

(2007) 04 PAT CK 0179

Patna High Court

Case No: CWJC No. 15416 of 2001

Sachindra Prasad Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision: April 6, 2007**Citation:** (2007) PLJR 165**Hon'ble Judges:** Navin Sinha, J**Bench:** Single Bench

Judgement

@JUDGMENTTAG-ORDER

Navin Sinha, J.

Heard Learned Counsel for the petitioner and the learned Counsel appearing on behalf of the Housing Board. The petitioner came to this Court with the grievance that he applied for allotment of lands in the LIG category before the Board on 5.12.1978 at Bahadurpur, in the area of Kankarbagh, Patna. It is his case that he deposited the entire amount with respect to the plot at Bahadurpur as demanded. After twelve years the respondent Board allotted him a LIG plot measuring 990 Sft. bearing plot No. 5L/66 at Digha by allotment letter No. 1014 dated 5.9.1991 and required the petitioner to pay the necessary amount. The contention on behalf of the petitioner is that he had already paid the requisite amount as demanded by the Board when an agreement was made between him and the Board despite which the physical possession of the plot has not been given to the petitioner by the authority. This submission has been made by the petitioner on oath in November 2001 when the present application was instituted. It is his further case in para 7 of the writ application that the area is still not developed, basic amenities like approach road, drains, sewerage, electrification etc. are still not available in the area where the plot had been allotted. The prayer in the writ application therefore was for a direction to the respondents to handover the physical possession of the plot. In the alternative, for inability to give physical possession, the money deposited by him be returned along with interest @ 18%.

2. When the matter was taken up a counter affidavit was filed on behalf of the respondent Board. It is the case of the Board in the counter affidavit that a letter was issued to the petitioner on 19.9.2005 requiring him to deposit Rs. 1,84,452/- towards the remaining amount of the cost/ price of the allotted plot and to take physical possession. The petitioner is alleged not to have responded. In accordance with the decision of the Board a sum of Rs. 84,643/- was however found to be payable by the petitioner by 30.11.2006 failing which Rs. 85,595/- was to be paid by the petitioner on 31.12.2006. A letter dated 10.11.2006 was accordingly issued to the petitioner and earlier letter dated 19.9.2005 was withdrawn. The petitioner by a representation dated 22.8.2006 disputed the said demand and required possession of the Plot. It was contended on behalf of the Board before this Court that the plot was readily available and the Board was ready and willing to deliver physical possession of the plot to the petitioner. However, the plot had been allotted to the petitioner subject to the cost escalation clause. The petitioner shall have to comply with the same.

3. A rejoinder has also been filed on behalf of the petitioner which emphasises that in terms of the original allotment the petitioner has deposited a total sum of Rs. 47,396/- more than the price of the plot fixed by the Board as Rs. 35,491/-. The petitioner thus disputes his liability to pay anything further.

4. This matter was taken up for consideration yesterday when the Court queried from the Counsel for the Board if the Board was in a position to hand over the vacant possession of the plot to the petitioner immediately. Counsel for the petitioner also submitted that he was ready to take possession immediately subject to his rights to raise a grievance with regard to the legitimate price of the plot in view of the earlier agreement, between the parties.

5. Today when the matter was taken up, it is not in controversy that the vacant possession of Plot No. 5L/66 in Sector 5 at Digha has been handed over to the petitioner.

6. One part of the grievance of the petitioner appears to have been fulfilled. But the issue of the price and liability in respect thereof still remains for determination. This in turn will depend on the respective rights and obligations of the parties under the terms and conditions of the original allotment and the fulfilment and non-fulfilment of their respective obligations. The reason for the delay with regard to possession of the plot, apportionment of the liability or responsibility for the delay and final determination of the price of the plot in the aforesaid background.

7. Learned Counsel for the petitioner even while disputing any further liability has very fairly submitted that he is ready to consider any legitimate demands that may be made by the Board subject to his rights in law to protest against the same.

8. The plot has been handed over to the petitioner by the Board after hearing had commenced on the query of the Court. The possession presently given to the

petitioner shall therefore not create any indefeasible right to possession in without a corresponding obligation for liability to pay any legitimate dues. The petitioner has also acknowledged his liability for any legitimate dues that may be made by the Board subject to his legal right to object the same. It goes without saying that if a legitimate determination for liability of further dues be arrived at, and the petitioner be not willing to discharge the same within a time frame, the handing over of possession of the lands to the petitioner shall be of no avail to him. The Board shall then be well within its right to resume possession of the lands on expiry of the specified period.

9. The Court further considers it proper to direct that this matter be referred to the Committee constituted by the respondent Board under the orders of this Court for resolution of disputes with regard to fixation of price of the lands and flats. Let the petitioner appear before the concerned authority along with a copy of this order within a period of four weeks from today. This Court expects that the Committee shall duly take into consideration all factual aspects of the matter as was urged on behalf of the petitioner and on behalf of the Board before arriving at a final determination of the matter. Let such determination be arrived at within a maximum period of three months from the date that the petitioner appears before the Board along with a copy of this order. Till such final determination of the liability of the parties, any construction made by the petitioner on the plot in question shall be at his own risk. The petitioner is further restrained from leasing, selling or otherwise parting with and/or creating any third party interest in the lands till final determination of the matter. Should the petitioner not appear before the respondent Board within the period of four weeks, the possession given to him by the Board shall be resumed and allotment cancelled.

10. This Court expects that after such final determination any request by the petitioner in consonance with the law shall be duly considered. The writ application accordingly stands disposed of with the aforesaid observations and directions.