
(1992) 08 PAT CK 0009
In the Patna High Court
Case No : C.W.J.C. No. 6519 of 1989

Surya Kant Choudhary

APPELLANT

Vs

The State of Bihar and others

RESPONDENT

Date of Decision : 17-08-1992

Acts Referred:

Bihar State Housing Board (Management and Disposal of Housing Estates)
Regulations, 1983 — Regulation 10

Citation : (1993) 1 PLJR 598

Hon'ble Judges : B.P. Singh, J

Bench : Single Bench

Advocate : Udit Narayan Singh, for the Appellant; Alakhraj Pandey and Mrs. Shivesh Mishra for the Respondent No. 5, Mr. Sharwan Kumar Singh and Mrs. Abha Singh for the Housing Board, Mr. Raghunath Choudhary for the State of Bihar and Mr. Binay Kriti Singh for Intervenor, for the Respondent

Final Decision : Allowed

Judgement

B.P. Singh, J.—The petition in this writ petition has prayed for an order quashing the allotment made by the Bihar State Housing Board of house no. 195, Hanuman Nagar, Kankarbagh, Patna in favour of respondent no. 1 herein. Consequently he has challenged the decision of the Board as recorded on 20th Feb. 1987 and 4.4.1987. It has further been prayed that the claim of the petitioner may be considered for allotment of the aforesaid house since the case of the petitioner stands on better footing, He had also applied much before respondent no. 5. A few facts, which are not in dispute, may be noticed. In the year 1972 the Bihar State Housing Board issued an advertisement calling for applications for allotment of dwelling units. The petitioner applied on 12.12.1972. Time for making the application was extended up to March 1973. Respondent no. 5 had not applied pursuant to the advertisement of the year 1972, nor did he apply within the extended period. He applied on 6th July 1974 much after the extended period had elapsed. However, it is not disputed that another similar advertisement was issued in August 1975. From annexure 15 it appears that by

a notice dated 11 July 1983 the Board directed the applicants to file the requisite affidavit and other supporting documents for allotment of dwelling units, so that their cases could be considered in accordance with the provisions of the Regulations relating to allotment of such units. It may be noticed that the Board has framed Regulations under the Act known as the Bihar State Housing Board (Management and Disposal of Housing Estates) Regulations 1983. The aforesaid regulations provide the manner in which allotments are to be made by the Housing Board. The petitioner as well as respondent no. 5 applied in response to annexure 13. A lottery was held and the petitioner as well as respondent no. 5 were allotted flats in Bahadurpur area, and not in Hanuman Nagar.

2. So far as the allotment of flat to the petitioner and respondent no. 5 is concerned, neither has grievance against the other. But the facts giving rise to the instant writ petition took place thereafter. It appears that respondent no. 5 was not satisfied with the allotment of a flat, since he was keen that he should be allotted an independent dwelling unit, and for that purpose he had made a representation to the Chief Minister on 6.1.1986 which is annexure 4 to the writ petition. He had explained that he had difficulty in going to the 4th floor, where his flat was located, since he was suffering from heart trouble. On the representation made by respondent no. 5 an endorsement was made by the Chief Minister to the Secretary, Housing Department directing him to take necessary action. On 4.4.1987 and 6.4.1987, a meeting of the Board was held, and in that meeting under agenda item no. 6 the case of respondent no. 5 for allotment of independent unit was considered. In the memorandum prepared for consideration of the Board it was stated the respondent no. 5 had been allotted a M.I.G. flat in sector no. 3 by order dated 27.11.1984. He had represented to the Chief Minister that an independent dwelling unit may be allotted to him on the ground that his wife was suffering from diabetes, blood pressure, heart disease etc. The Board by its letter dated 6.3.1986 had informed the Housing Department that it was not permissible for the Board to make any other allotment in view of the allotment already made by lottery. In reply to that the Housing Department by its letter dated 7.8.1986 directed that if not in Hanuman Nagar, then in any other locality nearby a separate house may be allotted to respondent no. 5, and if any extra money had to be paid, respondent no. 5 will pay such extra amount. After stating all these facts, the memorandum mentions that house no. 185 at Hanuman Nagar could be allotted to respondent no. 5 after cancelling the allotment of the flat to him. The Board accordingly approved the allotment of an independent dwelling unit bearing house no. 195 in Hanuman Nagar area in favour of respondent no. 5 which is evident from annexure 7. But it further directs that this decision will not be treated as a precedent. The decision of the Board was communicated to respondent no. 5 on 20th May 1987 and he was directed to deposit the further amount which was necessary. According to respondent no. 5 the hire purchase agreement was duly registered on 10.7.1987 and on the following day the Board directed its Executive Engineer to hand over the possession of the said house to the petitioner. However, since

some one else was in unauthorised occupation of the said house, respondent no. 5 could not get possession of the house in question. Respondent no. 5 was therefore, compelled to file C.W.J.C. No. 8650 of 1988. On the 16th of March 1989 this Court was pleased to issue certain interim directions in the writ petition directing the Housing Board to file an application for eviction of the tres-passer within one week, before the competent authority and the competent authority to dispose of the same within three weeks and if eviction was ordered to evict the unauthorised occupant within two weeks thereafter. It is not necessary for me to go into the prolonged litigation that followed between respondent no. 5 and the alleged unauthorised occupant, who sought to appear in this proceeding as intervenor because he was in possession of the house in question. I may only notice that SLP preferred by the said unauthorised occupant Shri H.K. Thakur was dismissed by the Supreme Court on 14.12.1990.

3. Counsel for the petitioner has urged before me that the petitioner being senior to respondent no. 5 he having applied earlier than the respondent no. 5, his case for allotment of separate dwelling unit should have been considered and granted before the application of respondent no. 5 was considered by the Board. He submitted that in fact respondent no. 5 was not even qualified for allotment of a flat in view of the fact that he owned property elsewhere in the State and that he had obtained allotment of a flat by filing a false certificate. In any event he submits that the allotment made by the Housing Board in favour of the respondent no. 5 is illegal because the action is arbitrary and contrary to the Regulations. In the alternative it was submitted that in case it is found that the Board has power to make such allotment as an exceptional case, the case of the petitioner should also be considered because he had also claimed allotment of independent unit on health ground.

4. I will first deal with the submission urged before me that the allotment of a flat to respondent no. 5 was itself illegal and therefore, the subsequent allotment of independent unit in his favour in lieu of the flat earlier allotted to him is also bad. It was submitted before me that respondent no. 5 was not qualified for allotment of dwelling unit by the Housing Board in view of the fact that the note of Regulation 8 of the Regulations provides that if an applicant had a house site in any town of the State, either in his own name, or in the name of his wife or minor children, he shall not be eligible for allotment of a dwelling unit. It is submitted that admittedly respondent no. 5 owned a house at Ranchi and therefore in terms of note to Regulation 8 he was disqualified from allotment of dwelling unit by the Housing Board. On the other hand it is contended on behalf of the respondent no. 1 that the note was inconsistent with Regulation 8(d) which disqualified a person from allotment of dwelling unit only if he had any other house within 8 kilometers of the concerned town or municipality or notified area. This inconsistency was brought to the notice of the Governor, and ultimately in exercise of powers u/s 115 (3) of the Act the same was deleted from the Regulations. It is not necessary for me to go into this controversy because the allotment of flat was made as early as in the year 1984. No one has

challenged the allotment of a flat to respondent no. 5. It is now too late to challenge that allotment. I, therefore, refuse to go into that question. I shall now consider the submission urged before me that the allotment of independent dwelling unit in favour of respondent no. 5 is illegal. It was submitted that in the matter of allotment of dwelling units the Board is bound by the Regulations framed under the Act. Chapter III of the Regulations provides the procedure of allotment of dwelling units or flats or sites. The procedure for allotment under the regulation is by draw of lottery after due notice to the applicants of the date, time and venue of the draw. It was, therefore, submitted that once allotment had been made by draw of lottery it was not open to the Board to change the decision and to make allotment in any other manner. Since respondent no. 5 was one of the persons in whose favour an allotment had been made of a M.I.G. flat he could not be considered for allotment of an independent unit in Hanuman Nagar after cancellation of the earlier allotment. In any event the Board had not applied its mind to the facts of the case, nor had it shown any regard for the provision and the Regulations framed under the Act. The Board acted merely at the behest of the Chief Minister and the Secretary of the Housing Department, knowing fully well that its action was illegal.

5. Counsel for the respondent no. 5 on the other hand submitted that in deserving cases it should be open to the Government as well as the Board to make allotment on special considerations. In the case of respondent no. 5, on health grounds allotment of an independent dwelling unit was justified. He, therefore, submitted that such a power should be read into the Regulations in favour of the Government and the Board, even though the Regulations did not confer such power expressly. He refers to section 13 (4) of the Act and submitted that the Board may at any time, for reasons to be recorded in writing, dissolve, or subject to the provisions of sub section (1) of section 13 after the constitution of any such Committee, modify or set aside the decision of the Committee. Since the lottery is drawn under the supervision of the Committee and the decision to make the allotment is by such Committee, the Board has overriding power u/s 13 (4) to modify or set aside the decision of the Committee. Section 13 of the Act enables the Board subject to Rules from time to time, and for any particular local area to appoint one or more Committees for the purpose of discharging such duties or performing such functions as it may delegate to them, and any such Committee may discharge such duties or perform such function with due regard to the circumstances and requirements of that particular area. Sub-section (4) vests in the Board the power to dissolve the Committee itself or to modify or set aside the decision of the Committee for reasons to be recorded in writing. Sub-section 4 of Section 13 cannot be read as a blank power in favour of the Board to modify or set aside any decision of the Committee. The section itself provides that this must be done only after the reasons are recorded in writing. It follows therefore that there must be justification for modification or the setting aside of the decision taken by the Committee. It therefore, become obligatory for the Board to satisfy the court that the action taken by the Committee was not in

accordance with law which provided the ground for setting aside the decision. The power under sub-section (4) of section 13 cannot be arbitrarily exercised. In the instant case it is not the case of the Board that since the Committee had not drawn the lottery as it was required to do under the Regulations or that it had committed any other error vitiating its decision that compelled the Board to cancel its decision. The resolution of the Board does not record any reason which could justify the setting aside or modification of the decision of the Committee to allot a flat in favour of respondent no. 5. On the other hand in order to confer a favour upon respondent no. 5, the decision of the Committee was sought to be modified. The action taken by the Board does not fall within the ambit of the power conferred upon it by section 13 (4) of the Act. The instant case is not a case where the Board sought to either modify or set aside the decision of the Committee for any relevant consideration. The submission of respondent no. 5 has therefore no force.

6. The other submission urged on behalf of the respondent no. 5, that in a deserving case the Government and the Board must have inherent power to make allotment on compassionate ground is equally untenable having regard to the scheme of the Regulations. In the absence of statutory rules, such a submission could have been considered. But where rules have been specifically framed under the Act in the form of Regulation neither the Board nor the Government can exercise power contrary to the provisions of the Regulations. Moreover I find that the Regulations do take into consideration such deserving cases, and adequate provision has been made in this regard. Regulation 10 provides a quota for the allotment of dwelling units, flats or house sites. In the general category 51% of the dwelling units have to be allotted to members of the general category. 14% has been reserved for Schedule caste, 10% for Schedule tribes, 6% for retired Government servants or Government Servant retiring within three years from the date of the application, 10% for defence and ex-defence personnel, 2% for members of Legislatures and Parliament directly under the order of the Government, 5% in favour of case having special circumstances and on compassionate ground, directly under the order of the Government, and 2% on compassionate ground by the Board to widows and disabled persons. It is, therefore, apparent that the Regulations provide that in deserving cases where some consideration has to be shown to the special circumstances, apart from the general quota and the quota for Schedule caste and Schedule tribes, retired Govt. servants and defence and ex defence personnel, provision has been made for allotment by the Government directly of dwelling units in cases having special circumstances. Similarly 2% of the dwelling units can be allotted directly by the Board on compassionate ground. The scheme of the Regulation therefore, takes into consideration different categories of applications and provides a quota for each category. A quota of 5% is reserved for the Government which it can allot directly in special circumstances. Similarly a quota of 2% is reserved for the Board, and the Board can make allotment on compassionate ground in favour of helpless widows or disabled persons within

this quota. Where such elaborate provisions have been made, it would not be permissible to read in favour of the Government or Board any further discretion in the matter. Apart from the cases envisaged by the Regulations, the Government and the Board cannot make allotment on any other ground. In the instant case, if the Government were so inclined and thought that the case of respondent no. 5 had special circumstances and that allotment should be made on compassionate ground, the Government could have made the allotment within the 5% quota available to it. The Government did not purport to do that. On the other hand it compelled the Board to make the allotment in favour of respondent no. 5 of an independent unit. The Government had no justification to do so. One cannot lose sight of the fact that a Board has been constituted under the Act. The powers have to be exercised by the Board in accordance with the Act. The Board is equally bound by the Regulations framed by it under the Act. An action of the Board or the Government which is contrary to the provisions of the Act and the Regulation cannot be sustained. The Government has no power to direct the Board to make an allotment in an illegal manner. The allotment by the Government as well as by the Housing Board must be made expressly in accordance with the Act and the Regulations. The Government and the Board in their discretion can only allot 5% and 2% of the dwelling units respectively on compassionate ground. Where the allotments are made by draw of lots neither the Board nor the Government has any discretion, once the result of the lottery is notified. I have, therefore, no doubt that the Board has erred in law in allotting an independent unit to respondent no. 5 and therefore, its decision to that effect must be quashed.

Even if that is done, the petitioner cannot claim as a matter of right the allotment of that house. If independent dwelling units are available for allotment the Board has to make the allotment in accordance with the Act and Regulations, and for that purpose, if necessary, it may have to follow a fair procedure so that there is no discrimination between the applicants. It may be, that there are better claimants than the petitioner and respondent no. 5 for the allotment of an independent unit, and therefore it is difficult for this Court to issue any writ or direction in favour of any of the parties before the Court.

7. Shri Harikant Thakur had prayed for intervention in this writ petition on the ground that the intervenor was noticed for the dwelling unit in question and therefore, no order should be passed without hearing him. I did not permit the intervenor application since it was made clear to the counsel appearing on behalf of the intervenor that no order shall be passed in favour of one or the other party for allotment of the house in question. So far as house no. 185 of Hanuman Nagar is concerned, since I have come to the conclusion that the allotment in favour of respondent no. 5 was illegal, the only direction that will issue to the Board is to make the allotment of that home and other such houses, if available, in accordance with the Act and the Regulations. The application for intervention was therefore not pressed. I accordingly dismiss the application for intervention.

8. I, therefore, hold that neither the Government nor the Board has any discretion to deviate from the regulation in the matter of allotment of dwelling units and to make allotments contrary thereto. Where allotment is to be made by draw of lots, allotment must be made by following that procedure alone, and no interference either by the Government or the Board is warranted. If any irregularity is committed in the draw of lots by the Committee concerned, that may be brought to the notice of the Board for appropriate order u/s 13(4) of the Act. The Government has authority under the regulation to make allotment of 5% of dwelling units in favour of cases with special circumstances and on compassionate ground. Similarly the Board can allot 2% of the dwelling units available for allotment on compassionate ground to helpless widows and disabled persons. Beyond this, the Government and the Housing Board have no discretion to make allotments on such considerations, and they must expressly follow the procedure prescribed by the Regulation, Interference by the Government with the exercise of power by the Board is unwarranted and illegal. It is obligatory, having regard to the quota fixed by the Regulations, that before the allotment of dwelling units are made, the notice must clearly mention total number of units available and the number of units for allotment under each category, so that there is no interpolation later on by changing the number of units available. The quota system cannot be worked unless the total availability of dwelling units is first notified. It appears that no effort is made by the Housing Board to first notify the units available for allotment. This has given rise to a lot of complaints, and rightly so. Having regard to the scheme of the Regulations it is obligatory for the Board to notify the number of dwelling units available for allotment and to specify categorywise the number of units that may be allotted to each category as specified in regulation 10 including those on compassionate grounds. The Board is, therefore, directed to follow this direction in all future allotments. In the result this writ application is allowed, the decision of the Board so contained in annexures-5 to 8 are quashed. The Board is directed to act in accordance with the Act and Regulations for the allotment of house no. 195 in Hanuman Nagar and other such units if available for allotment and consider the cases of all applicants including the parties in this writ application in accordance with law. Nothing said in this writ applications shall be construed as expression of any opinion on the merit of the claim of either the petitioner or respondent no. 5 in respect of the house in question. Having regard to the fact that the petitioner was allotted a house in the year 1984 the Board must follow the legal procedure and take decision in the matter of allotment of house no. 195 within the period of three months from the date the order of this Court is either received by it or is served upon it by any of the parties. If respondent no. 5 is willing to take a flat as was allotted to him earlier and makes an application the Board will consider his request and allot him a flat as allotted to him earlier and give him possession thereof within three months.

In the result this application is allowed but there will be no order as to costs.