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Court : Patna

Decided On : Dec-05-2001

Judge : R.S. Garg, J.

Appeal No. : C.W.J.C. No. 13423 of 2001

Appellant : Mohan Lal

Respondent : State of Bihar

Disposition : Petition Allowed

Prior history : R.S. Garg, J. 1. Heard the learned Counsel for the parties. 2. The Managing Director of the Housing Board is also present. The present petition presents a very pathetic condition of the working of the Housing Board. I am sorry to record that the manner in which the Housing Board and its Officers are working, cannot be said to be satisfactory rather their acts and action have to be condemned. In the present matter, the petitioner after being persuaded by the advertisement issued by the Housing

Judgement :

R.S. Garg, J.

1. Heard the learned Counsel for the parties.

2. The Managing Director of the Housing Board is also present. The present petition presents a very pathetic condition of the working of the Housing Board. I am sorry to record that the manner in which the Housing Board and its Officers are working, cannot be said to be satisfactory rather their acts and action have to be condemned. In the present matter, the petitioner after being persuaded by the advertisement issued by the Housing Board paid his hard earned money to the Housing Board with a pious hope that he would be given a plot in consideration of his money. A period of long 30 years has passed but the Housing Board is not ready to come out of its slumber. When this Court issued notice to the respondents, the Court sincerely hoped that the Housing Board would come out with a straight case and make feasible proper and honest officer. Instead of making such an offer the Housing Board is trying to persuade this Court by projecting their own pathetic condition.

3. Present is a case where the Housing Board has created trouble just for nothing and what could be done in the year, 1972 or immediately thereafter was not done for long many years. The property belonging to the Housing Board was trespassed by number of people and from the counter-affidavit of the respondents, it would appear that the officers of the Housing Board are not in a position to go on the said property or make any development on the same. In paragraphs 15, 16 and 17, the Housing Board has said that somewhere in the year 1995 under the orders of the Hon'ble High Court demarcation of the plots and construction of the roads, etc. were started with the assistance of the Police force, but, the Board does not say that they could bring it to its logical end or not. In para 16, the Board says that in the year, 1996, the police force deployed at

Olgha was withdrawn by the District Administration on the even of the Parliamentary Election and even after the conclusion of the elections the police force was not deployed again. It became tough for the Board to go on with the work. In paragraph 17, it is said that on 29-1-1997 certain persons indulged in unauthorised construction, made brutal assault on one Assistant Engineer and a Junior Engineer of the Board who were deputed for carrying out development work. The Board says that a police report was made and the police registered a case. In para 18, it is said that these facts were brought to the notice of this Court

in

C.W.J.C. No. 3991 of 1987 but till date the State Administration has not provided any police assistance to the respondents. They further say that in C.W.J.C. No. 3991 of 1987, on 1-2-2001 this Court directed the Board to demarcate plots of land and start other works relating to the development of the said acquired land with the help of the police force and also demolish the unauthorised constructions raised over the said land in violation of the High Court's earlier order dated 5-12-1994. From this narration, it would clearly appear that in the writ application filed in the year, 1987 certain interim orders were granted but because of the in action and non-action on the part of the Board people made encroachment upon the land and some of the persons have raised pucca construction over the said acquired property.

4. I fail to understand that how the Board can take advantage of the lapses committed by it and add premium to it. It was expected of the Board to take preventive measures on the very first complaint that somebody was trying to encroach upon the acquired land. For the lapses committed by the officers of the Board, the Board must thank itself, it cannot be allowed to say that in view of the prevailing law and order condition it is not possible for the Board to deliver the possession of the plot to the petitioner.

5. Learned Counsel for the Board stated that the High Court in the pending writ application required the District Administration to provide the police force or execute the earlier order of this Court but the District Administration is not responding to the requests made by the Board. He further submits that he had made some application in the earlier writ petition seeking further indulgence of the High Court.

6. I do not understand as to why the Board is required to make further application in the High Court. The Board in the said pending writ petition could make application to the High Court for drawing contempt proceeding against the said officer complaining that despite directions of the High Court the District Administration is not providing the Police Force or is not deploying the Para Police Force for executing the earlier order passed by the High Court.

7. From the conduct of the Board and its officers, it simply appears that instead of doing any-thing on their own in discharging their liability they want the High Court and the District Administration to do every thing for them and provide them possession of the disputed property in a platter. After the Housing Board acquires certain lands and proposes development on it, it gives an assurance to the public that it would develop a housing colony. It requires public to purchase it with an assurance that it would deliver goods to them. It cannot come before the Court and say that the things fizzled out of their hands, therefore, they being absolutely hapless and hapless cannot do anything it the matter. They being the dream merchants, if propose to sell dreams and after realising consideration cannot supply nightmares. When a man proposes to purchase a plot, he thinks of his dream house. What could be build for a song's price in 1972, now cannot be build for a good fortune.

8. The Board placing its strong reliance upon Annexure-A submitted before the Court that the possession of the property was delivered to the petitioner on 28-1-1997. True it is that the said document bears signature of the petitioner but in the opinion of this Court, if the document is read juxtapose with the assertions made in the counter-affidavit, it would clearly appear that the Board was never in a position to deliver the possession of the property to the petitioner. It appears that Annexure-A was simply prepared to contend at some stage that the petitioner was put in possession. If the Board's officers and the police force were not in a position to go to the spot then it was impossible that on 28-9-1997, the physical possession of the property could be handed over to the petitioner.

9. From paragraph 17, as referred to above, it would appear that on 29-9-1997, the very next day of the alleged delivery of possession, the officers of the Housing Board were brutally beaten. If that was the prevailing law and order situation on the spot, the Board cannot say that on 28-9-1997 the physical possession of the plot was delivered to the petitioner.

10. At this stage, learned Counsel for the Board submitted to the Court that if the petitioner is not ready and willing to opt for the plot in view of the prevailing conditions then the Board is ready to refund the amount in accordance with the

rules. This argument of dispersion appears to be lucrative but if is unveiled it would show that it is a dishonest officer because after keeping the money of the petitioner for long 30 years the Housing Board still wants to have cut of 20% of the money on cancellation of the agreement. In a democratic set up where the public rule? the government, where the public is the boss then any officer appointed by the State as a public servant must remember that he is a servant of the public and cannot be their boss. The attitude of the Housing Board in making such bad offer is again to be condemned.

11. It is not in dispute before me that if the late payments are made by the allottee, the Board charges interest and penal interest with particular rests, i.e. charges compound interest. In a case where the Board commits lapses and is not in a position to perform its part of the contract and is not in a position to deliver the property as assured by them then it must come out with a straight case and at least make offer before this Court that they would refund the full amount with reasonable interest and would try to compensate the petitioner. They could say that they would not pay the penal interest as they charge from the public.

12. Thirty years after all is a long period. In fact, thirty years is a period where the generation changes but it appears that the Board despite change of the generation is not ready to change itself. It is still not concerned with the perils, pains and plight of the public, but for charging the money, interest penal interest, service charges, etc. from the public. The Board is not ready to do anything for the persons like petitioner nor is ready to project itself as an honest authority which is ready to keep its words and promises.

13. The Housing Board is not a creation of the public. The Housing Board is a creation of the State Government. The lofty idea of creating the Housing Board was that the public at large would get plots, land, house and flats at reasonable price within a reasonable time. The creators of the Housing Board must not have though while creating the Housing Board that they were creating a system which is hopeless and the pit would never fill put whatever in it. The public at large cannot be thrown like lambs before the authoritative wolves of the Housing Board. If the Housing Board is not answerable to the public or to its own creator, at least they

are answerable to the Courts. The manner in which the Housing Board even now behaves before the Court would clearly show that they have no respect for their own words. They simply want some money from here or there so that their own people are paid their salaries and are made comfortable. They are interested in their own pleasures, purses and perks was this expected of them were they created for this. Can they say before the High Court that they still be given the authority to have their cut and share though they would not do anything in the matter.

14. The petitioner made a submission before the Court that he is ready and willing to withdraw his offer provided the money is paid to him with the interest and penal interest at the same rate at which the Board charges on the late payments from the public. The Counsel for the Housing Board again submits that they be given an opportunity to refund the money in accordance with their rules. I have already dealt with this submission of the Housing Board in the proceeding paragraphs.

15. Accepting the offer made by the Housing Board that the petitioner is entitled to return of the money, if the petitioner submits that he is ready to withdraw the offer I have no hesitation in holding that on Board's own showing and statement made before me the petitioner is entitled to the refund. The Housing Board it feels that any person entering in to an agreement with the Housing Board it does not fulfil his commitment then the Housing Board is entitled to compound interest or compound penal interest then in a case where the Housing Board is unable to perform its part of the contract then it must state, straight before this Court that instead of applying their own rules relating to refund of the money they would refund the same as honest authority. They, in fact, want to have the pound of flesh, the blood so also the authority. In my opinion, the Housing Board must pay interest to the petitioner at the rate and in accordance with the terms on which they charge it from the defaulting parties.

16. The petition to the extent above is allowed.

17. It is hereby directed that within three weeks from today the Housing Board shall calculate the amount deposited by the petitioner, the interest at the rate at which the Housing Board charges from the defaulters and shall make payment to

the petitioner within a further period of 30 days. This order is being dictated in present of the Managing Director who shall be personally obliged to see that this order is trully observed by the Housing Board. He is fore warned that if the directions issued by this Court are not observed in their true spirit and perspective, this Court will hold him personally liable and may draw contempt proceeding against him.

18. The petition is allowed with cost of Rs. 5,000/-.

19. This cost is again imposed against the Housing Board as neither they have come out with a straight case nor were ready and willing to help and assist the petitioner in his cause.

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