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Court : Patna

Decided On : Jan-18-1995

Judge : Nagendra Singh, J.

Appeal No. : Civil. Writ Jurisdiction Case No. 1648 of 1993 (R)

Appellant : Amareshwar Singh and anr.

Respondent : Bihar State Housing Board and ors.

Judgement :

Nagendra Singh, J.

1. With the consent of die parties this application is being disposed of at the stage of admission itself.
2. Heard learned Counsel for the parties.
3. Both the petitioners have filed the present writ application against the Bihar Slate Housing Board through its Chairman (respondent No. 1) and its officers for a direction to charge the price of the House sites allotted to the petitioners at the rate which was charged by in the year, 1980 from the other allottees' and further to restrain them not to charge from the petitioners with regard to the Houses sites allotted to them at the rate applicable in September, 1992. They have also prayed for giving them interest at the rate of 18% on the earned money deposited by the

petitioners in the year, 1980.

4. In this case necessary facts for disposal of the present writ application are stated as follows:

5. Under the provisions of the Bihar State Housing Board Act, the respondent Housing Board has been constituted with sole object of providing of house, house sites and execution of housing schemes in the State of Bihar. In the year, 1974 the Board published a prospectus announcing several schemes for allotment of house sites, dwelling units under different categories in die different town of the State of Bihar. The aforesaid prospectus provided inter alia that the persons desirous of applying for the sites or the dwelling units have to got themselves registered by the Board by depositing Rs. 50/- and thereafter they were required to file application in the prescribed form by depositing earnest money, according to the types of plot or dwelling units. The persons applying under the high income groups were required to deposit Rs. 3, 000/- as earnest money for house sites. The Petitioner No. 1 got himself registered on 7.5.1980 and Petitioner No.2 got himself registered on 25.2.1980. Both of them applied for house sites under high income group. Petitioner No. 1 filed prescribed form alongwith requisite earned money of Rs. 3, 000/- on 10.5.1980 and Petitioner No. 2 filed the application alongwith earned money .of Rs. 3, 000/- on 10.5.1980. The aforesaid facts are not in dispute between the parties.

6. According to the petitioners the allotment of house sites was made to them on 5.6.1980 but they were not informed about the allotment. In the year, 1983 a notice was published in the Board asking certain details from the applicants to whom house site has not been allotted till that date. The petitioners furnished the information sought for in the notice. In the meantime, according to the direction given by the Ranchi Bench of Patna, High Court in C.W.J.C. No. 242/89 (R) to allot the plots to the awaiting applicants up-to 1980 by drawing of lotteries, the steps were taken by the Housing Board for preparing the list of awaiting applicants. The waiting list prepared by the Housing Board was displayed on the notice board of the Executive Engineer (Respondent No .4). The said list did not contain the name of the petitioners, thereafter they brought to the aforesaid fact to

the notice of the respondents and thereafter the petitioners came to know that the house sites were already allotted to them on 5.6.1980. Petitioner No.1 was allotted plot No. H-65 and petitioner No.2 was allotted to house site No. H-64 and due to deliberate laches or inaction of the Housing Board and its employees the petitioners were not informed about the aforesaid allotment for a long time. The Board in its meeting dated 16.12.1991 and 25.7.1992 vide Annexure-2 series, reviewed the entire matter and found that the petitioners were allotted the plots. In the year, 1980 and accordingly ordered that after verification of the records allotment letter may be issued to the petitioners. Thereafter, allotment letters were issued to the petitioners by order dated 19.1.1993 and 4.1.1993 respectively vide Annexure-3 series. In the allotment letters price of the house sites of both the petitioners were mentioned as Rs. 11, 61, 83/- on the rates arrived at on 30th November, 1992, The petitioners were directed to deposit Rs. 320557/- after deducting Rs. 3, 000/-, the earnest money deposited by them in the year, 1980, and thereafter they were required to deposit the remaining amount in 60 installments. Thereafter, the petitioners deposited the aforesaid amount vide Annexure-4 series, thereafter they executed agreement for hire purchase of the plots in question with the Housing Board on 20.3.1993 and 22, 3.1993 respectively (Annexures-series to the Counter-affidavit). The Board thereafter directed them to take possession of the house sites and accordingly they took the possession of the house sites on 12.4.1993 and 14.4.1993 vide Annexure-6 and 6/1.

7. A Counter-Affidavit has been filed on behalf of the Housing Board wherein it is stated that the Housing Board is no profit no loss organisation and it never enhances the price or cost of the house sites or dwelling units arbitrary on unreasonable ground. It charges only the cost, which it incurred. While determining the cost it takes into account cost of acquisition of land, development cost of land, Cost of construction of flat/house, cost of fencing/boundary wall around the whole required land, cost of maintenance administrative charge, charge of documentation and interest on the ground borrowed from the financing body etc. The decision to allot the plots to the petitioner was taken by the Chairman of the Board but the same could not be implemented due to non-supply of certain required documents by the petitioner as such final decision for the implementation of the decision of the Chairman was not taken earlier and,

however, when the petitioners complied with all the formalities the decision was taken in July, 1992 to allot the plots to the petitioner. In pursuance of the aforesaid decision the allotment letters were issued in the month of January, 1993. Thereafter, the petitioners entered into a hire purchase agreement wherein the tentative price of the alleged plots was given. The total area of land allotted to the petitioners of the first instalment as per agreement the possession has been given in the month of April, 1993. The petitioners have been charged at the rate prevailing at the time of allotment in the year, 1992 and the same is not excessive on the other hand the same has been charged on the basis of taking into consideration the relevant factors as mentioned above.

8. Further stand of the Board is that the petitioners having entered into an agreement and having accepted all the terms and conditions as per the agreement they are estopped from challenging the cost of lands as calculated in the agreement. They cannot take shelter of delay in issuing the allotment letter as the delay has occurred due to laches in filing of the relevant papers by the petitioners. It is also stated that Clause 24 of the agreement provides arbitration in case of dispute and the petitioners may take recourse to the same in case they have went to raise dispute with regard to price.

9. Learned Counsel for the petitioners contended that charging the price on the basis of the valuation fixed in the year, 1992 is unreasonable, arbitrary and opposed to the public policy for the simple reason that the allotment was made to the petitioners in the year, 1980 and as such they cannot be forced to pay the price applicable for the housing sites in the year, 1992 for the fault or laches of the Housing Board. It is also submitted that they are entitled to get interest at the rate of 18% on the earned money deposited by them in 1980

10. Learned Counsel for the Board on the other hand contended that allotment to the house sites of the petitioners could not be made in 1980 because of the laches of their part. As the allotment has been made in the year, 1992 they have been asked to pay the price at the time of decision taken to allot the house sites to them and the said decision in no case can be said to be arbitrary nor it can be said that the petitioner have been discriminated in the sense that other allottees similarly

situated have been charged lower price whereas the petitioners have been charged higher price for the similar house sites. So far the rate of interest on the earned money is concerned, it is stated that in view of the clear provisions in the prospectus the petitioners are not entitled at the rate of 18% interest.

11. Before advertng to the respective submissions advanced at the bar it will be relevant to refer same of the provisions of the prospectus and the letter of allotment and agreement. Clause 4.8 of the prospectus runs as follows:

4.8--The probable cost of the house-sites/wellings indicated in the brochure for the scheme or indicated in the Schedule 'SKH' are tentative and is likely to be varied on account of the actual cost of acquisitions, construction, etc. and the extra sum so accruing shall be payable by the allottees in the manner laid down by the Board.

From letter of allotments (Annexure 3 and 3/1), it appears that Clause-3 specifically states that price of the house sites has been fixed Rs. 1, 16, 183.00/- on 30th December, 1992. It was further provided therein that in case the price of the sites increases because of the cost of land acquisition and development expenditure then the additional amount has to be deposited by the petitioners. However, if the cost is reduced then the same will be adjusted or refunded as the case may be, the decision taken by the Board will regard to the price of the house sites shall be final. Clause-4 required the payment of first instalment within 30 days from the date of issuance of letter. Clause-5 provides for execution of agreement of deposit of the first instalment. Clause-4 (a) of the hire purchase of the agreement runs as follows:

4(a)--That the total disposal price indicated above is according to the present estimates and hence tentative increase in the cost of development or due to increase in cost of land, acquisition or due to any decision/award of Court of law or legislation or due to final valuation or due to increase in the cost calculation otherwise as per decision of the Board shall be payable by the settle either instalments there or in lump sum within the period decided by the Board. The Settle shall under no circumstances be entitled to demand any accounts relating to the disposal price/cost or to question or disputed it and this shall be fixed by the

Board in its sole discretion and the disposal price of plot of land so fixed shall be binding on the settle.

12. Thus, the aforesaid provision shows that the subsequent price mentioned in the letter of allotment is according to the present estimate and the same is subject to increase or decrease according to the subsequent happenings as mentioned in the prospectus and the letter of agreement.

13. It is well settled that in price fixation executive authority has a wide discretion and it is not the function of the Court to sit over the decision of the executive authorities as an appellate forum. Only in cases where the price fixation is arbitrary or unreasonable the Court can interfere. In fixing the price of house sites or dwelling house, as stated by the Board in the Counter Affidavit, the Board has taken into account the price of the land, supervision, management charges and other factors while fixing the price; The cost varies time-wise, place-wise and availability-wise. All these factors have been taken into consideration for the purpose of fixation of price.

14. From the Counter-Affidavit it appears that the Board after having taking into consideration the relevant factors has fixed the price and charged the price from the petitioner on the basis of the price fixed for such house sites in the month of November, 1992. In this case the petitioners have not challenged the fixation of price of the house sites. In the year, 1992, On the other hand their grievance is that they should be charged the price as is chargeable from the allottees of 1980 on the ground that due to inaction of the Board there was delay of about 12 years and for that the petitioners should not be penalised. As such the question to be determined in this case is as to who is at fault in delay of allotment.

15. According to the petitioners they have complied with all the requirements in the shape of filling the earnest money and affidavits etc, and there was no inaction on their part. However, the Board asserts in the Counter-Affidavit that as certain documents were not filed by the petitioners the allotment order could not be issued earlier. The petitioners have filed the minutes of the meeting of the Housing Board dated 16.12.1991 and 25.7.1991 (Annexure-2 series). From perusal of which it appears that the allotments were made in favour of the petitioners in the year

1980, in the file only. It is mentioned therein that no allotment order could be issued because of some of the documents, which were required to be filed by the petitioners, were not filed. Accordingly a decision was taken that the allotment order would be issued subject to the filing of the required documents by the allottees.

16. Thus, it is clear that as a matter of fact in the year, 1980 only decision was taken in the file to allot the plot and no order was issued in pursuance thereof because of nonfiling of certain documents by them. Nothings has been brought on the record on behalf of the petitioners to show that from the year, 1980 to the date from which steps were taken for allotment of plots by holding lotteries, the applicants made any representation to the Board making grievance of any allotment of plots.

17. Thus, after going through the materials on the record, there is no difficulty in coming to the conclusion that the Board cannot be held to be at fault in this case. On the other hand, it appears that because of the laches on the part of the petitioners there was delay in making the allotment of house sites to the petitioners. It appears that the decision to issue the allotment of house sites to the petitioners. It appears that the decision to issue the allotment was made after complying with the formalities by the petitioners in the month of November, 1992. The Board has rightly fixed the price as applicable to the allottees of November, 1992, of the house sites in the said Colony. This apart the petitioners with open eyes entered into hire purchase agreement and agreed to pay the price as mentioned in the allotment letter and the agreement and now they cannot be permitted to challenge the same after concluded the agreement having entered into between them and the Housing Board.

18. So far the submission advanced on behalf of the petitioners that the price fixed by the Housing Board is opposed to public policy is concerned the said submission is without any substance. Nothing has been stated or brought on the record by the petitioners to show that the aforesaid price is arbitrary or unreasonable or in any way the price fixed by the Housing Board is opposed by the public policy. So far the claim with regard to interest on earnest money is concerned, from the

materials brought on record by the Housing Board it does not appear that the interest has been paid on the aforesaid amount of the petitioners.

19. In view of the specific terms of the prospectus, in my view, the petitioners should get interest at the rate of 4% on the earnest money from the month of deposit of till the date of allotment. The amount of interest calculated on the earnest money should be adjusted towards future instalments.

20. In the result, the application is allowed in part. The prayer for charging the price of the house sites from the petitioners at the rate applicable in the year, 1980 is rejected. However, they are entitled of the interest at the rate of 4% on the earnest money for the period as mentioned above.

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