

(2004) 02 JH CK 0033

In the Jharkhand High Court

Case No : LPA No's. 722 and 723 of 2003

Jharkhand State Housing Board and Others

APPELLANT

Vs

Dr. Parmanand Das Sharma and Others

RESPONDENT

Date of Decision : 06-02-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 2 JCR 479

Hon'ble Judges : P.K. Balasubramanyan, C.J.; R.K. Merathia, J

Bench : Division Bench

Advocate : Umesh Prasad Singh, Sachin Kumar and Binod Kumar, for the Appellant; R.K. Verma and V.N. Choudhary, for the Respondent

Judgement

1. These appeals are by the Jharkhand State Housing Board challenging the common judgment of the learned Single Judge in WPC Nos. 3924 of 2002 and 3952 of 2002, whereby demands for enhanced payment made by Jharkhand State Housing Board against the writ petitioners, the contesting respondents, in respect of two Middle Income Group houses allotted to the respective writ petitioners were set aside.

2. The writ petitioners challenged the claim for additional amounts on the ground that they were arbitrary, unreasonable and not as provided by the terms of the contract. They had a further contention that the allottees could not be made liable for the delay on the part of the Housing Board. The Board contended that the demands were only in terms of the contract and it was justifiable on the terms of the contracts involved in the writ petitions. A contention was also raised that an arbitration clause was there in the contract and therefore, there was no occasion for this Court to exercise its discretionary jurisdiction under Article 226 of the Constitution of India, at this Stage.

3. The learned Single Judge quashed the demands, in the facts and circumstances of the case and directed the Managing Director of the Jharkhand State Housing Board to reconsider the matter afresh and take a fresh decision by

passing a reasoned order after giving an opportunity of hearing to the writ petitioners.

4. It is seen that the learned Single Judge had given full liberty to the Managing Director of the Board to consider all the aspects arising out of the allotment letter, the hire purchase agreement and the other documents, based on the contentions raised by the writ petitioners. But, what is submitted by learned counsel for the appellant-Board is that if the intention was that the entire matter was to be reconsidered and a fresh decision taken after giving an opportunity of hearing to the writ petitioner, then it was not proper for the learned Judge to make observations in paragraph-7 of the judgment under appeal which have a tendency to restrict the scope of the enquiry by the Managing Director. He points out particularly to the sentence that the demand raised by the Board is wholly illegal, mala fide and without application of mind and points out that it was not warranted, in the circumstances of the case, especially since the Judge was not considering the question in this count. According to the counsel, the question should be examined on the basis of the contract between the parties and the Managing Director had to reconsider the question based on the terms of the contract and resolve the dispute of the claims raised by the writ petitioners regarding their liability and denial of any liability to pay any additional amount based on any default on the part of the Housing Board.

5. Learned counsel appearing for the contesting respondents, the writ petitioners, on the other hand, submitted that the learned Single Judge was justified in making those observations, since having put the allottees in possession and having recovered the instalments from them, there was no justification of the Housing Board in demanding further amounts from them. It was submitted that there is no reason to interfere with any part of the judgment under appeal.

6. We think that the matter should be left for a decision by the Managing Director as directed by the learned Single Judge untrammelled by any observation contained in the judgment under appeal. The demands were made of the writ petitioner without giving them an opportunity of being heard. That is ground enough to interfere. Therefore, we set aside all observations on merits especially those made in paragraph 7 of the judgment and direct the Managing Director to reconsider of the question after giving the writ petitioners an opportunity of putting forward their objections. At the same time, we think it proper to observe that the decision to be taken by the Managing Director has necessarily to be based on the terms of the contract between the parties and also the other circumstances relied upon by the writ petitioners to contend that they do not have any liability for paying any amount in addition to what they had originally agreed to pay. No occasion has arisen for this Court to restrict the approach or to control the decision making process to be undertaken by the Managing Director. We are, therefore, satisfied that the observations made in para-7 of the judgment under appeal should be set aside and the quashing of the demands

and direction to reconsider should be rested solely on the ground of non-compliance with the requirements of natural justice.

7. Thus, these appeals are allowed to the extent of deleting the observations made in paragraph-7 of the judgment under appeal and resting the final decision of the learned Single Judge only on the ground that the principles of natural justice was not complied with and the writ petitioners, were not given an opportunity of being heard while making the demands. In other words, the Managing Director will be free to reconsider the entire matter afresh including the argument of the writ petitioners put forward before him and take a fresh decision by passing a reasoned order after giving an opportunity of hearing to the writ petitioners.