
(2013) 04 JH CK 0028
In the Jharkhand High Court
Case No : LPA No. 612 of 2006

Jharkhand State Housing Board and Others

APPELLANT

Vs

Dr. Brajendra Prasad Verma

RESPONDENT

Date of Decision : 30-04-2013

Acts Referred:

Bihar State Housing Board Act, 1982 — Section 83A(4)

Citation : (2013) 3 JLJR 234

Hon'ble Judges : Prakash Tatia, C.J.;Jaya Roy, J

Bench : Division Bench

Advocate : Sachin Kumar, for the Appellant; Anil Kumar Sinha, A.K. Sahani and Mr. R.N. Sahay for the Intervener, for the Respondent

Judgement

1. Heard learned counsel for the parties. The writ petitioner-respondent preferred a writ petition seeking direction against the respondent-Jharkhand State Housing Board, Ranchi to execute and register the required indenture in favour of the petitioner in respect of House No. M-18 (Old) situated at Adityapur Housing Colony, District-Seraikela. Said writ petition of the writ petitioner was allowed by the learned Single Judge vide judgment dated 10th August, 2006 and the respondents were directed to inform the petitioner regarding any balance amount still payable by him or anything is required to be done in performance of his part for execution and registration of the indenture. The respondents were further directed to comply with the direction of the Court within four week from the date of receipt/production of the copy of the impugned order. Upon petitioner's depositing the balance amount and performing his part of the contract, the learned Single Judge further directed the respondents to execute and register the deed in favour of the petitioner.

2. Before proceeding to consider the submission of learned counsel for the parties, it is appropriate to give the facts of the case in brief, which has also been taken note of by the learned Single Judge. The petitioner submitted an application for allotment of a house on rental basis in MIG Scheme by submitting

an application bearing No. 43 dated 22.12.1967. The petitioner was duly allotted one House No. M-18 (Old) in Adityapur Housing Colony, District-Sareikela vide letter No. 1918 dated 11.9.1968. It will be worthwhile to mention here that said decision was taken prior to coming into force of the Bihar State Housing Board Act, 1982. In the year 1981 a decision was taken in the Board's meeting for allotment of house to the writ petitioner on hire purchase basis and said decision was communicated to the petitioner by Letter No. 4600 dated 19.6.1981. In pursuance of the said decision of the Board; a registered agreement was executed between the parties. The petitioner under the said agreement was required to pay Rs. 59,700/- which is the total amount of consideration for transfer of property in favour of the writ petitioner. Petitioner paid Rs. 25,388/- as 50% advance of the total amount and the petitioner was already in possession of the property. Before this petition was filed, petitioner through his agent requested the Board to inform any amount is due against the said agreement and petitioner paid the amounts as and when he was informed. Before filing this petition, the petitioner already deposited total Rs. 71,388/- for which due receipts were given to the petitioner by the Board.

3. However, according to learned counsel for the Housing Board, Mr. Sachin Kumar the petitioner paid the last installment in the year 1988. However, admittedly no deed was registered in favour of the petitioner till the year 2006 when petitioner filed this petition. The petitioner, through his power of attorney holder; who is a person who has filed the writ petition on behalf of the petitioner again requested the Housing Board to inform the petitioner or the power of attorney holder whether, still any amount is due and if any amount is not due, deed may be registered in the name of the allottee, Dr. Brajendra Prasad Verma. Since the indenture was not executed and registered in favour of Dr. Brajendra Prasad Verma, the petitioner filed this writ petition, W.P.(C) No. 376 of 2004.

4. In the writ petition the respondent-Board raised objection regarding maintainability of the writ petition questioning the authority of power of attorney. However that argument has been enlarged by stating that the same attorney, who is power of attorney holder of this writ petitioner, has entered into several contracts with the allottees of the Housing Board itself and intermeddling in the houses of the housing colony, therefore, he is not a bona fide power of attorney holder of the writ petitioner.

5. Be that as it may be, in the counter affidavit the respondent-Board raised objection that petitioner is not in possession of the house in question and he has let out the houses to the tenant. Therefore, in view of Clause 16 of the agreement, the petitioner is not entitled to get the house registered in his favour.

6. Learned Single Judge after considering Clause 16 of the agreement was of the view that letting out of the property is not parting with the possession of the property and it is not totally prohibited under Clause 16 and in Clause 16 it is provided that certain more amount can be demanded from the allottee by the Housing Board in addition to which has been agreed in the contract for hire

purchase and, therefore, on this ground the execution and registration of the indenture cannot be denied.

7. Learned counsel for the appellant vehemently submitted that as per the facts, which cannot be disputed, the allottee Dr. Brajendra Prasad Verma was allotted the House on 11.9.1968 and Sri Verma left India in the year 1972. He let out the property to one Nawal Kishore Sharan, which is clear from the copy of the plaint of Title (Eviction) Suit No. 1 of 2001 filed by the allottee Dr. Brajendra Prasad Verma through the same power of attorney holder for eviction of the tenant. According to learned counsel for the appellant-Board, the property was let out in the year 1972. However, in the plaint of the Eviction Suit the petitioner mentioned that the property was let out in the Month of January, 1998 on monthly rent of Rs. 5,500/-. Learned counsel for the appellant submitted that as per Section 83-A(4) of the Bihar State Housing Board Act, 1982 it is clear that in case tenants sublets the building or any part thereof belonging to the Board in contravention of the terms of the tenancy, his tenancy shall stand terminated with effect from the date of subletting and both tenant and sub-tenant are liable to pay the damage jointly or severally to the Board at a rate equal to three times the rate of rent payable for the building immediately before the termination. Further, in view of the condition mentioned in Clause (8) of the hire purchase agreement, unless and until all dues are cleared to the Board, the occupier is deemed to be a tenant in occupation and in view of Section 83-A(4) of the Act, in this case the petitioner occupied the premises as tenant and because of subletting of the premises tenancy stand terminated from the date of sub-letting to Nawal Kishore Sharan by the petitioner. It is also submitted by learned counsel for the appellant-Board that in fact petitioner was required to pay 120 installments but he paid 10 installments by 10th July, 1988 and 25,000/- plus in the year 1995. However that was also not the full payment of installment. Therefore, the petitioner committed default in making due payment. Learned counsel for the Board then submitted that the same person, the power of attorney holder of the petitioner, S.N. Sinha filed another writ petition, W.P.(C) No. 3935 of 2007 before this court as a power of attorney holder of R. Venu Gopal. In the said writ petition, the Housing Board took a plea that the said power of attorney is intermeddling in the properties of the Housing Board and entered into number of transactions with old allottees of the houses.

8. Learned counsel for the writ petitioner-respondent vehemently submitted that originally the house was allotted to the petitioner in the year 1968 by the Housing Department of the Government of Bihar before the Bihar State Housing Board Act of 1982 was enacted. Initially it was allotted on rental basis and subsequently it was sold to the petitioner on hire purchase basis. Petitioner's eligibility for getting the house was never questioned by anybody till petitioner filed this writ petition for getting the appropriate deed executed and registered in his favour. All set of pleas have been taken in the reply to the writ petition and according to the learned counsel for the petitioner all these pleas have been taken by the Housing Board at the behest of intervener, Dilip Kumar Verma, the

Ex-MLA, who has moved application for impleading him as party in the LPA. Learned counsel for the petitioner further submitted that undisputedly since 1968 the petitioner is in possession of the house in question either in actual physical possession or in legal possession with occupation of petitioner's tenant. The petitioner's allotment was never challenged by the Board since last about more than 40 years. If the contention of the Housing Board is taken to be correct that the writ petitioner sublets the property in the year 1972 then also no action was taken by the respondent-Board. The Housing Board even did not take any step for any default in payment of the installments. Contrary to it, there are number of letters placed by the writ petitioner, copy of which have been place on record in this L.P.A. also, which clearly indicate that petitioner requested the Housing Board to inform the petitioner whether any amount is due for deposit by the petitioner and because of the efforts made by the petitioner, the amount which was shown due by the Housing Board, has been deposited by the petitioner and has been accepted by the Housing Board without any protest. In that situation, non-registration of the deed in favour of the petitioner cannot be justified. Because of the non-registration of the deed in favour of the petitioner the consequence would be only that the petitioner will continue to remain in possession of the property, which he has kept lawfully since 1968 and will continue to be in possession even if indenture is not registered. The Housing Board yet has not decided to take any action against the petitioner because of any reason. It is also submitted that there cannot be any justification for not transferring the title by the Housing Board in a situation where the petitioner entered into the premises lawfully with a right to purchase the property in question, where the petitioner has paid the entire dues to the Housing Board and is ready to pay the amount which is yet to be paid by the petitioner. Learned counsel for the writ petitioner submitted that as per Regulation 36(1) and Regulation 36(5) of the Bihar State Housing Board Regulations, 1983, it is clear that if, there is any amount due under the hire purchase agreement then the Board can charge the interest. As per proviso to the sub-rule (5) of Regulation 36, where a hirer is permitted to pay the hire purchase price, he shall not mortgage, transfer or part with the possession of the property till the expiry of the hire-purchase period otherwise than with prior permission of the Board. This proviso clearly indicate that the such restriction can apply to the hire purchase period mentioned in the hire purchase agreement only and not beyond that. The hire purchase period expired long ago and mere non-registration of the deed of the transfer it cannot be presumed that such restriction even of legally letting of property can continue. According to learned counsel for the petitioner, the petitioner got the right to get the relevant deed from the Housing Board under agreement. Therefore mere letting out of the building cannot be treated to be the reason for cancellation of hire purchase agreement or termination of the right to purchase the property.

9. One I.A. has been filed by one D.K. Verma. Learned counsel for the intervener-Sri D.K. Verma submitted that he is necessary party in this L.P.A. because of the

fact that he is in possession of the property under agreement to sell, which is an oral agreement and said agreement was admitted by the allottee and petitioner in his letter dated 15.10.2000 wherein it is accepted that sale consideration for sell of the property in question was Rs. 2,50,000/- out of which the said D.K. Verma has already paid Rs. two lakhs and he is in possession of the house since 1982. However, learned counsel for the intervener could not give the exact date when this oral agreement was entered into between the parties. Learned counsel for the intervener submitted that petitioner admitted this agreement of sale in his letter dated 15.10.2000.

10. So far as intervener application being I.A. No. 3156 of 2008 is concerned, it is liable to be dismissed for several reasons. The applicant-D.K. Verma, by virtue of alleged agreement to sale cannot get any right, title or interest in the property as agreement of sale creates no right, title or interest in the property, which is well settled law. Agreement of sale gives only right to purchase the property. That right to purchase the property entitles the prospective purchaser to purchase the property but that right if is not exercised properly in time by showing his readiness and willingness to purchase the property cannot be enforced even by filing suit for specific performance of contract. Before us, in agreement, learned counsel for the intervener, unambiguously and vehemently questions the right of the petitioner in getting the property in his favour. Learned counsel for the intervener submitted that the petitioner is a citizen of United States of America and is not resident of the then State of Bihar now of Jharkhand, therefore, he is not eligible for getting the house in question to be registered in his favour under the hire purchase agreement. In view of above stand of the intervener which clearly indicates that intervener is at some time blowing hot and cold. On the one hand, the intervener is seeking the property through the petitioner and at the same time challenging the petitioner's right to get the property. The intervener is claiming property since he entered into an agreement to purchase the property in question from the petitioner on the basis of an oral agreement, the date of oral agreement is not known. The intervener is claiming property since he is occupying i.e., since 1982. If we take the stand of the intervener that the petitioner in his communication dated 15.10.2000 admitted the agreement of sale then after 2000 no action has been taken by the intervener. Learned counsel for the intervener vehemently submitted that either the property be given to the intervener or it cannot be given to the petitioner. That is a self-contradictory statement and disentitles the applicant for being impleaded as party in this writ petition where such stand cannot be permitted to be taken.

11. Therefore, I.A. No. 3156 of 2008 is dismissed.

12. Reverting back to facts of L.P.A. and writ petition, from the facts, which we have given above, it clearly indicate that a house was allotted to the petitioner as back as on 11.9.1968 though on rental basis but it was allotted to the petitioner on 19.6.1981 on hire purchase agreement basis and the agreement was duly

registered. The petitioner paid the installments and may have committed default in making payment also, but it is not disputed that the petitioner has paid Rs. 71,388/-prior to filing of this writ petition and a certificate of payment of the said amount was duly issued by the Housing Board on 14.5.2001. Admittedly, the petitioner was not served with any notice for cancellation of the hire purchase agreement or allotment by the Housing Board. The petitioner was not asked to explain any of the situations whether he sub-letted the property in the year 1972 or in the year 2001 or in the year 1998 and no action was taken against the petitioner for letting out for such a long period. Learned counsel for the parties admitted that now the original value of the property may be running in several crores of rupees. We are constrained to observe here that all mistakes have been done by the Housing Board itself. The respondent-Board was well aware that the house was allotted in the year 1968 and petitioner is also in occupation of the property since 1968 and continued to possess the property and/or willing to pay the entire amount and in fact paid the amount whenever demanded from the petitioner and the petitioner again and again requested the Housing Board to inform whether any more amount is due which the petitioner is willing to pay. It is not disputed that whenever any amount was demanded, it was paid by the petitioner or on behalf of the petitioner. In this situation, there was no reason for not getting the property registered in favour of the petitioner. We are of the considered opinion that respondent-Board was under obligation to manage its own affairs and because of the fault of the officers of the Housing Board all these disputes arose resulting into so many claims. One of the pleas of the Housing Board is that petitioner left India and settled in USA and according to Appellant Board he left India in the year 1972. The petitioner's contention is that he is Non-Resident Indian (NRI) and has right to hold the property in India and that right is not destroyed. In that situation, if the Housing Board view was otherwise then also since 1972 no notice was given to the petitioner who could have explained his position at relevant time. Today also no law has been shown to us by which the petitioner became disentitled to hold the property in question for which, he paid the entire amount periodically since 1981 onwards, which was accepted by the Housing Board without any protest. So far as Clause 16 of the hire purchase agreement, is concerned it contains two part. First part entitles the Housing Board to charge difference between the premium/cost paid and market value of the land and premises at the time of parting with possession. Obviously if this amount is charged by the Housing Board then the next part of this clause cannot be invoked which says that the Board also have an pre-emptive right to take back (purchase) the property from the settlee after paying an amount given to the settlee. In a case in hand where the petitioner was allotted a house in the year 1968 and then intends to purchase the property under hire purchase agreement, he cannot be deprived of his said valuable property only because of the reasons that petitioner's merely letting out of the property to one individual and which according to petitioner is none less than his own relative. In this situation also, Clause 16 which in fact has not been invoked by the Board, cannot be allowed to be invoked after such passing of the long period of more than 30

years. So far as the disputes between the private parties are concerned, which has been raised by the tenant of the petitioner and intervener are absolutely irrelevant for the purpose of deciding the entitlement of the petitioner to the property in question from the Housing Board. We are making it clear that even if there is an agreement of sale of the property then also it is not prohibited either under the hire purchase agreement or under the Bihar State Housing Board Act, 1982. It prohibits the transfer of property and agreement for sale of the property is never a transfer of property as we have made it clear that agreement to sale gives only right to purchase but it itself creates no right, title or interest in the property in favour of the prospective purchaser, therefore, also it is not a transfer of property. So far as the disputes between the private parties are concerned, they can be settled in accordance with law by the parties themselves or if not, then it can be settled through court of law. The controversy in this matter is very limited that is limited in facts situation where the applicant of 1967 of the Housing Board in question was allotted house in 1968 and the right to purchase the house in question under hire purchase agreement of 1982, and the allottee continued to be in possession directly or through his tenant is entitled to an appropriate deed in his favour from the respondent-Board. For this the Housing Board could not show any reason by which the petitioner disentitle from getting deed registered in his favour.

13. In view of above reasons, we are of the considered opinion that there is no merit in this L.P.A. and the learned Single Judge has rightly allowed the writ petition of the petitioner. Hence, the L.P.A. is dismissed.

14. It will be appropriate to mention here that in W.P.(C) No. 3935 of 2007 though there are objection of the respondent-Housing Board with respect to the bona fide right of power of attorney holder of the petitioner of that writ petition and that fact has been taken note of but in the facts of the case we are unable to hold that merely because of the reason having number of power of attorneys by one person in particular locality/area and even if in the area of the Housing Board then because of that reason alone the power of attorney cannot be rejected. No law provides that one person cannot become the power of attorney holder of number of willing persons. In this case, admittedly the person is residing in the USA and he has given power of attorney to a person for doing needful for the house. For the above reasons, we are of the considered opinion that unless and until there are reasons to hold that power of attorney is illegal and vitiated for any reason, power of attorney holder has right to do the act under the authority of his master. We are making clear that the Housing Board will be free to look into genuineness of the power of attorney if it has any doubt.

15. Before parting with, we are directing the Jharkhand State Housing Board to look into all the matters wherein the deeds which are required to be registered have not been registered for long period and may proceed for registration of the deed in accordance with law and may take appropriate action in accordance with law. Learned counsel for the Board now submitted that time given by the learned

single Judge to the Board for complying with the impugned order may be extended. Accordingly, the same is extended by two months from the date of receipt/production of the copy of this order by the respondent-writ petitioner.