

(2005) 12 PAT CK 0027

In the Patna High Court

Case No : C.W.J.C. No's. 11827 and 12091 of 1998, 5310, 5541, 8805 and 11491 of 1999 and 10082 of 2002

Vaidya Nath Prasad Srivastava and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 01-12-2005

Acts Referred:

Citation : (2006) 1 BLJR 71 : (2006) 2 PLJR 126

Hon'ble Judges : Ram Nandan Prasad, J; Barin Ghosh, J

Bench : Division Bench

Advocate : R.S. Pradhan, A.N. Rai, Rajeev Lochan and M.D. Singh, in CWJC Nos. 11808, 11827 and 12091/98, Anjana Mishra and Jai Shankar Pathak, in CWJC No. 5310/99, D.K. Sinha, Rajesh Kumar Choudhary and Anil Kumar, in CWJC No. 8805/99, Upendra Prasad Singh, in CWJC No. 11401/99, Gajendra Kumar Jha and Sushil Kumar Jha, in CWJC 10082/02, D.K. Sinha and Samir Kumar Sinha, in CWJC No. 5541/99, for the Appellant; Anil Kumar Sinha in CWJC 11808, 11827 and 12091 of 1998, A. Amanullah in CWJC 5310, 5541, 8805 and 11401 of 1999 and 10082 of 2002 for the Housing Board and Rani Kumari, JC to SC 8 in CWJC 8805 of 1999 and 10082 of 2002, for the Respondent

Judgement

R.N. Prasad, J.—In all these matters the question of allotment of flat/house, execution of agreement/final deed of transfer and further demand by the Housing Board is involved and, as such, they have been heard together and are being disposed of by common judgment and order. C.WJ.C.No. 11808/98

2. The petitioner filed an application pursuant to the advertisement for purchase of M.I.G. House and deposited earnest money as required. He was allotted M.I.G. House No. 90 on 21.9.1981 and a hire purchase agreement was executed on 9.12.1981. The price was fixed in 1972 at Rs. 36,000, in 1978 at Rs. 58,000, and in 1981 at Rs. 66,382. On 4.12.1982 the allotment was cancelled. However, the said order of cancellation was quashed by the High Court. The possession of the House was handed over to the petitioner on 5.12.1992. He made payment of the entire instalments at one time within the stipulated period fixed by the Board on

14.11.1994. On 11.3.1996 the petitioner was intimated the due amount of Rs. 28,149 to be paid by him. The petitioner paid the aforesaid amount on 13.3.1996. According to the petitioner, he paid Rs. 1,33,198.55 upto 13.3.1996. On 18.6.1996 the transfer deed was executed with respect to M.I.G. House No. 90 in favour of the petitioner. A letter dated 8.1.1997 was served upon the petitioner asking him to deposit Rs. 1,18,960 as due against him upto 31.12.1996. The petitioner filed objection against the said demand on 27.1.1997 and requested to supply the details as to how the dues have been determined but nothing was done. The petitioner, thus, has filed this writ petition for quashing the aforesaid demand, Annexures-12 and 14.

C.W.J.C. No. 11827/98

3. The petitioner pursuant to the advertisement filed an application and deposited Rs. 50/- in the year 1972 and also pursuant to the advertisement deposited earnest money of Rs. 65.00/- in the year 1978 for allotment of M.I.G. house. Vide letter dated 26.9.1981 he was allotted M.I.G. House No. 65. The cost was determined at Rs. 66,382/-, which was to be paid in instalments fixed by the Board. He deposited 25% of the initial amount. On 7.11.1981 an agreement of hire purchase was executed by the Housing Board in favour of the petitioner with respect to M.I.G. House No. 65. Vide letter dated 4.12.1982 the allotment of M.I.G. House No. 65 in favour of the petitioner was cancelled. However, the said order of cancellation was quashed by the High Court. The petitioner deposited the entire amount on 25.10.1986 i.e. Rs. 49.7467-. The possession of the house was handed over to the petitioner vide letter dated 15.12.1989, Annexure-7, Vide letter dated 28.4.1989 the petitioner was informed about the dues on principal amount and the interest thereon due against him after calculation till 30.6.1989 amounting to Rs. 41.662/-. The petitioner paid the said amount on 29.5.1989, Annexure-10. The petitioner made objection with regard to defects in construction but nothing was done. The final transfer deed was executed by the Board in favour of the petitioner on 17.7.1990, Annexure-12. However, vide letter dated 8.1.1997 the petitioner was directed to deposit Rs. 1,37,0627- as due against him upto 31.1.1997, Annexure-14. The petitioner raised objection and made request to supply the details of the dues but nothing was done in spite of the reminders and, as such, he has filed the writ petition for quashing the demand contained in letter dated 8.1.1997. Annexure- 14. made much after the execution of the final deed of transfer in the year 1990.

C.W.J.C. No. 12091/98

4. The petitioner pursuant to the advertisement in the year 1970 deposited registration fee of Rs. 50/- for the settlement of house. Subsequently, in the year 1978 pursuant to the advertisement made by the Housing Board the petitioner filed application along with earnest money of Rs. 6500/- for allotment of M.I.G. House. Vide letter dated 19.8.1991 M.I.G. House No. 227 at Hanuman Nagar, Patna was allotted to the petitioner. In the year 1981 the cost of the M.I.G. was calculated and fixed at Rs, 67,9047- and payment was to be made in instalments

fixed by the Board. On 24.8.1981 the petitioner deposited 25% of the amount i.e. 10,6267-. On 25.8.1981 the Board executed a hire purchase agreement in favour of the petitioner with respect to M.I.G. House No. 227. On 28.11.1981 the possession of the said M.I.G. House No. 227 was handed over to the petitioner. However, subsequently the Board cancelled the allotment, which was quashed by the High Court in C.W.J.C. No. 4841/82. The Executive Engineer informed the Manager Estate vide letter dated 23.9.1993, Annexure-4, that against the price of the M.I.G. House No. 227, which was originally Rs. 67,9047-, the petitioner has paid Rs. 98,948.80. Vide letter dated 16.11.1993 the petitioner was informed to pay Rs. 70527-. He paid the said amount on 25.2.1994. Vide letter dated 10.4.1996 the Revenue Officer again informed the petitioner to deposit Rs. 22,5377- as due upto 31.5.1996. The petitioner paid the said amount on 17.4.1996. On 5.7.1996 the final deed of transfer of M.I.G. No. 227 was executed by the Board in favour of the petitioner. The Board vide letter dated 10.12.1996 made a further demand of Rs. 1,07,3337- as due against him upto 31.12.1996, Annexure-11. The petitioner filed objection against the order, Annexure-11, and made request for supply of the details of the dues, but nothing was supplied. The petitioner thus has filed the writ petition for quashing the further demand vide letter dated 10.12.1996, Annexure-11 and also the letter dated 21.2.1997, Annexure-13.

5. In all the abovementioned three cases similar counter affidavit/supplementary counter affidavit have been filed on behalf of the Board. In the counter affidavit/supplementary counter affidavit the allotment of M.I.G. Houses to the petitioners, execution of hire purchase agreement, the execution of final transfer deed in favour of the petitioners, payment of the cost of the house fixed by the Board and deposited by the petitioners with interest has been admitted. However, it has been stated that further demand after execution of the final deed of transfer has been made by the respondent-Board in terms of the agreement/transfer deed. In the agreement it was specifically mentioned that the price shall be redetermined and the same shall be subject to determination of the price of the land in the Land Acquisition cases, development cost, construction cost and interest thereon. The Board has calculated and determined the cost of the house and, as such, the demand has been made by the respondent-Board after execution of the final deed of transfer.

C.W.J.C, No. 5310/99

6. The father of petitioner No. 2 and husband of petitioner No. 1, namely, Chandra Bhushan Tiwary, deposited the registration fee of Rs. 507- before the Bihar State Housing Board, and filed an application for allotment of M.I.G. House at Arrah in the year 1975 and deposited Rs. 65007- as earnest money. He was allotted M.I.G. -10 vide letter dated 12.11.1983, Annexure-2. He further deposited Rs. 10,290/- on 12.12.1983. The deed of agreement was executed on 11.7.1986. The possession was handed over vide letter dated 17.11.1986. Vide letter dated 19.3.1999 the Housing Board made a demand of Rs. 1,85,377/-

from the petitioners as dues against M.I.G. 10, Annexure-8. The petitioners raised objection against the said demand, Annexure-8, by filing representation but nothing was done and, such, they have filed this writ petition for quashing the demand vide letter, Annexure-8 and also for issuance of direction to the respondents to issue "No Dues Certificate" against the petitioners and execute the final deed of transfer.

7. A counter affidavit and supplementary counter affidavit have been filed on behalf of the respondent-Board wherein it has been admitted that the petitioners have deposited Rs. 1,01,255.10, which has been admitted by the petitioners in reply to the counter affidavit. The cost of the house was determined at Rs. 94,385/- as on 30.11.1983. The demand raised by the Housing Board is in terms of the agreement and also the interest as the amount was not paid in due time. The cost of the house includes the cost of land acquisition, the cost of development such as construction of roads, laying and maintenance of water supply, external electrification, laying of sewerage and drainage. The demand has been made on calculation and, as such, the same is payable by the petitioners.

C.W.J.C. No, 8805/99

8. The petitioner deposited Rs. 50/- as registration fee and also the earnest money of Rs. 2200/- for allotment of L.I.G. flat. He was allotted flat No. LF3/243 in the lottery and formal allotment letter dated 23.10.1983 was issued to the petitioner, Annexure-3 on tentative fixed price of 35,500/- which was to be paid in instalments. He deposited Rs. 5,050/- in advance after allotment. On 6.4.1988 the hire purchase agreement was executed in favour of the petitioner, Annexure-5. The possession was given to the petitioner and letter dated 30.6.1989 to the aforesaid effect was issued, Annexure-6. The petitioner deposited Rs. 49,056/- in instalments till 5.11.1998 and approached the Housing Board for execution of final transfer deed. He was asked to deposit further amount of Rs. 3,608/- vide letter dated 28.11.1998 which he deposited on 7.12.1998. Again vide letter dated 3.2.1999 a demand notice was issued to the petitioner to deposit Rs. 89,667/- before 28.2.1999, Annexure-9. The petitioner made several representations against the said demand but nothing was done and, as such, he has moved this Court against the demand of Rs. 89,667A, Annexure-9, and also for issue of direction to the respondents to execute final deed of transfer of L.I.G. flat No. LF3/243 in the name of the petitioner.

9. A counter affidavit and a supplementary counter affidavit have been filed on behalf of the respondent-Housing Board, wherein the deposit of the amount by the petitioner has been admitted. However, it has been stated that the petitioner did not comply clause 8 of the allotment letter, Annexure-3, for execution of the agreement and registration of the document within time and, as such hire purchase agreement was executed on 6.4.1988, Annexure-5 i.e. after four years of the allotment. The flat was constructed under the financial assistance of the Housing and Urban Development Corporation. The price indicated in the agreement was tentative. The Board re-determined the price which came to Rs.

184,700/- as on 31.3.1998. In terms of the agreement the petitioner is liable to pay the cost re-determined by the Board after deduction of the amount deposited by him.

C.W.J.C.No. 11401/99

10. The petitioner submitted application along with Bank Draft of Rs. 15,000/- on 8.1.1988 for purchase of unconstructed flat in Group A. The Housing Board vide letter dated 1.7.1989 asked the petitioner to deposit first instalment of Rs. 66,000/-, which she deposited on 29.7.1989. She was allotted flat No. 3SFA2/5 at Bahadurpur, Patna vide letter dated 1.3.1990, Annexure-2. The petitioner has given the details of the payment of money in favour of the Housing Board. The Executive Engineer, Bihar State Housing Board on 29.5.1993 directed to hand over the flat to the petitioner as all the payments had been made, Annexure-6. However, vide letter dated 19.1.1995 the petitioner was asked to deposit Rs. 8354/- calculating the final dues till 31.1.1995, which she deposited on 31.1.1995, Annexure-8. The flat in question was handed over to the petitioner on 6.12.1995. Again, the Board issued letter dated 11.5.1999 demanding Rs. 15,922/-, Annexure-1. The petitioner filed an application to examine the details to avoid future complication, Annexure-9. However, the petitioner deposited Rs. 15,922/- through Bank Draft on 28.6.1999 under protest, Annexure-10. According to the petitioner, the demand vide Annexure-1 was illegal but nothing was done and, as such, she has moved this Court for quashing the order, Annexure-1, and for refund of the said amount with interest.

11. A counter affidavit has been filed on behalf of the Housing Board, wherein the deposit of the amount by the petitioner has not been disputed. However, it has been stated that it was a self-financing scheme, details of mode of payment have been mentioned. The petitioner deposited Rs. 2,47,125/75 towards the instalments upto 31.1.1995 and Rs. 15000/- as earnest money along with the application for allotment. The Board calculated the cost of the flat and after adjustment of the amount paid by the petitioner the demand vide Annexure-1 was issued, which the petitioner has deposited. The said demand was not unwarranted. The cost of the flat was tentatively determined at Rs. 2,20,000/-. However, in the month of issuance of allotment letter the cost of the flat was assessed at Rs. 2,07,953.87 only. Subsequently calculation was made and, as such, the demand, Annexure-1, is not arbitrary.

C. W.J.C. No. 10082/2002

12. The M.I.G. House No. 116 was initially allotted to the mother of the petitioner being wife of the government employee vide order dated 5.7.1968. She filed an application for the house in question in prescribed format of the Housing Board. The Housing Board vide resolution dated 28.11.1974 resolved to allot the house to the tenants, subject to compliance of certain formalities, which the petitioner's mother complied and deposited the monthly rental upto June. 1974. At the relevant time the cost of the house in question was at Rs. 33,000/-.

However, the house was not finally settled and the mother of the petitioner died on 8.7.1984. The petitioner, who was residing with his mother, filed no objection of his surviving brothers for allotment of the house. The house was allotted in the name of the petitioner vide order dated 4.3.1991, Annexure-9, and the cost of the house was assessed at Rs. 1,19,960/-. The petitioner initially deposited Rs. 23,992/- and other amounts as directed by the Housing Board and a registered agreement was executed on 10.6.1991, Annexure-10. The petitioner deposited Rs. 70,000/- out of outstanding amount of Rs. 95,968/- and requested for final calculation of the dues but nothing was done. However, the petitioner deposited Rs. 2,14,000/- against the outstanding dues of Rs. 95,968/-. The Housing Board, however, vide letter dated 23.7.2002 issued a demand notice and directed to pay Rs. 4,56,982/- till 31.5.2002, Annexure-1. The petitioner has challenged the order, Annexure-1, as illegal and arbitrary.

13. A counter affidavit and a supplementary counter affidavit have been filed on behalf of the respondents. The allotment of the house in the name of the mother of the petitioner and after her death in the name of the petitioner has not been denied and the deposit of the amounts made by the mother of the petitioner as well as by the petitioner has also not been denied. However, it has been stated that the petitioner has deposited Rs. 1,39,192/- and also Rs. 50,000/- on 19.3.2002. After adjustment of the said amount the balance amount Rs. 4,56,982/- till 31.5.2002 has been demanded by the Board, Annexure-1. The demand is not arbitrary/illegal rather it is in terms of the agreement/allotment letter, which the petitioner is liable to pay.

C.W.J.C. No. 5541/1999

14. The petitioner filed an application for allotment of flat on 6.2.1988 along with Rs. 12,000/-. The petitioner was intimated regarding allotment of Flat No. 3 SFB 1/7 vide letter dated 27.6.1989. Vide letter dated 25.1.1993 the petitioner was directed to pay Rs. 88,141,7/-. However, the said letter was not served to the petitioner. Again a letter dated 15.2.1996 was issued to the petitioner to pay the aforesaid amount. The petitioner then deposited the aforesaid amount with interest @ 16.15% per annum to respondent No. 2. On 18.9.1996 the petitioner made complaint that the work was incomplete. On 7.5.1997 the petitioner deposited Rs. 27,600/- in favour of the Housing Board, Annexure-8. Again he deposited Rs. 60,541/- on 21.5.1997, Annexure-9. On 24.5.1997 he filed an application for delivery of possession, Annexure-10. The Executive Engineer of the Bihar State Housing Board vide letter dated 10.6.1997 intimated the petitioner about the nonavailability of the allotment letter. On 4.10.1997 the petitioner filed an application before the Manager Estate, Bihar State Housing Board, for issuance of allotment letter and delivery of possession, but nothing was done. However, on 20.3.1998 the cost was revised and a demand of Rs. 90,523.51 was again made. The petitioner deposited Rs. 50,000/- and Rs. 10,000/- on 14.11.1998. However, on 28.12.1998 he drew the attention of respondent No. 2 regarding wrong calculation of the cost, Annexure-15. He made

reminders but nothing was done. However, a letter dated 22.3.1999 was issued to the petitioner raising demand of Rs. 79,030/-, Annexure-18. The petitioner, however deposited Rs. 15,498/- on 24.3.1999 and made request to hand over the possession of the flat to him, but nothing was done and, as such, he has filed the writ petition for issue of direction to the respondents to issue allotment order and execute the deed in his favour and also to refund the excess amount deposited by him on the ground that the demand made by the Housing Board is illegal.

15. A counter affidavit has been filed on behalf of the respondent-Housing Board, wherein it has been stated that it was under the self-financing scheme and the construction was to be completed from the deposits of the applicants within time. The tentative cost was determined at Rs. 1.50 lac at the time of inviting application. Subsequently, due to increase of compensation in land acquisition, development and works relating to construction the increased cost was to be paid by the applicants. The allotment of the flat has been admitted. The petitioner failed to deposit the instalments in time. He deposited the first and the second instalments on 31.5.1990. By that time the third instalment was expected to be deposited. The cost of the flat was re-determined at Rs. 2,20,417/- as on 31.3.1993 and the petitioner has deposited towards cost Rs. 94,500/- and interest over the said amount Rs. 37,976/- till 31.3.1993. The balance Rs. 87,941/- was required to be paid by 31.3.1993 but it was not paid in time. However, he made some payments in 1997 and after adjustment of the above amounts dues arrived at Rs. 90,524/- till 30.4.1998. The petitioner thereafter also deposited some amount. The Board calculated the cost after adjustment of the paid amount and found that since he had paid Rs. 60,000/- on 14.11.1998, and Rs. 15,498/- on 24.3.1999, therefore, there was no due towards the cost. The Board had placed a demand of Rs. 79,030/- upto 30.4.1999 but, in the meantime, the petitioner had already deposited the total amount of Rs. 75,498/- upto March 1999, therefore, there was no need to receive any additional amount towards cost as due on 31.3.1999.

16. In all the writ petitions the petitioners have challenged the demand raised by the respondent-Housing Board. In C.W.J.C. Nos. 11808/98, 11827/98, 12091/98 the final deed of transfer has also been executed and thereafter further demand has been made. In rest of the writ petitions, the demand made by the Housing Board has been challenged and prayer for issue of direction for execution of final deed of transfer in favour of the petitioners has been made. In C.W.J.C. No. 11401/99 the prayer has been made for refund of the amount deposited by the petitioner. Therefore, it is evident that in all the cases the demand made by the respondent-Board has been challenged.

17. Counsel for the petitioners also submitted that the demand raised by the Housing Board is arbitrary and illegal, and, as such, the same be quashed and direction be issued to refund the amount, if payment has been made/execute a final deed of transfer in favour of the petitioners. On the other hand, counsel for

the respondents submitted that the demand has been raised in terms of the order of allotment letters/terms of the agreement. The cost fixed earlier was tentative and it was subject to the enhancement of the price of the acquisition of land, increase in development and construction cost. In case, where the payment has been made in time the final deed of transfer has been executed, in case where no payment has been made in time no such deed has been executed.

18. However, on consideration this much is obvious that in all the cases except C.W.J.C. No. 5541/99 allotment has been made and also the hire purchase agreement has been executed. The allotment has been made subject to the conditions mentioned in the allotment letter/hire purchase agreement. In some of the cases, as indicated above, even after execution of final deed of transfer the demand has been made. It is evident from the materials on record that the allotment was subject to the conditions mentioned in the order of allotment/hire purchase agreement. The parties are bound by the terms and conditions as mentioned in the allotment order/hire purchase agreement. No one can deny the terms and conditions as mentioned therein. There are specific terms and conditions i.e. tentative cost has been intimated in the order of allotment/hire purchase agreement and that is subject to increase in the cost of acquisition of the land, increase in construction cost and also development cost. Therefore, it can safely be said that the Board is entitled to raise the price/cost of the house/flat/land and interest thereon in the case of non-payment. In all the cases the demand has been raised but there is nothing as to how the demand has been raised, whether it has been raised because of increase of compensation in acquisition of the land, development/increase in the cost of construction. It would be pertinent to mention herein that the terms and conditions are enabling provisions for enhancing the price but the same has to be enhanced reasonably and it must be transparent so that the allottee may not feel any difficulty in complying with the demand raised by the Housing Board. In some of the cases, the petitioners/allottees have stated that no development has been made, no price of the land has been raised in acquisition proceeding and nothing has been indicated about the increase in the cost of construction. In some cases it has been stated that payment was made in due time but ignoring the said aspect of the matter the demand has been raised. It has been pointed out by the counsel for the parties that pursuant to the judgment and order passed in C.W.J.C. No. 47/94 and C.W.J.C. No. 2724/94 disposed of on 20th October, 1995 a Pricing Committee has been constituted for calculating the price of the flat/house/land allotted to the parties to avoid further litigation in the matter. Since nothing specific has been mentioned with regard to raising of the demand, in my opinion, it would be fit and proper that all the matters should be referred to the Pricing Committee, which shall look into the grievance of the petitioners and shall determine the cost/price of the land/flat/house allotted to the petitioners in accordance with law and the terms and conditions of the allotment letter/hire purchase agreement giving an opportunity to the petitioners to say in the matter and thereafter the respondent-Board shall issue letter if any amount is found due

against the allottees/petitioners. If the amount is found to have been deposited in excess the same shall be returned to the allottees/petitioners and if it is found that the allottees are required to pay some more amount the Board shall issue notice accordingly. The entire exercise, as indicated above, must be completed within a period of six months from the date of receipt/production of a copy of this order.

C.W.J.C. No. 5541/99

19. It is evident from the materials discussed above, that in this case no agreement has been executed in favour of the petitioner, though the petitioner claims that he has deposited the amount as required by the Board. It is a self-financing scheme and it has been prayed by the petitioner for issue of direction for execution of agreement and handing over possession of the allotted flat/house to the petitioner. Therefore, it is evident in this matter also the claim of the petitioner has to be determined by the respondent/Board/Pricing Committee as to whether, the petitioner has deposited the entire amount as required and also whether under the self-financing scheme the petitioner's payment is sufficient and any further demand is legal or not and it shall make a calculation of the entire deposit/required payment by the petitioner by a reasoned order in accordance with law and, thereafter, the Housing Board shall proceed further and in case it is found that the petitioner has deposited the amount as required under the law the Board shall execute the agreement and hand over the possession of the house/flat in question to the petitioner if not handed over as yet.

20. All the writ petitions are, thus, disposed of in the light of the direction/observations indicated above.