

(2009) 09 OHC CK 0055

In the Orissa High Court

Case No : Writ Petition (C) No. 6183 of 2007

Saroj Ranjan Mohanty

APPELLANT

Vs

Orissa State Housing Board and Others

RESPONDENT

Date of Decision : 01-09-2009

Acts Referred:

Citation : (2009) CLT 49 Supp : (2009) 2 OLR 418 Supp : (2009) OLR 49 Supp

Hon'ble Judges : Indrajit Mahanty, J;B.P. Das, J

Bench : Division Bench

Advocate : Bikram Pr. Das and S.K. Mishra, for the Appellant; B.K. Sahoo and Girija Tripathy, for the Respondent

Final Decision : Allowed

Judgement

B.P. Das, J.—The Petitioner has filed this writ petition with a prayer to direct the opposite parties, i.e., the Orissa State Housing Board (shortly called "the Board") and its functionaries, to allot a house in his favour in terms of the recommendation made by the Board treating Petitioner's case as an old case or in the alternative to consider his case for allotment of a house at par with the allottees paying full cost of the houses.

2. The Petitioner, who is working as a Section Officer in the Directorate of Secondary Education, Orissa, in 1994 applied for allotment of a Lower Income Group house under the LIG Housing Scheme at Patia in Bhubaneswar, which was floated by the Board, and deposited the required security money of Rs. 10,000/-. In due course, the Petitioner was provisionally allotted with a house under the said scheme but due to financial problems, he could not deposit the balance initial cost of Rs. 90,193/-. The Board by letter dated 25.5.1998 (Annexure-1) intimated the Petitioner to deposit the balance amount by 16.6.1998 failing which the allotment would be cancelled and the security deposit would be refunded. Due to bad financial condition, the Petitioner could not arrange and deposit the aforesaid amount. The Board neither issued any communication cancelling the allotment nor refunded the security deposit. In January, 2005, the

Petitioner approached the Board with a request to consider his case for allotment of a house in some other on going scheme whereafter the Board by letter dated 14.1.2005 (Annexure-2) intimated the Petitioner that since he had not deposited the balance amount, the provisional allotment of the LIG house in his favour was cancelled and the security deposit was being refunded. When the Board came up with a joint venture housing scheme, namely. Sri Satyasai Enclave at Aiginia in Bhubaneswar, on 28.11.2005 the Petitioner requested the Board to consider his case for allotment of a house under the aforesaid scheme. O.P. No. 3-the Asst. Housing Commissioner of the Board by letter dated 3.1.2006 (Annexure-3) intimated the Petitioner that the security deposit made for allotment of house under Patia scheme had been refunded and advised him to apply afresh for allotment of house when advertisement would be published in the local dailies. The Board refunded the security money to the Petitioner by letter dated 2.9.2006 (Annexure-4). The Petitioner, however, on 6.9.2006 while returning the security money requested the Board to consider his case for allotment of a house under Sri Satyasai Enclave Scheme as completed units were available under the said scheme. There was no response from the Board to the aforesaid request of the Petitioner. In the meantime the Board issued an advertisement calling for applications for allotment of house under the Sri Satyasai Enclave Scheme in response to which the Petitioner on 17.3.2007 applied for allotment of an MIG-III (Duplex) house under the category of Govt, employee and made the initial deposit of EMD of Rs. 1,14,300/- along with the processing fee of Rs. 1,500/-vide the acknowledgment receipt dated 17.3.2007 and bank challans under Annexures-5 and 6 respectively. The brochure issued by the Board for the Sri Satyasai Enclave Housing Scheme vide Annexure-7 stipulated that allotment of house would be made category-wise.

Since the opposite party-Board had a tie up with a finance company, namely, HDFC Ltd., for providing loans to the Applicants of the houses under the Sri Satyasai Enclave Housing Scheme upto the full cost of the houses, the Petitioner also requested the HDFC Ltd. to provide him loan upto the full cost of the house but his request was turned down on the ground that he had only four years of service left and had no other earning member in his family. The Petitioner has stated that the opposite parties have proposed to allot houses to the Applicants, who have been provided with loan by the HDFC Ltd. upto the full cost of the house but he would be deprived of getting a house because of refusal of the HDFC Ltd. to provide him such loan.

3. It is submitted by the Petitioner that he had applied for allotment of a house since long and the Secretary of the Board considering his case as an old case thrice recommended for allotment of house in his favour primarily because the Board had neither cancelled the allotment nor refunded he security deposit made under the earlier scheme immediately. It is alleged that as the Board has allotted houses to certain persons even before publication of the advertisement by it, the advertisement was issued for less number of houses than the number of houses actually constructed. According to the Petitioner, being a Government employee

he is trying to have a house at Bhubaneswar for more than a decade and is running from pillar to post to get the same. Now that he is going to retire in a few years and he very much needs a house at Bhubaneswar and since he is in a better financial position and is ready to pay the entire cost of the house, still he has been deprived of the house.

4. During the course of hearing, the Petitioner filed an application praying for provisional allotment of a house in his favour so that he would be able to arrange the required fund for payment of full cost of the house.

5. It is worthwhile to mention here that the Petitioner filed this writ application on 11.5.2007. On 17.5.2007 a collateral Bench of this Court passed an interim order to the effect that one house under MIG (III) Duplex in Satyasai Enclave Housing Scheme should not be allotted to anyone without leave of the Court and the said interim order is still continuing. On 20.7.2009 while hearing learned Counsel for the Petitioner, this Court, as an interim measure, directed the Board to give provisional allotment to the Petitioner in respect of the house reserved by virtue of this Court's order dated 17.5.2007 within a period of two weeks from that date, which would enable the Petitioner to apply for a loan in order to make full payment.

6. considering the allegation of the learned Counsel for the Petitioner that the order directing provisional allotment of a house in favour of the Petitioner has not been complied with, this Court by its order dated 17.8.2009 while issuing notice of contempt to the Secretary of the Board, Sri Basudev Bahinipati, directed him to appear before this Court in person today and file show cause for non-compliance of the order of this Court dated 20.7.2009. Pursuant to the aforesaid order, the Secretary is present in Court today and has filed a show cause affidavit. The opposite parties have filed their counter affidavit on 3.8.2009 wherein they have taken a stand that the application of the Petitioner was rejected earlier as the same was incomplete. In the foregoing paragraphs, we have already indicated the reason for rejection of the application of the Petitioner. The Petitioner has candidly disclosed in the writ petition the circumstances under which his application for allotment of house was rejected and the money deposited by him was not refunded to him immediately and the stages through which he went through to get a house in his favour. Initially the Petitioner deposited a sum of Rs. 10,000/- as security money and thereafter when he could not able to deposit the balance initial cost, the allotment was cancelled, but the amount deposited as security deposit was not refunded to him immediately. Thereafter, the Petitioner made an application, for allotment of a house under Sri Satyasai Enclave and made the initial deposit of EMD of Rs. 1,14,300/-

7. It is submitted by the learned Counsel for the opposite parties that the application of the Petitioner for allotment of house under Sri Satyasai Enclave was incomplete because he had not submitted the information regard income. In the rejoinder the Petitioner refuted the same stating that though he had not

mentioned the present annual income of the family, but had furnished the income certificate, copy of which is annexed to the rejoinder as Annexure-8. This being the position, the ground taken for rejection of the Petitioner's application is no more available to the opposite parties.

The opposite parties in Misc. Case No. 10320 of 2009, which was filed on 21.8.2009 with the affidavit of Basanta Kumar Mishra Law Officer of the Board have indicated that a house in Sri Satyasai Enclave has been provisionally allotted in favour of the Petitioner as per the letter dated 20.8.2009. But the house number has not been given and the cost of the said house has been indicated in the aforesaid letter to be Rs. 16,09,950/-.

8. Learned Counsel for the Petitioner submits that after filing of this writ petition, houses were allotted to different allottees at the cost of Rs. 11,43,000/-. Therefore, there is no reason as to why the opposite parties would compel the Petitioner to pay a higher cost of Rs. 16,09,950/-. There is no plausible answer to it by the opposite parties except saying that this is the present value of the house.

It is worthwhile to mention here that the Petitioner filed this writ petition on 11.5.2007 and thereafter the Board allotted houses different allottees at a value of Rs. 11,43,000/-.

9. In our considered opinion, since the Petitioner stands on the same footing as that of the allottees, who were allotted houses on 20.7.2007 at a cost of Rs. 11,43,000/-, the Petitioner should also be required to pay the same amount of cost, i.e., Rs. 11,43,000/-.

At this stage, the Secretary of the Board, who is present in Court, submits that the aforesaid amount of Rs. 11,43,000/- does not include the cost of electrification and water charges which is Rs. 28,000/-. So the total cost of house, i.e. Rs. 11,43,000.00 + Rs. 28,000.00, comes to Rs. 11,71,000/-. As the Petitioner was supposed to get the house on 20.7.2007, let the Petitioner pay interest @ 10% per annum on the aforesaid total amount of Rs. 11,71,000/- from that date till the date of allotment. Thus the Petitioner is liable to pay the total cost of the house, which is rounded up to Rs. 14,05,000/- (rupees fourteen lakhs five thousand) inclusive of interest for around two years.

The Secretary of the Board states that the number of the house allotted to the Petitioner is MIG (III)-404. Let the Board, after deducting the amount already paid by the Petitioner, raise a demand for payment of the balance amount by the Petitioner within a period of fifteen days from the date of receipt of this judgment, giving the Petitioner three months' time to deposit the amount as indicated above. After the demanded amount is deposited by the Petitioner within the time so stipulated, the opposite parties shall hand over possession of the house to the Petitioner within seven days thereafter.

In view of the aforesaid directions, we are not inclined to proceed against the

Secretary of the Board for violation of this Court's order and the notice is accordingly discharged.

10. The writ petition is allowed accordingly.

Indrajit Mahanty, J.

11. I agree.