
(2006) 09 PAT CK 0076
In the Patna High Court
Case No : C.W.J.C. No. 5909 of 2001

Shiv Sahay Verma

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 25-09-2006

Acts Referred:

Citation : (2007) 1 BLJR 33 : (2006) 4 PLJR 264

Hon'ble Judges : S.N. Hussain, J

Bench : Single Bench

Advocate : Shree Kant Pandey, for the Appellant; Nilu Agrawal, for the Respondent

Final Decision : Allowed

Judgement

S.N. Hussain, J.—Heard learned Counsel for the petitioner, learned Counsel for the State of Bihar and learned Counsel for the Bihar State Housing Board and its authorities.

2. This writ petition is directed against the order of the Bihar State Housing Board communicated vide letter No. 316 dated 1.3.2001 (Annexure-11) issued under the signature of the Executive Engineer, Bihar State Housing Board, Patna by which the petitioner was directed to pay additional demand of Rs. 1,54,657/- by 31.12.2001 in addition to the amount already paid by him as the price of L.I.G. House No. LH-1/27 in the year 1983 and also for a direction to the respondents authorities for transferring and registering the said L.I.G. house in the name of the petitioner as per the agreement between the parties.

3. Learned Counsel for the petitioner submits that under the welfare scheme for Low Income Group of landless persons, lands were acquired and constructions of house were made for being allotted to such persons on the basis of "no profit no loss". He further states that after completing the entire infrastructure and payment of cost of land as well as the cost of construction to the persons concerned, allotments were made and the said house was allotted to the

petitioner vide allotment letter dated 12.11.1983 (Annexure-1) at the price of Rs. 39,500/-, whereafter an agreement was executed by the parties on the proforma of the respondent Board on 03.04.1989 (Annexure-3) at the enhanced price of Rs. 48,435/- to be paid in 180 equal monthly instalments of Rs. 381.55 each. He also avers that thereafter the possession of the said premises was handed over to the petitioner on 27.6.1989 (Annexure-5) and since then the petitioner is residing therein.

4. Learned Counsel for the petitioner further contends that if from the date of agreement 180 monthly instalments are calculated it would end sometimes in the year 2004 but the petitioner not only went on depositing the instalments in time but deposited further amounts in addition to instalments due to which the entire money was deposited in less than 140 instalments by September, 2000 which is apparent from the chart dated 12.9.2000 (Annexure-6) as well as the check list also dated 12.9.2000 (Annexure-8) both issued under the signature of Executive Engineer of the Board showing total payment of Rs. 65,159.50 paise including the money deposited prior to the execution of the agreement amounting to Rs. 9687/-. In spite of the terms of agreement as well as the payment of entire money much within the period prescribed in the agreement, the same Executive Engineer of the Board issued letter No. 316 dated 01.03.2001 (Annexure-11) to the petitioner directing him that now he has to pay further amount of Rs. 1,68,300/-, out of which he has paid only Rs. 13,643/- and hence he was asked to pay Rs. 1,54,657/- by 31.12.2001, failing which further action will be taken. The petitioner was surprised to receive the said letter and hence he sent his reply to the said authority of the Board on 12.3.2001 (Annexure-12) stating in detail about the entire payment made by him much within the time prescribed and hence the entire fresh demand was absolutely baseless and frivolous and the authorities of the Board were duty bound to transfer the said premises to the petitioner by way of executing a proper deed. Learned Counsel for the petitioner also states that no heed was paid to the aforesaid representation of the petitioner and hence he had no other remedy but to file this writ petition on 02.05.2001 whereafter the said petitioner died on 18.05.2001 and his wife was substituted in his place in this writ petition as writ petitioner by order of this Court dated 24.08.2006.

5. Learned Counsel for the respondent-Board contests the claims of the petitioner on the basis of the counter affidavit filed by the said respondent, but it has not been denied that at the time of agreement in the year 1989, the cost was fixed at Rs. 48,435/- and on that basis instalments were fixed. Learned Counsel for the respondents however states that the price fixed in the agreement was tentative as would appear from the agreement itself. It is further stated on behalf of the respondent-Board that apart from the amount of Rs. 9687/- paid before the execution of the agreement the petitioner had paid only Rs. 55,272.50 Paise although the capitalised value up to 30.04.1989 calculated in the year 2000 came to Rs. 64,174.08 Paise, out of which only Rs. 55,272.50 Paise was paid by the petitioner only in 137 monthly instalments and thus an amount of Rs. 9000/-

was not paid by the petitioner as per the said calculation and hence in terms of Clause 3(a) and 4 of the agreement, the total due after adjustment of the amount paid by the petitioner was arrived at Rs. 160532/- as on 30.12.2000 and if it was not paid by that date, the required amount was to shoot up to Rs. 1,68,300/- up - to 31.1.2001 as the chargeable rate of Interest over the due amount was 13.5 per cent per annum. It is further submitted on behalf of the respondents that out of the said amount Rs. 13643/- was paid by the petitioner in January, 2001 and hence the remaining total amount with interest calculated on the date of filing of the counter affidavit on 10.7.2001 amounted to Rs. 1,63,134/-.

6. After hearing learned Counsel for the petitioner and learned Counsel for the respondents, it is quite apparent that the house in question was allotted by the authorities to the petitioner as far back as in the year 1983 and agreement was executed on 03.04.1989 and much before that all the infrastructures were complete and the cost of land as well as of constructions were already paid to the persons concerned and hence such financial liability incurred over the land acquisition as well as its development and construction were recoverable from its beneficiaries as the Low Income Group Houses were allotted on "no profit no loss basis" as per the Government policy. Furthermore, in terms of Clause 3 of the letter of allotment and Clause 4 of the agreement, the allottee is liable to pay increased cost/price due to increase in expenditure in cost of acquisition of land and its development or due to final valuation of the unit. In the Instant case, there is no question of any increase of the cost of acquisition of land or increase of the cost of construction as it had already been made much before the allotment to the petitioner and on that basis calculations were already made. Hence, in the said circumstances, there was no occasion for the authorities concerned to again revise the said cost and direct the petitioner to pay further amounts with interest on the enhanced amount from the date of allotment.

7. Although the respondents authorities have claimed that there was an error in calculating the price before agreement but the said agreement was executed in the year 1989 and no notice or information was ever given to the petitioner with respect thereto nor any such claim has been made before this Court by the respondents concerned and it was only in the year 2001 and that also after the payment chart etc. (Annexures-6 and 8) were issued by the Executive Engineer on 12.9.2000. In any view of the matter, no material has been produced by the respondents to show that the Housing Board ever communicated about any such alleged mistake to the petitioner and hence it is difficult to accept the claim of the Board. It is also not disputed that several houses of the same type were allotted to different other persons on the price fixed at the time of agreement but their cost has not been enhanced. It may now be noted in this case that a policy decision has already been taken by the authorities concerned that allotment in such cases will be made on the basis of "no profit no loss" and the cost of land and of construction having already been paid on the basis of which the price has already been fixed by the concerned authorities, there was no occasion for

issuance of the impugned letter dated 01.03.2001 (Annexure-11).

8. Several allottees of the respondent-Board had earlier also been similarly directed to pay enhanced cost and interest, out of whom one Ram Sharan Prasad Singh filed a writ petition bearing CWJC No. 5106 of 1991 which was disposed of on 8.7.1992 by this Court holding that the Housing Board cannot raise demand on the basis of alleged fact that the real price of the house in question was much higher and that the demand made was arbitrary and thus the same was quashed. The said order was challenged before the Hon"ble Apex Court by the Housing Board in a petition for Special Leave to Appeal (Civil) No. 13243 of 1992 which was dismissed with a liberty to the Board to file a petition for review before the High Court. Thereafter the Board filed Civil Review No. 159 of 1992 and the said review was also dismissed by this Court on 27.9.1993. Hence, as per the said decision also, there was absolutely no occasion for the Board or its authorities to enhance the said cost/price. Furthermore, this Court has also decided a similar matter in a writ case bearing CWJC No. 236 of 2001 (Smt. Bina Singh alias Sinha v. The Bihar State Housing Board and Ors.) which has been decided on 07.07.2006.

9. Considering the entire facts and circumstances, it is hereby held that the respondent-Board was not justified in raising the demand and fixing interest and hence the said demand and the impugned order are arbitrary and perverse and are accordingly, quashed.

10. However, it has been stated by the learned Counsel for the petitioner that she has already paid the entire amount of cost including the interest as per the direction of the authorities concerned and no amount including interest is due on the basis of the price of the premises and the rate of interest fixed at the time of allotment. Hence, respondent-Board is hereby directed to execute a deed of lease in respect of the transfer of the aforesaid premises on perpetual lease hold basis in favour of the petitioner (settlee) as per Clause 9 of the agreement in terms thereof.

11. However, it has to be made clear that if the Housing Board makes any re-calculation, it has to be done on the basis of the principal price fixed at Rs. 48,435/- only at the time of execution of the agreement and if any amount of the said principal amount or interest is due as per the agreement, the Housing Board may insist upon the petitioner to pay the said amount only.

12. It is further directed that let this order be complied by the respondents authorities within three months from the date of receipt/ production of a copy of this order. This writ petition is, accordingly, allowed.