

(2011) 12 PAT CK 0140

Patna High Court

Case No: CWJC No. 5759 of 2005

Anjani Kumar and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision: Dec. 15, 2011

Citation: (2013) 1 PLJR 430

Hon'ble Judges: Ravi Ranjan, J

Bench: Single Bench

Advocate: Arbind Kumar Singh, for the Appellant; Bhuneswar Pandey for the State and Mr. Ram Kishore Singh for the BSHB, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Ravi Ranjan, J.

I.A. 5851 of 2007 has been filed for expunging the name of the deceased sole petitioner Chhotan Singh, who is stated to have died on 28.8.2006 leaving behind his heirs and legal representatives as described in paragraph no. 3 thereof. A vakalatnama has been filed on behalf of the heirs and legal representatives of the deceased sole petitioner. None of the heirs and legal representatives has been shown as minor. There is no opposition to the aforesaid prayer.

2. Accordingly, this Interlocutory Application is allowed. Let the name of the deceased sole petitioner be expunged and in his place the heirs and legal representatives of the deceased sole petitioner as described in paragraph-3 of the interlocutory application be substituted.

3. Now I proceed to consider the main writ application on its own merit.

4. Heard learned counsel for the petitioners and the State.

5. The original petitioner (since deceased), by filing this writ application, had sought direction to the respondent-Bihar State Housing Board (hereinafter to be referred to

as "the Board") for giving delivery of possession of the land of plot no. 10H/199 measuring 1875 sq. ft. situated at Mohalla-Digha, P.S.-Digha, Patna, that was allotted to him by the Bihar State Housing Board (hereinafter to be referred to as "the Board") by its letter no. 2434/ AA dated 26.9.1991 upon initial deposit of Rs. 5,000/- (rupees five thousand) and, thereafter, subsequently total consideration money has been deposited amounting to Rs. 1,66,226.50. However, it is contended that even though the entire consideration money has been paid and allotment was made to the original petitioner, possession has not been given to him.

6. A counter affidavit has been filed on behalf of the respondent nos. 2 to 5 and a letter dated 5.4.2007 has been appended therewith which is, obviously, scribed during the course of pendency of the writ application stating therein that his allotment has been cancelled, however, no reason for cancellation of allotment has been disclosed and subsequently, after a lapse of about three years a letter dated 10.12.2010 has also been issued (appended as Annexure-C) whereby the petitioner has been directed to submit certain documents so that his amount be refunded.

7. Learned counsel for the respondents submits that due to the fact that possession of Digha land could not be taken by the Board itself, possession to the allottees could not be conferred. Learned counsel further submits that the Board is ready to refund the entire amount deposited by the petitioner alongwith interest of 5% per annum.

8. However, learned counsel for the petitioners places reliance upon a decision rendered by a Division Bench of this Court in Dr. Nitendra Prasad Sinha Vs. The Chairman-cum-Managing Director, Bihar State Housing Board, Mangals Road, Patna and Others, to impress upon this Court that the refund should be made at the rate of 12% per annum calculated at quarterly rest from the date of the payment made by the petitioner till the date of the refund.

9. The facts of this case appear to be almost identical to the aforesaid case which has been decided by the Division Bench of this Court and the respondent-Board could not point out any default on the part of the petitioners in depositing the money within the period prescribed. The only difference is that during the pendency of this writ application the order of cancellation has been made and a letter dated 10.12.2010 as contained in Annexure-C has been issued to refund the money to the petitioner. Fact regarding deposit of the money within the time has not been denied at the time of hearing by the learned counsel for the respondent-Board.

10. In above view of the matter, there is no difficulty for this Court in following the aforesaid decision of the Division Bench.

11. Accordingly, this writ application is allowed. Since the allotment has already been cancelled and the substituted petitioners, in view of the present circumstance, do not want any possession of the Digha land because that would not be possible as has been stated by the respondent-Board, the respondent-Board is directed to

refund the earnest money deposited by the original petitioner alongwith statutory interest of 5% per annum to the present petitioners as per Regulation 45 of the Bihar State Housing Board (Management and Disposal of Housing Estates) Regulation, 1983 and so far the cost of the land paid by the petitioner is concerned, the respondent-Bihar State Housing Board would be obliged to refund the same with interest of 12% per annum at quarterly rest from the date of payment by the petitioner till its refund. Since this order is being passed in presence of the parties, the petitioners should submit all the necessary documents required as per Annexure-C appended to the counter affidavit alongwith a certified copy of this order and the refund with interest should be made by the authority concerned within three months thereafter.