

Ashutosh Kumar Vs. Bihar State Housing Board and ors.

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Court : Patna

Decided On : Feb-13-1996

Judge : Ashish N. Trivedi, J.

Appeal No. : C.W.J.C. No. 2063 of 1995 (R)

Appellant : Ashutosh Kumar

Respondent : Bihar State Housing Board and ors.

Disposition : Petition Dismissed

Judgement :

Ashish N. Trivedi, J.

1.The case of the petitioner is that an advertisement was issued by the Bihar State Housing Board (hereinafter referred to as 'the Board') for allotment of L.I.G. flats in response to which the petitioner made an application dated 21.3.1985 and after completing all the necessary formalities deposited a sum of Rs. 5,000/- as earnest money. It is alleged that constructions of flats had already been completed and were ready for allotment. A draw of lots was held on 20.8.1987 and 21.8.1987 and the petitioner was allotted L.I.G. Flat No. R-146 and the Respondents unnecessarily delayed the issuance of formal letters and it was by a letter dated 6.4.1990 (Annexure-1) that L.I.G. Flat No. R-146 was allotted to the petitioner on payment of Rs. 79,400/- (Approximately) and accordingly the petitioner deposited

a sum. of Rs. 11,080/- on 7.5.1990. Since the petitioner did not want L.I.G. Flat No. R-146, he made an application dated 4.9.1990 (Annexure-2) for allotment of L.I.G. Flat No. R-40 which was under consideration of the Board.

2. However, a writ petition was filed as Public Interest Litigation which was registered as C.W.J.C. No. 1779 of 1989(R) praying for issuance of direction to the Board for making final allotment of L.I.G. Flate to persons, who were declared successful in the lottery held on 22.6.1987 and this Court by its decision in the case of Citizens Cause, Ranchi v. Bihar State Housing Board and Ors.

1992 (1) B.L.J.R. 367 quashed the letters of allotment wherein the disposal price had been mentioned as Rs. 62,800/- on the basis of the price as on March, 1990 and directed the Board to fix the disposal price keeping in view the actual cost of constructions and other charges as existing in August, 1987 and further directed that if any of the allottees had deposited the amount in terms of the said letter of allotment, the Board shall adjust the same against the dues of that particular allottee and prescribed the time schedule for implementation of the directions issued by this Court.

3. Respondent No. 3 in pursuance of the directions issued by this Court in anticipation issued the letter dated 23.3.1991 (Annexure-4) informing the petitioner that provisional price of Flat No. R-146 has been fixed at Rs. 63,762,40 only and the amount of monthly instalment was accordingly reduced.

4. The request of the petitioner for change of the allotment was considered and accepted by the Board in its meeting dated 18.1.1992 (Annexure-5) and the Board by its letter dated 3.3.1992 (Annexure-6) offered allotment of L.I.G. Flat No. R-40 on the terms and conditions mentioned in the letter specifically-indicating the approximate price of the said flat as Rs. 97,854/- and the manner in which the price had to be paid in instalments.

5. The petitioner alleges that in view of dire necessity of a house, he entered into a Hire Purchase Tenancy Agreement on 20.5.1992 and took possession of the house. However, a copy of the Agreement had not been brought on record by the petitioner, who claims to have made several representations and a copy of one

said representation is annexed as Annexure-7 in which it was alleged that he is liable only to pay Rs. 63,762/- as the price of the said flat instead of Rs. 97,854/- claimed by the Respondents. The petitioner states that as per the price fixed by the Respondents in the letter dated 23.3.1991 (Annexure-4) he has deposited monthly instalment Rs. 624/- upto July, 1995 amounting to Rs. 23,712/- but complains that it was under unavoidable circumstances and because of the dominant position of the Board that he was involuntarily compelled to enter into the Agreement which contains unconscionable and unreasonable terms and conditions. It is further alleged that L.I.G. Flat No. R-40 had been allotted to another person earlier which establishes that it had been constructed much before the draw of lots held in August, 1987 and, therefore, the enhancement of the price is wholly illegal and arbitrary and the petitioner, had therefore prayed for appropriate directions to the Respondents to charge only Rs. 63,762 : 40 as per the allotment letter dated 23.3.1991 (Annexure-4 and not Rs. 97,854/- as mentioned in Annexure-6).

6. Despite time having been granted, Counter Affidavit has not been filed on behalf of the Respondents.

7. The contention of the learned Counsel for the petitioner is that the decision of this Court in the case of Citizens Cause (supra) is binding on the Respondents and, therefore, they are obliged to charge the price of the L.I.G. Flat No. R-40 in accordance with the observations and directions made in the said decision. Reliance was also placed by the learned Counsel for the petitioner on a decision of learned single Judge of this Court in the case of Phool Chandra Ram and

Ors. v. Bihar State Housing Board and Ors. (1995 (1) BLJR 606) and a Division Bench decision of the Delhi High Court in the case of Ashok Kumar Behal and

Anr. v. Union of India and Ors. AIR 1994 Delhi 149 in support of his contention that the price of the L.I.G. Flat allotted to the petitioner had to be the same as was the cost of the flat on the completion of its constructions in the year 1987 and not when the said L.I.G. Flat No. R-40 was allotted to the petitioner by the letter dated 3.3.1992 (Annexure-6).

8. Learned Counsel appearing for the Board produced the original copy of the Hire Purchase Agreement between the Board and the petitioner that was executed on 10.4.1992, a copy of which has been taken on record and submitted that the relationship between the petitioner and the Board is governed by the terms and conditions of the Agreement and the writ petition is not maintainable and further that the petitioner is estopped from challenging the terms and conditions of the Agreement having taken possession of the flat in question.

9. Having considered the submissions made by the learned Counsel for the parties and the material on record, I am of the view that there is no merit in the writ petition.

10. The decision relied upon by the learned Counsel for the petitioner in the cases of Phool Chandra Ram and Ors. (supra) and Ashok Kumar Behal and Ors. (supra) are of no assistance as also the decision of this Court in the case of Citizens Cause (supra) in view of the fact that in none of the cases had the petitioners executed any Agreement or had entered possession of the premises allotted to them.

11. The explanation which has been given by the petitioner for the occupation of the L.I.G. Flat No. R-40 after execution of the Agreement is that he was in dire need of a house and, therefore, he is not bound by the alleged unconscionable and unreasonable terms of the Agreement. Nothing prevented the petitioner from questioning the offer made to him for allotment of L.I.G, Flat No, R-40 on the terms and conditions contained in the letter of allotment dated 3.3.1992 (Annexure-6). The petitioner not only accepted the offer made to him but also executed the Hire Purchase Agreement on 10.4.1992 and on perusal of the copy of the same, it is evident. that he has signed all the pages of the Agreement in the presence of his witnesses and it is not open for him to back out or resile from the terms and conditions of the Agreement or to dispute the same and in case he does want to dispute, consequences mentioned in the Agreement have to follow.

12. It was held by the Supreme Court in the case of Barailey Development Authority v. Ajay Pal Singh : [1989]1SCR743 that when the contract entered into by the State is non-statutory and purely contractual the relations are no longer

governed by the constitutional provisions but by the legally valid contract which determines the rights and obligations of the parties inter-se. In this sphere, the parties can only claim rights conferred upon them by the contract in the absence of any statutory obligations on the part of the authority in the said contractual field. It is also settled that no writ or order can be issued under Article 226 of the Constitution of India so as to compel the authorities to remedy a breach of contract pure and simple.

13. The contention of the petitioner that the Board was in a dominant position and could dictate terms and, therefore the petitioner was compelled to enter into the Agreement involuntarily is not amenable to reason inasmuch as the petitioner himself did not want L.I.G. Flat No. R-146 to be allotted to him and requested that

L.I.G. Flat No. R-40 be allotted and when the offer was made by the Board for allotment of the said flat by the letter of allotment dated 3.3.1992 (Annexure-6), he did not question the same but readily accepted it and executed the Hire Purchase Agreement in the presence of his witnesses. It is not the case of the petitioner that he is illiterate or did not understand, the terms and conditions contained in the letter of allotment dated 3.3.1992 (Annexure-6) or of the Hire Purchase Agreement dated 10.4.1.992 and he is, therefore, liable to abide the same and the writ petition is non maintainable.

14. In view of the aforesaid discussions, the writ petition is not maintainable and is liable to be dismissed, however, it is open for the petitioner to seek redress before the Civil Court by taking appropriate proceedings or approach the Respondents for correction of any. calculation or arithmetically mistake.

15. In the result the writ petition is dismissed with no order as to costs.

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