
(2011) 01 PAT CK 0074

In the Patna High Court

Case No : Letters Patent Appeal No. 1190 of 2004

Bihar State Housing Board and Others

APPELLANT

Vs

Ashok Kumar Sen

RESPONDENT

Date of Decision : 05-01-2011

Acts Referred:

Citation : (2011) 01 PAT CK 0074

Hon'ble Judges : S.K. Katriar, J;Birendra Prasad Verma, J

Bench : Division Bench

Judgement

S.K. Katriar, J.—This appeal under Clause 10 of the Letters Patent of the High Court of Judicature at Patna raises a grievance with respect to the judgment dated 5.11.2004, passed by a learned Single Judge of this Court in C.W.J.C. No. 4039 of 2000 (The State Bank of India Senior Supervising Staff Cooperative Society Ltd., Patna, through its Secretary v. The Chairman, Bihar State Housing Board), whereby the writ petition has been disposed of with certain directions to the writ Petitioner to make payment of the dues along with interest at the rate of 8.5% with yearly rest towards full and final settlement and payment of the dues payable by the Petitioner to Bihar State Housing Board (hereinafter referred to as the "Board"), for settlement of 21 plots of land in Kankarbagh Colony in the township of Patna. We shall go by the description of the parties occurring in the writ proceedings.

2. A brief statement of facts essential for the disposal of this appeal may be indicated. We shall draw the basic facts from the writ proceedings, except by specific reference to the present appeal. The writ Petitioner (the Respondent herein) had submitted application for allotment of plots for residential purposes with the Bihar State Housing Board (the Respondent there, and the Appellant herein). The Chairman of the Board allotted 21 plots to the writ Petitioner, which were really commercial plots in the master-plan and were allotted to the writ Petitioner after conversion of its user. The registered agreement of hire purchase was executed by the Respondents in favour of the writ Petitioner on 15.5.1980

(Annexure-1). According to the terms of the agreement, total number of 21 commercial plots after conversion of its user for residential purposes were allotted to the writ Petitioner for a total consideration of Rs. 9,85,350/-, out of which a sum of Rs. 6,30,000/- was paid to the Board before the agreement was executed. The balance sum of Rs. 3,55,350/- had to be paid to the Board within a period of two years without the obligation of payment of interest.

2.1) The pricing committee considered the matter in detail and submitted its report on 7.10.1999 (Annexure-9), whereby, in substance, it permitted conversion of user, it approved of that part of the Board's resolution dated 14.9.1984, whereby it had decided to realize auction rate of commercial plots, and the writ Petitioner shall be liable to pay interest. The writ Petitioner challenged the same by preferring the present C.W.J.C. No. 4039 of 2000, which has been disposed of by the judgment dated 5.11.2004 with certain directions regarding payment of the principal amount and computation of interest. Aggrieved by the judgment, the Board has preferred this appeal.

3. Learned Counsel for the Appellants has submitted that the agreement dated 15.5.1980 (Annexure-1), was the personal and individual handi-work of the then Chairman of the Board. He was not authorized to act in contravention of the master-plan, whereby the 21 plots of land earmarked for commercial purposes was converted to residential purposes. Therefore, in his submission, the Board was entitled to revise the rates. He has made elaborate submissions in support of the appeal. 4. Learned Counsel for the writ Petitioner has also advanced elaborate submissions in support of his case.

5. We have perused the materials on record and considered the submissions of learned Counsel for the parties. It is evident on a perusal of the report of the pricing committee of 7.10.1999 (Annexure-9), that the 21 plots in question were undoubtedly shown in the master-plan to be commercial plots. Its user could have been changed only in accordance with law, and the Chairman surely was not empowered to do it at his own level. Therefore, the terms of the agreement of 15.5.1980, allotting 21 commercial plots to the writ Petitioner with change of user, as well as the rates at which the same were allotted, and also the mode and manner of payment were individual acts of the Chairman. It was surely an ultra-vires act, without the sanction of law. Law is well settled that the Government or an instrumentality of the Government is not bound by the ultra-vires acts of its functionaries. The mala-fides on the part of the Chairman is writ large on the face of it. After the agreement was executed and registered on 15.5.1980, he placed it for the ratification of the Board on 19.6.1980 and on 26.7.1980. He intended to confront the Board with the *Fait Accompli* with which the Board did not agree and refused to ratify it. The matter was ultimately resolved by the resolution of the Board at its 91st meeting on 14.9.1984, whereby the Board permitted conversion of the user of the plots of land in question, allotment of the plots to the writ Petitioner, but at the altered rate, i.e. the auction rate of commercial plots. Conversion of user was itself a privilege.

And settlement at lower rates was another privilege and cannot be countenanced. We do not find fault with the report of the pricing committee and we hereby uphold the same. The writ Petitioner is, therefore, liable to make payment of the basic cost of allotment as per the auction rate.

6. We now pass on to the question of levy of interest on the alleged delay in payment of the same. Learned Counsel for the writ Petitioner is right in his submission that the delay in issuance of demand notice by communication dated 4.4.1997 (Annexure-6), is entirely attributable to the Board. Therefore, we entirely agree with the submission of the writ Petitioner that they are not liable to pay interest on the principal amount up to 4.4.1997. 6.1)

6.1 So far as the question of payment of interest after 4.4.1997 is concerned, the writ Petitioner must realize that the problem had a good deal arisen because they provided the opportunity by non-payment of the balance sum of Rs. 3,55,350/- within a period of two years from the date of the agreement, which they paid on 16.11.1989. We are, therefore, of the view that the writ Petitioner is liable to pay interest at the rate to be indicated hereinafter from 1.5.1997 till the date of payment. There is a passing reference in the report of the pricing committee of the rate of interest being 8.5%, although there is no conclusive finding in that regard. We are of the view that the writ Petitioner shall be liable to pay simple interest at the rate of 8.5% on the unpaid amount from 1.5.1997, till the date of payment.

6.2) We wish to make it perfectly clear that the writ Petitioner has made substantial payments on different occasions. We reproduce hereinbelow paragraph 7 of the counter affidavit of the writ Petitioner in the present appeal:

7. That therefore the total amount paid by the Society is as follows: To sum up the payments made by the Society to the Board are mentioned as under:

1. Cost of the land fixed at premium on commercial rate for residential purpose only Rs. 9,85,350/-

2 Less down payment of 70% of the cost of land paid on 16.05.1980 for 21 plots measuring 87300 sq. feet before allotment Rs. 6,30,000/-

3 Balance paid on 16.11.89 Rs. 3,55,350/-

1. On 24.11.04 interest for 15 years from 1.12.89 to 30.11.2004 paid @ 8.5% at compounding rate Rs. 10,23,650/-

2. On 19.02.2005 interest paid on Rs. 3,55,350/- from May 1980 to 18.11.89 (For moratorium period) Rs. 4,18,500/-

3. Paid interest of the dues as demanded by the Board in their show cause notice on 30.05.2006 Rs. 1,300/-

Total interest paid Rs. 14,43,450/- Thus the society has paid to the board a total sum of Rs. 24,28,800/- in the form of principal and interest which works out to

Rs. 27.82 per sq. ft. against the auction rate of 24.80 per square feet as claimed by the Board. That therefore the Respondent has paid the entire interest at the rate of Rs. 8.5% at compounding rate."

7. The Board has not filed rejoinder to the same. We, therefore, proceed on the footing that the writ Petitioner has so far deposited a total sum of Rs. 24,28,800/- with the Board on various dates mentioned in paragraph 7 of the counter affidavit. In other words, the writ Petitioner had deposited a sum of Rs. 9,85,350/-, till 16.11.1989. We are, therefore, of the view that the writ Petitioner shall be liable to simple interest at the rate of 8.5% on the balance sum commencing 1.5.1997. It is further made clear that the writ Petitioner shall get interest at the same rate on the amounts deposited after 1.5.1997. Let the Board re-calculate the amount and serve a fresh demand notice on the writ Petitioner which they shall be liable to pay within a period of three months from the date of service of demand notice. 7. In the result, this appeal is disposed of in accordance with the directions and the observations made hereinabove. In the circumstances of the case, there shall be no order as to costs.