
(2012) 03 JH CK 0039
In the Jharkhand High Court
Case No : Writ Petition (C) No. 4826 of 2011

Dinesh Sharma

APPELLANT

Vs

Jharkhand State Housing Board and State of Jharkhand

RESPONDENT

Date of Decision : 21-03-2012

Acts Referred:

Citation : (2012) 3 JCR 186

Hon'ble Judges : Poonam Srivastava, J

Bench : Single Bench

Advocate : Siddhartha Ranjan, for the Appellant; Sachin Kumar, Advocate for the Housing Board, for the Respondent

Final Decision : Allowed

Judgement

Hon''ble Mrs. Justice Poonam Srivastav

1. Heard counsel appearing on behalf of the petitioner as well as counsel appearing on behalf of the Housing Board. The instant writ petition is preferred for quashing the letter No. 05/AA/170/01/286/AA dated 05.02.2008 (Annexure-4) issued by Revenue Officer, Jharkhand State Housing Board (Head Quarter) whereby the Housing Board has made a demand of Rs. 3,38,907/- till 31.03.2008 after adjustment of the amount deposited by the petitioner for the cost of the house in question to be paid in favour of the Housing Board.

2. The contention of the petitioner is that the demand of the respondent is altogether arbitrary, unreasonable and illegal since the petitioner has already deposited all installments way back in the year 1999 for the house allotted to him, as per the hire purchase agreement executed between the parties in the year 1989. The hire purchase agreement is annexed as Annexure-2 to the writ petition. The petitioner was required to deposit a total cost of the house which was a tentative determination of the cost, Rs. 78,500/- minus initial deposit of Rs. 15,700/-. The installments were to be paid from the beginning of May 1989 in 120 installments including the interest and the cost of the house. Petitioner

started depositing Rs. 778/- per month with effect from May 1989. Possession was handed over and the entire installments were deposited till April 1999. After complete deposit of 120 installments, the petitioner approached the respondent to execute a final deed of conveyance. The Housing Board, instead of executing the deed, issued a letter through the Executive Engineer, Jharkhand State Housing Board, Jamshedpur, to the Revenue Officer, Jharkhand State Housing Board, vide Memo No. 2510 dated 15.12.2007 acknowledging the payments by the petitioner and also to calculate the final principal interest, with a further direction to forward an intimation to the petitioner. The impugned letter order was issued after adjustment of the deposits made earlier demanding a sum of Rs. 3,38,907.00 to be paid latest by 31.03.2008 and only then the deed would be executed. The petitioner has claimed that the Housing Board could not act in such arbitrary manner.

3. Perusal of the impugned letter, it is evident that interest on the price of the house has been imposed from the date of the allotment till the date of agreement and further interest on the same from the beginning of the first installment till payment of last installment and imposing further compound interest from the date of the last installment paid i.e. April 1999 and extending till March 2008. Thus, total amount shown outstanding is Rs. 1,76,034.10 on 31.03.2008 and this amount is build up of the interest gap between allotment and entering into the agreement between the parties. A revaluation of the house has also been done and on this score an amount of Rs. 1,62,865/- has been shown as outstanding against the petitioner purportedly under a unilateral decision of the Bihar Housing Board revaluating the cost of the house retrospectively imposing interest for more than 16 years. The amount shown in the impugned letter on account of revaluation is also not tenable as the price of the house which was said to be tentative, the same could be increased only in certain eventualities, in the instant case, none of those factors mentioned in the Hire Purchase Agreement are involved, there could be no revaluation. The construction was completed at the time of agreement and the cost etc, was known at the time of hire purchase agreement itself made on 07.04:1989 and delivery of possession was given in the following month.

4. In an identical case where exorbitant demand was made after complete payment was made and all dues cleared, this Court in W.P.(C) No. 1127 of 2010 quashed the demand letter issued by the Housing Board, vide order dated 21.07.2011.

5. Learned counsel has submitted that the facts of the present case is squarely covered by the decision in W.P.(C) No. 1127 of 2010 and, therefore, a similar direction is liable to be issued to the respondent to execute the deed of conveyance within a stipulated period.

6. It is also brought to my notice that the order passed in the aforesaid writ petition stands confirmed in L.P.A. No. 346 of 2011, vide order dated 01.02.2012. Learned counsel has placed photocopies of the two judgments which

is not disputed by the counsel appearing on behalf of the Housing Board.

7. I am of the view that the agreement executed between the Housing board and the petitioner stipulated that payment of installments has to commence from a certain date and deposited in accordance with the installment vis-a-vis the date fixed in the initial agreement. The Housing Board and the petitioner unequivocally agreed to the terms and thus, after payment of the complete installment when no amount was due, then the petitioner cannot be termed to be a defaulter. Therefore, no penal rate or interest whatsoever could be levied. The possession was handed over consequent to the agreement and installments being accepted in terms of the agreement and, therefore, the Housing Board cannot resile from the original stipulation. Besides, construction was completed at the time when the agreement was executed, possession was handed over and, therefore, since it was a higher purchase scheme, therefore, the respondents were liable to execute the deed of transfer immediately. Thereafter, escalation of cost after a lapse of long period is nothing short of a high handed act of the Housing Board to somehow build pressure on the petitioner. The petitioner approached this Court under equity jurisdiction and in view of this the petitioner is entitled for a deed of conveyance executed by the Housing Board forthwith. The escalation of prices is also a lame excuse since the possession was handed over immediately after the agreement was executed on payment of the entire installments. Thus, the cost of the house should have been calculated before the execution of the agreement and immediately after the last installment was accepted. Nothing has been brought on record to substantiate as to how the cost has escalated after such a long period. Therefore, the present writ petition is squarely covered by the decision in W.P.(C) No. 1127 of 2010 confirmed in L.P.A. No. 346 of 2011.

8. Thus, for the reasons assigned in the earlier writ petition quashing the subsequent demand, I am of the opinion that the demand made by the respondents by means of impugned letter No. 05/AA/170/01/286/AA dated 05.02.2008 (Annexure-4) issued by Revenue Officer, Jharkhand State Housing Board (Head Quarter) is liable to be quashed. The writ petition is allowed.