
(1984) 07 RAJ CK 0036
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1733 of 1983

Brij Kumar Bhargava

APPELLANT

Vs

Rajasthan Housing Board and Another

RESPONDENT

Date of Decision : 16-07-1984

Acts Referred:

Rajasthan Housing Board (Disposal of Property) Regulations, 1970 — Regulation 28, 34, 36

Rajasthan Housing Board Act, 1970 — Section 53

Citation : AIR 1985 Raj 47

Hon'ble Judges : K.S. Sidhu, J

Bench : Single Bench

Advocate : Paras Kuhad, for the Appellant; B.L. Sharma and J.K. Singhi, for the Respondent

Final Decision : Allowed

Judgement

-ORDER

K.S. Sidhu, J.—This is a writ petition by Brij Kumar Bhargava under Article 226 of the Constitution against the Rajasthan Housing Board (for short, the Board) and Naresh Kumar Sethi, for; (i) a declaration that the non-inclusion of flat No. 4/83, size 140.18 sq. metres, Jawahar Nagar Housing Scheme, Jaipur, in the draw of lots for allotment of corner flats, is illegal, (ii) a writ directing the Board to either allot flat No. 4/83 to the petitioner or in the alternative to redraw the lots for allotment of corner flats and (iii) a direction to the Board to implement the decisions of its Property Allotment Committee.

2. Before narrating the facts giving rise to the filing of this writ petition, a brief reference to the relevant provisions of law will be helpful for a correct appreciation of the nature of this controversy. The Legislature enacted the Rajasthan Housing Board Act, 1969 (for short, the Act) to provide for measures to be taken to deal with and satisfy the need of housing accommodation in the State. The Board constituted under the Act is charged by the Legislature to

undertake works in different areas of the State for framing and executing such housing schemes as it may consider necessary. u/s 53 of the Act, the Board has made regulations, called the Rajasthan Housing Board (Disposal of Property) Regulations, 1970, laying down inter alia, the principles to be followed in the allotment of tenements and premises constructed by the Board under a particular housing scheme. Regulation 23 provides for the constitution of a Property Allotment Committee which will hereinafter be referred to as the Committee. The Chairman of the Board is the ex-officio Chairman of the Committee. The first step which a person desirous of allotment of a flat to be constructed by the Board must take is to get himself registered as a registered applicant in accordance with the provisions of regulations 22 to 26. The process of registration is complete with the entry of the name of the applicant in the register of "Registered Applicants" and the grant of a certificate of registration to him indicating his registration number and the amount of the deposit made by him for such registration.

3. The next step in the process of allotment of a flat is the making of an application for such allotment. Under regulation 27, the Chairman invites applications for allotment as soon as the flats are ready or Hearing completion. It is only a person holding a certificate of registration as mentioned above, who is eligible to make an application for allotment under regulation 27. He must make the application in the prescribed form. A perusal of the prescribed form would show that there are three types of flats i.e. corner flats, twin flats and ordinary flats available for allotment. The prescribed form requires the applicant to give his option for either a corner flat or a twin flat with his partner. It is made abundantly clear in this form that an applicant cannot opt for a corner flat as a twin flat with his partner. In fact, the instructions issued by the Board for the guidance of applicants make it further clear that if an applicant gives his option for a corner flat and a twin flat with his partner, the application shall be treated as an application for the allotment of an ordinary flat. The applicant giving his option for a corner flat has to give an undertaking that he shall pay such extra price for the corner flat as may be determined by the Board.

4. Regulation 28 deals with draw of lots. It lays down that allotment of flats to eligible applicants shall be made by draw of lots under the supervision of the Committee, and that if the number of applicants exceeds the number of flats lots shall be drawn to the extent of the number of flats available, plus 50% thereof in addition to serve as a waiting list. In the very nature of things,, this means that the draw of lots is a twofold exercise. In the first instance, the Committee must select by draw of lots the requisite number of applicants, from out of all the registered applicants, keeping in view the number of flats available for allotment. Thereafter, the Committee has to hold another draw of lots between the selected applicants themselves to determine which particular flat is to be allotted to whom. After this twofold exercise is complete, regulation 30 comes into play and the Committee is required thereunder to enter the names and other particulars of the allottees in the "Allotment Register". Regulation 31 requires the

Committee to send intimation to a person, selected for allotment as mentioned above, that a particular flat has been allotted to him. If the person concerned makes any representation in respect of such allotment, the Committee is empowered under regulation 34 to decide such representation. It is noteworthy that this regulation emphasises that the Committee has full power to decide such representations. Regulation 23(iii) confers a finality on the decision of the Committee in matters of allotment.) Execution of the hire purchase agreement by the applicant and delivery of possession of the flat follow in that order after the applicant has fulfilled the requirements as specified in regulations 35 and 36.

5. Turning now to the facts, it is common ground between the parties that after being registered in the register of "Registered Applicants" in January, 1980, the petitioner as well as Naresh Kumar Sethi (respondent 2 herein) made their respective applications in the prescribed form in August, 1980 for allotment of flat of 140.18 sq metres size in the , Jawahar Nagar Housing Scheme. The petitioner gave his option for a corner flat giving the requisite undertaking that he shall pay the extra price for it. On the other hand, Naresh Kumar Sethi gave his option for a twin flat with his partner Kamini Sethi. Both N.K. Sethi and Kamini Sethi signed the application in token of their joint option for adjoining flats called twin flats N.K. Sethi scored out the column regarding the undertaking for paying extra price for the corner flat, making it thereby clear that he was not opting for a corner flat and that therefore he would not be liable to pay the extra price for a corner flat

6. On October 27, 1980, the Committee selected by draw of lots 110 persons for allotment of 140.18 sq metres size flats in Jawahar Nagar Housing Scheme, Jaipur. The names of Kamini Sethi (applicant for a twin flat with N.K. Sethi) N.K. Sethi and the petitioner are given at serial Nos. 29, 100 and 104 respectively of the list of 110 selected persons. As on October 27, 1980, the Board had 98 flats available in Jawahar Nagar for allotment to the aforementioned selected persons. Those 98 flats were allotted to persons mentioned at serial Nos. 1 to 98 of the list Kamini Sethi was one of the allottees of a flat in that very list. She appears to have accepted the allotment thus abandoning her option for a twin flat Her partner N.K. Sethi was thus left out in the reserved list of 12 persons. The said list makes it clear that N.K. Sethi was selected for allotment of an ordinary flat and the petitioner was selected for allotment of a corner flat. All that remained to be done was to specify by means of a future draw of lots on the completion of 12 more flats as to which corner flat was going to be allotted to the petitioner and which ordinary flat was going to be allotted to N.K. Sethi.

7. In February, 1982, the Committee took up the matter of allotment of flats to the 12 persons in the reserve list mentioned above, because 12 more flats had been placed at its disposal for such allotment by that time. Those 12 flats included 6 corner flats and 6 ordinary flats. The six corner flats included flat No. 4/83 which is the bone of contention between the petitioner and N.K. Sethi, Treating it as an ordinary flat it was excluded from the draw of lots for corner

flats and included in the draw for ordinary flats. The result of the draw of lots held on February 11, 1982 shows that N.K. Sethi's name appeared for flat No. 4/83 as an ordinary flat. Of course, the petitioner's name appeared for a corner flat (No. 4/75). The petitioner could not possibly expect his name at that time to appear for allotment of No. 4/83 which had been excluded from the draw of lots for corner flats on the erroneous assumption that it is an ordinary flat. In due course, on discovery by the petitioner that corner flat No. 4/83 which was much better from the standpoint of location, situation and surroundings than corner flat No. 4/75 which had appeared in the lottery for him, had gone to N.K. Sethi who was not even eligible for the allotment of a corner flat, the petitioner made oral and written representations to the Chairman complaining that he along with other applicants for corner flats had been denied the opportunity of getting the allotment of corner flat No. 4/83 by the exclusion of this flat from the draw of lots for corner flats and that it had been arbitrarily allotted to N.K. Sethi who was not even eligible for the allotment of a corner flat. The Board considered this representation and proposed vide their letter (Annexure 2) dated, March 23, 1983, that the petitioner may get allotment of flat No. 4/83 in exchange for flat No. 4/75 if he was prepared to accept the exchange. The petitioner replied, vide his letter (Annexure 3), dated, March 29, 1983 stating that he was happy to know that the Board had realised its mistake and was prepared to rectify it and that he was accepting the exchange as proposed. He requested the Board to issue him a letter allotting flat No. 4/83 to him. The Board did not take any action on the petitioner's request for nearly three months. The petitioner therefore sent two reminders (Annexures 4 and 5) on June 25, 1983 and July 4, 1983 respectively. These reminders also did not evoke any reply from the Board. The petitioner thereupon served a legal notice (Annexure 6), dated, August 1, 1983 on the Chairman of the Board, demanding allotment of flat No. 4/83 within a week from the receipt of that notice by the Chairman, failing which, he notified the Chairman, he would be compelled to seek legal remedy against the Board. The Board did not accede to the request of the petitioner even after service of the aforesaid legal notice on the Chairman. The petitioner therefore filed the present writ petition on August 29, 1983, for the reliefs mentioned at the outset of this judgment.

8. The Board entered appearance in response to the service of notice of this petition on it, but did not file any written reply in answer to it. N.K. Sethi respondent 2, filed a written reply to the petition raising some preliminary objection to it. He pleaded that the irregularity of non-inclusion of flat No. 4/83 in the draw of lots for corner flats was a minor irregularity and that it should therefore be ignored by the Court while exercising its extraordinary jurisdiction under Article 226 of the Constitution the respondent pleaded in this context that the petitioner who was an applicant for a corner flat had got a corner flat in No. 4/75 which fell to his lot in the draw held on February 11, 1982, and that he cannot question the validity of the draw merely because one of the corner flats (i.e. No. 4/83) had not been included in the pool for which lots were drawn

between the applicants for corner flats. The respondent denied that flat No 4/83 had been illegally and surreptitiously allotted to him by the Board. According to him, he got selected for the allotment of this flat to him as a result of an open and public draw of lots by the Committee.

9. The question which falls for determination in this writ petition is quite simple and the same whether the petitioner had a legal right to the inclusion of flat No. 4/83 in the pool of corner flats for the draw of lots held on February 11, 1982, in which he himself was competing as an applicant for the allotment of a corner flat. All allegations in which the petitioner has accused the Board of having favoured N.K. Sethi in a secret and surreptitious manner, and the counter-allegations in which N.K. Sethi retaliated by accusing the petitioner of hobnobbing with the officials of the Board who allegedly instigated him to raise a controversy about a minor irregularity in the draw of lots regarding corner flats, must in my opinion be ignored as irrelevant and uncalled for. Mr. B.L. Sharma, learned counsel for the Board placed before me the entire record of the board relating to registration and allotments. I am satisfied from the record that flat No. 4/83 which is a corner flat was erroneously and inadvertently omitted from the pool of 6 corner flats for which draw of lots was held on February 11, 1983. The mistake occurred because the Resident Engineer of the Board who supplied a list of the 12 flats to the committee for draw of lots for allotment on February 11, 1982 made a mistake in describing flat No. 4/83 as an ordinary flat. He should have described it as a corner flat which it in fact is and was at the material time. That explains the erroneous exclusion of this flat from the draw of lots for corner flats and its inclusion in the draw for ordinary flats. On this mistake being discovered on the basis of the representations made by the petitioner from time to time, the Board took steps to rectify it. The Board conveyed its view to the petitioner and N.K. Sethi, vide letters dated March 19, 1983 and dated April 27, 1983, respectively, to the effect that it had decided to cancel the allotment of flat No. 4/83 in favour of Sethi and allot it to the petitioner and instead allot to Sethi flat No. 4/75. The Board requested both Sethi and the petitioner to give their consent to its proposal as aforementioned. While the petitioner accepted this proposal, Sethi rejected it vide his letter, dated, May 3, 1983. All these letters are in the file produced in the Court by Mr. Sharma at the time of arguments. This would apply prove the bona fides of the Board and the efforts made by it to rectify the mistake made by it with the consent of the parties. Unfortunately, the Board failed to persuade N.K. Sethi to accept its proposal with the result that the petitioner was compelled to file this writ petition.

10. Before taking up the question as to whether the petitioner has a legal right in the matter of inclusion of flat No. 4/83 in the draw of lots for corner flats, I must mention here that after discovery of its mistake about it, the Board ought to have rectified the mistake regardless of the wishes of the parties in the matter. The approach of the Board in trying to rectify the mistake with the consent of the parties is of course commendable. But the moment it discovered that one or the other party was being intransigent, it should have exercised its own powers

under the Regulations to take a correct decision on the representation of the petitioner and appraise the parties about it. A reference has already been made in this judgment to the powers of the Committee and the Board in the matter of allotment of flats. It has been mentioned there that the Committee has full power to decide such representations in regard to selection of applicants for allotment of flats and that the decision of the Committee in that behalf carries the stamp of finality under the Regulations. Had the Board and the Committee decided the petitioner's representation one way or the other in a categorical manner it would have perhaps given a quietus to this litigation.

11. This brings me to the question regarding the claim of the petitioner that he had a legal right to the inclusion of flat No. 4/83 in the pool for the draw of lots for corner flats. As already stated the petitioner had given his option for the allotment of a corner flat and had also given an undertaking in writing that he shall pay the extra price for such a flat. On the contrary, N.K. Sethi had given his option for a twin-flat with his partner, Kamini Sethi, and had expressly scored out the column regarding the option for a corner flat. After the allotment of an ordinary flat to his partner in the draw of lots on October 27, 1980, and the acceptance of that allotment by her, it is obvious that N.K. Sethi's application could be considered only for the allotment of an ordinary flat to him. He could not claim the allotment of a corner flat as a matter of right. The petitioner, however, could claim allotment of a corner flat as a matter of legal right, depending on the availability of such flats. In that view of the matter, the petitioner had quite clearly a legal right to the inclusion of all available corner flats (6 in number including flat No. 4/83) in the pool for the draw of lots for corner flats on February 11, 1982. It is only by such inclusion that he could legitimately exercise his right for the possibility of the allotment of flat No. 4/83 to him. By the exclusion of this flat from the said draw of lots, the petitioner was deprived of his legal right to compete in the lottery for the allotment of this plot to him. Instead, this flat was erroneously included in the pool for the draw of lots for ordinary flats, and thus the respondent who had no legal right to its allotment to him could compete for its allotment in a lottery, the very basis of which was wrong.

12. The draw of lot of flat No/ 4/83 in favour of N.K. Sethi does not mean the automatic allotment of this flat to him. As already pointed out, such a draw in his favour does not mean anything more than this that he was selected for allotment. It was then for the committee to enter his name in the "Allotment Register" and intimate him about such allotment. No legal right vests in the allottee even after such intimation inasmuch as it is always open to the Committee to cancel such allotment on the basis of a representation by another applicant. It is only on the execution of the hire-purchase agreement and the delivery of possession that a legal right vests in the allottee. The Committee would be well within its powers to cancel any allotment for a valid reason so long as delivery of possession is not made in accordance with the provisions of regulation 36, Rajasthan Housing Board (Disposal of Property) Regulations,

1970. It is common ground between the parties that let alone the execution of any hire-purchase agreement by N.K. Sethi or the delivery of possession to him, the Board has not even issued any letter of allotment in his favour: No legal right has therefore come to vest in Sethi in respect of flat No. 4/83 merely because he was selected for allotment of this flat in his favour.

13. For all these reasons, I must hold that Sethi has been wrongly selected for allotment of flat No. 4/83 in his favour. His selection as such is cancelled. He is not eligible for being selected for the allotment of a corner flat to him. If none of the other three applicants for corner flats, namely, R.K. Saxena, S.S. Kabra and Pankaj Tandon, who had similar right as the petitioner to compete for the allotment of flat No. 4/83 is in the field any longer for such competition, it follows as a matter of necessary corollary that this flat shall be allotted to the petitioner. If the said three applicants have already accepted the allotment of their respective flats for which each of them was selected in the draw of lots held on February 11, 1982, and taken possession of those flats in accordance with the provisions of regulation 36 mentioned above, the Board will be free to take this factor into consideration for the purpose of taking a decision whether they should still be considered as candidates for the allotment of flat No. 4/83. If the Board finds that one or more of them can still be validly considered as a candidate or candidates, for the allotment of fiat No. 4/83, it will have to decide the competing claims of all such candidates including the petitioner by draw of lots in accordance with the provisions of the regulations mentioned above. Similarly it is for the Board to decide on the question of selection of Sethi for the allotment of an ordinary flat for him. If a corner flat is still available after satisfying the claims of all applicants eligible for allotment of corner flats, the Board may consider the case of Sethi also for allotment of a corner flat to him.

14. In conclusion, the writ petition is allowed in terms stated in the immediately preceding paragraph leaving the parties to bear their own costs.