

IN THE HIGH COURT OF JUDICATURE AT PATNA

Musafir Lal Sah

versus

The Bihar State Housing Board & Ors.

CWJC No. 3858 of 2014

28 August 2023

(Hon'ble Mr. Justice Mohit Kumar Shah)

Issue for Consideration

Whether the cancellation of allotment and agreement of a housing plot on the ground that it was executed by an incompetent official is legally sustainable.

Headnotes

Neither any amount was due and payable by the petitioner nor his father qua the price of the Plot in question or any such amount had even been quantified/ demanded. Board has failed to enumerate the deficiencies or the specific conditions of the allotment letter and the agreement in question, which have not stood complied with by the petitioner. (Para 7)

As far as the letter dated 18.04.2013, issued by the Estate Officer, Bihar State Housing Board, Patna is concerned, by which the agreement has been cancelled on account of the default of the Board itself as the person who had executed the agreement in question on behalf of the Board was not competent to do so, this Court finds that the petitioner cannot be penalized for the mistake of the Board. Concerned Assistant Engineer has executed other agreements as well, however the same have not been cancelled. Action taken by the Estate Officer is not only perverse but also illegal. (Para 7)

Petition is allowed. (Para 9)

Case Law Cited

None cited in the judgment.

List of Acts

None mentioned in the judgment.

List of Keywords

Cancellation of Allotment; Housing Board; Administrative Lapse; Procedural Irregularity; Incompetent Authority; Plot Agreement; Quashing of Orders

Case Arising From

Order dated 18.04.2013, issued by the Estate Officer, Bihar State Housing Board, Patna

Appearances for Parties

For the Petitioner: Mr. Subodh Kumar Sinha, Advocate; Mr. Sanjit Kr. Singh, Advocate

For the Respondents: Mr. Rabindra Priyadarshi, Advocate

Headnotes Prepared by Reporter: Amit Kumar Mallick, Advocate

Judgment/Order of the Hon'ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3858 of 2014

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Musafir Lal Sah, s/o Late Ramjee Sah Kanu, r/o village- Ibrahimpur, PO-
Harpur Karah, PS-Baniapur, Dist-Saran.

... .. Petitioner/s

Versus

1. The Bihar State Housing Board through its Managing Director, Office situated at 5 Mangles Road, PS-Sachivalaya, Patna.
2. The Secretary, Bihar State Housing Board, Office situated at 5 Mangles Road, PS-Sachivalaya, Patna.
3. The Estate Officer, Bihar State Housing Board, Office situated at 5 Mangles Road, PS-Sachivalaya, Patna.
4. The Executive Engineer, Bihar State Housing Board, Office situated in Damozlarpur via Patahi at Muzaffarpur.
5. The Assistant Engineer, Bihar State Housing Board at Chapra.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Subodh Kumar Sinha, Advocate
	:	Mr. Sanjit Kr. Singh, Advocate
For the Respondent/s	:	Mr. Rabindra Priyadarshi, Advocate

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 28-08-2023

1. The present writ petition has been filed for quashing the order dated 18.04.2013, issued by the Estate Officer, Bihar State Housing Board, Patna i.e. the respondent no. 3, by which the allotment of the Plot of Land bearing Plot no. C-8, situated at Prabhunath Nagar, Chapra, made vide letter 14.05.1974 has been cancelled on the ground that registration



was done by the Assistant Engineer, Housing Board, Chapra, who is not the competent authority for the said purpose.

2. The petitioner has also prayed for quashing of the letter dated 05.04.2010, issued by the Executive Engineer, Bihar State Housing Board, Patna.

3. The brief facts of the case, according to the petitioner are that the Plot in question was allotted by the Bihar State Housing Board at Prabhunath Nagar, Chapra vide letter dated 14.05.1974 in the name of the father of the petitioner for a price of Rs. 3,037/-. It is the case of the petitioner that the entire money towards the cost of the land was paid by the father of the petitioner and then the registration was done by the Assistant Engineer, Housing Board, Chapra on 24.09.1979 and the possession of the Plot in question was handed over to the father of the petitioner on 19.01.1996. The father of the petitioner died on 12.06.1996, whereafter steps were taken for substituting the name of the mother of the petitioner, however, she also died subsequently and then the petitioner had filed an application dated 05.04.2013, before the Bihar State Housing Board, Patna for substituting the name of the petitioner.

4. It is the further case of the petitioner that in the



meantime, surprisingly, a letter dated 05.04.2010 was issued by the Executive Engineer, Bihar State Housing Board in the name of the father of the petitioner, wherein it was stated that since the condition mentioned in the allotment letter has not been complied with, the allotment is being cancelled, however no reason or ground of cancellation of allotment was mentioned therein. Thereafter, another letter dated 18.04.2013 was issued by the Estate Officer, Bihar State Housing Board, Patna, wherein the petitioner was informed that since the competent officer had not executed the agreement, the same was being cancelled.

5. The learned counsel for the petitioner has submitted that neither the petitioner nor his father are to be blamed, in case an incompetent official had executed the agreement in question, thus in case, such a mistake has taken place, it is the Bihar State Housing Board, Patna, which is responsible, hence, the petitioner cannot be penalized for the mistakes of the respondents. It is also submitted that the entire price of the Plot in question has stood paid. It is also apparent from the records that the respondent- Board has failed to bring on record any demand made with regard to any outstanding dues, at any given point of time. Thus, it is submitted that the



impugned orders dated 05.04.2010 and 18.04.2013 are illegal and fit to be set aside.

6. *Per contra*, the learned counsel for the respondent-Bihar State Housing Board has submitted by referring to the counter affidavit and supplementary counter affidavit, filed in the present case that after allotment of the Plot in question, the Estate Officer-cum-Additional Secretary of the respondent-Board had requested the original allottee to submit the agreement with stamp paper, on or before 30.04.1976 as also to execute the agreement within 15 days, however, it was found that the said agreement was executed by the Assistant Engineer of the Board, who was not competent to do so. It is also submitted that the allotment of the Plot in question had stood cancelled, inasmuch as the conditions contained in allotment letter and the agreement were not complied with by the petitioner. Lastly, it is submitted that even after the death of the original allottee, her wife had also failed to submit documents.

7. I have heard the learned counsel for the parties and perused the materials on record. A bare perusal of the counter affidavit and supplementary counter affidavit, filed by the respondent- Board would show that the same nowhere



demonstrates that either any amount was due and payable by the petitioner or his father *qua* the price of the Plot in question or any such amount had even been quantified/ demanded and moreover, the counter affidavit filed in the present case also fails to enumerate the deficiencies or the specific conditions of the allotment letter and the agreement in question, which have not stood complied with by the petitioner, in order to show that the impugned order dated 05.04.2010 is sustainable in the eyes of law, hence, the order dated 05.04.2010, issued by the Executive Engineer, Bihar State Housing Board, Patna is patently illegal and fit to be set aside. As far as the letter dated 18.04.2013, issued by the Estate Officer, Bihar State Housing Board, Patna is concerned, by which the agreement has been cancelled on account of the default of the Board itself, inasmuch as it is averred therein that the person who had executed the agreement in question on behalf of the respondent- Board was not competent to do so, this Court finds that the petitioner cannot be penalized for the mistake of the respondent- Board, hence it was incumbent upon the respondent-Board to have rectified the mistake by getting a fresh agreement executed vis-a-vis the petitioner but the respondent- Bihar State Housing Board kept silent and failed to discharge its duties, resulting in harassment



of the petitioner. At this juncture, the learned counsel for the petitioner has submitted that the concerned Assistant Engineer has executed other agreements as well, however the same have not been cancelled. In such view of the matter, this Court finds that the action taken by the Estate Officer, Bihar State Housing Board, Patna, vide the aforesaid letter dated 18.04.2013, is not only perverse but also illegal.

8. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, I deem it fit and appropriate to quash the letter dated 05.04.2010, issued by the Executive Engineer, Bihar State Housing Board, Patna and the letter dated 18.04.2013, issued by the Estate Officer, Bihar State Housing Board, Patna.

9. The writ petition stands allowed.

(Mohit Kumar Shah, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	09.09.2023
Transmission Date	NA

