

(2011) 09 PAT CK 0177
In the Patna High Court
Case No : CWJC No. 3900 of 2005

The Awas Board Padadhikari Sahkari Grin Nirman Samiti
Limited and Others

APPELLANT

Vs

Bihar State Housing Board and Others

RESPONDENT

Date of Decision : 08-09-2011

Acts Referred:

Citation : (2012) 2 PLJR 297

Hon'ble Judges : Ravi Ranjan, J

Bench : Single Bench

Advocate : Pushkar Narain Shahi, Patanjali Rishi and Sanjeet Kumar Singh, for the Appellant; Harendra Pd. Singh, Pankaj Kumar for the State and M/s Lalit Kishore, Rabindra Kr. Priyadarshi for the BSHB, for the Respondent

Final Decision : Allowed

Judgement

1. Petitioner No. 1 is a Housing cooperative Society, whereas petitioner nos. 2 to 11 are members thereof. Petitioners seek quashing of the decision taken by the Bihar State Housing Board (hereinafter to be referred to as "the Board") in its 212th meeting on 29.1.2005 to the extent it relates to the cancellation of allotment of the plots made in favour of the petitioner no. 1 as back as on 7.11.1981. A copy of the concerned proceeding as contained in memo no. 358 dated 29.1.2005, has been brought on record as Annexure-1. Petitioner No. 1 had applied for allotment of the land before the Board for the purpose of construction of residential houses of its members. It is the case of the petitioners that the Board in its 70th meeting held on 7.11.1981 took a decision to allot the land to the petitioners from Neighbourhood Centre (N.C.-B-I) to N.C.-B-II consisting of area of 29.90 in Lohia Nagar, Patna. Such decision was communicated to the petitioner no. 1 vide letter as contained in memo no. 88 dated 06.01.1982 (Annexure-2). Thereafter, the Board and the petitioner no. 1 had entered into a hire-purchase agreement for the concerned plots (Annexure-3). It would appear from a report (Annexure-4) that the possession of

the concerned land was given to the secretary of the concerned society on 7.1.1982 itself. Subsequently, the society, as would appear from Annexures-5 and 7, allotted the plots in favour of its members, thereafter, it had entered into a hire-purchase agreement alongwith its sub-allottees. However, subsequently, the State of Bihar came up with a notification declaring that the meeting held by the Board on 7.11.1981 was not in accordance with law, thus, all the decisions taken by it in the aforesaid meeting had been cancelled. As a consequence thereto, the Board has also come up with a notification dated 24.2.1982 clearly indicating that all the allotments made pursuant to the 70th meeting of the Board dated 7.11.1981 stood cancelled. Thus, the petitioners' allotment also impliedly stood cancelled. Some of the petitioners had earlier moved before this Court by filing C.W.J.C. No. 9970 Of 1999 and C.W.J.C. No. 968 of 2000 and vide order dated 18.3.2004 a Bench of this Court, without going into the merit of the case, had directed the respondent-Board to take a final decision in the matter of the petitioners within the period specified therein, which was later on extended. Pursuant to that, it appears that the impugned decision has been taken by the Board.

2. A counter affidavit has also been filed on behalf of the respondent nos. 1 to 3 and few affidavits have been subsequently filed on behalf of the petitioner drawing attention of this Court to the fact that at one hand the allotment of the petitioners was cancelled, however, the same plots were being offered to some others. The Interlocutory Application concerned was heard and interim relief was granted to the petitioners restraining the respondents-Board from making allocation of the piece and parcel of the land, which were allotted to the petitioner-society and which are subject-matters of this writ application.

3. I have heard the parties and perused the records of the case.

4. It has been submitted on behalf of the petitioners that the State Government has come up with the notification as contained in Annexure-9 and as a consequence thereof, without hearing the affected parties and also without consideration of the fact that earlier notification dated 16.11.1981, as contained in Annexure-8, the tenure of the members of the Board was extended till 30th of November, 1981, the State of Bihar had cancelled all the decision taken by the concerned Board and thereafter the Board came up with the consequential notification as contained in Annexure-10. The matter was challenged by filing several writ petitions and the Ranchi Bench of this Court in C.W.J.C. No. 1197 of 1982(R) and its analogous cases had set aside the impugned notification of the Government as well as the Board while allowing the writ applications with costs vide order dated 26.6.1985. Subsequent thereof several other orders were passed by different Benches of this Court and some of them have been brought on record as Annexures-17 and 18. Learned counsel drew attention of this Court towards the impugned order to show that once again an erroneous decision has been taken by the Board relying upon the aforesaid earlier decision of the State Government which stood quashed by the orders passed by this Court as

discussed above. Learned counsel has also drawn the attention of this Court towards Annexure-13, which is the proceeding of the meeting of the Board dated 4.4.1987. While considering allotment to a different Housing Society, the Board has held that in view of the fact that all the allotments are prior to the Rules framed in 1983 would remain unaffected there from. Learned counsel for the petitioners has also placed reliance upon the minutes of the 141st meeting dated 11.7.1991 of the Board (Annexure-14) to impress upon this Court that after, an inquiry having been held by the concerned, the Board had come to the conclusion that the lands allotted to the petitioner-society was out of the area measuring 18.86 acres which was reserved for the Neighbourhood Centre as even after deducting the aforesaid area from the total available land of 21.50 acres, about 2.86 acres were in excess and the petitioner-society had been allotted 29.90 kathas of land from the aforesaid excess land.

5. Learned counsel for the respondents-Board, however, submitted that the lands, which were reserved and kept for the development of the Neighbourhood Centre could not have been allotted by the Board in favour of the petitioner-society. Another stand has been taken by the Board that a decision has been taken in the year 1991 by the State Government by issuing letter no. 1938 dated 18.8.1991 imposing ban upon the respondent-Board from allotting any land to the Housing Co-operative Societies. Learned counsel has tried to justify the decision of the Board on the aforesaid grounds. However, at the time of hearing he could not justify the stand taken by the respondent-Board taken in its decision as contained in Annexure-1 which shows that it has also placed reliance upon the earlier decision taken by the State Government, whereby all the decision taken by the 70th meeting dated 7.11.1981 have been cancelled. The aforesaid notification having already been quashed by this Court in *Smt. Krishna Sinha and Others vs. Bihar State Housing Board and Others*, 1986 BBCJ 417, there was no occasion for the respondent-Board to place reliance upon such notification. However, learned counsel has submitted at the time of hearing that decision was also taken in view of the fact that the State Government has issued a notification as contained in letter no. 1938 dated 18.8.1991 whereby the allotment of the land to the Housing Co-operative Society was stayed till any further order. Though a copy of such notification has not been brought on record, however, it has been submitted on behalf of the petitioner that it would be apparent from the pleadings as well as from the stand taken in the counter affidavit and the decision itself that the aforesaid decision was prospective in nature and it could not have affected the allotment which had already been made in favour of the Housing Co-operative Societies including the petitioner no. 1 in the year 1981-82.

6. Lastly, learned counsel for the respondent-Board has tried to impress upon the Court that the lands, which were kept for development of the Neighbourhood Centre had been allotted. However, a plain reading of the Annexures would show that though a decision was taken on 30th September, 1997 to constitute a spot verification committee, no such report of the said committee was ever submitted. Thus, definitely, the aforesaid decision is not based upon any report of any

committee verifying on spot as to whether the lands are inside the area earmarked for the development of the Neighbourhood Centre or lie outside the same. However, it becomes apparent from the proceedings of the 141st meeting dated 11.7.1991 (Annexure-14) that after consideration of the then Chairman, the Chief Engineer, Secretary, Legal Advisor, Architect and other members of the Board and local inspection and measurement of the area earmarked for the development of the Neighbourhood Centre, it has come to the conclusion that after deducting 18.86 acres of land for the development of the Neighbourhood Centre, another piece of land measuring 2.86 acres was available and, in fact, the petitioner-society was allotted 29.90 kathas of land from the additional land which was available at that point of time.

7. Learned counsel for the respondent-Board was not in a position at the time of hearing of this writ application to say as to why the proceeding of the Board as contained in Annexure-14 was not considered and without any further verification by spot inspection committee, the impugned decision has been taken by the Board cancelling the allotment of the petitioner, which was made in year 1981 itself. Not only that, from Annexures-20, 21 and 22 it appears that the aforesaid lands were sought to be allotted to some Government/semi-Government Organization. The question would be that if the same was within the area reserved for the development of the Neighbourhood Centre then how the Board had taken decision to offer the same to some other Government/semi-Government Organization.

8. In above view of the discussion above and upon consideration of the materials on record, this Court is of the opinion that the decision of the Board as contained in Annexure-1, so far it affects the petitioner-society, cannot be sustained in the eyes of law as the same has been taken relying upon the notification dated 16.1.1982 and 24.2.1982 of the State of Bihar, which have been set aside by this Court in Smt. Krishna Sinha and Others (supra) and the other findings recorded by the Board placing reliance upon the letter dated 18.8.1991 would also not be tenable in view of the fact that the order itself clearly indicates that further allotment to any other Housing Cooperative Society was stayed. Thus, the same in no manner could have affected the allotment already made in favour of the petitioner-society in the year 1981 itself and regarding which a hire-purchase agreement was also entered into and possession had already been delivered. The impugned order would also not be tenable in view of the fact that the earlier proceeding of the Board as contained - Annexure-14 clearly indicates that the plots allotted to the petitioners were from outside the area earmarked for the development of the Neighbourhood Centre and perhaps for that reason only the Board was seeking to allot the same in favour of certain Government/semi-Government Organisations vide Annexures-20, 21 and 22. As a result, this writ application succeeds and the impugned decision of the Board cancelling the allotment in favour of the petitioners as contained in Annexure-1, so far it affects the petitioners, is hereby set aside as no infirmity could be shown by the respondents in the earlier decision making the concerned allotment in favour of

the petitioner no. 1 and also admittedly, the possession of land concerned stands already delivered to the petitioner no. 1.