

(2013) 12 PAT CK 0051

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 7740 of 1992

Sri Ram Tiwary

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 03-12-2013

Acts Referred:

Bihar State Housing Board Act, 1982 — Section 60

Citation : (2013) 12 PAT CK 0051

Hon'ble Judges : Ramesh Kumar Datta, J

Bench : Single Bench

Advocate : Amrendra Nr. Rai, for the Appellant; Anil Kumar Sinha, Advocate for the Housing Board, Mr. Shashi Bhushan Kumar, SC 7 and Mr. Rajeev Kumar, AC to SC 7 for the State, for the Respondent

Final Decision : Dismissed

Judgement

Ramesh Kumar Datta, J.—Heard learned counsel for the petitioner and learned counsel for the Bihar State Housing Board. The petitioner seeks quashing of the Resolution at Item No. 2 under heading Other, contained in Memo No. 162 dated 18.1.1990 passed by the Bihar State Housing Board, Patna in its 130th Meeting by which the representation of the original petitioner has been rejected and for a direction upon the Board to consider the application of the original petitioner for allotment of MIG House No. 192 at Hanuman Nagar, Patna and for consequential reliefs.

2. The case of the petitioner is that upon application being invited by the Department of Housing, Government of Bihar in the year 1965 for allotment of House/Flats in the town of Patna the original petitioner deposited a sum of Rs. 100/- on 20.1.1967 through treasury challan No. 58, which has been annexed as Annexure-1 to the writ application. In 1972 the Bihar State Housing Board was constituted under a statute and an advertisement was issued in the year 1978 informing, inter alia, to the persons who had already got their claim registered with the Housing Department, to apply afresh after depositing Rs. 50/- for a

house and/or plot of land in the town of Patna. The petitioner further deposited the said amount of Rs. 50/-. Pursuant to the further advertisement the petitioner made further deposit of Rs. 6,500/- on 25.11.1978 as earnest money for allotment of house in the town of Patna. An application dated 25.12.1978 was also filed by the petitioner. In the seniority list of the applicants to be allotted a house at Hanuman Nagar prepared by the Housing Board the petitioner was shown at Serial No. 68. It is further alleged by the petitioner that several allotment letters were issued to those persons who were juniors to the petitioner in the year 1981 and therefore the petitioner filed a representation before the Chairman, Bihar State Housing Board who directed her to occupy any vacant house at Hanuman Nagar and assured the petitioner to get her claim decided immediately. It is further stated that on learning that MIG House No. 192 was vacant and after informing the Executive Engineer about the verbal order of the Chairman she occupied the MIG House No. 192 at Hanuman Nagar waiting for formal allotment order from the Bihar State Housing Board. Thereafter it is stated that on the basis of lottery the Board had allotted the petitioner Flat No. 6MF2/2/38 at Bahadurpur. Thereafter by letter dated 9.12.1986 of the Bihar State Housing Board the petitioner was informed to get the provisionally allotted flat registered. The petitioner claims to have made a representation that she was not an applicant for the said flat as she had made application for house and her name was at Serial No. 68, therefore, she ought to have been allotted the house which she was occupying since 1981. It is further stated that even the said Bahadurpur flat No. 6MF2/2/38 was wrongly registered to different lady claiming to be Jagmuni Devi, wife of Sri K.N. Pandey and the petitioner was again deprived of the said flat provisionally allotted to her. It is stated by the petitioner that assurances were received from the respondents that the MIG House No. 192 at Hanuman Nagar will be allotted to her after the court cases are over but the same was not done despite approaching the higher authorities up to the Chief Minister. It is also stated that an eviction order was passed against the petitioner for which she filed an appeal u/s 60 of the Bihar State Housing Board Act, 1982 which was remanded for fresh hearing and the matter is still pending. The petitioner ultimately filed CWJC No. 6452 of 1988 before this Court which was disposed of by order dated 3.11.1988 with a direction to the respondent Board that if any representation is pending such as Annexure-10 before respondent No. 2 that should be disposed of at an early date. Thereafter the petitioner filed a detailed representation on which it was held by the Board in its Resolution dated 22.12.1989 communicated through letter dated 18.1.1990 that she had already been allotted MIG Flat at Bahadurpur for which agreement has also been entered into and thus she had no claim for any house at Hanuman Nagar and that she was in wrongful possession and further it was directed to take steps to vacate the house which was under her unlawful possession.

3. In the counter affidavit filed on behalf of the respondents the stand taken is that it is evident from the money receipt dated 20.1.1967 (Annexure-1) filed by the petitioner that she had herself stated the name of her husband as K.N.

Pandey which has been interpolated and made as R.S. Tiwary. It is further submitted that she gave her address as C/o. Sri Ram Tiwary who was in fact a Government Official and her husband. It is stated on the basis of the aforesaid facts that the petitioner's claim that Jagmuni Devi, wife of K.N. Pandey was someone else to whom Flat No. 6MF2/2/38 at Bahadurpur was allotted and registered with is without any basis and she had intentionally created such confusion for the reasons best known to her and which according to the respondents shows her scheming nature. It is further stated that Flat No. 6MF2/2/38 was allotted to the petitioner and was communicated to her by letter dated 20.10.1994 (Annexure-A) and thereafter she even executed an agreement with the Board on 23.2.1987 and took possession of the allotted flat on 25.5.1989 and the said allotment and possession letters have been made Annexures B & C to the counter affidavit. It is further submitted that there is no valid allotment order with respect to MIG House No. 192, Hanuman Nagar in favour of the petitioner and she had illegally and unauthorisedly occupied the same since 1981 and her statement that on the basis of an oral order of the then Chairman, Housing Board she was in occupation of the MIG House No. 192, Hanuman Nagar was found totally false. It is further submitted that the petitioner being an unauthorized occupant is liable to pay penal rent since 1981.

4. It is further submitted that the allotment of house/flat depends on availability of the same and upon the seniority list and the applicant's success in the lottery and since the number of houses at Hanuman Nagar was small, therefore all the applicants in Hanuman Nagar could not be accommodated there and some of them had been allotted flats at Bahadurpur. It is further submitted that even in her application form she had given her choice for allotment of a MIG House/flat at Bahadurpur also and thus no illegality was committed in allotment of MIG flat at Bahadurpur.

5. On a consideration of the aforesaid facts and circumstances, it is evident that Annexure-1 being her own document clearly shows the false stand being taken by the petitioner that the allotment of Flat No. 6MF2/2/38 at Bahadurpur was to Jagmuni Devi, wife of K.N. Pandey who is another person, whereas the document filed by her shows that she had entered her name as Jagmuni Devi, wife of K.N. Pandey which has been clearly interpolated in the writ petition. That being so, it appears that the entire writ application has been filed on the basis of wrong facts placed by the petitioner before this Court making an attempt to justify her illegal occupation of the flat No. 192 at Hanuman Nagar by referring to an oral order of the then Chairman of the Housing Board. No right can be derived from such oral order. If at all any such order had been passed that cannot create any right in favour of the petitioner and no right can be claimed because of occupation of a vacant flat which had not been allotted to her.

6. On a consideration of the entire facts and circumstances, as narrated above, it is evident that the petitioner is not entitled to any relief in the present writ petition and the authorities of the Housing Board are justified in rejecting her

claim. The writ application is devoid of merit. It is, accordingly, dismissed.