IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.181 of 2021
In
Civil Writ Jurisdiction Case No.14831 of 2014

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1. The Bihar State Housing Board through its Managing Director, 6, Sardar Patel Marg, Police Station Secretariat, Patna 800015.
2. The Managing Director, Bihar State Housing Board, 6, Sardar Patel Marg, Police Station Secretariat, Patna 800015.
3. The Deputy Revenue Officer, Bihar State Housing Board, 6 Sardar Patel Marg, Police Station Secretariat, Patna 800015.

... ... Appellant/s

Versus

1. Sanjay Kumar Rai sonof Late Brahm Dayal Rai resident of 105, Gagan Apartment, Exhibition Road, Police Station - Gandhi Maidan, District- Patna.
2. Indu Bala wife of Shri Shiv Chandra Singh resident of Hasanpur, Naya Tola, Police Station - Mahnar, District- Vaishali.

... ... Respondent/s

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Appearance :
For the Appellant/s : Ms.Binita Singh, Adv.
For the Respondent/s : Mr. Shravan Kumar, Sr. Adv.
Mr.Dinesh Maharaj, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 10-10-2022

Heard Ms. Binita Singh, the learned Advocate for the appellant /the Bihar State Housing Board and Mr. Shravan Kumar, the learned senior Advocate for the respondents.

The appellant/Housing Board has challenged the judgment and order of the learned Single Judge dated

27.08.2019 passed in C.W.J.C 14831 of 2014, whereby the demand notice of Rs. 66,76,499/- to be paid by the respondent as unearned increase before transferring the said property in favour of the third party has been quashed on two grounds namely the delay in responding to the request of the respondent in granting permission for the ultimate transfer of the property and that the decision was an administrative decision which was not backed by any resolution of the Housing Board, which alone was entitled to charge unearned increase from the allottees.

This Court *vide* order dated 29.06.2022, while hearing the appeal by the Board had asked the counsel for the appellant/Housing Board to bring on record the circle rate which had been relied upon for calculating the quantum of money which the settlee would be required to pay before grant of permission to sell the property and whether any decision of the Board had been taken by that time, regarding the chargeable rate.

Pursuant to the aforesaid direction of this Court, an affidavit has been filed today across the Board, which has been taken on record and a copy of the same has also been handed over to Mr. Shravan Kumar, the learned senior Advocate for the appellants.

The aforesaid affidavit brings on record that the Housing Board had constituted a Market Value Fixation Committee under the Chairmanship of the Secretary of the Board for determining the amount of premium to be charged from an allottee for the financial year 2012-13 for granting permission for transfer of lands/flats of the Board situated across the State. The Committee delegated its powers to a freshly appointed Core Committee. The Core Committee submitted its report, giving classification of roads over which the properties/flats were situated and on the basis of the premium location, market value was fixed. In the instant case, for the financial year 2012-13, the market value which was suggested by the Core Committee was approved by the Market Value Fixation Committee on 05.06.2012.

It is the contention of the appellant that the demand notice of 66,76,499 was based on the aforesaid valuation of the property. Ms. Singh, the learned advocate for the appellant, therefore, submits that one of the grounds raised by the respondent and accepted by the learned Single Judge was non-existent and that it has been in vogue that unearned income is chargeable by the owners of the property. Even Clause 15 of the agreement between the parties permits of such imposition of cost before the property could exchange hands.

Mr. Shravan Kumar, the learned senior Advocate for the respondent however, submits that the aforesaid resolution of the Board would not apply to the case of the respondent for the reason that such fixation was made for the financial year 2012-13, whereas in the case of the respondent, the assessment was made sometimes in the year 2009 which amount was paid by 2011. Thus, it is the contention of the respondent that any proceeding cannot be allowed to remain alive indefinitely. Once, the request of the flat owner/respondent which was made on 18.03.2008 was responded by the Board affirmatively on 24.11.2009, asking the respondent to pay an amount of

Rs. 7,70,361/- which amount was ultimately paid by him, there was no reason for saddling the respondent with another cost of Rs. 66,76,499 on the sole premise of the earlier assessment not being appropriate in view of the Fixation Committee resolution.

After having heard the counsel for the parties, this Court finds that the learned Single Judge rightly took note of the fact that the request of the respondent for transferring the land was responded after about more than a year and when payments were made by 2011 on the assessment of the Board itself, it could not have been revised as it would amount to reopening an already decided matter. The sanction of the Board in accepting resolution/recommendation of the Fixation Committee is for financial year 2012-13, which would not govern the case of the respondent as in his case, the proceedings were concluded by 2011 when the second and the last of the installments of the assessed amount for grant of permission was paid by him.

We, thus do not find the order of the learned

Single Judge faltering on any score.

We are thus, left with no alternative but to dismiss this appeal but without any order as to costs.

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

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