

(2015) 08 PAT CK 0004

In the Patna High Court

Case No : Letters Patent Appeal No. 823 of 2014 in Civil Writ Jurisdiction Case No. 17933 of 2013

Madan Mohan Dubey

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 18-08-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 08 PAT CK 0004

Hon'ble Judges : I.A. Ansari, A.C.J; Chakradhari Sharan Singh, J

Bench : Division Bench

Advocate : Madan Mohan Jha, for the Appellant

Final Decision : Dismissed

Judgement

Chakradhari Sharan Singh, J—We have heard the appellant in person and Mr. Anshuman Singh, learned counsel appearing for the respondents, Bihar State Housing Board (hereinafter referred to as the Board).

2. An order, dated 16.05.2014, passed by learned single Judge, in C.W.J.C. 17933 of 2013, is being assailed, in the present appeal, preferred under Clause 10 of the Letters Patent of Patna High Court whereby a learned single Judge has dismissed the writ application filed by the appellant under Article 226 of the Constitution of India.

3. There are certain facts, which are not in dispute. By a public notice, dated 20.03.1965, the Housing Department, Government of Bihar, had invited applications from individuals, having annual income between Rs. 6,000/- and 15,000/-, for settlement of houses constructed by the Department at Kankarbagh (Patna), under Middle Income Groups (MIG) Housing Scheme, for bona fide residential purposes either through outright sale or sale on hire purchase basis. It appears from a letter, dated 28.09.1968, that the appellant was allotted House No. MIG 67 situated in Mohalla Lohia Nagar, temporarily, on

rental basis. The letter, dated 28.09.1968, issued by the Housing Department, Government of Bihar, has been brought on record by way of Annexure-3 to this appeal. It is not discernible from the said letter that the appellant was allotted the said house on the basis of any application submitted by him pursuant to the said public notice, dated 20.03.1965. As per his case, subsequent to the said public notice, the Housing Department had invited applications from interested persons for allotment of MIG houses, on rental basis and it was in response thereto that he had applied and accordingly, the said house was allotted to him on monthly rent @ Rs. 107/-.

4. Thereafter, Bihar State Housing Board (hereinafter referred to as "the Board") came to be created with effect from 01.05.1972. The Housing Department of the Government of Bihar transferred the said houses to the Board, so created, for outright sale on hire purchase basis. It has been pleaded by the appellant that through letter No. 4593, dated 20.07.1974, the Board of Directors of the Board had decided to sell the houses on hire purchase basis, in favour of those persons, who were allotted and residing in the houses on rental basis, at Lohia Nagar, Kankarbagh. A communication to this effect was made to the appellant through letter No. 4593, dated 20.07.1974. The appellant accepted the offer. The Board informed the appellant through letter, dated 12.06.1975, which has been brought on record by way of Annexure-5 to the memo of appeal, for entering into an agreement. The appellant, accordingly, entered into an agreement with the Board, on 30.10.1975, for purchasing the said house on hire purchase basis. It is the case of the appellant that he deposited full amount in various installments and, thereafter, requested the Board to execute registered deed of conveyance in his favour with respect to the house in question.

5. It is the appellant's case that instead of preparing the sale deed, the appellant was given a copy of a lease deed, which the Board intended to execute in his favour. It is his further case that he enquired from the said Officer of the Board in this regard, when he was told that the Board had taken a decision to execute lease deeds and not sale deeds in favour of allottees and, accordingly, lease deed was required to be executed in his favour.

6. We need not go into various facts, averred in the petition of appeal, which are not necessary for present adjudication and would come straightway to the fact that a lease deed, with respect to the said house, was, in fact, executed by the Board in favour of the appellant on 30.12.1996.

7. It is the appellant's case that he did not know about the fact that there was no decision of the Board to execute the lease deed, as was represented to him, in the year 1979 and he learnt about it in the year 2012 after he obtained information under Right to Information Act, 2005. The information, which the appellant, claims to have received through letter, dated 29.05.2012, under Right to Information Act, 2005, has been brought on record by way of Annexure-13 to this appeal. He filed a representation, dated 04.06.2012, before the authorities of the Board and is said to have filed representation, dated 12.06.2012, before

them, in this regard. He, thereafter, filed a petition, being C.W.J.C. No. 12804 of 2012, under Article 226 of the Constitution of India, raising his grievance, before this Court.

8. Without entering into the merits of the case of the appellant, and in view of the submission made by him, appearing in person, this Court by an order, dated 13.05.2013, disposed of the writ application with a direction that if the petitioner's representation, dated 04.06.2012, was still pending, the same be considered and disposed of by a speaking order by the Managing Director of the Board in accordance with law expeditiously, preferably, within a period of four months on receipt/production of a copy of the order. The Managing Director of the Board, in compliance of this Court's order, dated 13.05.2013, passed in C.W.J.C. No. 12804 of 2012, made a reasoned order dated 23.07.2013, rejecting the appellant's claim on the ground that sale deeds were being executed by the Board in favour of only such allottees, where there was an agreement of outright sale between the State Government and an allottee and that the agreement between the Board and the allottee being in the nature of hire purchase, lease deeds were executed in their favour. The Managing Director has referred to Rule 42 of the Rules framed by the Bihar State Housing Board, while rejecting the case of the appellant, which prescribes that property, allotted by the Board, is transferred to the allottees on permanent lease basis and not on the basis of outright sale.

9. The appellant, thereafter, preferred a writ application, under Article 226 of the Constitution of India, giving rise to C.W.J.C. No. 17933 of 2013, seeking a direction to the Board to execute sale deed in respect of the said House No. MIG 67, as, according to him, the house was required to be conveyed to the appellant on the basis of outright sale as per the policy of the State Government/Board. It is true that the appellant, in his writ application, sought for quashing of the order, dated 23.07.2013, passed by the Managing Director of the Board in his writ application, whereas in the order, under appeal, learned Judge has recorded that the said order was not under challenge.

10. Learned single Judge by the order, under appeal, dated 16.05.2014, dismissed the writ application on the ground that through communication, dated 12.07.1975, it was made known to the appellant that though he would be owner of the house, but the land on which it was situated would be leased out for ninety years. The learned single Judge held that having accepted the conditions as contained in Clauses 8 and 9 of the communication, dated 12.07.1975, the appellant entered into an agreement. Clauses 5 and 8 clearly contemplated that the property would be given on lease for ninety years renewable at the discretion of the Board. The learned Single Judge considered Regulation 42 of Bihar State Housing Board (Management and Disposal of Housing Estates), Regulations, 1983, which expressly contemplates that the land under and appurtenant to a property shall be allotted on perpetual leasehold basis to the owners of the dwelling unit on such terms and conditions as may be determined by the Board

and a lease deed for the land, specified in sub-regulation (i) of Regulation 42, shall be drawn up and executed in such form as may be prescribed by the Board. The learned single Judge held that the execution of lease deed, in the year 1996, with respect to the property, in question, was in accordance with 1983 Regulations. The learned single Judge further held that it was impermissible for the appellant to challenge the terms of the agreement entered into between him and the Board in the year 1975 and the subsequent lease deed executed by the Board in the year 1996 in his favour to which he was also a party. The learned single Judge, however, was of the opinion that the appellant having not challenged the order of the Managing Director of the Board, dated 23.07.2013, passed in compliance of this Court's order, dated 13.05.2013, rejecting the appellant's claim for execution of deed of outright sale in his favour, no relief could be granted to him.

11. The appellant, in person, assailing the order under appeal, has submitted before us that there is error, apparent on record, in the order under appeal, inasmuch as learned single Judge erred by noticing the fact that the appellant had challenged the decision of the Managing Director, dated 23.07.2013, passed in compliance of this Court's order, dated 13.05.2013, in C.W.J.C. No. 12804 of 2012. He has placed much emphasis upon the information supplied to him under the Right to Information Act, 2005, through letter, dated 29.05.2012, in support of his contention that there was no decision by the Board to settle Middle Income Group Houses of Lohia Nagar on lease basis. He has, accordingly, submitted that in the absence of such decision of the Board, the Board was bound to execute outright sale deed in his favour with respect to the house, in question. He has submitted that he was made to enter into an agreement in the year 1975 under the wrong impression that only lease deed could be executed with respect to the property, in question.

12. Mr. Anshuman Singh, learned counsel appearing on behalf of the Board, on the other hand, has submitted that there was no assurance by the State Government or the Board at any stage that the property, in question, would be settled in favour of the appellant on the basis of outright sale. He has submitted that in no case, similarly situated, the Board has ever executed document of absolute sale in favour of the settlee and that the decision of the Managing Director as contained in the order, dated 23.07.2013 (Annexure-15), suffers from no infirmity as there was no such agreement of outright sale in his favour pursuant to allotment of the said house in question.

13. After having heard rival submissions made on behalf of the parties and having given our anxious consideration to such submission and perusal of material on record, we find that the appellant has admitted this fact that he had, in the light of the communication made to him through letter, dated 12.07.1975, entered into an agreement with the Respondents-Board, on 30.10.1975, for purchasing the house, in question, on hire purchase basis. It was specifically mentioned in the said communication that though, upon payment of full amount

with interest, the ownership over the house shall be transferred to him, but the land, on which the house allotted to the petitioner stood, would be leased out to him for a period of ninety years. Pursuant to the said agreement, the appellant entered into an agreement, dated 30.10.1975; Clause 5 of which read as follows:--

"That the land of property will be given on ninety years lease renewable at discretion of the Board "

14. In the year 1996, lease deed was executed in favour of the appellant.

15. In our considered view, the appellant, after more than three decades of execution of agreement in the year 1975, as noted above, and several years after execution of lease deed in his favour by the Board, cannot be permitted to question the terms of the agreement. We are of the view that agreement between the appellant and the Board entered into in the year 1975 and subsequent lease deed executed by the Board in favour of the appellant and accepted by him in the year 1996, with respect to the house in question, are binding on both the parties and none of them can question the terms of agreement or lease deed except on the ground of fraud in execution of the agreement. Further, we find that the respondent- Bihar State Housing Board (Management and Disposal of Housing Estates), Regulations, 1983. We have already discussed what Regulation 42 conveys discussed above. The said regulation requires the Board to settle the land under a house or an appurtenant to a property on perpetual lease hold basis to the owners of the dwelling unit.

16. We, therefore, do not find any compelling reason to interfere with the order under appeal, dated 16.05.2014, whereby learned single Judge refused to grant relief sought for by the appellant in the writ proceeding. We do not find much force in submission made by the appellant-in person that the order of learned single Judge, under appeal, requires interference on the ground that learned single Judge failed to consider that the appellant had challenged the order passed by the Managing Director of the Board, dated 23.07.2013, in compliance of the order of this Court, dated 13.05.2013, passed in C.W.J.C. No. 12804 of 2012 for the reason that we have gone into and examined the correctness of the said order. We find that the Managing Director of the Board has assigned reasons, while rejecting the appellant's representation, which are not only germane but based on correct appreciation of the factual aspects.

17. We do not find any merit in the present appeal. This appeal is, accordingly, dismissed.

18. There shall be no order as to costs.