellant is willing to do
so by filing an application with a copy of this order.

(Nilu Agrawal, J)

I Agree
Ajay Kumar Tripathi, J

(Ajay Kumar Tripathi, J)

Rajesh/-

AFR/NAFR	AFR
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