

(2008) 02 PAT CK 0100
Patna High Court
Case No: CWJC No. 11753 of 2007

Ashalata Verma

APPELLANT

Vs

Bihar State Housing Board and
Others

RESPONDENT

Date of Decision: Feb. 7, 2008

Citation: (2008) 2 PLJR 332

Hon'ble Judges: Ajay Kr. Tripathi, J

Bench: Single Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Ajay Kr. Tripathi, J.

Heard counsel for the petitioner and learned counsel for the Housing Board. This is yet another litigation where a law abiding citizen is being harassed in the hands of an instrumentality of the State by totally illegal and illogical stand taken by them. The facts of this case speak for themselves and have certain relevance why. it needs to be noticed in some detail. The immediate provocation for the petitioner to approach this Court is a notice dated 29.6.2006 contained in Annexure-6 to the writ application, by virtue of which a demand of Rs. 3,64,419/- was made by respondents upon the petitioner for a HIG flat bought in the year 1981. She approached the Housing Board for seeking permission to transfer the flat in favour of her daughter-in-law due to her advancing age, when she was confronted with Annexure-6.

2. Husband of the petitioner, Late Ram Chandra Prasad Verma, made an application to the Housing Board on an advertisement issued by them on 13.12.1972. He subsequently deposited a sum of Rs. 6500/- on 28.9.1978 on a demand made by the Housing Board for allotment of a M.I.G. flat/house at Hanuman Nagar, Patna. The allotment fructified in favour of the late husband and M.I.G. Plot No. 171 Hanuman

Nagar, Patna was allotted vide Board's order No. 7273 dated 23.9.1981. On 28.11.1981 the possession was handed over after execution of hire-purchase agreement. At the time of the agreement the total cost determined by the Housing Board was Rs. 66,382/-. On the monthly instalments fixed by the Housing Board payments came to be made and the entire amount was paid to the Board prior to if not within the time frame fixed in this regard. In fact a sum of Rs. 88,155/- was paid, evidence of which is contained in the reply of the petitioner to the counter affidavit filed on behalf of the Housing Board. It is supported by the money receipts of the payments/deposits alongwith a chart of details.

3. Husband of the petitioner died on 25.3.1991 and she sought a transfer of the property in her name first in the year 1992 and vide many a letters upto the year 1996. After five years of correspondence and treating it as an opportunity the Housing Board immediately demanded details of payments from the present petitioner. Details of payments were furnished by the petitioner. On due verification of the same the Housing Board transferred the property in her name vide letter No. 1459 dated 5.5.1998. All issues, therefore, came to be settled in the year 1998 by the said transfer.

4. Petitioner continued to enjoy the property in question till she decided in her wisdom that looking at her advanced age it is better to transfer the property in question in favour of her daughter-in-law, namely, Meera Verma. This indiscretion on the part of the petitioner has given ample opportunity to the Housing Board to strike back with a vengeance. They grabbed the opportunity whole-hog and issued a notice dated 29.6.2006 that a sum of Rs. 3,64,419/- is payable by 31.7.2006 and the same is due against her. Till this payment is made over not only her request for a transfer will not be entertained but consequential punitive action shall also follow. Petitioner has, therefore, taken shelter before this Court in the present writ application.

5. A counter affidavit has now been filed on behalf of the Housing Board. They say that the law allows them to conduct themselves in the manner in which they have decided to behave for after all there is a hire-purchase agreement entered between the parties and they have due authority of law behind them. If their account shows some due even if discovered or invented after many a years so be it. The stand broadly taken by the Board is as if they have the fullest opportunity to extort or extract money from any unsuspecting public, who happen to enter into an agreement at any point of time with the Housing Board. For them no passage of time is good enough to reopen an issue, 30 years is too less. 1981 is the year in which the property was handed over to the petitioner's husband. Even thereafter in the year 1998 the property stood transferred in the name of the present petitioner after due verification of payment but looking at the nepotism and corruption prevailing in the Housing Board, and despite several strictures passed by the High Court on several occasions they are totally undeterred or unfazed. No kind of

chiding by the Court has forced them to do some introspection and bring about any change in their working. This Court would like to record some of the opinions expressed by the High Court and Supreme Court for ready reference hereinbelow:-

(1) [Smt. Mira Mishra, Smt. Aparna Devi and Indrajit Kumar Vs. State of Bihar and Others, :-](#)

"12. Thus, according to the Board, the petitioners are to be denied even the meagre benefit of simple interest @ 5% because the provisions of interest was made in the Regulations, coming into force in the year 1983 while the deposits were made by the petitioners in the year 1981. It does not seem to have occurred either to the Board or to its counsel that the provision of interest could at least be extended to the petitioners from the date the Regulations came into force and this court is constrained to say that the affidavit filed on behalf of the Board is completely thoughtless, crass and callous. In its counter affidavit the Board tends to display an institutional arrogance of a bad and dangerous type and it seems to consider individual citizens, for whose benefit the Board was set up, as totally subject to its mercy, caprice and whims. The reference to Clause 33 of the Regulations for deducting 20% of the deposits made by the petitioners is wholly unsustainable. The Regulations are not meant to cover up the Board's inefficiencies, laches and lapses and to be used as a shield to protect the Board from the consequences which are of its own making. The application of the Regulations would require that the Board should itself first act with a modicum of reasonableness. In the case in hand the Board has flagrantly breached its promises on all material issues. Though it is correct that the Board's promises were tentative and "probable", its actions must at least bear a semblance of correlation with its promises. Otherwise, the Board must be held liable to pay suitable compensation to a person suffering loss by acting on the basis of its promises. The Board announced in the year 1981 that the construction of the houses after the acquisition and development of land will be completed within four years time. In fact it issued an "important notice" in the year 1983 declaring that 900 houses, covering all the applicants in the middle income group were completed and yet the decision to make allotments was taken in December, 2000. It thus extended the time factor by five times.

13. In terms of cost, in the prospectus issued in the year 1981, the probable price of the flat was shown to be Rs. 50,000/-. The construction of the flats was complete in the year 1983 and yet in 2000 the disposal price was escalated to over Rs. 5,30,000/-. The escalation in terms of cost is thus over ten times. And with this kind of track-record the Board deems fit to cite the provisions to deduct 20% of the deposits made by the petitioners and to refund the balance without any interest.

14. There must be a limit to the mindless and insensitive harassment caused by the Board to individual citizens. I feel constrained to observe that in this State. Corporations and the Boards which were intended to serve as vehicles of progress and development are tending of become stumbling blocks in the way of

development. To individual citizens they would sometimes appear as instruments of harassment. The case in hand is illustrative of the point."

(emphasis mine).

(2) [Sanjeev Kumar Singh Vs. The Managing Director, Bihar State Housing Board and Others](#), are quoted below:-

"5. Taking into consideration the totality of the circumstances, I am of the view that the matter requires a probe by the Central Bureau of Investigation because the Housing Board is functioning in a manner which is detrimental to the interest of the public who are reposing confidence in it, it is using their money and is not providing them the property. It is not ready and willing to refund the amount even in cases where it is not in a position to give the possession of the flats or plots or is unable to remove the encroachments. The CBI shall fix the liability of the officers for whose lapses the flats could not be constructed.

6. Let the Registrar General of the Court refer the matter to the Superintendent of Central Bureau of Investigation for making an enquiry into the matter.

7. The concerned Investigating Officer shall make a detailed investigation into the total working and the manner in which the Housing Board has been spending money and into the conduct of the Managing Directors, present and past.

(3) Hon"ble Supreme Court in a recent decision approved opinion of the High Court in the case of Sita Devi vs. Bihar State Housing Board, 2007(1) PLJR (SC)246, quoted as under:

"6. Admittedly, 20% of the amount deposited by the appellant was deducted. The learned Single Judge of the High Court having regard to the facts and circumstances of this case opined as follows:-

"...The letter Annexure-4 under which the petitioner had claimed refund was not an absolute offer. It was a conditional offer that the total amount be refunded to her. If the respondents were not ready and willing to refund the entire amount and wanted to cut 20% of the deposit, the lapses being on their side, they were obliged to inform the petitioner that 100% refund cannot be made. It also appears from their conduct that finding an opportunity in their favour, they pounced upon it and readily agreed to refund 80% amount so that they can pocket the balance. If the flat was not complete in the year 1996 and is yet not complete, it would be too much to say that a person if out of sheer frustration says that he/she does not want a flat then too the respondents would be entitled to a cut. Paragraph 8 of Annexure 2 says that some delay would be condonable but some delay does not mean notorious delay. Some delay should only mean a reasonable delay. If the possession was to be delivered to the petitioner in 1994, or immediately thereafter, then the respondents cannot say that they would not deliver the possession in the year 1996 and would not complete the construction even up to 2004 and would still be entitled to deduct

the amount of 20%. The conduct of the respondents is not fair. It perilously touches the boundaries of dishonesty. A public authority has to act fairly and in favour of the public. These institutions/organizations are not to act like Shylock but have to act in favour of the public in a Welfare State.

(emphasis mine)

It is held that the respondents are not entitled to deduct the said 20% amount. Let the said 20% amount be refunded to the petitioner within a period of three months from today with 6% interest from the date of the application made by the petitioner seeking refund. If the amount is not refunded to the petitioner within a period of three months then from the date of the petitioner's entitlement/application, the respondents would be obliged to pay interest at the rate of 15% on the delayed payment."

6. The reasoning given in the counter affidavit that there is default in payment of not only some instalments but since there was an increase in the price which was worked out in the year 1998, they are entitled to demand compound interest on the difference of the original price fixed and what is payable by the petitioner now.

7. The stand taken by the Housing Board and the statements made in the counter affidavit deserves to be contemptuously rejected because there is absolutely no indication in the counter affidavit that any demand after the refixation of price was ever raised upon the petitioner. In fact there are indications in the writ application that the Housing Board had verified the payments and after being duly satisfied effected transfer of property and allowed the matter to rest all these years. The counter affidavit and the stand taken in the counter affidavit has only been created now to justify an illegal demand which has been raised by the Housing Board in the present matter. In absence of any notice to the petitioner of difference in the price and a unilateral so-called revision being talked of now there is no occasion for this Court to allow any demand of price or interest on the said amount from the petitioner at this stage. This Court holds the same to be an afterthought, without any substance or basis. Assertion now in counter affidavit shall not do. The issue has to be treated as closed as and when the property in question stood transferred in the name of the husband of the present petitioner, later her and the respondents' conduct by itself prevents them to reopen it now at this stage in the garb of so-called accounting. The Court expresses certain serious doubts and reservations on the accounts which have been produced in the light of statement and the money receipts which have been brought on record by the petitioner as Annexure-7. The statement which has been made by the respondent-Board that there is a default is a totally misplaced and dishonest statement, which this Court regrettably has to reject in view of Annexure-7 i.e. the chart of payment and the money receipts brought on record by the petitioner and not controverted.

8. In the given facts and circumstances Annexure-6 is hereby quashed and a direction is issued upon the Housing Board that they shall issue the permission sought by the petitioner for transfer of the property in question in favour of her daughter-in-law within a period of four weeks from the date of communication/production of a copy of this order.

9. This Court before parting, looking at the persistent and insistent conduct of the Housing Board has gained an impression that the time has come that an authority should start enquiring and investigating into the affairs of the Housing Board looking at the series of the judgments which have been rendered by this Court and the anguish expressed by them which have had no effect on their day-to-day business in any manner. This Court directs the Additional Director General of Vigilance, State of Bihar to institute a case against the Housing Board and enquire into the activities of all persons who are involved in the decision making process as well as who have been responsible in creating false account and raising false demands in relation to the present petitioner.

10. Let wider enquiry into the assets and properties of such officials of the Housing Board also be carried out to see whether they have benefited at the cost of the innocent citizens.

11. Let a copy of this order be communicated to the Additional Director General of Vigilance, State of Bihar, who shall institute and submit progress of investigation within a period of three months from the date of communication/production of a copy of this order. This writ application stands allowed.