

(2003) 09 JH CK 0004

In the Jharkhand High Court

Case No : Writ Petition (C) No's. 3376 and 5587 of 2002

Ram Jiwan Das and Suresh Chandra Verma

APPELLANT

Vs

Jharkhand State Housing Board and Others

RESPONDENT

Date of Decision : 10-09-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 2 JCR 314

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : R.K. Verma, for the Appellant; Umesh Prasad Singh and I. Sen Choudhary, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, J.—As both the cases relate to flats of Jharkhand State Housing Board, Harmu Housing Colony, P.S. Argora, Town and District-Ranchi, they were heard together and are being disposed of by this common judgment.

2. W.P.(C) No. 3376 of 2002 has been preferred by Ram Jiwan Das for issuance of writ/order/direction including writ of mandamus on the respondents to execute the "final Conveyance Deed" transferring the absolute ownership of the premises, comprising of house and land No. HI-163, Harmu Housing Colony, P.S. Argora, District-Ranchi without imposing unlawful, unreasonable and arbitrary conditions as per the prospectus as was issued by the Bihar State Housing Board, Patna.

Further prayer has been made to direct the respondents to refund the over payment made by petitioner to the tune of Rs. 41,647/- with interest.

In W.P. (C) No. 5587 of 2002, the petitioner, Suresh Chandra Verma has challenged the letter No. 206, dated 31st August, 2002 issued by the Managing Director, Jharkhand State Housing Board, Ranchi, whereby and whereunder the allotment of rental Flat No. R-9/2. Harmu Housing Colony, P.S. Argora, Town and

District-Ranchi earlier allotted to the petitioner has been cancelled.

3. Before discussing the individual case of petitioners, it is desirable to discuss certain common facts as noticed and stated hereunder.

Initially the Government of Bihar from its department of Housing and Building Construction used to frame scheme to provide shelter to the Government servant and other people by constructing flats/houses. Subsequently, with a view to implement social housing scheme, the Bihar State Housing Board was constituted by Government of Bihar Ordinance No. 101/91 v followed by the Bihar State Housing Board Act, 1982. The flats/houses, which were earlier constructed and in the control of the department of Housing and Building Construction, Government of Bihar, were also transferred under the control of Bihar State Housing Board. Subsequently, on re-organisation of the State of Bihar in pursuance of Bihar Re-organisation Act, 2000 and creation of successor State of Jharkhand, the Government of Jharkhand enacted Jharkhand State Housing Board Act, 2000 and constituted a Jharkhand State Housing Board.

The flats/houses within the territory of Jharkhand which belonged to Bihar State Housing Board, whether the same stands transferred under the control of Jharkhand State Housing Board or not is pending consideration before the competent Court of law and the Central Government, therefore, it is not required to decide such issue in both the cases.

4. According to petitioner. Ram Jiwan Das (W.P.(C) No. 3376/02), House No. H 1-163, Harmu Housing Colony, P.S. Argora, Town and District-Ranchi was allotted to him by the Bihar State Housing Board vide letter No. 2718 dated 10th December, 1983. He initially paid Rs. 16,400 as initial payment against 20% of the total cost of the house i.e. Rs. 82,000/-. The Bihar State Housing Board subsequently executed an agreement of higher purchase on 7th July, 1987 showing therein the terms and conditions. As per the allotment and agreement, rest of the amount was paid back in maximum 180 monthly equal installments.

The possession of House No. H 1-163, Harmu Housing Colony, Ranchi in the meantime given to him and he had completed all the above formalities, paid all the dues as demanded by the Bihar State Housing Board and has registered all the deeds as per the decision of the respondents. Thereafter, though he (Ram Jiwan Das) written to Housing Board for transfer of the house premises through conveyance deed vide letter dated 5th March, 2001 and the Land Resources Officer (Bhu Sampoda Padadhikari) of Bihar State Housing Board, Patna vide its letter dated 31st March, 2001 directed the Executive Engineer, Housing Board, Ranchi to furnish the payment details of house for final valuation but till date, the final conveyance deed has not been executed in favour of him.

The petitioner, Ram Jiwan Das further claims to have represented the matter before the Managing Director, Jharkhand State Housing Board, Ranchi.

According to petitioner, Suresh Chandra Verma (W.P.(C) No. 5587/02), the Flat

No. R-9/2 situated at Harmu Housing Colony, P.S. Argora, Town and District-Ranchi was lawfully allotted to him on 9th October, 1969 by the department of Housing and Building Construction, Government of Bihar as per the scheme to provide shelter to the Government servant and other people. It has been wrongly cancelled by the Managing Director, Jharkhand State Housing Board by letter No. 206 dated 31st August, 2002 without giving him an opportunity to be heard. The respondents in violation of terms and conditions and tenancy, as stipulated/contained in the agreement, cancelled the order of allotment, duly executed between the department of Housing, Government of Bihar. The action is amount to be arbitrary, malafide, without application of mind and in violation of rules of natural justice.

5. Mr. R.K. Verma, Advocate is the 5th respondent in W.P.(C) No. 3376/02. He is the son of petitioner, Suresh Chandra Verma of WP(C) No. 5587/02.

Suresh Chandra Verma, petitioner (WP (C) No. 5587/02) was in the services of the State Government, recently retired and now joined the legal profession (Advocate).

Mr. R.K. Verma, 5th respondent of W.P. (C) No. 3376/02 appeared on behalf of petitioners in both the cases and Mr. Suresh Chandra Verma, now Advocate assisted him.

6. I am referring the aforesaid fact only because of the allegation made by the respondent, Jharkhand State Housing Board.

7. According to Jharkhand State Housing Board, the Flat No. R-9/2, Harmu Housing Colony, P.S. Argora, Ranchi was allotted to Suresh Chandra Verma being an employee of the State Government. It is just like a Government quarters allotted to a Government employee, who is to vacate it after retirement. Even after retirement, Sri Suresh Chandra Verma having not vacated the Government Quarters, his initial allotment order has been cancelled.

Counsel for the Jharkhand State Housing Board submitted that Jharkhand State Housing Board, Ranchi has been constituted recently and has become custodian of all flats/houses of the Housing Board within the territory of Jharkhand. The order of allotment, if any, issued in favour of petitioner, Suresh Chandra, Verma should be with the petitioner and the copy, if any, should be either in the Housing Department of State of Bihar or the Bihar State Housing Board, Patna. The petitioner is not produced any order of allotment in his favour and having not made the State of Bihar or the Bihar State Housing Board, Patna as the party, no respondent is in a position to produce any such order of allotment.

It was submitted that no higher purchase agreement was reached between the petitioners, nor any order of allotment on the basis of higher purchase agreement was issued.

8. On 26th November, 2002 this Court in WP (C) No. 5587/02 (Suresh Chandra Verma) observed that there is nothing on the record to suggest that any order of

allotment of quarters in question was issued in favour of petitioner by any competent authority. Counsel for the petitioner was allowed time to file rejoinder to the counter affidavit enclosing the copy of order of allotment, if any, issued in favour of petitioner, Suresh Chandra Verma.

In spite of time granted, the petitioner, Suresh Chandra Verma failed to produce any order of allotment in his favour to suggest that the Flat No. R-9/2, Harmu Housing Colony, Ranchi was allotted in his favour by any authority.

9. Counsel for the petitioner relied on one or other document to suggest that there must be some order of allotment, otherwise there was no occasion to cancel the allotment order but such submission cannot be accepted as any right of occupation of an immovable property cannot be decided on the basis of presumption.

Another fact has been brought to the notice of the Court by the Jharkhand State Housing Board. According to them, the House No. H1-163, Harmu Housing Colony, Ranchi was Initially allotted to Ram Jiwan Das but said Ram Jiwan Das, in fact, not in possession of the said house. The house is in possession of other petitioner, Suresh Chandra Verma and his son, R.K. Verma, Advocate. On the basis of a power of attorney, Suresh Chandra Verma purported to have purchased the House No. H 1-163, Harmu Housing Colony, Ranchi without prior permission of the Housing Board, against the terms of agreement.

10. Counsel for the Jharkhand State Housing Board placed reliance on a number of enclosures attached to the counter affidavit of WP (S) No. 3376/02, including an allegation petition dated 6th August, 2001 made by one Kailash Bihari Trivedi, retired Forest Divisional Officer, report of Junior Engineer, Jharkhand State Housing Board, Ranchi dated 7th December, 2002. The notice dated 12th September, 2001 given by Sri Suresh Chandra Verma to the Managing Director, Jharkhand State Housing Board, Ranchi with respect to House No. H 1-163, Harmu Housing Colony, Ranchi and the attorney of Sri Ram Jiwan Das, letter dated 20th February, 1997 written by Ram Jiwan Das to Kailash Bihari Trivedi to suggest that Sri Trivedi was paying monthly installment of Rs. 1900/-per month to the Housing Board and agreement dated 24th October, 1996 signed by Ram Jiwan Das in favour of Kailash Bihari Trivedi, Photo of house in question to suggest that additional construction has been made with permission of the Housing Board and the name plate of R.K. Verma, Advocate is hanging on the wall, telephone directory of Jharkhand High Court Advocate Association wherein the address of Advocate, R.K. Verma has been shown to be House No. H1-163, Harmu Housing Colony, Ranchi etc.

11. From the aforesaid fact, the following facts emerges :

(i) There is no allotment order on record, nor there is any agreement to suggest that the Flat No. R-9/2, Harmu Housing Colony, Ranchi was allotted to Suresh Chandra Verma as higher purchaser;

(ii) The House No. H 1-163, Harmu Housing Colony, Ranchi is in occupation of Sri R.K. Verma, Advocate which he accepted before this Court;

(iii) There is a dispute whether Ram Jiwan Das has sold the House No. H 1-163, Harmu Housing Colony to Suresh Chandra Verma by giving a power of attorney or was sold to Sri Kailash Bihari Trivedi or renovated the house in violation of agreement or not;

and

(iv) Sri R.K. Verma, Advocate son of petitioner, Suresh Chandra Verma has now taken up the case of Ram Jiwan Das and argued, though he himself is the 5th respondent in the said case WP (C) No. 3376/02.

In the aforesaid background, it is not desirable to discuss the submission as made on behalf of petitioners, as no relief can be granted to either any one of the petitioners for the reasons mentioned above.

12. Both the writ petitions are, accordingly, dismissed. However, there shall be no order, as to costs.