IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1130 of 2019
In
Civil Writ Jurisdiction Case No.18985 of 2013

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1. The Bihar State Housing Board 6, Sardar Patel Marg, Patna- 800015 through its Managing Director.
2. The Managing Director, Bihar State Housing Board, 6, Sardar Patel Marg, Patna- 800015.
3. The Revenue Officer, Bihar State Housing Board, 6, Sardar Patel Marg, Patna- 800015.
4. The Manager of Estate, Bihar State Housing Board, 6, Sardar Patel Marg, Patna- 800015.
5. The Executive Engineer, Bihar State Housing Board, Patna Division-2 patna.

... ... Appellant/s

Versus

1. Saraswati Roy wife of Late Mathura Nath Roy resident of 6 MF, 1/29, Bahadurpur Housing Colony, BhoothNath Road, Agamkuan, District- Patna.
2. Rashmi Sharma daughter of Late Mathura Nath Roy, wife of Manoj Kumar Sharma resident of 6 MF, 1/29, Bahadurpur Housing Colony, BhoothNath Road, Agamkuan, District- Patna.
3. Priya Priyadarshani daughter of Late Mathura Nath Roy, wife of Saday Kumar Mishra resident of 6 MF, 1/29, Bahadurpur Housing Colony, BhoothNath Road, Agamkuan, District- Patna.
4. Nivedita Rani daughter of Mathura Nath Roy, wife of Saroj Kumar resident of 6 MF, 1/29, Bahadurpur Housing Colony, BhoothNath Road, Agamkuan, District- Patna.
5. Prabhat Kumar son of late Mathura Nath Roy resident of 6 MF, 1/29, Bahadurpur Housing Colony, BhoothNath Road, Agamkuan, District- Patna.
6. Pranav Kumar son of Late Mathura Nath Roy resident of 6 MF, 1/29, Bahadurpur Housing Colony, BhoothNath Road, Agamkuan, District- Patna.

... ... Respondent/s

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Appearance :
For the Appellant/s : Mr.Binita Singh
For the Respondent/s : Mr.Sanket

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE NAWNEET KUMAR PANDEY
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE NAWNEET KUMAR PANDEY)

Date : 25-01-2023

The present appeal has been filed by the appellants, the Bihar State Housing Board and its authorities, being aggrieved by the order of learned single judge in CWJC No. 18985/2013 dated 03.05.2019 whereby the learned Single Judge has held that the respondents shall be liable to make a payment only of the difference money between the amount fixed at the time of handing over of possession and the amount determined in the 181st meeting between the parties. The appellants were directed to work out the difference amount within 60 days of that order.

Brief facts of the case is that Bihar State Housing Board, appellant No.1, invited applications for allotment of flats under the retired government servant quota. Late Shree Nath Roy, father of the original writ petitioner, Late Mathura Nath Roy applied and was allotted a flat on 20.10.1984. Late Mathura Roy, after the death of his father, Shree Nath Roy as well as the death of his mother, applied for substitution in respect of the above-mentioned properties. The Housing Board sent a letter to Mathura Roy intimating him that his name would be substituted provided he is ready to pay the present price. Being aggrieved by that communication, Late Mathura Roy filed CWJC No. 3924 of 1996, with a prayer for direction to the Housing Board to substitute him on the same terms and conditions as stipulated in original allotment letter dated 20.10.1984. During the pendency of that writ petition, Revenue Officer of the Housing Board (appellant No. 3) intimated the original writ petitioner on 08.07.1997 that *ekrarnama* would be executed on the same terms and conditions as per allotment letter dated 20.10.1984. Thereafter, an agreement was executed between the Housing Board and Late Mathura Roy on 05.08.1997 and it was registered on the next date i.e. 06.08.1997. The tentative price of the flat was fixed Rs. 80,350/-. The original writ petitioner, Late Mathura Roy was required to pay the amount after payment of 20 percent of the initial amount in 180 installments with the condition that the price was tentative and the final price will be determined by the Housing Board. As the CWJC No. 3924/1996 has lost its relevance, the original writ petitioner had withdrawn it on 11.08.1997.

The original writ petitioner had paid all the 181 installments. The contention of the appellants is that he has not paid the installments in time as such he is liable to pay the interest/penalty. The stand of the original writ petitioner is that after payment of all the installments, he requested the appellant nos. 2 and 3 to register the deed in his favour, in response whereof he received a letter dated 27.06.2013 sent by appellant no. 5 demanding Rs. 16,05,964/-. When an objection was raised, the appellants issued an order on 26.08.2013 whereby the allotment of flat was cancelled. The original writ petitioner died during the pendency of the writ petition. The respondents were substituted as his heirs and legal representatives and they are the third generation, awaiting the registration of their flats.

The annexure-6 of the writ petition was filed by the original writ petitioner to show that he had paid the installments within time. The appellants had taken stand that he was liable to pay the revised price of the flat as on 31.12.2013.

Appellants in their counter affidavit in the writ court, had stated that on the 181st meeting on 30th April, 1998, the revised price of the flat was fixed as Rs. 3,58,800/- and a notice to that effect was affixed on the notice board. They have stated further in paragraph no. 7 of the counter affidavit that on 31.01.2008, a demand was raised for Rs. 8,43,990/- and again on 26.05.2011, a demand was raised for Rs. 12,64,887/-. Again on 28.09.2011, a demand was raised for Rs. 13,09,295/- Thereafter, the allotment was cancelled on 26.08.2013.

The above-noted action of the appellants shows that instead of fixing final price, they kept on fixing tentative price of that flat. When the flat was allotted, its tentative price was Rs. 80,350/-. Again, they fixed tentative price as Rs. 3,58,800/-. After execution of the agreement, the flat was handed over to the respondents. The learned Single Judge has rightly held that it is incomprehensible as to why the final price was not fixed even after the flat was completed and its possession was handed over to the appellants. It is the third generation, waiting in aspiration of registration of deed in respect to the flat which allotment has been cancelled by the appellants.

As already discussed, the appellant no. 5, the manager of Bihar State Housing Board, issued a letter dated 08.07.1997 to the original writ petitioner expressing his intent to execute an agreement on the same terms and conditions as laid down in letter dated 20.10.1984. It means the terms and conditions were the same as they were on 20.10.1984.

As such, the learned Single Judge has rightly held that after the agreement was executed and the possession was handed over to the respondents, it was obligatory on the part of the Housing Board to fix the final price of the flat. It was not proper to fix tentative price again and again.

The learned counsel for the appellants has submitted that the reason for fixing tentative price was that the Housing Board constructed the houses after borrowing money from the HUDCO and it had to pay interest to HUDCO at the rate of 16.25 per cent per annum.

We failed to understand as to what was the hindrance in fixing the final price even after the flat was constructed and was already handed over to the respondents. Merely because the flats were constructed after taking loan, it could not prevent the appellants from fixing the final price. In our view, it is nothing than a lame excuse. Since the Housing Board could not fix the final price, even after handing over the flat to the respondents, in our view, it cannot take the plea that there was a clause in agreement that the increase in the cost of construction might have enhanced the price of the flat. The Housing Board cannot be allowed to exploit the allottees on the basis of such clause in the agreement.

In our view, the Housing Board is entitled to raise a demand only of the difference between the amount already paid by the respondents and the actual amount which has been worked out by the Housing Board at the time of payment of 181st installment. The Housing Board shall work out that difference within a period of 60 days from today and shall communicate the same to the respondents. The respondents shall pay the difference amount as indicated above, within a period of six months from the date of its communication. If the respondents would pay that amount within six months from the date of communication, they shall not be liable for paying interest. The Housing Board shall execute a registered deed of transfer in favour of the respondents within a period of one month of payment of the amount mentioned above.

On the basis of above-noted observations, we do not find good reasons to interfere with the order of the learned Single Judge.

Accordingly, the appeal is dismissed but without costs.

(Nawneet Kumar Pandey, J)

Ashutosh Kumar- I agree.

(Ashutosh Kumar, J)

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AFR/NAFR	NAFR
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