

(1993) 12 PAT CK 0016
In the Patna High Court
Case No : C.W.J.C. No. 22 of 1992

Baidya Nath Prasad Mairh

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 24-12-1993

Acts Referred:

Citation : (1994) 1 PLJR 323

Hon'ble Judges : Nagendra Rai, J; I.P. Singh, J

Bench : Division Bench

Advocate : Man Mohan, Mukeshwar Dayal, Ram Niranjana Sahay and Sunil Pd. Singh, for the Appellant; Sarwan Kumar and Abha Singh for Housing Board, Kamal Nayan Chaubey and Ravi Ranjan Upadhyay for Respondent No. 5, Ramji Prasad, for P.R.D.A., Sada Nand Rai, for State, for the Respondent

Final Decision : Allowed

Judgement

Nagendra Rai and I.P. Singh, JJ.—The present writ application has been filed for quashing the order dated 21.6.91 as contained in Annexure-"2" passed by the Chairman-cum-Managing Director of the Bihar State Housing Board (Respondent No. 2) cancelling the allotment of plot No. L-21 situated in Sri Krishna Nagar in favour of Petitioner, order dated 5.7.91 issued under the signature of Manager, Estate-cum-Additional Secretary Respondent 4 as contained in Annexure-1 allotting the aforesaid plot to Respondent No. 5 as well as. order dated 22.8.91 contained in Annexure-3 handing over the possession of the said plot to Respondent No. 5 in pursuance of order contained in Annexure-1.

2. This Court on 5.2.92 issued notice to the Respondents and passed order of Status quo. The Respondents have appeared and filed their counter- affidavit and with the consent of the parties this application is being disposed of at the stage of admission itself.

3. The Petitioner's case is that while he was in Government service he applied for allotment of land under low income scheme before the Department of

Housing, Government of Bihar. According to the procedure prevalent at that time the allotment of the plot was to be made by the Housing Board by lottery. A Lottery was held on 22.11.70 and the Petitioner got a plot in the said lottery. He was informed that he had been allotted a plot under low income group vide Annexure-4. On 3.12.70 he was informed by the Deputy Secretary, Government of Bihar, Department of Housing that he has been allotted L-21 plot at Srikrishna Nagar, Patna, a copy of the said order has been annexed as Annexure-5 to this writ application. According to the terms and conditions as mentioned in the said letter of allotment the Petitioner was required to deposit Rs. 794/- within a period of one month from the date of allotment and the remaining amount of Rs. 3072/- in 60 instalments in the manner as prescribed in the allotment order.

4. The Petitioner deposited 794/- within time by Treasury Chalan No. 95 dated 23.11.70 and balance amount of 3072/- was deposited at one time vide State Bank of India Secretarial Branch Chalan Scroll No. 14 dated 7.9.73. The agreement between the Petitioner and the Housing Department was executed on 27.11.70. A true copy of the said agreement is marked as Annexure-8 to this application. Thereafter the possession of the said plot was handed over to the Petitioner on 14.6.71 vide annexure-10 by the concerned authorities. The Petitioner also got a map of this house sanctioned by Patna Regional Development Authority in this year 1980. The Petitioner came to know through his nephew who resides at Patna that Respondent No. 5 has illegally entered into the said plot. Then the Petitioner made an enquiry and came to know that settlement of plot in his favour has been cancelled by the order as contained in Annexure-2 which was published in the newspaper "Hindustan" on 21.6.92. He also came to know about the illegal order passed by the Housing Board, Patna making allotment of the plot to Respondent No. 5 by violating all rules and regulations. The Petitioner represented the matter to the Minister, Housing Department as well as to the Managing Director to the Housing Board but no action was taken. Hence the writ application.

5. Three Sets of counter affidavit have been filed, one on behalf of Respondent No. 2, Bihar State Housing Board and its Estate Officer, Respondent No. 4. The second set has been filed by Respondent No. 5 and third set by the Regional Development Authority Respondent No. 6. The fact that plot number L.21 was allotted to the Petitioner has not been denied in the counter-affidavit filed by the Board and Respondent No. 5. Their stand is that as the Petitioner had neither deposited Rs. 3072/- within time nor he has made any construction within 36 months from the date of the execution of the agreement, allotment in his favour has been cancelled. In the counter-affidavit of the Board it is stated that the balance amount was never deposited by the Petitioner as per the record of the Board and on 18.5.85 by letter No. 1933/- A.N. he was requested to make available the clearance certificate of payment if any issued by the concerned Executive Engineer so that steps be taken for transfer of the plot. Again by letter No. 286/A.N. dated 15.2.91 he was asked to show cause within one week as to why allotment made in his favour be not cancelled. Petitioner did not file any

reply to the aforesaid notices and as such the allotment was cancelled by the order contained in Annexure-2. Even in the said order/information it was clearly stated that the Petitioner and other allottees of plots detailed in the said had not deposited any amount and in case no information was given within one week of the publication then allotment of the party would stand automatically cancelled and no notices would be given. As the Petitioner did not give any information the allotment in his favour stood cancelled. Thereafter the plot in question was allotted to Respondent No. 5 who was an old applicant by teller dated 5.7.91. He deposited the entire amount and the final transfer was made in his favour and he was also given possession on 22.8.01.

6. Respondent in 5 apart from stating the aforesaid facts had also stated that he was an applicant of the year 1976 and as no plot was allotted to him he represented the matter before the Board. Thereafter the plot in question was allotted to him by the Board. He took possession of the same and got the map passed by the competent authority and he has also made some temporary structure over the plot in question.

7. The Petitioner has filed the reply the counter-affidavit and has clearly stated that at no point of time any notice was served upon him earlier by the Board before cancelling the allotment in his favour. He also stated that the map which was passed by the P.R.D.A. in favour of Respondent No. 5 was passed after the order of status quo passed by this Court. It is also stated that the temporary construction has been made by Respondent No. 5 after the passing of the order of status quo by this Court.

8. Learned Counsel for the Petitioner contended that no notice was ever served upon the Petitioner before cancelling the allotment in question and on this ground alone the order of cancellation published in the newspaper which is contained in Annexure-2 is vitiated in law. He also pointed out that the Petitioner has deposited the entire amount which is proved by Annexures 6 and 7 as such the ground given for cancellation of the settlement non est. Thirdly, he pointed out that the then Managing Director Respondent No. 7 Mohendra Singh and Manager-cum-Special Secretary Respondent No. 4 connived with Respondent No. 5 and with a view to favour him illegally allotted the plot in question to him against the provisions of the Bihar State Housing Board (Management and Disposal of (Housing Estate) Regulation, 1983 (hereinafter Referred to as the Regulation). In no case Respondent No. 5 could have been allotted the plot in question which is a low income group plot as Respondent No. 5 had applied for plot under High Income Group.

9. Counsel appearing for the Respondents on the other hand, contended that as the Petitioner did not deposit a sum of Rs. 3072/- within the time as provided in the allotment order allotment in his favour has been rightly cancelled. It was also contended by the Respondents that the plot in question has been allotted to the Respondent No. 5 by observing all the provisions of the Regulations hereinafter referred to as the Regulation").

10. It is an admitted position that the Petitioner applied in the year 1962 for the allotment of plot. Plot No. L-21 belongs to the low income group and it was allotted to the Petitioner, agreement was executed in his favour as possession was handed over to him long back. The controversy between the parties is whether the Petitioner has deposited the amount or not after the allotment. So far as deposit of Rs. 794/- by the Petitioner is concerned, it is amply proved by the documents i.e. chalan No. 95 dated 23.12.70 (Annexure-7) and the agreement executed by the Petitioner and the Housing Board, a copy of which has been annexed as Annexure-8. The Board in the counter-affidavit has not challenged the deposit of the said amount by the Petitioner. So far as the deposit of Rs. 3072/- is concerned the Petitioner has filed the copy of the scroll of State Bank of India Secretariat Branch, Patna showing deposit of the aforesaid amount on 7.9.73 (Annexure-6). The said assertion has not been denied specifically by the Housing Board. Only a vague statement has been made that as per records maintained in the office of the Board the aforesaid amount has not been deposited. No extract of any record maintained in the office has been filed to substantiate the aforesaid statement. It is difficult to accept the stand taken by the Housing Board specifically when the document filed by the Petitioner is of the year 1973 and there is nothing on the record to disbelieve the aforesaid documents filed on behalf of the Petitioner which bears the seal of the Bank.

11. Even assuming that the aforesaid amount was not deposited the question is as to whether action of the Board cancelling the allotment can be justified in this case. The Board has the power to cancel the allotment in case of non-payment of instalment or for other grounds mentioned in the order of allotment and the terms of agreement. But such power can be exercised in accordance with law and not arbitrarily. The Petitioner has stated in the writ application as well as in the reply to the counter-affidavit that at no point of time any notice was served upon him either asking him to deposit the balance money or cancelling the allotment. The Housing Board has stated that in the year 1985 the Petitioner was requested to make available the Clearance Certificate from the concerned authority and in the year 1991 the Petitioner was asked to show cause as to why his allotment be not cancelled for violation of the condition of the agreement. The Petitioner has denied having received any such notice or notices before cancellation of the plot by the impugned order which was published, in the newspaper. No papers have been filed by the Board to show that the notices as stated in the counter-affidavit were served upon the Petitioner. In absence of such documents it can safely be held that the statements of the Board regarding giving notice to the Petitioner before cancellation is only a false statement deliberately made to justify the illegality. It cannot be disputed that the order of cancellation is prejudicial to the interest of the Petitioner as he is deprived of the plot allotted to him and in that view of the matter order cannot be passed without observing the principle of natural justice. In this case no notice for cancellation of plot at any point of time before cancellation was given to the Petitioner. On this ground alone the order of cancellation is fit to be quashed.

12. However the counsel for the Board and Respondent No. 5 contended that as after cancellation of the allotment in favour of the Petitioner, Board has allotted the plot to Respondent No. 5 and he has made temporary constructions this Court should not exercise its discretionary power in favour of the Petitioner even if order of cancellation of plot allotted to him is held to be bad.

13. According to the Petitioner allotment of plot in question to Respondent No. 5 is against the provisions of the Bihar State Housing Board Act and the Regulations. He has been favoured by the then Managing Director Mohinder Singh and Manager cum-Secretary Sri J.P. Gupta. There is no dispute that Respondent No. 5 was a Deputy General Manager P.N.B. at the relevant time. He belongs to high income group where as the plot in question falls into low income group category. From the documents filed by Respondent No. 5 appended with the counter-affidavit it is also clear that he applied for a plot under the High Income Group vide Annexure B. Annexure B shows that he has deposited Rs. 5000/- as earnest money for a High Income Group plot in Bahadurpur or Kankerbagh and not Shri Krishnanagar where the plot in question is situated. Rule 9 of the Regulation provides four types of Income Groups for allotment of dwelling house namely, weaker section upto Rs. 600/- per annum, low income, Rs. 6001 to Rs. 12000/- per annum, middle income Rs. 12,001/- to Rs. 24,000/- per annum and high income Rs. 24,000/- . According to Rule 9 the applicant must belong to the particular income group in which category the dwelling Unit or plot or site applied for is available. The said rule can be relaxed only if (here is no applicant in that particular group subject to the approval of the State Government. It is not stated in the counter-affidavit of the Board or the Respondent No. 5 that while allotting the plot of low income group to the Respondent No. 5 approval of the State Government has been taken. The Petitioner has clearly stated that no approval of the State Government has been taken. It is also clear that plot has been allotted to Respondent No. 5 by the Managing Director in an arbitrary manner and not by the Board which is a competent body to allot the plot according to Clause 25 of the Regulations. Nothing has been shown by the Respondents that the Board has allotted the plots in question. It has also not been stated by the Respondents Board that while allotting the plot in question to Respondent No. 5 the provisions of the regulation for allotment of plot were followed. Thus it is held that the allotment of plot has been made to Respondent No. 5 arbitrarily against the provision of the Regulation by the authority who is not competent to allot the same. The facts on the record reasonably lead to an inference that the then Managing Director acted illegally in allotting the plot to Respondent No. 5 by violating all the rules and regulations. In such a situation it is very difficult to accept the contention advanced on behalf of the Board and Respondent No. 5 that this Court should not interfere in the case because Respondent No. 5 has made some temporary constructions. This apart if it is asserted on behalf of the Petitioner that temporary constructions were made after the order of status quo passed by this Court. In our view, the allotment of plot to Respondent No. 5 is illegal and the

same cannot be supported in law. Thus, in our view the order of cancellation of plot allotted to the Petitioner as well as the allotment of plot to Respondent No. 5 after cancellation etc. is illegal and has no sanction of law. It shows an arbitrary action on the-part of the Managing Director of the Housing Board, Mohinder Singh. Accordingly, the orders contained in Annexures-1, 2 and 3 are quashed. The Housing Board is directed to re store the possession to the Petitioner within one month from today failing which stern action will be taken against the Respondent Board. In the facts and circumstances of the case Rs. 2000/- is awarded as cost to the Petitioner which is payable by the Housing Board.

14. In the result this application is allowed as mentioned above.