

Smt. Kamla Devi Vs State of Jharkhand and Others

Court: Jharkhand High Court

Date of Decision: June 17, 2003

Citation: (2003) 3 JCR 167

Hon'ble Judges: Vikramaditya Prasad, J

Bench: Single Bench

Advocate: Ajit Kumar, for the Appellant; I. Sen Choudhary, for Respondent J.S.H.B. and V.K. Prasad, for B.S.H.B., for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Vikramaditya Prasad, J.

Heard the parties. The respondent-Housing Boards have not filed any counter-affidavit. The petitioner has filed

this writ petition for issuance of mandamus upon the respondent to transfer/ register the Flat allotted to the petitioner in her name and thus, to

perform the final disposal of the said Flat, considering the fact that petitioner has already deposited the entire purchase price as agreed between the

petitioner and the respondents on installment basis long back in the year 1997 and consequently to quash Annexure-10 issued by the respondents,

whereby and whereunder a sum of Rs. 1,99,554/- has been demanded as dues of the Board to be paid by the petitioner.

2. The undisputed facts of the case are that the petitioner was allotted a Flat No. H/212 MIG after the death of her husband and there was a Hire-

Purchase Agreement for the same entered into between the petitioner and the respondent Board on 11th July, 1986. Under this agreement, the

tentative cost of the Flat was fixed at Rs. 85,400/- and this amount, after deduction of the initial amount of Rs. 17,080/-, was to be paid in monthly

installments of Rs. 819.90. It is submitted that the petitioner paid the installment and the installments were complete by March, 1997. It is relevant

that by Annexure-5, the possession of the Flat had already been delivered to the petitioner on 11.8.1986. Thereafter, by Annexure-8, the

petitioner asked the respondents for issuance of the No Due Certificate and for determining the final cost of the Flat, so that the petitioner might be

in a position to pay the rest amount, and also for transfer of the Flat in her name. It appears that thereafter the Executive Engineer of the Board

wrote to the Manager, Estate that the tentative amount had been fixed and Rs. 85,400/- has been paid, besides Rs. 200/- as fees against the legal

charges. The installments deposited by the petitioner were also confirmed and he also requested for fixing the disposal price of the Flat so that the

balance amount was directed to be paid by the petitioner. Thereafter, by Annexure-10 issued on 15.6.2002, the impugned order was passed,

which is sought to be quashed.

3. The allotment agreement, Annexure-3, clearly provides that the price that was fixed in the year 1985 was tentative and on this tentative price,

the installment was fixed. Thus, whatever installment is there, that is towards the payment of the tentative price and not towards the payment of the

final cost of the Flat and there can be no dispute on this. The Clause 9 of the Hire-Purchase Agreement reads as follows :

That after the full payment has been made and all dues cleared and if there has been no violation of any of the terms and conditions of this

agreement or of the Board's Regulations in this regard a deed of lease in respect of the transfer of the aforesaid premises on perpetual lease hold

basis shall be executed in favour of the settlee.

Clause 23 of this agreement reads as follows :

That the settlee shall cease to be a tenant and shall be the owner of the House/premises only after the last installment of hire purchase and all other

dues have been paid by him to the Board and the transfer of the property to him has been effected through conveyance deed such form as may be

prescribed by the Board.

4. What will be the final price and on which date it will be calculated has to be considered. There is no specific provision made in the agreement

itself with regard to the date on which the final price of the Flat has to be calculated. Clauses 4(a) and (b) of the agreement have got some relevant

with regard to the final valuation of the Flat. These reads as follows :

4(a) That the total disposal price indicated above is according to the present estimate and hence tentative. Increase in the cost of the construction

or development or due to increase in cost of land acquisition due to any decision/award of Court of law or legislation or due to increase in the cost

due to final valuation or calculation or otherwise as per the decision of the Board shall be payable by the settlee either in installments thereof or in

lump sum within the period decided by the Board.....

4(b) That the settlee shall be liable to pay such charges, if any, incurred by the Board on maintenance of road, water supply, drainage, street

lighting and other services and amenities within a Housing Estate.

Thus, the determination of final price is dependant upon the aforesaid factors. One argument was raised by the learned counsel appearing for the

petitioner that since the possession of the Flat was delivered in the year 1986 and the construction was complete, the cost occurring on account of

that construction should be that which could be on the date of delivery of the possession. Even if this proposition appears to be acceptable, then

some questions also still remain unanswered that whether there is any increase in the land valuation, which was tentative at the time of settlement

and the cost regarding development and maintenance etc., which are the factors to be taken into consideration, while calculating the final price.

Therefore, while I agree with the submission of the learned counsel appearing for the petitioner that as the possession of the Flat had been

delivered in the year 1986, the cost over construction of the Flat should be that which was the actual cost that had occurred on that date because

once the Flat is constructed, that cannot subsequently be the subject of escalation in the price of the building materials. But so far as the land over

which it is constructed is concerned, if the valuation of the land acquisition is increased subsequently, I mean to say, not as per the market price of

the land, but due to award of the Court, then that amount has to be paid by the petitioner. The land on which the Flat stands and the further

development costs even after the delivery of possession has to be included in the final price because of delivery of possession can be made in the

initial stage and subsequently the road, park etc. can be developed, the electrical fittings can be made. These are also to be included in the final

price. Therefore, whatever price was fixed in the year 1986 even at the time of delivery of possession was definitely a tentative price and the

Board had a right to calculate the final price of the Flat so allotted after taking into consideration the factors admissible for such calculation.

5. There is no date given in the agreement as to on which date this final valuation of the Flat will be determined. Obvious it is that if the demand is

made in installments and the settlee has complied with her part of agreement, then by end of the year 1997, when the last tentative installment was

paid and a notice was given by the petitioner for making the final valuation of the Flat so that the balance amount was cleared off, then it was

incumbent upon the Board to take decision upon this final valuation, but withholding this matter for 5 years or more, then issuing a due notice upon

the petitioner calculating the interest is unfair and unjust, because if this liberty is given to the Board, then despite the petitioner having paid the last

installment may be harassed to pay any amount at any time at any date at the will of the Board, which, on all occasions and more fairly on all

occasions, can be a very big amount to be paid by a settlee. Therefore, the Board could not sit idle, after the payment of the last installment, on the

question of final valuation of the Flat.

6. In view of the discussions made above, the Annexure-10 is quashed and the respondents are directed to calculate the final price of the Flat on

the date on which the last installment was paid in the year 1997 within a months and the balance amount, if any, that remained due will be paid by

the settlee/petitioner within a period of three months thereafter and the deed of lease will be executed by the Board. It goes without saying that

while fixing the final price of the Flat, the Board shall supply the details of the calculations under various heads arrived at by it to the petitioner.

Order accordingly.