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(2011) 02 PAT CK 0086

In the Patna High Court

Case No : CWJC Nos. 6966 of 2000 and 2212 of 2001

Lt. Col. Arun Kumar Sinha, through his father Kamla Prasad, Attorney Holder on behalf of him — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

Date of Decision : 04-02-2011

Acts Referred:

Citation : (2011) 02 PAT CK 0086

Final Decision : Dismissed

Judgement

Birendra Pd. Verma, J.—In this batch of writ petitions, the Petitioners are aggrieved by the final order passed by the Pricing Committee, constituted by the Respondent Bihar State Housing Board (hereinafter referred to as the Board) in compliance of order and direction issued by a Division Bench of this Court in CWJC No. 47 of 1994 and CWJC No. 2724 of 1996. The aforesaid Pricing Committee has passed separate orders, impugned herein in this batch of writ petitions, in view of remand order made by this Court, when the Petitioners had approached this Court separately on previous occasion raising their grievances against the demand notice issued by Respondent Board, whereby enhanced price of the house in question allotted to them separately was demanded.

2. For the purpose of deciding the issues involved in these cases, the basic facts shall be noticed from the pleadings of CWJC No. 6966 of 2000, unless specific reference is made with respect to other connected writ petitions.

3. It is common case of the parties that in the year 1978, an advertisement was published in a local newspaper published from Patna inviting applications from the eligible persons for allotment of 250 M.I.G. (Middle Income Group) houses at Hanuman Nagar (Patna) on hire purchase basis. The Petitioners of all the cases claim to have submitted their separate applications on fulfillment of stipulated conditions indicated in the advertisement, and they were finally allotted separate M.I.G. House by the Respondent Housing Board. The Petitioner was issued order of allotment dated 6.1.1982 (Annexure-2), wherein the tentative cost of the

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house was shown to be Rs. 66,594/-. In the letter of allotment itself it was indicated that if the price for acquiring the land and development cost are increased, then the allottee would be liable to pay the enhanced price fixed by the Respondent Board. In view of the aforesaid allotment, a Hire Purchase Agreement for house in question was signed by the parties on 20.1.1982 (Annexure-3), wherein terms and conditions for allotment of the house in question were clearly indicated. Clauses-2 and 4 of the aforesaid agreement are relevant and as such are being reproduced herein below:

2. That the land and the house will be given on "As is where is" basis and the Board will not entertain any complaint whatsoever relating to property circumstances, quality of materials used, workmanship or any other matters.

4. That the total cost indicated above is according to present estimate and hence tentative. Increases in the cost of construction or development or due to increase in cost of land acquisition or due to any decision/award of court, of law or legislation or due to final costing or otherwise shall be payable by the settle either in installment or in lump sum within the period decided by the Board. The settle under no circumstances be entitled to demand any accounts relating to the cost or to question or dispute it and this shall be fixed by the Board in its sole discretion.

4. It is not disputed by the parties that after signing of the agreement (Annexure-3) the possession over the house in question were given to the allotters in the year 1982 itself. Petitioners claim to have deposited the entire money within the stipulated period as indicated in the agreement (Annexure-3). It is also claimed by the Petitioners that subsequently in the year 1991, some more amount was demanded from the Petitioners by the officers of the Respondent Housing Board and that was also paid within the time prescribed. The main grievance of the Petitioner is that on 10.12.1996 Respondent Revenue Officer issued a letter to the Petitioner asking him to deposit Rs. 1,23,512/- which was said to be still due against him, so that lease in perpetuity could be executed in favour of the Petitioner with respect to allotted M.I.G. House. The Petitioner claims to have represented the matter before the Respondent authorities, but the grievance raised by the Petitioner was not redressed, where after he came to this Court in C.W.J.C. No. 6832 of 1998, which was finally disposed of by an order dated 27.8.1998 (Annexure-20) remitting the matter to the Pricing Committee constituted by the Respondent Board with a direction to take decision a fresh in the light of order passed on 2.7.1998 in the connected batch of writ petitions bearing C.W.J.C. No. 4929 of 1998, C.W.J.C. No. 4930 of 1998, C.W.J.C. No. 4931 of 1998 and C.W.J.C. No. 4932 of 1998, which, in fact was passed with respect to claims raised on behalf of other Petitioners in this batch of writ petitions.

5. In view of remand order passed by this Court in their separate writ petitions filed by each of the Petitioners, the matter was taken up for consideration by the Pricing Committee consisting of High Officials of the Respondent Board. The

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Pricing Committee heard both sides and considered all the materials placed by the parties. The aforesaid Pricing Committee, after taking into consideration Clause-4 of the hire purchase agreement, and after taking into consideration that there has been enhancement in the decreetal amount for payment of compensation to the land owners as also due to enhancement of costs of construction and development of the house in question, finally decided the same by a speaking order dated 13.5.2000 (Annexure-23) in C.W.J.C. No. 6966 of 2000 and rejected the claim of the allottee and approved the resolution/order passed by the Respondent Housing Board demanding the enhanced price of the house in question. Similarly, in the connected writ petitions by separate order dated 15.10.2000 (Annexure-21) in C.W.J.C. No. 6973 of 2000, order dated 13.5.2000 (Annexure-22) in C.W.J.C. No. 6974 of 2000 and order dated 23.12.2000 (Annexure-19) in C.W.J.C. No. 2212 of 2001, claims raised on behalf of the respective Petitioners have been rejected. Hence, the Petitioners have filed their separate writ petitions questioning the validity of the order of the Pricing Committee.

6. Mr. Ajay, learned Counsel appearing on behalf of the Petitioner in each cases, has submitted that the order passed by the Pricing Committee is arbitrary and not sustainable in the eye of law, because beyond the enhancement of the decreetal amount towards compensation of the lands, the enhancement in construction price and developmental price of the house in question, could not have been taken into consideration in view of the judgment of the Hon''ble Apex Court. It is also urged that with respect to some other allotters, the Respondent Board has executed the deed of lease, but the Petitioners have been discriminated and the deed of lease has not been executed till date purportedly on the ground that the balance amount has not been paid by them to the Respondent Board.

7. Learned Counsel, appearing on behalf of the Respondent Housing Board, has strongly opposed the prayer made in this batch of writ petitions and has placed strong reliance on the averments made in the counter affidavits filed in C.W.J.C. No. 6973 of 2000 as also in C.W.J.C. No. 2212 of 2001. It is submitted by learned Counsel appearing on behalf of the Board that entire action has been taken in terms of Clause-4 of the agreement (Annexure-3) and both the parties are bound by the terms and conditions of the agreement. It is also submitted that the Pricing Committee has noticed all the facts and materials placed by the parties and thereafter has come to a right conclusion. It is further urged by the learned Counsel appearing on behalf of the Housing Board that similar matter on behalf of other allotters came up for consideration before a learned Single Judge of this Court in C.W.J.C. No. 6053 of 1999 alongwith C.W.J.C. No. 3018 of 1999 and C.W.J.C. No. 3308 of 1999 and aforesaid batch of writ petitions was dismissed by a common order dated 18.11.1999 (Annexure-A to the counter affidavit). Against the aforesaid order dated 18.11.1999, those allottees preferred L.P.A. No. 19 of 2000, L.P.A. No. 31 of 2000 and L.P.A. No. 35 of 2000 and same were dismissed by a Division Bench of this Court by separate order

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passed on 9.5.2000 and 10.5.2000.

8. It has been specifically pleaded that against the order passed by the Division Bench in L.P.A. 19/2000, L.P.A. 31 of 2000, SLP (Civil) No. 13248 of 2001 and 13852 of 2001 were filed before the Hon''ble Apex Court and both the aforesaid SL Ps were dismissed by a common order dated 1.11.2002 (Annexure-B). It is contended that in view of the order passed by the learned Single Judge and affirmed by a Division Bench of this Court as also by the Apex Court, the Petitioners cannot legally challenge the decision of the Pricing Committee, on the grounds which were available to them prior to the order of remand made by this Court. In the same vein, it is urged that there is no legal infirmities in the order/ resolution of the Pricing Committee and, as such, it is fit to be affirmed by this Court.

9. Learned Counsel for the Respondent Housing Board has also placed reliance on two judgments of the Apex Court in the case of Shimla Development Authority Vs. Asha Rani, and in the case of Preeta Singh, etc., Vs. Haryana Urban Development Authority and others, . It is submitted that before the Apex Court also similar issues were raised that statutory body, after allotment of the house/ plot, was not entitled to enhance the price of the same either in the name of enhancement of decreetal amount or in the name of enhancement of developmental costs of the site in question. Paragraph-7 of the case of Preeta Singh (Km.) and Ors. v. Haryana Urban Development Authority and Ors. (supra) is the complete answer of the issues raised on behalf of the Petitioners in this batch of writ petitions, which is reproduced hereinbelow:

7. A conjoint reading of the above Rules would clearly indicate that the allottee is liable to pay a sale price including the additional price and the cost incurred and also the cost of improvement of the sites. It is to be remembered that the Respondent HUDA is only a statutory body for catering to the housing requirement of the persons eligible to claim for allotment. They acquire the land, develop it and construct buildings and allot the buildings or the sites, as the case may be. Under these circumstances, the entire expenditure incurred in connection with the acquisition of the land and development thereon is required to be borne by the allottees when the sites or the buildings sold after the development are offered on the date of the sale in accordance with the regulations and also conditions of sale. It is seen that in the notice dated 9.8.1990, the total area, net area, the payable amount for the gross acreage, the acreage left for the development purpose, balance recoverable from the plot-holders, plot-table area have been given for each of the areas and recovery rate also has been mentioned under the said notice. Under these circumstances, there is no ambiguity left in the calculations. If, at all, the Appellants had got any doubt, they would have approached the authority and sought for further information. It is not the case that they had sought the information and the same was withheld. Under these circumstances, we do not find any illegality in the action taken by the Respondents. The High Court, therefore, was right in

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refusing to interfere with the order.

10. After having heard the parties and on consideration of submissions made on their behalf, this Court does not find any legal infirmity in the separate impugned orders passed by the Pricing Committee, after remand order having been passed by this Court on previous occasion. The ratio laid down by the Apex Court in the case of Preeta Singh (Km.) (supra) is, in fact, complete answer of all the issues raised on behalf of the Petitioners. This Court further finds that the case of the Petitioners is squarely covered by a judgment/ order dated 18.11.1999 passed by a learned Single Judge of this Court in the case of Radha Krishna Pd. v. State of Bihar and its analogous cases, (Annexure-A to the counter affidavit), which was affirmed by a Division Bench of this Court as also by the Apex Court.

11. For the reasons recorded above, this Court finds no valid grounds for interfering with the orders passed by the Pricing Committee, impugned herein in the present proceedings, and, in fact, no legal infirmity has been pointed out on behalf of the Petitioners to the aforesaid decision of the Pricing Committee. Accordingly, the entire writ petitions fail and are hereby dismissed. However, there shall be no order as to costs.

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