

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7083 of 1999

1. Sudhir Ranjan.

2. Rajiv Kumar.

Both Sons of late Hardeo Prasad and late Ramdeyi Devi, resident of MIG-33,
Hanuman Nagar, Kankarbagh, P.S.-Patrakar Nagar, District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar.

2. Secretary, Urban Development Department, Govt. of Bihar, Patna.

3. The Special Secretary, Cabinet Secretariat, Govt. of Bihar, Patna.

4. Bihar State Housing Board, Patna through its Managing Director.

5. The Managing Director, Bihar State Housing Board, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Jitendra Kr. Roy, Adv.

For the Housing Board : Mr. Anshuman Singh, Adv.

For the State : Mr. Ravi Verma, AC to GP-4

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

Date : 06-12-2018

This writ petition was initially preferred by one
Ramdeyi Devi, wife of late Hardeo Prasad with a prayer to
issue necessary directions to the respondent authorities to
make payment of M.I.G. Flat No. 33, Hanuman Nagar,
Kankarbagh, Patna belonging to the Bihar State Housing



Board, Bihar, Patna (*in short the Housing Board*) for the purposes of the same being used by the petitioner/s.

2. It may be noted here that aforesaid Ramdeyi Devi is the wife of late Hardeo Prasad, a freedom fighter and whose sufferings and financial status was taken into account by the Government of the day to declare that in recognition of the services of late Hardeo Prasad, a middle income group house, shall be financed by the Government. For the aforesaid purpose, some correspondence was made at the governmental level with the Housing Board and the Housing Board informed the State Government that aforesaid M.I.G. Flat No. 33 has been allotted to her and the price of which is Rs. 1,14,400/-. Thereafter, the aforesaid decision of the Government was never enforced and late Ramdeyi Devi entered into an agreement with the Housing Board for the purchase of aforesaid flat on hire purchase agreement. The initial payment of around Rs. 25,000/- was made by the erstwhile petitioner/late Ramdeyi Devi. Some further payments were also made in the expectation that the Government would reimburse such payments.



3. In any view of the matter, as the time progressed, it has been argued that the Government rolled back on its promise, but the wife of late Hardeo Prasad along with her family members kept on residing in the aforesaid flat in the hope that it will be paid for by the Government.

4. During the pendency of the present writ petition, aforesaid Ramdeyi Devi died and her two sons, viz., Sudhir Ranjan and Rajiv Kumar, have been substituted in her place to pursue this petition.

5. The occasion for the substituted petitioners to agitate before this Court arose with a demand notice of approximately Rs. 10,00,000/-, which includes the penalty for late payment of the installment amount.

6. Mr. Jitendra Kumar Roy, the learned Advocate for the petitioners has drawn my attention to an order of this Court dated 06.11.2003, wherein it has been recorded that the petitioner is prepared to pay a sum of Rs. 1,14,550/- to the Housing Board in reasonable installments towards the price of aforesaid M.I.G. Flat No. 33, Hanuman Nagar, Kankarbagh, Patna. On the aforesaid offer made on



behalf of the petitioner at that time, the counsel for the Housing Board took some time to seek instructions in the matter. Mr. Roy submits that no such installment was fixed nor any definite statement came from the end of the Housing Board, giving an impression in the mind of the petitioner that the house/flat in question is to be financed by the State Government.

7. Mr. Ravi Verma, learned Assistant Counsel to Government Pleader No. 4, submits that the statement made by the petitioner that the Government had taken a decision to finance the flat is incorrect. There is no record of any such decision having been taken by the Government either on the floor of the House or in its Cabinet decision.

8. The aforesaid statement on behalf of the State does not appear to be correct as Annexure 3 to the writ petition, which is a letter sent by the Joint Secretary of the Government to the Managing Director of the Housing Board asking for the price of the flat in question for the purposes of being paid by the Government, clearly is an indicator of the fact that a decision had been taken at the



governmental level to finance the house/flat in question to the family members of late Hardeo Prasad in recognition of his services and his financial status. It is quite a different thing that today, as the law stands, the State Government cannot be forced to make payment for a house to be given to a private person, even though he is the nearest family member of one of the freedom fighters from the State of Bihar, but this Court is at pains to note how with the change of the Government, the stand also changes. It is a matter of common knowledge that successive Governments respect the declaration made by the erstwhile Governments, if such decisions are not against the public policy or so unreasonable that it should not be continued with at all.

9. It would also be necessary here for this Court to note down the objections of the Housing Board.

10. Mr. Anshuman Singh, the learned Advocate appearing for the Housing Board submits that in view of Annexure 5, which is a hire purchase agreement for M.I.G. house/flat at Hanuman Nagar, Kankarbagh, Patna, which has been signed by the late mother of the present/substituted



petitioners, there is no way in which the substituted petitioners can be given the possession of the flat in question without their paying the price of the flat and the penalty for not having paid the installments in time.

11. True it is that the late mother of the petitioners had signed the aforesaid hire purchase agreement with the clauses of payment of penalty for non-payment of installment amount in time, nonetheless, this Court cannot loose sight of the fact that the aforesaid document was signed by the widow of a political worker, who was not well versed in the letters of law. This hire purchase agreement is in the nature of a standard form contract/agreement and there is nothing on record or submitted on behalf of the Housing Board to indicate to this Court that the clauses of the agreement were explained to the late mother of the petitioners. A signatory to a document is expected to know the contents of the same, but in the present case, situation is absolutely different. The aforesaid document was signed *uberima fides* on the assumption that the Government shall finance the flat in question. The Housing Board may



technically remain stuck with the clauses of the hire purchase agreement, but such a stand only reflects that the background facts have not at all been taken into account either by the functionaries of the State or the Housing Board.

12. After having heard the learned counsels appearing for the parties at length and taking into account the upfront proposal of the substituted petitioners that they are ready to pay Rs. 5,00,000/-, in all, to the Housing Board as the price of the flat as well as the penalty for late deposit of the installments, this Court is of the opinion that such an offer ought to be considered by the Managing Director of the Housing Board and then a decision be taken.

13. Before I relegate this matter to the domain of the Managing Director of the Housing Board, I must indicate the reasons for coming to such a conclusion.

14. As far back as in the year 2003, an offer was made by the late mother of the petitioners to pay the cost of the flat in question. At that time, the cost of the aforesaid flat in question was Rs. 1,14,450/-. The aforesaid



offer was never responded to by the Housing Board despite the present writ petition remaining pending for further adjudication. The correspondence between the functionaries of the State as well as the Housing Board is an indicator of the fact that some decision was taken by the Government of the day for financing the aforesaid flat in recognition of the services of late Hardeo Prasad.

15. The petitioners, who are the sons of late Hardeo Prasad, have not done well for themselves in life. Though, this cannot be a reason for any undue sympathy for them, but considering the other factors, this Court deems it equitable to relegate this case to the Housing Board for taking a decision in this matter.

16. For the aforesaid decision, the Managing Director of the Housing Board can either consult the Pricing Committee, which has been constituted under the orders of this Court or refer the matter to the Pricing Committee and in that event, the Pricing Committee shall look into the entire background facts and would come to a decision which shall be intimated to the petitioners.



17. It would further be relevant here to state that apart from the letters of law, there is a bigger proposition of 'equity' and the law with respect to 'equity' is well settled that if 'equity' is claimed by both sides, the law should prevail, but if it is one sided, then, necessary orders may be passed in consonance with the principle of *in aequali jure melior est conditio possidentis*.

18. This Court, therefore, directs the petitioners to approach the Managing Director of the Housing Board along with their offer of Rs. 5,00,000/- towards cost of the flat as well as the penalty/surcharges with an open mind to enter into further negotiations with the Housing Board within a period of four weeks from today.

19. The Managing Director of the Housing Board, on receipt of such representation, would either take a decision on his own or consult the Pricing Committee and take a decision whether some relaxation be given to the petitioners for the purchase of the aforesaid flat in question. The process of decision making, at the end of the Managing Director of the Housing Board, ought not to take more than



six months. The decision shall be communicated to the petitioners.

20. With the aforesaid direction, this writ petition stands disposed off.

(Ashutosh Kumar, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
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