

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.253 of 2017

In

Civil Writ Jurisdiction Case No.5955 of 2014

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Ajeet Kumar Singh Son of Sri Ram Sagar Singh A Resident of Rajeev Nagar,
Road No. 7, Police Station - Rajeev Nagar, District - Patna

... .. Appellant/s

Versus

1. The State of Bihar.
2. The Managing Director, Bihar State Housing Co - Operative Federation Limited, Lalit Bhawan, Jawahar Lal Nehru Marg, Patna-800001
3. The District Magistrate, Patna
4. The Accounts Officer, Bihar State Housing Co - Operative Federation Limited, Lalit Bhawan, Jawahar Lal Nehru Marg, Patna-800001
5. The Liquidator Officer, Bihar State Housing Co - Operative Federation Limited, Lalit Bhawan, Jawahar Lal Nehru Marg, Patna-800001

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Satyabir Bharti, Advocate

For the Respondent/s : Mr. Raj Balabh Pd.Yadav, AAG-11

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 27-07-2023

The appeal arises from a judgment in a writ petition, which found that the dispute is purely of a civil nature and the petitioner has to approach the Civil Court of competent jurisdiction. Leaving such remedy, the writ petition was disposed of.

2. The appellant before this Court had sought for allotment and handing over of Flat No. 16, Jagat Amrawati



Apartment, Mahesh Nagar, Patna, for which the appellant allegedly paid Rs. 43 lakhs, subsequent to the highest bid given by him in a public auction. The appellant is said to have deposited Rs. 43 lakhs as per the highest bid on 01.12.2011. The appellant also submits that in yet another auction, with respect to one Udaigiri Apartment the petitioner had made an offer of Rs. 52.45 lakhs, against which proceeding a writ petition is filed and the petitioner had made deposit of 50% of the bid amounts, subject to the disposal of the writ petition.

3. It is the submission of the learned counsel for the appellant that, since, the Administrator was In-Charge of the Cooperative Federation at that point of time, the Cooperative Federation would fall within the definition of State under Article 12 of the Constitution of India and hence amenable to writ jurisdiction. The learned counsel also relied on a Special Bench decision of this Court in **The Organizer, Dehri C.D. & C.M. Union Limited v. State of Bihar** reported in (2014) 1 PLJR 695.

4. The learned counsel for the respondent, however, pointed out that the Special Bench decision was stayed in S.L.P. No. 25842 of 2014, **State of Bihar v. The Organizer, Dehri C.D. & C.M. Union Limited** by order of the Hon'ble Supreme



Court on 15.09.2014. The learned counsel for the appellant then produced yet another order dated 13.07.2015 in the S.L.P, which refers to **Gayatri De vs Mousumi Cooperative Housing** reported in **(2004) 5 SCC 90**.

5. Having gone through the decision of the Special Bench, which was by a majority of four Judges, we were, with due respect, unable to agree with the proposition insofar as the cooperative society, when managed by an Administrator appointed by the Government, being amenable to the writ jurisdiction, merely because the Administrator appointed is an Officer of the Government, who discharges public functions. In *Gayatri De* (supra) the order under challenge was passed by a Special Officer, an Officer of the department appointed by the High Court under the provisions of the Act. It was found that the Special Officer being a statutory functionary, re-alloting the flat to a stranger even after he had received a letter regarding transfer of ownership in favour of the legal heirs, was amenable to writ jurisdiction. This is not to say that the cooperative society was found to be a State under Article 12 of the Constitution.

6. With all the respect at our command, we are unable to agree with the declaration of law in



the Special Bench decision which was by a majority of four Judges and our views are in conformity with the dissenting judgment. We, however, bow to the declaration made, since, we are a Bench of two Judges and the Special Bench decision is a binding precedent. However, it is within our power to doubt the Special Bench decision in which case the matter would have to be placed before a Special Bench of co-equal strength to decide as to whether a reconsideration is necessary. But as of now, since the decision of the Special Bench, has been stayed by the Hon'ble Supreme Court, which order of stay has not been disturbed in the subsequent order, referring to *Gayatri De (supra)* we do not find ourselves compelled to make a reference.

7. The cooperative society cannot be found to be a State under Article 12 of the Constitution of India merely for reason of an Administrator having been appointed under the Act, who is also a government servant. Though the Government servant is appointed as an Administrator, his role as the Administrator is only to act in accordance with the Act, Rules and the by-laws of the society.

8. In the facts of the present case, we have to notice that there is no overt act or prejudicial order of the Administrator complained of. The allegation in the writ petition



is that the flat was not being allotted to the appellant, he being the highest bidder and also having paid up the bid amount.

9. This gives rise to disputed questions of facts which cannot be agitated in the writ petition and the subject matter of the dispute is purely contractual.

10. We also do not find any way to hold the cooperative society as it now stands with the administration on an elected managing committee to be a State under Article 12 of the Constitution of India.

11. The learned counsel for the respondent has also relied on the Hon'ble Supreme Court decision in ***Ramakrishna Mission v. Kago Kunya***, reported in ***(2019) 16 SCC 303***, wherein it was held that before an organization can be held to discharge a public function, the public function must be of a character that is closely related to functions which are performed by the State, in its sovereign capacity. ***Federal Bank Ltd. V. Sagar Thomas; (2003) 10 SCC 733*** held that the scope of mandamus is determined by the nature of the duty to be enforced, rather than the identity of the authority against whom it is sought. ***K.K Saksena v. International Commission on Irrigation & Drainage*** held that even if the authority discharges a public function in a wider sense, there is no public law



element involved in the enforcement of a private contract of service. We hence reject the appeal leaving the appellant to the civil remedies, subject to just exceptions.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

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