

(2003) 07 JH CK 0100

In the Jharkhand High Court

Case No : Writ Petition (C) No's. 3924 and 3952 of 2002

Sahdeo Mistry and Parmananda Dash Sharma

APPELLANT

Vs

Jharkhand State Housing Board and Others

RESPONDENT

Date of Decision : 08-07-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 3 BC 506 : (2003) 3 JCR 263

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : R.K. Verma and V.N. Choudhary, for the Appellant; I. Sen, Choudhary and V.K. Pd., for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—In these two writ applications since common question of law is involved, they have been heard together and are disposed by this common order.

2. The only question that falls for consideration is as to whether the respondent Housing Board is justified in demanding exorbitant amount from the petitioners-allottees before executing the final deed of conveyance in favour of the petitioners.

3. Petitioners were allotted flats bearing Nos. HI-189, HI-98 vide allotment letters dated 28.9.1983 and 10.12.1983. Petitioners paid a sum of Rs. 16,550/- against the total price of the house i.e. Rs. 82,000/- fixed in the allotment letters. Hire Purchase Agreement was executed by the respondent-Housing Board in favour of the petitioners on 18.3.1986 and 21.3.1986. As per the said agreement the petitioners were to pay a further sum of Rs. 65,000/- in 180 equal installments. Petitioners said to have started payment of installments and represented the respondent- Housing Board for delivery of possession of their respective houses. Delivery of possession of the houses were given to the petitioners on 19.5.1988 and 25.8.1988.

4. In WP(C) No. 3952/2002 petitioners' case is that he regularly paid the installments and the total amount paid by him is Rs. 1,54,260/- while the total amount paid by the petitioner of WP (C) No. 3924/2002 is Rs. 1,42,250.50 Paise against the predetermined price of the houses i.e. Rs. 82,000/- It is contended that after making payment of last installments the petitioners filed representation to the Executive Engineer of the respondent- Housing Board on various dates and requested him to execute deed of conveyance. However, instead executing the deed of conveyance the Managing Director of the Housing Board has issued the impugned letters demanding a sum of Rs. 2,33,254/- and Rs. 2,15,840/- from the petitioners respectively. The petitioners, therefore, contend that the demand of such exorbitant amount is wholly illegal and mala fide.

5. In the counter affidavit filed by the Housing Board it is stated that the allotment was made to enter into an agreement with the Board within 30 days but they entered into agreement in June, 1986 i.e. after more than 2 years and in the said agreement the tentative price of the houses was Rs. 82,000/-, So far the calculation of the Impugned demand is concerned, the same was made by the accountant which has been approved by the Section Officer, Jharkhand State Housing Board.

6. In WP (C) No. 3924/2002 the stand of the Housing Board is that the petitioners defaulted in payment of the requisite installment and entered into Hire Purchase Agreement at belated stage. Paragraphs 12, 13 and 14 of the counter-affidavit is worth to be quoted which reads as under :--

"That as the petitioner executed agreement with the Board after a delay of two and half years on the tentative cost of Rs. 82,000/- as on 30.09.1983. However, Rs. 6,500/- deposited by the petitioner as earnest money has been deducted from the tentative cost of Rs. 82,000/- and after deduction, the amount comes to Rs. 75,000/-. The amount was capitalized on the prevailing, @ interest 12.25% which came to Rs. 76,270/- as on 31.10.1983. After deducting the initial deposit of Rs. 9,900/- deposited on 24.10.1983, the rest amount comes to Rs. 66,370.70 (i.e. 76,270.70-9,900) which was to be paid by the petitioner.

That the capitalized value of Rs. 66,370.70 from 31.10.1983 to 31.03.1986 comes to Rs. 87984.02 only. As the installment was fixed on the amount of Rs. 65,000/- as mentioned in paragraph 6 of the allotment order, hence the difference money of Rs. 22,384.02 (87,984.02-65,600) remained due and payable by the petitioner. The capitalized value of Rs. 22,384.02 from April 1986 comes to Rs. 1,22,414.97 up to November 2000 and Rs. 1,23,664.58 upto December 2000.

That the installment has been fixed in the allotment order calculating the Interest @ 9.5% and 12% at the time of allotment. But as per decision of the Board issued under Office Order No. 481 dated 04.02.1994, the rate of interest was revised @ 12.25% and 14.75% respectively. After calculating the dues at the

revised rate of interest, the dues on the point of interest, penal interest and delayed payment of installment comes Rs. 92,176/- in the month of December 2000. Under the aforesaid facts and circumstances, it is clear that due to delay In execution of agreement and increase In the rate of interest, the dues against the petitioner stands as shown hereunder :--

Matuk	Nath	@	Matru	Jha													
										Ramnath	Jha	Umanath	Jha				
										Nanumani	Jha	Balkuntha	Jha	Wife	Baleshwari	Devi	
										Widow	Sudama	Devi					
										(plaintiff)							
										Devendra	Jha	Upendra	Jha	Jahanbi	Jha	Gyanbi	Jha
										Kamla	Devi	(D)	Bimla	DeVI			
										Shambhunath							
										Thakur							
										Rajesh	Kumar	Jha	Sailesh	Nath	Jha	@	
										Maheswari	Kumar	Jha					
										Anand							
										Kumar	Jha	Akhilesh	Kumar	Jha	Naresh	Nath	Jha
										@	Mithilesh	Kumar	Jha				

7. Admittedly the petitioners deposited the entire installments and as against the price of Rs. 82,000.00 fixed in the Hire Purchase agreement the petitioners paid Rs. 1,42,257.50 Paise and Rs. 1,54,260.00 respectively. In that view of the matter, merely because there was some delay in payment of the installments the respondent-Housing Board can not make such exorbitant demand by calculating the amount in the manner stated in the aforementioned paragraphs of the counter affidavit. The demand raised by the Board, therefore, is wholly illegal, mala fide and without application of mind. Petitioners shall at least be liable to pay interest for the period they defaulted in making payment of the installments but they can not be saddled with such exorbitant demand by capitalizing the amount not paid by the petitioners in time. The matter needs reconsideration by the Managing Director of the respondent-Housing Board.

8. For the aforesaid reasons these two writ applications are allowed and the impugned demand is quashed. The Managing Director of the respondent-Board is directed to reconsider the matter afresh and take a fresh decision by passing a reasoned order after giving opportunity of hearing to the petitioners.