

(1999) 08 PAT CK 0042
In the Patna High Court
Case No : C.W.J.C. No. 7723 of 1988

Suresh Kumar Sinha and Others	Vs	APPELLANT
The Chairman, Bihar State Housing Board and Others		RESPONDENT

Date of Decision : 20-08-1999

Acts Referred:

Citation : (1999) 3 PLJR 696

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Advocate : R.C. Sinha, for the Appellant; Sharwan Kumar and Sri Kumar Priyaranjan and M/s. Y.V. Giri and Raju Giri, for the Respondent

Final Decision : Allowed

Judgement

Aftab Alam, J.—The original petitioner Gauri Shankar Prasad died during the pendency of this case and was substituted by his four sons who are now prosecuting this case. The petitioners seek to challenge the decision of the Bihar State Housing Board (hereinafter referred to as the Board) on agenda item no. 34 of its 121st meeting held on 13.9.1989. Copies of the agenda item and the impugned decision are at Annexures 11 and 12 respectively. By the impugned decision MIG House No. A.M./4, situate at Adityapur, Jamshedpur was allotted by the Board to respondent no.5 (who was at that time one of the members of the Board) and consequently the allotment of the house made earlier in 1969 in favour of the deceased petitioner was cancelled.

2. The relevant facts of the case are brief and simple and can be stated as follows; By order no. 1156, dated 14.4.1969 passed by the Housing Department, Government of Bihar (the precursor of the Housing Board). The deceased petitioner was allotted house no. A.M./4, MIG type, situate at Adityapur and he came in possession of the house on and from 25.7.1969 on a monthly rental of Rs. 155/- which was later enhanced to Rs. 303/- w.e.f. 1.1.1975. According to the petitioner he paid monthly rent and other charges e.g., water tax, Misc. tax etc. to the Housing Board regularly.

3. The Board in its meeting held on 2.9.1976 took a decision that the occupants of its houses who till then were tenants on monthly rental on getting their demand for the house registered with the Board by depositing Rs. 50/- as registration fee and Rs. 6,500/- as earnest money would be entitled to be allotted the house in their respective occupation on a hire purchase basis. In that connection it was provided that they should produce certificate from the Executive Engineer, Jamshedpur Division showing that they had paid upto date rent of the house in question till May, 1976 and further testifying that the applicant himself lived in the house in question and had not created any sub tenancy.

4. According to the counter affidavit filed on behalf of the Board, the deceased petitioner though got his demand registered by depositing Rs. 50/- on 6.1.1976, he did not deposit the amount of earnest money being Rs. 6,500/-. He also defaulted in the payment of the monthly rent. He was accordingly asked by the Executive Engineer, Jamshedpur by letter no. 1880, dated 18.7.1983 to deposit the entire arrears of rent by 27.7.1983. On his failure to clear the arrears the Executive Engineer sent him reminder by letter no. 1502, dated 29.9.1986 intimating that the outstanding arrears of rent upto 30.9.1986 had amounted to Rs. 41,436.89 and in case of his failure to deposit the entire arrears by 17.10.1986 the allotment of the house in his favour on rental basis would be cancelled and other legal action would be taken against him.

5. It is the admitted position that in response to that letter the petitioner paid the entire arrears on 15.10.1986 i.e. two days in advance of the final deadline. He also deposited the sum of Rs. 6,500/- being the earnest money for allotment of the house of hire purchase basis on 17.10.1986.

6. However, in the meantime the order issued by the State Government, purportedly in exercise of the power under clause 10(2) (Ch) of the Bihar State Housing Board (Management and Disposal of Housing Estates) Regulation, 1983 (hereinafter referred to as "the Regulation") was received in the Board directing it to allot in favour of respondent no. 5 any one of the three houses being MIG (old House) Nos. 4, 19 and 50, situate at Adityapur. Though the letter of the government containing the directions to allot a house to respondent no.5 has not been brought on record it appears that on that basis the matter of allotment of a house to respondent no. 5 was included as agenda item no. 34 for the 121st meeting of the Board. The relevant agenda item was as follows :

ADITYAPUR, JAMSHEDPUR ISTHITH MADHAYAM AAYA WARGIYE PURANA MAKAN SANKHAYA 4, 19 EWAM 50 MAIN SEH EK MAKAN SHRI RAMASHRAY PRASAD KE AWANTAN KE SAMBANDH MAIN

7. On this agenda item the decision was taken in the Board's meeting held on 13.9.1988 to allot the house in question to respondent no. 5 and consequently to cancel its allotment made earlier in favour of the petitioner.

8. From the copy of the decision it is not clear whether respondent no. 5 who

was at that time one of the members of the Board, participated in the 121st meeting of the Housing Board but in the counter affidavit filed on behalf of the Board it is stated, "that when item no. 34 of the agenda of the Board meeting held on 13.9.1988 was taken up for consideration Shri Ramashray Prasad was not present in the meeting." this Court will, therefore, proceed on the basis that respondent no. 5 was not present in the meeting when agenda item no. 34 was taken up.

9. The absence of respondent no. 5 when agenda item no. 34 was taken up in the meeting dated 13.9.1988 does not seem to be of any consequence as it appears that the ground work was already done by him earlier and from the impugned decision it is manifest that respondent no. 5 had been monitoring and guiding the whole matter from before.

10. In paragraph 2 of the decision it is stated that in the Board's earlier meeting dated 27.2.1988 respondent no. 5 (described as the Hon'ble Member) had expressed the wish that he should be allotted MIG House No.AM/4, situate at Adityapur and then the decision goes on to consider the previous developments concerning that house and to allot it in favour of respondent no. 5.

11. Moreover, the direction of the State Government that formed the basis for allotment of the house to respondent no. 5 was issued in purported exercise of power under clause 10(2) (Ch) of Regulation. Clause 10(2) (Ch) empowers the State Government to give direction under special circumstance and on compassionate grounds for allotment of houses upto the extent of 5% from among the house left over after allotments being made under clause 10(1). Clause 10(2) (Ch) reads as follows :

WISHESH PRASHTITHI MAIN ARTHAT ANUKAMPA KE AADHAR PAR SIDHE SARKAR KE AADESH SE ... 5%

12. It is difficult to understand how the case of respondent no. 5 could be said to be covered by the above provision. The only thing that could be said in his favour was that at that time he was a member of the Board and was the General Secretary of the Singhbhum District Congress Committee, the Political party which was in power at that time. This could hardly make his claim come under the special category for the exercise of the special power vested in the State Government. It must, therefore, be held that the direction of the government issued in favour of respondent no.5 was itself quite misconceived and unenforceable.

13. Further, as is seen above, respondent no. 5 taking advantage of his position as a member of the Housing Board targetted the house in question and monitored the whole matter so as to lead the Board to make allotment of the house in his favour. The action of the Board in making allotment of the house in favour of respondent no. 5 is thus directly hit by the decision of the Constitutional Bench of the Supreme Court in A.K. Kraipak and Others Vs. Union of India (UOI) and Others, . It must, therefore, be held that the decision of the

Board to allot MIG House No. AM/4, situate at Adityapur in favour of respondent no. 5 was quite illegal and unsustainable in the eyes of law. The decision of the allotment of the house in favour of respondent no. 5 is accordingly set aside.

14. Once respondent no. 5 is removed from the scene the whole picture concerning the Board and the petitioner gets completely altered. It is noted above that the question of cancellation of allotment made in favour of the petitioner was never directly at issue before the Board. Agenda item no. 34 for the Board's 121st meeting was about allotment of a house to respondent no. 5 and the cancellation of the allotment made earlier in the petitioner's favour was the consequence of the allotment of the house in favour of respondent no. 5.

15. Apart from this it is an admitted position that on the demand raised on behalf of the Board, the petitioner paid off the entire arrears of rent till 30.9.1986 before the deadline of 17.10.1986 and he also deposited the amount of earnest money on 17.10.1986. The payment having been made in pursuance of the demand raised by the Board I fail to see how the Board can turn around and hold that the petitioner was not entitled to the allotment of the house in terms of the Board's decision taken in the meeting, dated 6.1.1976. Further, this also cannot be overlooked that the house in question has been in the occupation of the petitioners for the past 30 years, that is to say, for more than a generation; the original allottee died there and the house is now in the occupation of his sons. It would be, therefore, quite unreasonable, unfair and unjust to cancel the allotment of the house in the petitioners favour on the ground that the earnest money was not deposited within time.

16. For the foregoing reasons, I find and hold that the petitioners are entitled to the allotment of the house on the basis of the Board's decision taken in its meeting, dated 6.1.1976. The Board is accordingly directed to complete the necessary formalities of allotment and transfer of title etc. in respect of the house in favour of the petitioners in terms of the decision taken on 6.1.1976 and on the petitioners making payment of all lawful dues and complying with the relevant legal requirements. In the result, this writ petition is allowed but with no order as to costs.