

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.10668 of 2010

Suvendra Kumar Swain

....

Petitioner

Mr.Pitambar Acharya, Advocate

-versus-

Chairman, Orissa State Housing

Board, Bhubaneswar

....

Opp. Party

Mr. Dayanand Mahapatra,

CORAM:

THE CHIEF JUSTICE

JUSTICE R.K.PATTANAİK

ORDER

09.02.2022

Order No.

05.

1. The Petitioner approached this Court with the present petition way back in 2010 challenging an order dated 28th May 2010 issued by the Orissa State Housing Board (OSHB) informing him that they were returning the tripartite agreement in respect of Flat No.A-1/3 of Banaja Apartment at Unit-VI, Bhubaneswar (the flat in question') since it had been received beyond the stipulated date of payment i.e. 15th May 2010.

2. While issuing notice in the present petition on 12th August, 2010, this Court passed an interim order that the flat in question "shall not be allotted to any other person till disposal of the writ petition."

3. That interim order has continued thereafter. On 6th January, 2021 when the writ petition was taken up for hearing and after

hearing the learned counsel for the parties, this Court passed the following order:

“Heard Mr. Pitambar Acharya, learned Senior Counsel for the Petitioner and Mr. Dayananda Mohapatra, learned counsel for Opposite Parties through Video Conferencing mode.

It is pointed out by the learned counsel for the Opposite Parties that the Petitioner deposited Rs.9,50,000/- as EMD against the bid value of Rs.43,51,123/- and by the due date (15th May, 2010), the Petitioner was required to pay the balance amount of Rs.34,01,123/-, which has not been deposited.

Even according to the Petitioner, by that date he had only applied for sanction of a loan of Rs.7.50 lakhs and therefore he requested the Opposite Parties for extension of time till 15th June, 2010. On the contrary, learned Senior Counsel for the Petitioner insisted that the Petitioner was prepared to pay the entire consideration amount. He says that in order to show the bona fide, he is prepared to deposit before this Court the entire balance amount of Rs.34,01,123/- on or before 13th January, 2021.

In that view of the matter, without prejudice to the rights and contentions of the parties, let the Petitioner deposit the aforesaid amount, in the form of a Bank Draft, before the Registrar (Judicial) of this Court on or before 13th January, 2021.”

4. On the next date, i.e. 18th January, 2021 the following order was passed:

“Heard Mr. Pitambar Acharya, learned Senior Advocate for the Petitioner and Mr. Dayananda Mohapatra, learned counsel for the Opposite Party- Orissa State Housing Board.

The Petitioner has pursuant to the order passed by this Court dated 6th January, 2021 deposited a sum of Rs.34,01,123/- in this Court. The said amount be kept in a short term fixed deposit initially for three months and thereafter be kept renewed during the pendency of the writ petition, subject to the orders of this Court.

The Court directs the Opposite Party-Orissa State Housing Board to re-examine the matter in the light of the above developments and take a fresh decision on whether, in the peculiar circumstances where the interim order in favour of the Petitioner has continued for over ten years with the OSHB not seeking its vacation, and subject to the Petitioner paying any additional amount as may be thought appropriate, the allotment in his favour can be regularized without creating any precedent.

Mr. Mohapatra, learned counsel for the Opposite Party Orissa State Housing Board states that he will seek instructions and file supplementary affidavit at least one week before the next date.”

5. Pursuant to the above order, an affidavit was filed by the OSHB on 8th March, 2021 stating that the Petitioner had to deposit a further sum of Rs.45,66,207/- apart from the stamp duty and registration fee at the time of registration and other incidental charges for the possession of the flat to be handed over to him. Time was sought by Mr. Pitambar Acharya, learned Senior counsel for the Petitioner for instruction. Although on the next date, Mr. Acharya informed the Court that the Petitioner was not in a position to pay the further sum as demanded by the OSHB and this Court asked the OSHB to

take steps for possibility of any alternative flat, today Mr. Acharya, on instructions, informs the Court that the Petitioner is prepared to accept the above condition of the OSHB and pay further sum of Rs.45,66,207/- apart from stamp duty and registration fee to that possession of the flat in question can be handed over to him.

6. In response to Mr. Acharya's submission that the OSHB should also adjust the amount of interest accrued not only on Rs.9.50 lakhs deposited initially by the Petitioner but even the subsequent amount of Rs.34,01,123/- deposited in this Court, Mr. Dayananda Mohapatra, learned counsel appearing for the OSHB pointed out the above amount of Rs.45,66,207/- was calculated as on 8th March, 2021 i.e. nearly a year ago.

7. It appears to the Court that if the Petitioner is asked to make payment of the above sum of Rs.45,66,207/- now, then it would take care of the issue raised by Mr. Acharya.

8. In the circumstances, in light of the above submissions, the following directions are issued:

(i) The sum of Rs.34,01,123/- deposited by the Petitioner in this Court together with interest accrued thereon will be released by the Registry of this Court to the OSHB through an authorized representative forthwith.

(ii) The Petitioner will pay the OSHB the sum of Rs.45,66,207/- apart from the stamp duty, registration fee and

the incidental charges which would be intimated by the OSHB to the Petitioner on or before 1st March, 2022 and within the time stipulated by the OSHB in such intimation letter.

(iii) Upon the Petitioner making such payment to the satisfaction of the OSHB, possession of the flat in question will be handed over to the Petitioner immediately.

9. The writ petition is disposed of in the above terms.

10. An urgent certified copy of this order be issued as per Rules.

