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(2004) 09 PAT CK 0072

In the Patna High Court

Case No : CWJC No. 4080 of 2000

Shri Narendra Pratap Pandey APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 10-09-2004

Acts Referred:

Bihar State Housing Board (Management and Disposal of Housing Estates) Regulations, 1983 — Regulation 45

Citation : (2004) 3 BLJR 1870 : (2004) 4 PLJR 239

Hon'ble Judges : R.S. Garg, J

Bench : Single Bench

Advocate : A.B. Ojha, for the Appellant; Rajiv Nayan Singh, for the Respondent

Final Decision : Allowed

Judgement

R.S. Garg, J.—Heard learned counsel for the parties.

2. The facts in nutshell are that in the year 1972 the Housing Board notified a Housing Scheme, the petitioner made an application and on 15.12.1978 deposited a sum of Rs. 5,000/- and his application in prescribed proforma along with his own affidavit. On 25.9.1991 the plot was allotted in favour of the petitioner. On 24.1.1996 the petitioner in accordance with the directions issued by the respondents deposited a sum of Rs. 35,530/- and thereafter an agreement was executed on 19,2.1996. It was agreed between the parties that the balance consideration would be paid by the petitioner in 40 equal instalments each of Rs. 2,165.30 paisa. The petitioner who purchased a dream sincerely hoped that the Housing Board, a creation of the State Government would act honest, would provide him the land so that he may build his dream house, went on depositing the instalments. The respondent Board knew well that the plot which has been allotted to the petitioner is under encroachment. Despite the personal knowledge of the facts no steps were taken to remove the encroachers and as an eye-wash an application was filed before the Estate Officer for removing the encroachment. Though the order has already been passed by the

Estate Officer but the Housing Board feeling itself to be absolutely incompetent and powerless could not execute the order nor could dispossess the encroachers. The petitioner has filed the present writ application on 9.5.2000. The submission was that the respondents be asked to hand over the possession of the plot, the petitioner to show his sincerity even after filing of the writ application deposited the instalment amount and the respondents exhibiting their utter and absolute dishonesty proceeded to receive the instalment amount knowing well that they are unable to deliver the possession of the plot to the petitioner.

3. A show cause was asked. The respondents simply stated in it that a large chunk of land admeasuring 1024.51 acres at Digha, Patna was acquired, a amount of Rs. 8,33,43,958.20 was deposited with the Collector in the year 1982. The facts thereafter are that number of the persons challenged the acquisition, they came to the High Court in writ application, the writ application was dismissed, the LPA filed by the land owners were also dismissed and their appeals before the Supreme Court also proved futile. The Housing Board did not take any care of the property and during this period of litigation the original land owners went on executing sale-deeds in favour of third party and the said third parties, well within the knowledge of the Officers of the Housing Board went on constructing their houses on the acquired land. A sum of Rs. eight crores the public money was deposited by the Housing Board with the Collector as compensation money. The land undisputedly is under encroachment. On an earlier occasion in a different writ it was submitted before me that about 500 acres land is under encroachment while other 600 acres land is open. Unfortunately the respondent Housing Board even with the help and assistance of the administration, police and the might of the State Government is unable to maintain its possession over that area of 600 acres. The petitioner when claims a plot the respondents say that they are not in possession of the land therefore they are unable to hand over the possession. When the petitioner demands the money the respondents say that they may return the money with 5% interest.

4. The respondents are placing their strong reliance on Regulation 45 of Bihar State Housing Board Regulations, 1983. The said regulation reads as under:

"Simple interest at the rate of 5% will be payable on the amount of earnest money deposited by the applicants, after the date of enforcement of this regulation no interest will be payable on deposits made hereinbefore."

A fair reading and understanding of Regulation 45 would make it clear that simple interest @ 5% is to be paid on the amount of earnest money and no interest would be paid on any amount deposited prior to enforcement of the regulations.

5. A straight question was put to the counsel of the respondents in presence of the Managing Director of the respondent Housing Board that whether the amount deposited by the petitioner was towards earnest money or towards the cost. It is submitted by the learned counsel for the respondent Board that a sum of Rs.

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5,000/- was deposited towards earnest money and the balance amount was deposited towards tentative cost of the plot. From the admission made by the counsel for the respondents it would clearly appear that they can honestly or dishonestly return the sum of Rs. 5,000/- with a submission that they would pay 5% interest on it. For the balance amount when they themselves say that it was not deposited towards the earnest money then in accordance with Regulation 45 they can not say that they would pay only 5% interest. The Regulation is not framed by the general public it has been framed by the Housing Board itself. It was framed in the year 1983 since then 21 years have passed and the Housing Board has not thought that the Regulations require a change.

6. During course of the arguments it was submitted that in a meeting of the Housing Board held on 22nd September, 2003 the Board has resolved that Regulation 45 should be made applicable to all types of the deposits. Assuming for a minute that such a Regulation would be valid with retrospective effect then to the amount paid by the present petitioner would not come under the category of the deposits. It is payment towards consideration. If the Board says that they would keep money for long many years and they wish to change Regulation 45 with the effect that every amount shall carry only 5% interest then such a resolution would exhibit nothing but dishonesty on the part of the Housing Board. Though the said proposal is not before this Court but the manner in which it is sought to be projected is shocking. It would be absolutely unconstitutional. How can an authority keep the money for long many years and say that they would only pay 5%. The rate of interest is fixed by the Reserve Bank of India. In the year 1983 the rate of interest was ranging between 9-13%, the private Banks and Co-operative Banks were giving 1% more. The rate of interest started falling since after 1997 when it was reduced to 9%. Even today it is 5.5%. In cases where the money is invested in the securities and bonds the return on the interest is more than 6%. If a person invests his hard earned money in secured ventures or securities or in the Bonds where he has a guarantee of its return and refund then he is entitled to get more than 6% as on date then how can the respondent Housing Board can justify that they would pay the interest @ 5% from the date of deposit and the interest would only be simple interest. When I specifically asked the counsel for the respondent Board that in case of default how much interest they charge the learned counsel for the respondents stated in the open Court that in case of delayed payment they charge interest at the rate of 13.5% and in case of default they charge 1% extra i.e. 14.5%. If the respondents are charging interest @ 13.5% and penal interest of 1% more than how can they be allowed to say that they would refund the money with 5% simple interest. It is not expected of the respondents that they would act as Shylock. It appears that the respondent Board wants pound of flesh and the blood too.

7. At this stage a submission was made that in an earlier case where 12% interest was allowed the matter was taken to the Supreme Court and the Supreme Court on the rate of interest has issued a notice to the private person.

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The prayer is that this case be adjourned till final disposal of the matter pending before the Supreme Court. I do not think that I am required to adjourn the present case awaiting the judgment of the Supreme Court. In the earlier case the interest was awarded on particular facts of the said case.

8. It is also to be seen that the petitioner filed the present writ application in the year 2000 and went on making his deposits of the instalments up to 2001. If the respondents knew that they were unable to hand over the possession then instead of receiving the money dishonestly they should have informed the petitioner that they are unable to give possession of the plot therefore, the petitioner may be refunded his entire amount. In number of the cases this Court has come across further dishonest orders passed by the Housing Board wherein on say of the Housing Board when an application is filed by the prospective purchaser for refund of the money then a part of the earnest money is deducted by the Housing Board on the ground that the person in whose favour the allotment has been made is withdrawing from the offer. I must also record that even in those cases where the Housing Board is unable to deliver the possession they are deducting money in case an application for withdrawal is made. How can the creation of the State Government be so dishonest. I would repeat that how can the Housing Board, creation of the State Government which was created to serve a laudable purpose, to help and assist the public at large by providing them houses can be so dishonest. The public does not pay money to the Housing Board so that its officers are paid their salary etc. They pay their hard earned money for purchasing the dreams. The respondent Housing Board cannot be allowed to supply the nightmares. I refuse to adjourn the case.

9. Taking into consideration the totality of the circumstances and absolute dishonest conduct of the respondent Housing Board I hereby direct that the amount of Rs. 5,000/- be refunded with 5% interest from the date of its deposit and all the other amounts deposited by the petitioner be refunded back to the petitioner with 12% interest from the date of such deposits. The refund shall be made within 15 days from today. If the amount are not refunded by the respondents within the period aforesaid then it would be taken to be a serious lapse on the part of the respondents and a contempt of the lawful authority of this Court. The petition is allowed. The respondents shall pay a cost of Rs. 2,000/- to the petitioner.

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