

Dr. Surendra Prasad and ors. Vs. Bihar State Housing Board and ors.

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Court : Jharkhand

Decided On : Oct-31-2002

Reported in : 2002(50)BLJR2413

Judge : M.Y. Eqbal, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : CWJC No. 245 of 1995

Appellant : Dr. Surendra Prasad and ors.

Respondent : Bihar State Housing Board and ors.

Advocate for Def. : Indrani Sen Choudhary, Adv.

Advocate for Pet/Ap. : M.S. Anwar, Sr. Adv.,; N. Hoda and; Altaf Hussain, A

Disposition : Writ dismissed

Judgement :

M.Y. Eqbal, J.

1. In this writ application the petitioners seek appropriate Direction upon the respondents to make allotment of Low Income Group (LIG) residential plots at Harmoo Housing Colony, Ranchi for which the petitioners had applied as early as in the year 1977 and to complete all the formalities.

2. Petitioner's case is that pursuant to the advertisement published by the Bihar State Housing Board in the newspaper dated 21.11.1976 they applied for LIG flats at Harmoo Housing Colony. As per the requirements they deposited Rs. 500/- each alongwith prescribed applications form in the different months of the year 1976. It is contended that through a letter dated 17.3.1978 issued by the Board seeking some information from the petitioner No. 3 which was said to have been complied in 1978 itself. It is alleged that from, 1977 till 1994 a large number of correspondence was made by the petitioner to the respondents but without any fruitful result and they were not allotted plots.

3. Respondent Housing Board in their counter affidavit have stated that prior to 1982 mode of allotment of land/flat/ house etc. in different category was used to be done in order of seniority subject to the completion of the application form. After the Bihar State Housing Board Act came into force the mode of allotment of plot/ house has been decided to be done by way of lottery in the different category and in the manner provided in the Regulation. In 1985 it was detected by the Board that no flat for residential purpose was available and as such a notice was issued by the Board on 20.2.1985 under the signature of Managing Director of the Board and also by publishing it in the newspaper. It was stated that those persons who are the applicant for the residential plot in different categories may give option of the house in different categories. Petitioners did not give their option in pursuance of the aforesaid notice.

4. Mr. M.S Anwar, learned senior counsel for the petitioner firstly contended that the action of the respondent Board in not allotting piece of land/plot to the petitioners is illegal and arbitrary inasmuch as all the petitioners admittedly applied for LIG flats in 1977 and completed all the formalities. Learned counsel submitted that as a matter of fact many unauthorized persons have encroached several plots in connivance with the employees of the Board and that was the reasons the Board became unable to make allotment of plots to various applicants including the petitioners. Learned counsel submitted that the Board itself approached this Court by filing CWJC No 1546 of 1994 (R) seeking direction upon the respondent State of Bihar for giving assistance to the Board for removing the encroacher and for giving vacant possession of the plots which have been allotted to the

concerned successful allottees.

5. Mrs. I Sen Choudhary on the other hand submitted that the instant case has no concern with the facts involved in the aforesaid writ petition inasmuch as that was a case in relation to the land of Harmoo Housing Colony where despite several flats were allotted to the successful allottees, possession thereof could not be given due to interference of unsocial elements. It is contended that although petitioners applied in 1977 for allotment of LIG. Flats but after coming into force of the Bihar State Housing Act and after creation of Bihar State Housing Board the petitioners never approached the Board nor exercised their option at any point of time.

6. Admittedly the petitioners applied for LIG. Flats in 1977 and deposited Rs. 500/- each. It has been categorically stated by the respondents in para 9 of the counter affidavit that in 1982 when new Act came into force the mode of allotment was changed and as per the regulation of 1983 it was decided that the allotment should be made by lottery system. In para 11 of the counter affidavit it is stated that a notice dated 20.2.1985 was published in the newspaper by the Board stating that persons who are the applicants for residential plot in different categories may give their option for allotment of the house but the petitioner did not give their option in pursuance of the aforesaid notice. Although petitioners filed reply to the counter affidavit but these two paragraphs have not been denied or disputed by them. The admitted position therefore is that the petitioners did not exercise their option in 1985 nor raised any objection rather it appears that after making application in 1977 they sat over the matter and did not pursue their application. Petitioners have not filed copies of any of the correspondence ever made by them with the respondent Board from 1977 to 1994. It is only after about 14 years they approached this Court by filing instant writ application. So far CWJC No. 1546/94 R is concerned this writ petition was filed by the Housing Board seeking help of the District Administration for removing encroachers who had occupied the land of the Board situated in Harmoo Housing Colony. I do not find any relevancy of the question involved in that writ petition in the instant case.

7. As noticed above, there are no materials to prima facie hold that petitioners have been regularly making correspondence with the Board and pursuing their application nor does it appear that even after 1983 or 1985 petitioners ever approached the Board by making any objection or exercising their option. In that view of the matter, I have no hesitation in holding that this Court cannot issue writ in the nature of mandamus directing the respondent-Housing Board to make allotment of LIG plots to the petitioners on the basis of their application which was filed as far back as in 1977.

8. For the aforesaid reasons, I do not find any merit in this writ application, which is accordingly dismissed.

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