

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.556 of 2015
IN
Civil Writ Jurisdiction Case No. 23195 of 2011**

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1. The Managing Director, Bihar State Housing Board, 6 Mangles Road, Patna -1
2. The Secretary, Bihar State Housing Board, Patna.
3. The Executive Engineer, Bihar State Housing Board, Patna Division I, Lohia Nagar, Patna.

.... Appellants

Versus

1. Anil Kumar, son of Ram Chander Sharma, resident of village Ark, Dhivaria, P.S. Tekari, District Gaya.
2. The State of Bihar through...
3. The District Magistrate, Patna.
4. The Sub Division Magistrate, Patna City, Patna.
5. Officer in Charge Agamkuan, Police Station, Patna 26.

.... Respondents

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Appearance :

For the Appellant/s : Mr. Anshuman Singh, Adv.
For the Respondent/s : Mr. Kamal Nayan Chaubey, Sr.Adv.
Mr. Ravi Kumar, Adv.
Mr. Shashi Kumar, Adv.

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**CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date: 19-09-2018

It is feeling aggrieved by the judgment and order of a learned Single Judge dated 11.9.2013 passed in C.W.J.C. No. 23195/2011, whereby the writ petition was allowed that the Managing Director, the Secretary and the Executive Engineer of the Bihar State Housing Board have joined together for filing this intra-Court appeal.

The appeal was admitted for hearing on 28.6.2016 and was directed to be listed 'For Hearing' within a year. During the pendency



of the appeal the original allottee i.e. respondent no.6, Lallan Prasad, deceased and since the notice issued to him returned with a note that the address is incomplete and since neither any relief was granted to the said respondent nor there was any conflict of interest in between the writ petitioner and respondent no.6, rather the writ petitioner had stepped into his shoes, that the appellants were permitted to delete his name on their helplessness shown, in providing details of the legal heirs of respondent no.6.

For appreciating the contest it would be necessary to briefly discuss the facts accompanying the contest as reflecting from the pleadings on record. The matter relates to plot no. 6H/74 in HIG category situated in Bahadurpur, Sector H, in the town and district of Patna lying in the jurisdiction of the Bihar State Housing Board. This plot was initially allotted to Lallan Prasad by the Bihar State Housing Board vide letter no. 2778 dated 26.9.1988 and an agreement to such effect was entered in between the said Lallan Prasad and the Bihar State Housing Board on 9.12.1988, a copy of which is enclosed at Annexure 1 to the writ petition. The possession of the plot was also handed over to Lallan Prasad, which was received on 9.1.1989 as manifest from Annexure 26 to the writ proceedings. A representation was filed by the said Lallan Prasad on 7.3.1990 which is addressed to the Chief Engineer, Bihar State Housing Board complaining of



encroachment on the eastern portion of the plot. A request was made for removal of the encroachment so that he can start construction work. This complaint of the original allottee Lallan Prasad, who was arraigned as respondent no.6 and has since deceased and deleted forms part of Annexure 26 series. Certain actions were also taken by the authorities of the Bihar State Housing Board acting on the complaint made by the original allottee for removal of the encroachment giving rise to Encroachment Case No. 22 of 1999 and 23 of 1999. A copy of the order passed in the said proceedings enclosed at Annexure 'A series' to the supplementary counter affidavit filed on behalf of the Board in the writ proceedings would confirm that the proceedings had been initiated at the instance of the Bihar State Housing Board. In between this period the original allottee Lallan Prasad sold the land in question in favour of the writ petitioner after obtaining permission from the competent authorities of the Housing Board and after depositing the statutory 'Labhansh' of Rs.1,87,588/- with the Board. The permission so granted is available at Annexure 2 series and is dated 5.1.2000 issued under the signature of the Estate Officer. It is thus with permission of the Board that a registered deed was executed by the original allottee in favour of the respondent- writ petitioner on 28.6.2000, a copy of which again forms part of Annexure 2 series.



According to the respondent- writ petitioner, it is after completion of formalities that when he tried to start construction work on the plot, he was restrained by certain persons who were arraigned as respondents in the writ proceedings though deleted subsequently and in which respect, a complaint was made to the authorities of the Board who also acted thereupon. It is the grievance of the petitioner that though complaint made by the original allottee as regarding encroachment on the plot gave rise to initiation of the encroachment proceedings, the same situation was faced by the respondent- writ petitioner on transfer of the plot in his name with due permission of the Board, which caused obstruction in carrying out construction work and though the authorities of the Board did take steps for resolution of the dispute and removal of the encroachment but they could not succeed and ultimately it is on a misinterpretation of an order passed by the Division Bench of this Court in C.W.J.C.No. 12376/2007 **(Krishna Murari Prasad Singh & ors. vs. the State of Bihar & anr.)** dated 2.9.2008 and the order dated 15.11.2011 passed on the contempt petition arising therefrom bearing M.J.C.No. 999/2011 that an order bearing Memo No. 9754 was issued by the Managing Director on 11.11.2011 cancelling the allotment made in favour of 17 persons including one made to the allottee of the respondent- writ petitioner, Lallan Prasad, whose name appears at serial no.10. It is



feeling aggrieved by this action of the respondent Board that the respondent as the writ petitioner came before this Court through the writ petition in question.

The Housing Board filed their counter affidavit and supplementary counter affidavit in trying to demonstrate laches on the part of the respondent- writ petitioner in not taking effective steps for construction of the plot which left no choice for the Housing Board but to cancel allotment in the light of the directions present in the order of the Division Bench passed in the case of **Krishna Murari Prasad Singh** (supra). The learned Single Judge in consideration of the facts accompanying the contest did not find justification in the action of the respondent Board in cancelling the allotment of the original allottee of the respondent- writ petitioner rather feeling satisfied by the steps taken by the original allottee as well as the writ petitioner in raising grievance against the encroachment as well as on the obstructions created by the people on the spot, quashed the order of cancellation and issued direction to the authorities of the Board to ensure that the plot is made encroachment free or give the respondent- writ petitioner an alternative allotment. It is this order of the learned Single Judge which has aggrieved the Housing Board and its authorities to file this appeal.

Mr. Anshuman Singh has appeared for the appellants while



respondent- writ petitioner is represented by Mr. Kamal Nayan Chaubey, learned Senior Advocate, assisted by the Advocate on record Mr. Ravi Kumar.

According to Mr. Singh, learned counsel appearing for the appellant Board and its authorities, there was gross laches on the part of the respondent- writ petitioner in taking steps for making construction on the plot and since the mandatory condition present in Clause 13 read with Clause 19(a) of the Hire Purchase Agreement mandated a cancellation on the failure of the allottee to make construction within six months of the allotment that there was nothing wrong in the order of the Board in cancelling the allotment. It is the submission of Mr. Singh that the learned Single Judge has grossly erred in interfering with the order of cancellation which was passed in obedience of the directions issued by the Division Bench of this Court in the matter of **Krishna Murari Prasad Singh** (supra). It is the submission of Mr. Singh that the transfer of the plot took place in the year 2000 and since the respondent- writ petitioner did not chose to make any construction despite lapse of a decade that it is in the light of the stipulations present in Clause 13 read alongside the enabling power vested in the Board under Clause 19(a) of the Hire Purchase Agreement that the order of cancellation is passed which requires no interference.



In reference to the recitals of the sale deed executed by the original allottee in favour of the respondent- writ petitioner enclosed at Annexure 2 series to the writ proceedings he submits that the parties do agree that the plot was free from any encumbrances. He submits that the encroachment proceedings so initiated on the complaint made by the original allottee was dropped vide order passed on 17.7.2003 enclosed at Annexure 'A series' to the supplementary counter affidavit and which order was never appealed against by the petitioner. In reference to the statement present at paragraph 7 of the supplementary counter affidavit filed in the writ proceedings he submits that the cancellation order dated 11.11.2011 was tested by one of the aggrieved allottee in a matter arising from C.W.J.C.No. 2288/2012 (**Basanti Mukherjee vs. the State of Bihar & ors.**) but was not interfered with and even the Letters Patent Appeal was dismissed. He refers to the order passed on the writ petition and the Letters Patent Appeal at Annexure 'B series' to the supplementary counter affidavit in support of his contention.

It is further the argument of Mr. Singh that even when the respondent- writ petitioner was charging the encroachers of causing obstructions in carrying out the construction work and though they were arraigned as a party in the writ proceedings but the writ petitioner has chosen to delete them from the array of the respondents



and the reasons are missing. He thus submits that the respondent- writ petitioner having deleted the alleged encroachers from the writ proceedings he cannot justify the delay by taking refuge in the disturbance caused by the alleged encroachers. It is the argument of Mr. Singh that the learned Single Judge has failed to appreciate these aspects of the matter rather has accepted the plea of the respondent- writ petitioner to allow the writ petition.

In sum and substance the argument of Mr. Singh, learned counsel for the Housing Board, is that the cancellation order is in tune with the statutory prescriptions present in the Hire Purchase Agreement which enables the Housing Board to cancel any allotment where constructions have not started within six months of the agreement and has been passed in obedience of the directions present in the order of this Court passed in the case of **Krishna Murari Prasad Singh** (supra).

It is contesting the arguments advanced by Mr. Singh that Mr. Chaubey, learned Senior Counsel appearing for the respondent- writ petitioner, has submitted that the document on record of the writ proceedings would confirm that even until passing of the order of cancellation, the respondent Board could not remove encroachment from the plot in question. He submits in reference to the pleadings on record that the respondent Board having accepted the encroachment



on the plot allotted to the petitioner, it is their own official who has suggested for allotment of an alternative plot to the petitioner. Arguing thus, he submits that no issue of laches or delay can be attributed on the part of the appellant-petitioner in carrying out construction work.

In reference to the allotment order at Annexure 19 to the supplementary affidavit filed in the writ proceedings he submits, that there is a clear mention regarding encroachment from the adjacent plot and the complaint of the original allottee dated 7.3.1990 confirms this position enclosed at Annexure 20.

Mr. Chaubey has next referred to Annexure 21 to the writ proceedings which is a letter of the Chief Engineer directing the Executive Engineer for removal of the encroachment, to submit that follow-up steps have been taken by the Board themselves on 27.3.1990 for removal of the encroachment and in which connection an F.I.R. was also instituted, a copy of which is at Annexure 24 of the supplementary affidavit. In reference to Annexure 25, which is a copy of F.I.R. instituted by the Bihar State Housing Board, Mr. Chaubey submits that it is aggrieved by the illegal construction on the disputed plot that the Housing Board itself have instituted an F.I.R. on 5.5.1999 and alongside had also initiated encroachment proceedings on 9.10.1999 bearing Case No. 22 and 23 of 1999. It is in reference to



Annexure 3 that Mr. Chaubey submits that a request was made by the petitioner for giving physical possession followed by his request at Annexure 4 dated 3.1.2003 for removal of encroachment but none of the request was accepted because the encroachment on the plot continued until the cancellation order which is confirmed from the letter dated 12.10.2010 of the Housing Board addressed to the Officer In-charge and the letter of the Officer In-charge to the Sub-divisional Officer for initiating appropriate proceedings against the nuisance makers, copies of which are at Annexures 6 and 10 to the writ proceedings. Learned Senior Counsel in reference to a judgment of Bombay High Court reported in AIR 1954 Bombay 232 (**All India Groundnut Syndicate Ltd. v. Commissioner of Income Tax, Bombay**) submits that the respondents cannot take benefit of their own lapses.

Learned counsel has made reference to a judgment of the Division Bench reported in 1999(2) BLJ 818 (**Barhu Ram & ors. v. Butai Ram & anr.**) to explain the scope of interference with a judgment/order of a Single Judge while exercising Letters Patent Jurisdiction. He submits that the judgment and order of the learned Single Judge is based on facts; has been passed after taking note of the statutory prescriptions as well as the Division Bench judgment in the case of **Krishna Murari Prasad Singh** (supra) and in which



situation, a mere second opinion in the given facts would not be enough to set aside the view taken by the learned Single Judge.

We have heard learned counsel for the parties and have perused the records. A consideration of the submissions so advanced by learned counsel appearing for the contesting parties would suggest that this court needs to record its opinion on the following aspects of the matter:

(a) Whether, the judgment and order passed in the case of **Krishna Murari Prasad Singh** (supra), can be applied to the case in hand?

(b) Whether, taking note of the march of events as well as the prescriptions present in Clause 13 and Clause 19(a) of the Hire Purchase Agreement, there has been laches or delay on the part of the respondent- writ petitioner?

(c) Whether the refusal by this court to interfere with the cancellation order impugned in the present proceedings, while considering the case of **Basanti Mukherjee** (supra), is binding on the respondent-petitioner?

(d) Whether, the order of cancellation passed against the original allottee, is sustainable when the plot is transferred in the name of the respondent-petitioner after obtaining due permission of the Housing Board?

We shall now take up the issues canvassed by Mr. Singh to



question the opinion expressed by the learned Single Judge, as noted above.

In so far as the binding nature of the directions present in the case of **Krishna Murari Prasad Singh** (supra) is concerned, we note from the record of the proceedings that the directions in the said case, was issued on 2.9.2008 for taking action against the defaulter allottees who had failed to construct their houses as per the conditions of the Hire Purchase Agreement. This direction was issued on 2.9.2008 but it is only after a contempt proceeding was initiated through M.J.C.No. 999/2011 that the authorities of the Housing Board woke up from their slumber to pass the impugned order of cancellation on 11.11.2011 which is confirmed from the opening paragraph of the cancellation order.

The reason for such hurried action followed by the mechanical discharge by the authorities of the Housing Board is eloquent from a reading of the order passed on the contempt application dated 21.10.2011 enclosed at Annexure 12 of the writ proceedings. The Division Bench after rejecting the show cause of the Managing Director, directed for his presence alongwith a fresh show cause and posted the matter on 15.11.2011 for enabling the authorities of the Housing Board to show substantial compliance. It is after passing of the order on 21.10.2011 that the authorities in the Housing



Board showing utmost expediency, passed the order of cancellation on 11.11.2011 without verification of individual cases so that they can show substantial compliance when the matter next comes up on 15.11.2011 as manifest from Annexure 14.

In the circumstances so eloquent, it has been rightly observed by the learned Single Judge that the order of cancellation was passed with undue haste and is without application of mind.

The directions issued in the case of **Krishna Murari Prasad Singh** (supra) can be gathered from the operative portion of the judgment which runs under:

“ The respondent no.2 shall ensure that pursuant to the general notice dated 14th March, 2008, the action against the defaulting allottees, who have not constructed houses within the time provided in clause 13 of the hire-purchase agreement, is completed in exercise of the power under Clause 19(a) within six months from today.”

In our opinion, before passing any order of cancellation, in purported obedience of the directions passed by the Division Bench in the case referred to above, the Housing Board was under an obligation to hold enquiry before concluding that the allottee was a defaulter and a mere delay by an allottee to construct his house, did not vest jurisdiction in the Housing Board to mechanically apply the directions



to order for cancellation of the allotment. This is the first gross infirmity committed by the Managing Director, Housing Board in mechanically applying the directions of the Division Bench in so far as the case of the present petitioner is concerned.

The second issue raised by the appellant- Board as noted above, is regarding alleged laches on the part of the respondent- writ petitioner in carrying out construction work. In our opinion, the pleadings on record are sufficient indication that no stones were left unturned by the original allottee as well as by the respondent- writ petitioner for removal of the encroachment present on the allotted plot and despite action being taken by the Housing Board themselves for removal thereof, even they have failed in this effort. The pleadings on record are sufficient indication of the consistent and continued effort made by the petitioner for removal of encroachment but since not only the authorities of the Housing Board but even the policing authorities have failed to get success that the constructions were delayed and it is taking refuge in their own lapses of removal of encroachment from the plot in question that the cancellation order is passed by the Housing Board as a face saving to the directions present in the order of **Krishna Murari Prasad Singh** (supra). We have taken note of the following events together with the documents present on record while recording our opinion on this issue:



(i) 9.12.1988- The allotment was made in favour of the original allottee Lallan Prasad.

(ii) Annexure 20 at page-107 is a letter dated 7.3.1990 of the original allottee Lallan Prasad to the Chief Engineer, Bihar State Housing Board for removal of the encroachment so that he can start construction.

(iii) 28.6.2000- The plot in question was transferred by the original allottee in favour of the respondent- writ petitioner through registered sale deed after seeking permission from the Housing Board as present in the letter dated 5.1.2000 at Annexures 2 series and deposit of Labhansh, which is also present at Annexures 2 series.

(iv) Annexure 3 is the letter of the petitioner dated 14.7.2000 seeking mutation on the transfer of the plot.

(v) Annexures 4 series at page-48 is a letter of the Junior Engineer to the Assistant Engineer in reference to an encroachment case which had been initiated together with recommendation for allotment of alternative plot in favour of the respondent- writ petitioner bearing plot No. 6A/59.

(vi) Annexures 4 series at page-46 dated 3.9.2003 is a letter of the petitioner to the Managing Director requesting him for removal of the encroachment so that he can start construction work.

(vii) Annexures 4 series at page-50 is the letter of the Estate



Officer to the Executive Engineer dated 23.5.2003 to submit report on the request for alternative allotment.

(viii) In response to the request of the Estate Officer, the Executive Engineer while enclosing the recommendation of the Assistant Engineer dated 28.5.2003 for alternative allotment in favour of the respondent- writ petitioner informed the Estate Officer through letter dated 4.6.2003 that the recommendation is self explanatory.

(ix) Since neither the Housing Board took steps for removal of the encroachment nor gave an alternative plot to the petitioner that he sought recourse by filing a police complaint on 5.10.2010 at Annexure 5 which position has also been endorsed by the Executive Engineer through Annexure 6.

(x) Annexures 8 series and Annexures 9 series are confirmation of the fact that the plot was never made encroachment free and thus, the respondent- writ petitioner was not in a position to make any construction thereon.

(xi) Annexures 10 series are recommendation by the Officer In-charge of the Police Station for initiation of the proceedings under sections 107 and 144 Cr.P.C. against the nuisance makers before the Sub-divisional Officer and who has drawn proceedings giving rise to Misc. Case No. 645/2011 and 644/2011.

The pleadings on record discussed above is a confirmation



of the fact that there was no laches on the part of the petitioner in carrying out construction work rather he was precluded from doing so for the circumstances beyond his control. The pleadings are also a confirmation of the fact that the petitioner certainly could not be categorized as a 'defaulter' allottee for being proceeded under the directions of the Division Bench passed in the case of **Krishna Murari Prasad Singh** (supra).

In so far as the third issue, regarding the order passed in the case of **Basanti Mukherjee** (supra) so relied upon by the appellant-Board is concerned, the facts accompanying the two cases are clearly distinguishable as can be gathered from the discussion above, which is a confirmation of the fact that the plot was never made encroachment free and in which view the petitioner could not be termed 'a defaulter' of the conditions present in Clause 13 and 19(a) of the Hire Purchase Agreement.

The fourth infirmity present in the order of cancellation is that it is passed against the original allottee even after the Housing Board has granted permission for transfer. It is a matter of record that the transfer has been made by the original allottee in favour of the respondent- writ petitioner with due intimation of the Housing Board; the statutory Labhansh has been deposited and an application has been made by the respondent- writ petitioner for mutation of his name in



the records of the Housing Board, a copy of which is placed at Annexure 3 of the writ proceedings.

In the aforementioned circumstances, the learned Single Judge has rightly held that the Managing Director, Bihar State Housing Board, has been absolutely mechanical in his approach to apply the directions present in the case of **Krishna Murari Prasad Singh** (supra) to the case of the present petitioner because neither the circumstances noted in the direction of the Division Bench were existing in the present case nor the order of cancellation could have been passed against the original allottee once the Board had granted permission for the transfer; realized the Labhansh; a sale deed executed and an application for mutation filed by the transferee- writ petitioner before the Housing Board, as stated above.

In the nature of the discussions that we have held above, we find no infirmity with the opinion expressed by the learned Single Judge warranting interference and bearing note of the legal position settled by this Court in the case of **Barhu Ram** (supra) and by the Supreme Court in the case of **Management of Narendra & Company Pvt. Ltd. vs. Workmen of Narendra & Company**, reported in (2016)3 SCC 340, unless there is any perversity in the opinion of the learned Single Judge, a mere second possible opinion would not be sufficient for interfering with the judgment and order so



passed.

For the reasons so discussed, the appeal is dismissed but
with no order as to costs.

(Jyoti Saran, J)

(Nilu Agrawal, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	12.10.2018
Transmission Date	NA

