

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1587 of 2015
IN
Civil Writ Jurisdiction Case No. 13010 of 2015**

- =====
1. The Bihar State Housing Board Patna through its Chairman and Secretary.
 2. The Managing Director, Bihar State Housing Board Patna.
 3. Estate Officer, Bihar State Housing Board, Patna.
 4. The Executive Engineer, Bihar State Housing Board Patna Division No. 3, Bahadurpur Housing Colony, Patna-26.

.... Appellants

Versus

1. Ratan Yadav Son of Late Bhikhari Yadav resident of Mohalla Krishna Nagar, L-37, Road No. 20, P.O. Kidwaipur, P.S. Budha Colony, District Patna.
2. The State of Bihar through its Principal Secretary, Arban Development Department, Patna

.... Respondents

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Appearance :

For the Appellant/s : Ms. Binita Singh, Adv.
For the Respondent/s : Mr. Dileep Kumar Jha, Adv.
Mr. Bipin Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date: 09-03-2018

Although this appeal under Clause 10 of the Letters Patent of High Court of Judicature at Patna has been preferred by the respondent Bihar State Housing Board feeling aggrieved by the interim order dated 20.8.2015 and 21.8.2015 passed by a learned Single Judge of this Court in C.W.J.C.No. 13010/2015, whereby pending disposal of the writ petition the Bihar State Housing Board has been directed to make temporary arrangement for the stay of the petitioner and his family members but in the nature of the issue that is being deliberated upon by the contesting parties that this Court



allowed the parties to address the issue on merits as well because in the opinion of this Court unless the writ petitioner has any enforceable right vested in him to espouse the cause raised in the present writ petition, it would be an academic exercise to set aside the interim order and remit the matter to the learned Single Judge for consideration of the writ petition independent thereof.

We have heard Ms. Binita Singh, learned counsel for the appellant Board and Mr. Dileep Kumar Jha, learned counsel appearing for the respondent- writ petitioner.

The prayer made by the writ petitioner in the writ petition runs under:

- I) A writ, order and direction in the nature of mandamus for directing and commanding the respondent authorities not to dispossess the petitioner from the physical possession of Alp Aay Vargigay Bhukhand No. L-37 Road No. 20, Mohalla Shri Krishna Nagar and also not to disturb the legal and valid occupation of the petitioner, be issued.
- II) A writ, order and direction in the nature of certiorari for quashing the letter no. 721 dated 8.8.2015 issued by Executive Engineer (respondent no.5) Bihar State Housing Board Patna Division-3, Bahadurpur Housing Colony, Patna, be issued.
- III) A writ, order and direction in the nature of certiorari for quashing the letter no. 5099 dated



12.8.2015 issued by Estate Officer, Bihar State Housing Board, Patna, be issued.

IV) A writ, order and direction in the nature of certiorari for quashing the letter no. 5974 dated 22.11.2007 issued by Managing Director, Bihar State Housing Board Patna, be issued.

V) Any other writ, order and direction as the petitioner is entitled to.”

A counter affidavit was filed by the Housing Board in the writ proceedings and in which it is mentioned that the plot in question bearing No. L-37, situated at Shri Krishna Nagar, in the town and district of Patna was allotted to one Rani Jamuar vide letter no. 4727 dated 12.9.1969 and possession was given. A Hire Purchase Agreement was executed on 28.6.1969 for the piece of land having an area of 2.556 katha. In between the process of finalization of the allotment that some kind of authorization was given by the allottee in favour of the petitioner for looking after the plot and for residing in the temporary construction made therein until the allottee was able to construct her house, a copy of which is present at Annexure 2 to the writ petition and is dated 4.12.1969. It is explained in the counter affidavit that it is drawing strength from such authorization that the writ petitioner got electric and water connection installed in his name. It is mentioned that on grounds of non-payment of dues by the allottee or her legal heirs that the allotment was cancelled vide letter no. 5974 dated 22.11.2007, a copy of which is enclosed at Annexure 8 to the



writ petition and was also communicated through letter no. 3526 dated 1.6.2015 at Annexure 7 to the writ petition. The cancellation orders were followed by letter no. 721 dated 8.8.2015 at Annexure 10 to the writ petition issued by the Executive Engineer, Bihar State Housing Board, directing the petitioner to vacate the plot, failing which he would be evicted therefrom and which was followed by another letter no. 5099 dated 12.8.2015 issued under the signature of the Estate Officer, Bihar State Housing Board.

It is explained that it is only when a complaint was received by one Ranjan Kumar Singh as to the encroachment by this petitioner that the issue was enquired into and steps taken for his removal after cancellation of the allotment through letter dated 22.11.2007. It is the case of the Housing Board that despite paper publication dated 14.6.2007 and 13.11.2007 none appeared on behalf of the allottee to discharge the obligation under the agreement and hence, the allotment was cancelled way back on 13.11.2007.

It is taking note of the stand of the Housing Board taken in the counter affidavit filed in the writ proceedings that the learned counsel appearing for the writ petitioner was asked to demonstrate as to how he had inherited a right of continuance over the plot in question where the allotment itself stood cancelled way back in the year 2007. On query, Mr. Jha has relied upon the authorization dated 4.12.1969 at Annexure 2 to claim possession over the plot in question.



In fact except for the said document, no other document having a legal force and which could be held binding on the Housing Board, could be presented before this Court.

We have heard learned counsel for the parties on merit and perused the records. In our opinion, Annexure 2 to the writ petition is a private understanding in between the petitioner and the allottee and has no legal force having been drawn on the plain sheet. It bears no lawful character. The mutual understanding between the allottee and the petitioner does not bind the Housing Board. Even otherwise the recitals to the authorization merely allows the petitioner to take care of the plot in absence of the allottee and for such limited purpose, reside in the godown so constructed thereon. It speaks nothing further. In the circumstances discussed, the authorization in no manner passed on any better title on the petitioner, than held by the original allottee had and in view of the explanation present in the counter affidavit of the Housing Board filed in the writ proceedings as also taken before this Court in the appeal, even the original allottee had failed to assume title on the plot, having failed to discharge her obligation to clear the dues. Thus, even if the possession of the plot was given to the allottee Rani Jamuar, the title was yet to pass on to her by execution of a deed of transfer. In such circumstances, where the title of the plot was yet to pass on to the original allottee, obviously neither she could transfer the same to the petitioner nor a mere continuation of the petitioner



over the plot would vest any right in him which can be enforced through the writ petition.

In the circumstances existing where the very foundation for the petitioner to maintain the writ petition was lacking, we are of the considered opinion that no enforceable right vested in him to maintain the writ petition much less grant of any interim order. The allotment having been cancelled by the appellant Board way back in 2007 with none questioning the cancellation before any adjudicatory forum, the petitioner certainly on the basis of the letter dated 4.12.1969 at Annexure 2 drew no legal right to espouse the remedy and in fact the statement of gift present at paragraph 5 of the writ petition is on a complete misconception of a legal position because Annexure 2 does not satisfy the pre-requisite of a gift deed. At best it is an authorization to the petitioner as a caretaker of the plot and nothing beyond. Perhaps these foundational issue escaped the notice of the learned Single Judge in passing the interim orders dated 20.8.2015 and 21.8.2015 for in our opinion where the very foundation to maintain a writ petition was lacking in Annexure 2, the petitioner neither had a locus to file a writ petition nor was entitled to any relief.

For the reasons so discussed, this Court while setting aside the interim order(s) passed by the learned Single Judge on 20.8.2015 and 21.8.2015 in C.W.J.C.No. 13010/2015 is of the considered opinion that the petitioner had no locus to maintain the writ petition



on the basis of the letter dated 4.12.1969 at Annexure 2 to the writ petition, especially where the allotment itself stood cancelled by the Board vide letter no. 5974 dated 22.11.2007 at Annexure 8 to the writ petition which was preceded by the advertisement in the newspaper dated 13.11.2007 and which had not been challenged by the allottee thus attaining finality. Neither on merits nor on the issue of unexplained delay the writ petition was maintainable and as a consequence this Court while setting aside the orders impugned in the appeal is satisfied that the writ petition itself is not maintainable and thus, while allowing this appeal it proceeds to dismiss the writ petition as well.

In consequence, this L.P.A. is allowed and C.W.J.C.No. 13010/2015 is dismissed in limine.

(Jyoti Saran, J)

(Chakradhari Sharan Singh, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
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