
(2010) 07 PAT CK 0054
In the Patna High Court
Case No : CWJC No. 1176 of 2003

Kamal Nayan Choubey

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 20-07-2010

Acts Referred:

Citation : (2011) 1 PLJR 386

Hon'ble Judges : J.N. Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

J.N. Singh, J.—Heard learned Senior Counsel for the Petitioner, Mr. Lalit Kishore for the Housing Board and learned Counsel for the State.

2. In this writ application Petitioner has prayed for quashing of a demand contained in letter No. 1022 dated 29.11.2002, Annexure-16 to the writ application, issued by the Executive Engineer of the Board, Patna Division asking the Petitioner to deposit an amount of Rs. 1,05,233/-towards final installment of the flat allotted to him. A further prayer has been made for direction to the Respondents to execute the transfer deed in his favour after payment of final installment of the earlier demand as deposited on 26.6.1996.

3. It appears that earlier also the Board had raised demand for payment of installments towards cost of price of the flat through notices dated 15.1.2001, 18.1.2001 and 26.5.2001. These notices were challenged by the Petitioner in CWJC No. 8297 of 2001. The said writ application was heard by a Division Bench and, by order contained in Annexure-12 with the writ application, the same was disposed of by order dated 31.7.2002 with certain findings and orders. Subsequent to this order a fresh demand has been raised by the Respondents by the impugned demand notice which is sought to be challenged in this case.

4. Learned Senior Counsel for the Petitioner has pointed out that the calculation of cost of price of the flat, which was extracted in the order of the Division Bench

in paragraph 5 of the order, the details for escalation of the price and the fixation of capitalized value was not mentioned. He submits that now in the present writ application the Board has produced the detailed calculation and decision for escalation of the price and fixation of capitalized value in paragraph 6 of its counter affidavit. He submits that, from these details it appears that the Board was not legally entitled to raise the price of the flat in the manner made by it. He also refers to Annexure-17 with the I.A. No. 4861 of 2004 filed by the Petitioner and contends that the price of the flat allotted at the time of its allotment was tentative which were to be increased only under certain conditions. He submits that these conditions were not fulfilled and, therefore, the Board was not entitled to fix the revised capitalized value of the flat as in the manner indicated in the counter affidavit.

5. learned Counsel for the Board submits that the calculation made by the Board, revising the initial price of the flat and revising its capitalized value from time to time, was approved by the Division Bench. He submits that the Petitioner had challenged the revised cost of the flat before the Division Bench which was specifically negatived by the Division Bench as per its finding in paragraph 7. Therefore, he submits that it was not open to the Petitioner to go behind the calculation and challenge the same now in this writ application. He also informs this Court that the Petitioner had filed review application for review of the said judgment of the Division Bench which did not find favour by the Court and the same was dismissed. In view of the same, he submits that this Court cannot go behind the calculation as noticed by the Division Bench in its order and entertain the challenge of the Petitioner.

6. After going through the order passed by the Division Bench, this Court finds that the calculation made by the Board, extracted in paragraph 5 of the order, was discussed in detail in paragraph 6 and thereafter, in paragraph 7, the challenge of the Petitioner to the revision of the cost of the flat was rejected by the Bench. It may be that, as per the submission of learned Counsel for the Board, while passing the order, the Division Bench missed to notice in the order that, upon payment of Rs. 1,75,005.00 by the Petitioner on 26.6.1996, the remaining amount shown as on 30.6.1996 as Rs. 59,519.78 was not towards interest on delayed payment, rather, it was the remaining amount of revised cost of the flat. But this does not absolve the Petitioner from payment of his dues as per the calculation made by the Board and approved by the Division Bench.

7. learned Counsel for the Petitioner submits in reply that the operative part of the Division Bench order was confined to payment of interest on late payment of last installment on 26.6.1996 which was intimated to him by letter dated 26.12.1995 and he was only made "liable to pay interest on that amount for the subsequent period".

8. This Court finds that in the second last paragraph of the order, the Division Bench noticed that the amount of Rs. 59,519.78 shown due to the Petitioner up to 30.6.1996 increased to Rs. 1,01,062/- up to 30.6.2001 with the passage of

time. The Court had observed that the Petitioner was not informed about his final liability at the time of payment of last installment it would be unfair to saddle him with further liability on account of interest for the subsequent period. Thus, it appears to this Court that, although it may not be very clear in the order of the Division Bench, but the Petitioner was not absolved from the liability of Rs. 59,519.78 as shown balance due against the Petitioner as on 30.6.1996.

9. As noticed earlier, Petitioner filed a review application for review of this order before the Division Bench which stands dismissed. Therefore, this Court does not find it appropriate to pass any order which may be contrary to the spirit and findings of the Division Bench and may amount to going behind the ratio of the Division Bench.

10. Therefore, this Court does not find any merit in the writ application and the same is dismissed.

11. learned Counsel for the Board points out that, pursuant to a direction of a Division Bench or this Court, the Board has constituted a Price Fixation Committee and the Committee has been empowered to go into the disputes with regard to final calculation of the price of the allotted flats to the allottees and fix up the final liability which the allottees are to pay. He submits that on payment of such final liability the Board is obliged to execute the deed of lease in favour of the allottees.

12. In the circumstances, the Petitioner will be at liberty to move the said Price Fixation Committee for final fixation of his liability in terms of the orders of the Division Bench which the Price Fixation Committee should decide as early as possible, preferably within a period of six months from date of receipt/production of a copy of this order.

13. It is made clear that the Petitioner or any of his representatives shall be given hearing by the Price Fixation Committee as and when requested in the matter.