
(2011) 02 PAT CK 0021
In the Patna High Court
Case No : CWJC No. 10810 of 2003

Jagdish Prasad Choudhary

APPELLANT

Vs

The Managing Director, Bihar State Housing Board and Others

RESPONDENT

Date of Decision : 14-02-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 2 PLJR 641

Hon'ble Judges : Birendra Pd. Verma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Birendra Pd. Verma, J.—Heard learned Counsel for the Petitioner and learned Counsel appearing on behalf of the Respondents.

2. The Petitioner has filed the present writ petition under Article 226 of the Constitution of India with a prayer for setting aside the order, contained in Memo No. 2894 dated 30.7.2003 (Annexure-9), whereby prayer made on behalf of the Petitioner to refund the money, deposited by him for allotment of a flat under self-finance residential scheme, was allowed, but after deducting 20% from the earnest money. The Petitioner has also prayed for payment of interest @ 15% per annum with cost.

3. The factual matrix in the present case is not in much controversy. Respondent-Housing Board issued an advertisement in the year 1987 for allotment of A, B & C type of flats at Bahadurpur (Patna). The aforesaid flats were to be constructed under self-finance scheme, within a period of two years.

4. The Petitioner, besides others submitted application in the prescribed form and deposited required amount for allotment of a C-type flat. Flat No. 6 SFC-1/27 was allotted to the Petitioner on 27.6.1989. The Petitioner claims to have deposited entire price of the flat fixed by the Housing Board, but the same could not be completed despite passage of about 14 years. Under the aforesaid

circumstances, the Petitioner was compelled to submit an application for withdrawal of entire money deposited by him with interest.

5. In view of the aforesaid application filed by the Petitioner, impugned order dated 30.7.2003 (Annexure-9) was issued, whereby the prayer made on behalf of the Petitioner for refund of money was accepted. However, as per terms and conditions of the brochure, 20% of the total earnest amount was deducted by the Respondent-Housing Board. Being aggrieved by the impugned action regarding deduction of 20% of earnest money the present writ petition has been filed.

6. Learned Counsel appearing on behalf of the Petitioner has fairly submitted that during the pendency of the present writ petition, his grievance has been partly redressed by the Respondent-Housing Board. The amount declutched by the Respondent-Housing Board to the extent of 20% of earnest money has already been refunded to the Petitioner with 5% simple interest. Therefore, the only issue left for adjudication is for payment of 15% interest per annum for delayed refund made by the Housing Board of the aforesaid earnest money.

7. Learned Counsel appearing on behalf of the Respondent-Housing Board submits that by an account payee cheque dated 6.2.2008 not only 20% earnest money, which was earlier deducted by virtue of the impugned order, has been refunded, rather 5% simple interest has been added over the entire deposits made by the Petitioner before the Respondent-Housing Board and, accordingly, a cheque of Rs. 1,03,086/- has been issued in favour of the Petitioner and this fact has not been disputed by learned Counsel appearing on behalf of the Petitioner.

8. Learned Counsel for the Petitioner, while placing reliance on a judgment in the case of Ramkeshwar Choudhary Vs. The State of Bihar and Others, and in the case of Shakuntala Devi v. The Managing Director, Bihar State Housing Board and Ors. reported in 2010 (3) PLJR 241, both delivered by learned Single Judges" of this Court, has submitted that the Petitioner is entitled for 12% per cent rate of interest on the amount deposited by him, if his claim for 15% interest is not accepted by this Court.

9. Learned Counsel appearing on behalf of the Respondent-Housing Board submits that in similar circumstances in the case of Vijay Sharan and Others this Court had directed for payment of interest @ 11% per annum. The matter was taken to the Apex Court in Civil Appeal Nos. 1566-67 of 1997 (Bihar State Housing Board and Ors. v. Vijay Sharan and Ors.) and the Apex Court, by order dated 17.2.1997 (Annexure-A to the counter affidavit), has held that interest has to be paid as per the statutory provisions, contained in Regulation No. 45 of the Regulations framed by the Respondent Housing Board. The order of the High Court directing for payment of interest @ 11% was modified and it was directed that the interest will be paid @ 5% only, as envisaged under Bihar State Housing Board (Management and Disposal of Housing Estates), Regulation, 1983. Learned Counsel for the Respondents has further placed reliance on a recent Division

Bench judgment of this Court passed in C.W.J.C. No. 7335 of 1991 (Gur Bilas Singh and Ors. v. The State of Bihar and Ors.). The aforesaid writ petition was disposed of by an order dated 10.2.2010 and the Division Bench, after noticing statutory provisions contained in Regulation No. 45, was pleased to direct to the Respondent Housing Board to refund the earnest money of the allottees with simple interest @ 5% per annum. The relevant portion of the order dated 10.2.2010 passed in C.W.J.C. No. 7335 of 1991 is reproduced hereinbelow for ready reference:

Thus, in keeping with the present scenario, this Court would only direct for refund of the earnest money of Rs. 5,000/- deposited by each of Petitioners alongwith simple interest at the rate of 5% per annum from the date of its deposit to the date of its refund to the Petitioners. Such payment, however, must be made to the Petitioners and/or their legal representatives within a period of three months from the date of receipt/production of a copy of this order."

10. After having heard the parties and after considering the submissions made on their behalf, this Court comes to a finding that entire earnest money and other deposits made by the Petitioner have already been refunded to him by the Respondent Housing Board with 5% simple interest, as envisaged under the Regulation, from the date of deposit till the actual date of refund. The claim of the Petitioner for payment of higher rate of interest for delayed refund cannot be allowed in view of ratio laid down by the Supreme Court as also by a Division Bench of this Court, as referred to above. Petitioner is not entitled for any further interest in the facts and circumstances of the case. Therefore, nothing remains to be decided in the present case.

11. Accordingly, the writ petition stands dismissed. No costs.