(2012) 09 JH CK 0014

In the Jharkhand High Court

Case No : Writ Petition (C) No. 1484 of 2006

Mostt. Bhagwati Devi APPELLANT

Vs

Managing Director, Jharkhand State Housing Board and Others RESPONDENT

Date of Decision : 12-09-2012

Acts Referred:

Citation : (2012) 09 JH CK 0014

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : S. Rahman, for the Appellant; I. Sen Choudhary, for the Respondent

Judgement

Aparesh Kumar Singh

1. Heard learned counsel for the parties. The petitioner is aggrieved by the order dated 8.9.2003 as contained in Letter No. 241, Annexure 5, issued by the Revenue Officer, Jharkhand State Housing Board, Ranchi, whereby on the basis of a calculation chart dated 28.8.2003 the petitioner has been asked to deposit a sum of Rs. 1,77,693/- due from 30.9.2003 in respect of LIG Flat No. 3 LF/39 said to be allotted in the name of the husband of the petitioner on 13th May, 1992.

2. It is the contention of the petitioner that her husband entered into a registered agreement dated 10th August, 1996 in respect of the said flat showing the value of the flat at Rs. 63,534/-, in which initial payment of Rs. 12,707/- was fixed with installment starting from September, 1996@ Rs. 746/- per month. The petitioner submits that a letter of authority for handing over the possession of the flat in question was issued on 8.10.1996. It is stated on behalf of the petitioner, on the basis of Annexure 4, the letter dated 21st August, 2003 that he had deposited a sum of Rs. 64.907/- towards the cost of the said flat, however, by the impugned letter dated 8th September, 2003 the husband of the petitioner was informed to deposit a further sum of Rs. 1,77,693/- found due after adjustment of the aforesaid deposited amount. The contention of the petitioner is

that the aforesaid demand is arbitrary and illegal. Against the 180 installments, which were fixed at the time of agreement, the petitioner''s husband was required to pay Rs. 63,534/- with interest. However, it is submitted that the petitioner''s husband died on 13th October, 2003 and thereafter despite representation when the respondents failed to correct the demand in terms of the agreement in question, the petitioner has been compelled to move this Court.

3. On the other hand, Mrs. I. Sen Choudhary, learned counsel appearing on behalf of the Jharkhand State Housing Board, submits that the agreement itself as contained in Annexure 2 to the writ petition stipulates that the fixation of price at the time of agreement was only tentative based upon the then estimate and subject to increase in the cost of construction and development or due to increase in cost of the land acquisition etc., which would be apportioned upon the final valuation or calculation pursuant to the decision of the Board, which the settle is liable to pay in installment or in lump sum within the period decided by the Board.

4. It is submitted that the final fixation of the price was done in the year 2003. Against 180 installments, which were to be paid by the petitioner''s husband, it was found that he was a habitual defaulter and after the death of the petitioner''s husband it was mandatory on the part of the petitioner being his wife to get her substituted as an allottee by filing succession certificate, which she has not done and moved this court seeking finalization of the demand. It is further stated that the Housing Board itself got loan from the financial institution like HUDCO and the Board regularly paid the substantial amount against loan, which obviously has to be realized from the allottees at the time final fixation of the price done after the development of the Housing Colony. It is further submitted that dispute arises out of an agreement in question in which provision has been made for arbitration and the aggrieved persons are supposed to move in arbitration proceeding for settlement of the dispute.

5. Learned counsel for the respondents, however, disputed the averment made in the rejoinder to the counter affidavit stating therein that a sum of Rs. 52,000/- was paid on 28th July, 2003 as full and final consideration amount of the flat.

6. From the submission of the learned counsel for the parties as also the impugned demand, it appears that the respondent-Board has charged interest for delay in execution of the agreement by the allottee, which was supposed to be done within the period of 30 days as per the allotment order in question. The allotment was made in the year 1992 but the agreement was executed in the month of August, 1996. However, it is apparent from the calculation that the amount of interest for the delay in execution of agreement, may be on the part of the petitioner''s husband, was for the first time communicated by the impugned demand dated 8th November, 2003 and obviously the petitioner cannot be made liable for the said interest apportioned on the delay in execution of the agreement in 1996. The respondent-Board is therefore liable to make calculation in respect of the final fixation of price reducing the amount of interest

charged on the delay in execution of agreement from 1992 to 1996, as demand, for the first time, was communicated to the petitioner''s husband in the year 2003. However. so far as the rest payments, they are to be calculated on the basis of agreement entered into between the parties, depending upon the final fixation of the price by the Board. There cannot be any doubt that the allottee is liable to pay the amount as per terms and conditions of the agreement including the interest. Moreover, the petitioner being the widow of the original allottee is required to substitute herself as allottee by fulfilling necessary formalities by approaching the respondent-Board.

7. In the aforesaid facts and circumstances, therefore, the petitioner is directed to approach the respondent-Board for getting herself substituted in place of the original allottee by fulfilling necessary formalities. The respondent-Board, on the other hand, would calculate the demand, afresh after reducing the interest apportioned on the delay in execution of the agreement for four years between the period of allotment and the date of execution of the agreement, together with the rate of interest over the rest amount, which is agreed between the parties as per terms and conditions of the agreement and the allottee or settllee is liable to pay the same in accordance with the terms and conditions of the agreement. This exercise would be completed within a period of four weeks and the petitioner would be liable to pay the fresh demand within a period of eight weeks thereafter. This writ petition stands disposed of in the aforesaid terms.

