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Court : Patna

Decided On : Feb-16-1995

Judge : Nagendra Rai, J.

Appeal No. : Civil Writ. Jurisdiction Case No. 271 of 1994 (R)

Appellant : Sanjay Kumar Chamaria and ors.

Respondent : Bihar State Housing Board, Through Its M.D. and ors.

Disposition : Application Dismissed

Judgement :

Nagendra Rai, J.

1. With the consent of the parties this application is being disposed of at the stage of admission itself.

2. Heard learned Counsel for the parties.

3 The petitioners have tiled the present writ application for quashing the letter issued by the Manager Estate, Bihar State Housing Board (respondent No.2) fixing Rs. 71, 000/-m interim cost of the flats allotted to the petitioners under the integrated subsidised housing scheme of the Board and asking the petitioners to

deposit 20% of the same and thereafter agreement will be executed and possession will be given to them and to pay the remaining amounts in 180 monthly instalments and for a direction to the Housing Board to complete the flats by providing Sanitary fittings etc., and not to add the amount of interest on the cost amount of the flats prior to actual handing over the possession to the petitioners and to pay interest on the earnest money deposited at the time of submitting application and to fix the price of the house Rs. 30, 000/- which was the price at the time of inviting applications in the year, 1989 for the house/flats under the aforesaid scheme.

4. The facts which are not in dispute are that in the year, 1989 the Board made an advertisement in local newspaper inviting applications of allotment of the houses/flats constructed by it under different schemes including integrated subsidised house scheme for economically weaker people of the society having income of upto Rs. 9, 240/- per annum. A copy of the said advertisement has been annexed as Annexure-1 to the writ application. The petitioners applied for the allotment of flats/houses constructed in the town of Dhanbad under the aforesaid scheme and each of them deposited Rs. 3, 000/- as earnest money in terms of advertisement. On 19.3.1990 a lottery was held as per terms of the relevant rules at town Hall of Dhanbad for the allotment of the flats/houses to the applicants under the aforesaid scheme and the houses/flats were allotted to the applicants including petitioners and thereafter letters were issued to the allottees including the petitioners by respondent No. 2 stating therein the specific plots allotted to the petitioners in the said lottery. It was also mentioned therein that the allotment order will be issued to them after completion of the other formalities. Copy of the said letters issued to the petitioners have been annexed as Annexure-2 series. According to the petitioners, thereafter no formal order of allotment was issued to them nor possession was given to them by the Housing Board. Although the flats were constructed in 1989 but were incomplete in the sense that no sanitary fittings and other amenities were provided therein. The said flats were illegally occupied by encroachers and on 26.6.1992 the local administration at the request of the Housing Board got vacated the aforesaid flats/houses. However, the petitioners were forced to sign a letter on 26.6.1992 wherein incorrect facts were mentioned that the petitioners were in illegal possession of the flats/houses in question and

on 26.6.92 (they vacated the flats/houses and after issuance of allotment order they will abide by terms and conditions as mentioned in the allotment order. According to them, they were never in possession prior to 26.6.92 and on that day only they were given possession of the flats in question.

5. According to the petitioners as the flats were without sanitary fittings etc. the petitioner No.1 reported the matter to the Housing Board by filing representations vide Annexure-4 and 5 but no action was taken by the Housing Board and on 11.2.1993 respondent No.2 issued a letter of allotment asking the petitioners to deposit 20% of the estimated cost of flats as determined on 31.1.1993. They were also directed to execute the agreement after depositing the 20% of interim estimated cost. A copy of the said allotment order has been annexed as Annexure-6 to the Writ application. After receipt of the aforesaid letter the petitioners filed representation to the authority of the Housing Board vide Annexure-8 mentioning therein that the price fixed for the flats were excessive one as no amenities or facilities were provided therein and flats were not in habitating condition. Thereafter, on 29.7.1993 respondent No. 2 instead of resolving the grievances raised by the petitioners vide Annexure-9 rejected the representation of the petitioner' and further informed that if they have got any grievance they should raise individually. On 16.6.1993 the Executive Engineer Housing Board issued letter to some of the petitioners asking them to deposit the initial amount within fifteen days and get the agreement executed failing which the steps will be taken for cancellation of allotment made in their favour. A copy of the said letter has been annexed as Annexure-10 to the Writ application.

6. The petitioners in support of their assertions state that the houses are still not complete. They have also annexed the tender notice in the supplementary writ petition to show that still the tenders have been invited for giving water connection etc. to the flats in question. According to the petitioner, the Board is acting arbitrarily in the matter of the petitioners. They belong to the category of the weaker sections and they should be charged at the rate which was applicable in the year 1989 when the advertisement was issued. Charging price of the flats at the rate applicable as on 31.1.1993 is without any basis. It is also stated that once the flat was allotted in the year, 1990 no interest should be charged from the

petitioner thereafter The Board is also acting arbitrarily in not adding the interest on the amount deposited as earnest money

7. A counter-affidavit has been filed on behalf of the Housing Board and its officers. Their case is that the Board has been established by the Bihar State Housing Board Act for providing facilities of houses/flats/sites etc. to the persons with a view to ease out the housing problem. It is a not-for-profit organisation. It has no fund or resources of its own and it takes loan from various financial institutions and from the State of Bihar with high interest and the price of the houses/flats are not fixed on arbitrary ground. It charges the price by taking into consideration the cost of acquisition of land, cost of fencing/boundary wall around the whole acquired land, cost of maintenance, administrative charge, charge of documentation and interest on the amount borrowed from the financing body or State of Bihar. So far the present flats/houses are concerned they were constructed in the year, 1989 by the State of Bihar on the 20 point programme but in the midst of the construction of the final finishing, the financial assistance has been stopped by the State of Bihar as such the Housing Board has treated those flats in question as L.I.G. Janata flats and decided that the construction work will be done after collecting 20% of the tentative cost from the allottees. In other words, the Board has admitted that the flats are incomplete in the sense that some of the amenities are still to be provided after depositing 20% of the tentative cost by the allottees.

8. Respondent Housing Board admits that the flats were allotted to the petitioners in the lottery held on 19.3.1990 but it was clearly stated in the letter issued to them that the allotment order will be issued after compliance of all the formalities. But the petitioners before the formal order of allotment could be issued to them forcibly entered into the flats in question. Thereafter, the Board requested the Sub-Divisional Magistrate to get vacated the encroachments of the flats made by the petitioners who had illegally occupied the same. The Sub-Divisional Magistrate by letter No. 1051 dated 12.5.1992 (Annexure-A) deputed an Executive Magistrate to remove the encroachment. In pursuance of that the Executive Magistrate along with officials of the Board went at the spot and on seeing the Executive Magistrate the petitioners gave their undertaking and agreed that after the

issuance of the allotment order they will abide by the terms and condition mentioned in the allotment order and as a result of which they were not evicted from the flats in question by the Magistrate, but inspite of that they did not abide by the terms and conditions of the allotment order. Thereafter, the Executive Engineer of the Board issued letters (Annexure-10) to the petitioners asking them to deposit 20% of the tentative cost and get their agreement executed within fifteen days and also take possession of the flats in question, otherwise steps will be taken or cancellation of the allotment of flats. Even after issuance of Aunexure-10 the petitioner: did not take any step in terms of the allotment order

9. On 18.12.1993 the Executive Engineer of the Board sent a letter to the Sub-Divisional Magistrate, Dhanbad requesting him to take steps for removing the petitioners from unauthorised occupation of the flats. In compliance of the aforesaid request the Sub-Divisional Magistrate issued an order deputing a Magistrate for removing the petitioners from the flats in question Thereafter, the Magistrate went on the spot on 30.12.1993 for removing the petitioners from unauthorised occupation and there the petitioner filed joint petition Vide Annexure-C that they may not be evicted from the flats under their possession and prayed for one month time to deposit the amount asked by the Executive Engineer of the Board in terms of agreement, but instead of complying with die undertaking given by them in the petition they filed a writ application before this Court. Further case of the Board is that the price has been fixed after taking into consideration the relevant factors as stated above and the same is not arbitrary. It is also stated that as toe petitioners have not deposited the amount according to the terms of the allotment order the allotment made in their favour stood cancelled and as such they are not entitled to any relief.

10. After hearing learned Counsel for the parties and having gone through the records, now the admitted position is that the flats were allotted to the petitioners in a lottery held in (he year, 1990 and in the communication made to the petitioners (Annexure-2 series), it was clearly mentioned that a formal order of allotment will be issued after compliance with other formalities but before issuance of order of allotment the petitioners have forcibly occupied the house. From the documents available on the records it appears that uptill now the Board has not

given possession to them but they are continuing in illegal possession of the flats. It is also an admitted position that after issuance of allotment order and reminders the petitioners have not deposited the 20% of the tentative cost as required to be deposited within one month from the date of issuance of allotment order. The only amount which they have deposited is Rs. 3, 000/- as earnest money in the year, 1986.

11. Before determining the points raised on behalf of the petitioners, I am of the view that as the petitioners have taken the law in their own hands and forcibly occupied the quarters they by their own conduct are disentitled to discretionary relief by this Act of theirs under Art. 226 of the Constitution of India. This apart as they have not acted according to the terms of the allotment order the allotment made in their favour stood cancelled and the earnest money deposited stands forfeited.

12. So far fixation of price is concerned, it is the function of the Executive and the power of this Court in this connection is limited in the sense this Court cannot sit over its decision as an appellate authority. Only in cases where the fixation of price is arbitrary unreasonable or contrary to the constitutional or statutory provision, the Court can interfere. From the counter affidavit of the Board it is clear that the price is being fixed after taking into consideration the relevant factors including the interest as the Board has to pay the same to the financial institutions of the State Government. Since right to flat arises only on communication of order of allotment, the price available on date of such communication is to be demanded from the allottees. (See 1995 S.C. page 1 Delhi Development authority v. Puspendra Kumar Jain) However, in case it is found that the allotment order has not been deliberately issued due to laches of the Board then the Court may issue direction for the payment of price from the date when the decision was taken to allot the flats in question. However, in this case the delay in issuance of allotment order has occurred because of laches on the part of the petitioners and as such the fixation for tentative price from 31.11.1993 cannot be said to be arbitrary or buffering from any infirmity. Nothing has been shown on behalf of the petitioners that fixation of price is arbitrary or excessive or violative of any statutory provisions concerning the fixation of price. Accordingly, there is no force in their submissions regarding

fixation of the price of the flats in question. The Board is also justified in adding the interest on the cost of the price of flats as the Board is no profit no loss organisation and it has to pay the interest on the loan advanced to it and the same has to be collected from the allottees.

13. Regarding the grievance made by the petitioners that the houses are still incomplete, I can only say that the petitioners have to blame 'themselves' for the said situation. According to the statement made on behalf of the Board it is clear that the steps could not be taken earlier because whenever the Board wanted to provide them entries the petitioners who were in unauthorised occupation frustrated the attempt of the Board as a result of which the amenities in question could not be provided earlier. However, as the Board has taken interest and has invited tenders also, as admitted by the petitioners, those facilities will be provided. In view of the stand taken by the Board that the amenities will be provided on depositing the 20% of tentative cost after their entering agreement by the petitioners, there is no need to issue any direction in this connection to the Board.

14. So far the claim of the petitioners of interest on earnest money is concerned, no direction can be issued at this stage for the reasons that the allotment order made in favour of the petitioners has already been cancelled because of their own laches.

15. However, in case the petitioners deposit the 20% of the tentative cost within two months from today and abide by the other terms and conditions of the allotment order as contained in Annexure-6, the Board may not treat the allotment made in favour of the petitioners as cancelled and will hand over the possession in accordance with law to them. If the petitioners do not deposit the 20% of the tentative cost and abide by the terms and conditions as mentioned in Annexure-6 then the Board will take steps to remove them from the flats and will also take steps for the fresh allotment of the aforesaid flats in accordance with law.

16. In the result this writ application is dismissed with aforesaid observations.