

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3405 of 2016

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Renu Devi, Wife of Ram Naresh Pandit, Resident of Village - Bhith, P.S.-
Bhagwanpur, District - Begusarai, presently Residing in Flat no. M.I.G. -
155/6/MH - 16 Barari, P.S. Barari, District - Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Urban Development Department, Govt. of Bihar, Patna.
2. The Managing Director, Bihar State Housing Board, Patna.
3. The Bihar State Housing Board, Patna through its Secretary.
4. The Secretary, Bihar State Housing Board, Patna.
5. The Executive Engineer, Bihar State Housing Board, Bhagalpur.
6. Manoj Kumar Singh
7. Niraj Kumar Singh, Both sons of late Navindra Prasad Singh, Resident of Vill- Chardadin P.S. -Dhoriya Distt. Bhagalpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Md. Anisur Rahman
For the Respondent/s : Mr. R.K. PRIYADARSHI- SC32

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 24-01-2018

Heard Md. Anisur Rahman, learned counsel for the petitioner,
Mr. (Dr.) Anand Kumar, learned counsel for Housing Board and
Mr. Prabhat Ranjan, learned AC to GP-6 for the respondent-State.

In view of nature of order this Court intends to pass, this
Court is not inclined to issue notice to private respondent nos. 6
and 7.

The present writ application has been filed for quashing the
order, issued vide Memo No. 7111, dated 23.09.2014, under the
signature of State Officer, Bihar State Housing Board, as contained
in Annexure-13, whereby Navindra Prasad Singh, the original



allottee of the house, being Flat No. 6/MH/16, situated at Barari Bhagalpur, has been directed to deposit Rs. 25,73,927.10/-.

The factual matrix of the case is that Flat No. 6/MH/16 was allotted through lottery in favour of Navindra Prasad Singh on 03.05.2000. Consequently, Navindra Prasad Singh was directed vide letter no. 59 dated 03.05.2000, issued under the signature of State Officer, Housing Board, as contained in Annexure-1, to deposit Rs. 1,55,000/- through bank draft by 18.06.2000 and to facilitate the execution of agreement by 30.06.2000. Consequently, Navindra Prasad Singh deposited the said amount and agreement was entered into between Navindra Prasad Singh and the Housing Board on 01.09.2008, as contained in Annexure-3 and subsequently, Navindra Prasad Singh came in possession of the flat in question. The petitioner claims that the original allottee, Navindra Prasad Singh executed agreement of transfer on 09.09.2008 in favour of the petitioner with regard to flat in question. Navindra Prasad Singh also deposited Rs. 3,30,000/- from 01.11.1989 to 09.12.2011 to the Housing Board, but in spite of deposit of entire consideration amount, the allotment letter was not issued in favour of original allottee Navindra Prasad Singh. The petitioner has filed the present writ application on the basis of an agreement entered into between Navindra Prasad Singh and



letter of the Housing Board issued vide Memo No. 4934 dated 30.05.2012, as contained in Annexure-8, to the effect that the subsequent purchaser from the original allottee will be responsible for all the liabilities of the allottee on production of sale deed. Hence, the petitioner has filed the present writ application praying for quashing of further demand made by the Housing Board.

It is submitted by learned counsel for the Housing Board that as per own admission of the petitioner, the petitioner never represented before the Housing Board for such grievance. Moreover, no sale deed was executed by the original allottee in favour of the petitioner and the Housing Board has never made any demand from the petitioner.

Considering the rival submissions of the parties, this Court is not inclined to interfere on two grounds, firstly, there is nothing on record to suggest that the petitioner made any representation before the Housing Board for transfer of the allotment, nor intimated to the Housing Board about the agreement entered into between the petitioner and original allottee, Navindra Prasad Singh. Secondly, the nature of relief sought for in the present case involves serious disputed question of fact, since the original allottee, Navindra Prasad Singh is dead, hence, his two sons, Manoj Kumar Singh and Niraj Kumar Singh have been made party



respondents and such disputed question of fact can only be resolved by leading of evidence before appropriate civil Court.

The Apex Court in the case of Union of India and Others Vs. Ghaus Mohammad AIR 1961 Supreme Court 1526, held that a proceeding under Article 226 of the Constitution of India is not an appropriate forum to seek relief if such relief is based on disputed question of facts. Paragraph 9 reads as follows:

“9. The question whether the respondent is a foreigner is a question of fact on which there is a great deal of dispute which would require a detailed examination of evidence. A proceeding under Art. 226 of the Constitution would not be appropriate for a decision of the question. In our view, this question is best decided by a suit and to this course neither party seems to have any serious objection. As we propose to leave the respondent free to file such a suit if he is so advised, we have not dealt with the evidence on the record on the question of the respondent's nationality so as not to prejudice any proceeding that may be brought in the future.”

Same view has been reiterated by the Apex Court in the case of State of Rajasthan Vs. Bhawani Singh and Others, AIR 1992 SC 1018, holding that disputed questions relating to title cannot be satisfactorily gone into or adjudicated upon in a writ proceeding. Paragraph 9 reads as follows:

“9. Having heard the counsel for the parties, we are of the opinion, that the writ petition was misconceived insofar as it asked for, in effect, a declaration of writ petitioner's title to the said plot. It is evident from the facts stated hereinabove that the title of the writ petitioner is very much in dispute. Disputed question relating to title cannot be satisfactorily gone into or adjudicated in a writ petition.”



In the case of D.L.F. Housing Construction (P) Ltd Vs. Delhi Municipal Corpn. and Others, (1976) 3 Supreme Court Cases 160, the question related to the right of ownership over a land, a Four Judge Bench of the Apex Court held that in a case where the basic facts are disputed and complicated question of law and fact depending on evidence are involved, the writ court is not a proper forum for seeking relief. Paragraph 18 reads as follows:

“18. In our opinion, in a case where the basic facts are disputed, and complicated questions of law and fact depending on evidence are involved the writ court is not the proper forum for seeking relief. The right course of the High Court to follow was to dismiss the writ petition on this preliminary ground, without entering upon the merits of the case. In the absence of firm and adequate factual foundation, it was hazardous to embark upon a determination of the points involved. On this short ground while setting aside the findings of the High Court, we would dismiss both the writ petition and the appeal with costs. The appellants may if so advised, seek their remedy by a regular suit.”

In the present case, the issue raised cannot be decided in a summary proceeding since there is triangular dispute between the parties and the fundamental facts have not been brought on record through pleadings and counter pleadings. Such issue can be decided only after leading of evidence properly in a suit before Civil Court.

Accordingly, the present writ application is dismissed.

However, the present order will not preclude the petitioner to approach the Housing Board for redressal of grievance, concerning



which the Housing Board shall not be prejudiced in any manner by
the order of this Court.

(Dinesh Kumar Singh, J)

Amrendra/-

AFR/NAFR	
CAV DATE	
Uploading Date	06.02.2018
Transmission Date	

