

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2314 of 2016

Sanjay Mishra, son of late Smt. Shahsi Lekha Mishra, resident of
Bhuvaneshwar Bhawan, Club Road, Ramna, Muzaffarpur.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Urban Development Department, Government of Bihar, Patna, New Secretariat, Patna.
2. The Bihar State Housing Board, 6 Mangles Road, Patna through the Managing Director.
3. The Managing Director, the Bihar State Housing Board, 6, Mangles Road, Patna.
4. The Estate Officer, the Bihar State Housing Board, 6, Mangles Road, Patna.

... .. Respondents

Appearance :

For the Petitioner : Mr. Bidhanesh Misra, Advocate
For the State : Md. Khurshid Alam, AAG-13
For the Housing Board : Ms. Binita Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

ORAL JUDGMENT

Date : 28-08-2024

In this case, the petitioner has challenged the order dated 11.11.2011 passed by the Bihar State Housing Board, whereby the allotment of plot No. 6H/65 situated at Bahadurpur Patna Sector-06 in favour of the mother of the petitioner has been cancelled on account of non-construction of building and also to allot the aforesaid plot in favour of the petitioner after substituting his name in place of his deceased mother.

2. The facts of this case are that the mother of



the petitioner got herself registered with the Bihar State Housing Board (for short “the Housing Board) in the year 1980 for allotment of a plot of land vide registration no.196511 and had also made an advance payment of Rs.5,000/- on 26.12.1981 and 27.05.1981 along with the necessary documents with the Housing Board. When the original allottee was found eligible, she was allotted a plot bearing no. CH/27 in Sri Krishna Nagar, Patna admeasuring 2.91 *khatas* of land vide letter dated 16.01.1982 and she was directed to make payment of Rs.1840/- by 31.01.1982, which the original allottee duly complied and deposited the said amount on 29.01.1982 and therefore the allotment stood confirmed. Despite the allotment letter being issued, the Housing Board did not execute the formal deed of agreement for the allotment of the said plot. Thereafter, the husband of the original allottee wrote a letter on 08.07.1982 to the then Chairman of the Housing Board requesting for completion of the necessary formalities. In response to the said letter, it was replied that no allotment of plot/house is being done as the same has been deferred at present and can only be processed after August, 1982. Thereafter, on 16.09.1982 the Housing Board published a notice in the local daily ‘Search Light’, directing all the applicants of different categories of



plots to furnish full information once again to update the files and avoid any detriment to any applicant on account of any omission. In pursuance of the said notice, the original allottee supplied all requisite documents on 22.09.1982 and the same was acknowledged vide receipt no.40791 issued by the Housing Board dated 28.09.1982.

2.1. Despite completion of all necessary formalities, the Housing Board did not execute the deed of agreement but again on 17.04.1986 published a notice in the local daily newspaper namely, 'Indian Nation' requiring all applicants, who were allotted plot under the Chairman's quota between February 1981 and January 1982, to furnish all information along with relevant documents within fifteen days of publication of the notice. In pursuance of the said notice, the original allottee once again furnished all the information along with relevant documents to the Housing Board but, no fruitful action was taken by the Housing Board.

2.2. The Housing Board in its 121st meeting held on 13.09.1988 considered the application pressed by Shri Awadh Bihari Singh, Minister of the State, Housing, requesting change of his allotted plot from CH/22 to CH/27, which was previously allotted to the mother of the petitioner. Being aggrieved by the



inaction on the part of the Housing Board and non-execution of deed and non-delivery of possession as well as allotment of plot no. CH/27 to Shri Awadh Bihari Singh, the mother of the petitioner filed C.W.J.C. No.458 of 1989 before this Court and this Court vide order dated 15.12.1989 directed for interim stay on allotment of the said plot. Despite the interim stay order dated 15.12.1989, the Housing Board transferred the Plot No. CH/27 situated at Sri Krishna Nagar to Postal Cooperative House Constructon Society. Thus, the original allottee was forced to prefer contempt petition vide M.J.C. No.72 of 2001 before this Court, which was disposed vide order dated 30.07.2001 with a direction to the Housing Board to find a suitable alternative plot in Sri Krishna Nagar and allot the same, if available, in favour of the original allottee within four weeks from the date of the order and in case no suitable plot is available in Sri Krishna Nagar, the Housing Board will allot a suitable plot in any other suitable and similarly situated colony and further directed that the said allotment would be made at the prevailing rate as on the date of initial order i.e. 15.12.1989. In terms of the order passed by this Court, plot bearing 6H/65 situated at Bahadurpur, Patna was allotted to the mother of the petitioner vide allotment letter 623/AA dated 02.03.2002 and



the possession of the same was handed over to the mother of the petitioner on 01.10.2002. However, the mother of the petitioner passed away on 12.07.2003 i.e. within 10 months of taking possession of the plot.

2.3. The petitioner informed the Housing Board about the death of his mother vide letter dated 20.11.2003 and thereafter an ad-hoc payment of Rs.50,000/- was also made. Thereafter, the Housing Board vide letter dated 13.06.2008, annexing letter dated 29.02.2008, demanded Rs.35,089/- and Rs.35,410/-, which was duly deposited by the petitioner on 16.09.2008. Thereafter the petitioner followed-up with the Housing Board for transfer of the said plot in his name after the demise of his mother since other legal heirs had already given no-objection in favour of the petitioner. The Housing Board vide letter dated 26.05.2009 issued a show cause notice seeking explanation as to why non-construction on the plot be not considered as default under Clause-13 of the agreement. The petitioner vide letter dated 06.07.2009 replied to the said show-cause mentioning therein that since the transfer was still pending consideration and till such time it is transferred in favour of the present petitioner, the plan for construction could not be sanctioned and construction could not therefore



commence. The Housing Board sought documents from the Land Estate Officer vide letter dated 10.09.2013, who in turn sought all necessary documents from the petitioner vide letter dated 28.09.2013, to which the petitioner complied and once again submitted all necessary documents. Thereafter, the petitioner received a letter dated 12.12.2013 informing the petitioner that his request for transfer cannot be considered since the Housing Board had cancelled the allotment vide office order no. 9754 dated 11.11.2011. According to the petitioner, the said letter dated 11.11.2011 was never received by the petitioner and he only got to know about the cancellation of plot in the year 2013 i.e. two years after the cancellation was effected.

3. Learned counsel for the petitioner submits that the impugned order of cancelling the allotment of plot has been passed in view of the orders of this Court passed in C.W.J.C. No.12376 of 2007 and M.J.C. No.999 of 2011, but the case of the petitioner did not fall in the category of defaulter on account of non-construction since the plot in question was not transferred in the name of the petitioner and unless it is transferred in the name of the petitioner, the plan for construction could not be sanctioned and construction could not be commenced. Therefore, the reasons for non-construction



were totally beyond the control of the petitioner. Moreover, neither the petitioner or his mother was a party before this Court in the said proceeding nor any notice was issued to them and therefore the impugned action of the Housing Board in pursuance of the order of this Court is bad in law to the extent of the petitioner.

4. Learned counsel for the petitioner further submits that there was no default or delay caused by the petitioner in construction of the building rather the delay caused on account of inaction on the part of the Housing Board in granting necessary permission as per Clause-11 of the agreement, which mandates allottee to obtain the approval of the Housing Board and the Authority prescribed in the Bihar Restrictions of Uses of Land Act or any other Authority prescribed by law before construction could commence.

5. It has been submitted by learned counsel for the petitioner that the plot no. 6H/65, Bahadurpur Housing Colony, Patna was handed over to the mother of the petitioner on 01.10.2002 and that within 10 months of handing over the possession, his mother passed away and before the construction could commence, the plot had to be transferred in the name of the legal heir by the Housing Board and the petitioner had duly



informed the fact about the demise of his mother to the Housing Board on 20.11.2003 itself. Furthermore, the legal heirs of the original allottee had made the payment of Rs.1,02,535/- on 22.11.2003 against the tentative cost of the plot of Rs.1,04,360/- as indicated in the allotment letter.

6. It has further been submitted by learned counsel for the petitioner that the action of the Housing Board amounts to gross violation of Article 14 of the Constitution of India. The right to property though not a fundamental right under Part-III of the Constitution of India but is a constitutional right enshrined under Article 300A which provides that no person shall be deprived of his property save and except by authority of law. In support of this submission, learned counsel for the petitioner has placed reliance on the decision of the Hon'ble Supreme Court in the case of *State of West Bengal vs. Haresh C. Banerjee* reported as (2006) 7 SC 651 wherein it has been held that even after the repeal of Article 19(1)(f) and Article 31(1) of the Constitution vide Constitution (Forty Forth Amendment) Act, 1978 w.e.f. 20.06.1979, the right to property was no longer a fundamental right, it was still however a constitutional right.

7. It has been argued by learned counsel for the



petitioner that the representations made by the petitioner for transfer of the plot in his name was not considered by the Housing Board and any delay so occurring on account of the inaction of the Housing Board could not be attributed to the petitioner. It has also been argued that the name of the original allottee had wrongly been included in the list of the defaulters as from perusal of the list of defaulting allottees, as enumerated in the notice dated 11.11.2011, it appears that the allottees were handed possession way back in 1980s and 1990s but in the case of the petitioner the possession of the plot was handed on 01.10.2002. Further, in furtherance of the order dated 02.09.2008, the Housing Board had enquired from the petitioner *qua* the status of the construction, which was promptly replied by the petitioner by stating that there was no delay on the part of the allottee and the petitioner was awaiting transfer of the plot.

8. Learned counsel for the petitioner has relied upon Clause 13 of the Hire-Purchase Agreement, which stipulates that the settlee will make no alteration or addition upon the said premises without the prior written permission and sanction of the Board by submitting a plan and without obtaining approval of the municipal or other authorities in accordance with the provisions of law for the time being in



force. He has also relied on Clause-15 of the allotment letter which *inter alia* stipulates that if the allottee dies after the possession of the plot and the amount has been paid then upon the application of the legal heirs for transfer of the said plot, the Board will take decision in its discretion. Further, Clause-10 of the allotment letter stipulates that the plot will be constructed only in accordance with the sanctioned map/plan issued by the competent authority. Therefore, the discretion stipulated in Clause 15 was not duly exercised and the application for transfer was kept pending without any reason and as a consequence the delay in construction occurred which could not be attributed to the petitioner. Further, clause-10 of the allotment letter provides that mandatory sanction could not have proceeded unless the plot was duly transferred in the name of the legal heir, i.e. the instant petitioner.

9. The Housing Board has filed its counter affidavit and reiterated the facts regarding allotment of the plot 6H/65 situated at Bahadurpur, Patna and leading to the Hire-Purchase Agreement dated 20.05.2002 and finally the possession being handed over on 01.10.2002. It has been submitted by the Housing Board that as per Clause 10 of the Allotment letter dated 02.03.2002, the allottee was required to



start the construction of the house within two years from the date of possession and thereafter within three years complete the construction of the ground floor of the house. Further, Clause 12 of the Hire-Purchase Agreement also bound the allottee to the same stipulation. The original allottee passed away on 12.07.2003, thereafter despite the above Clauses the legal heir did not take any step for substitution nor complied with the Clause 10 of the allotment letter or Clause 12 of the Hire-Purchase Agreement. The Petitioner merely gave information about the demise of the original allottee and only prayed for information regarding dues, if any.

10. It has also been submitted that the Housing Board vide letter dated 29.02.2008 informed the allottee regarding the failure of compliance of the directions contained in letter dated 22.03.2006 and further informed regarding balance amount. Thereafter, the Housing Board on non-receipt of any payment, reminded the petitioner vide letter dated 04.07.2008, to which the petitioner responded and made the payment. Thereafter, the Housing Board was constrained to call for show cause vide letter no.1218 dated 26.05.2009 against the contravention of stipulation contained under Clause-12 of the hire-purchase agreement which mandates to start construction



within two years of having been put in possession of the plot and thereafter complete the construction up to ground floor within a further period of three years. The Petitioner responded to the said show cause vide his reply dated 06.07.2009. The petitioner did not take any steps for substitution of the name of the legal heir against the allotment of the plot in question and was waiting for the response from the Housing Board. Moreover no intimation/letter has been sent by the petitioner to the Housing Board with respect to any query for substitution before the said show cause letter dated 26.05.2009 came to be issued.

11. It has been argued that this Court vide order dated 02.09.2008 passed in *C.W.J.C. No. 12376 of 2007 (Krishna Murari Prasad Singh vs State of Bihar & Ors.)* directed that pursuant to the general notice dated 14.03.2008, action be taken against the defaulting allottees, who have not constructed house within stipulated time as per hire-purchase agreement within 06 months. Since the aforesaid order of this Court was not complied, a contempt application bearing *M.J.C. No. 999 of 2011 (Krishna Murari Prasad Singh vs State of Bihar & Ors)* was preferred and in the said contempt application a show cause containing the order passed by the Housing Board dated 11.11.2011 showing action taken against



17 defaulter allottees under various provisions of the agreement was filed and therefore, the contempt application was disposed of by this Court. Since the case of the petitioner also covered by the direction of this Court contained in the order dated 02.09.2008, the Housing Board took the action of cancellation of the allotment of the petitioner in accordance with law.

12. It has also been argued that the legal heir of the original allottee had furnished the papers for transfer of the allotted plot in his name but the said documents were found to be defective and therefore, the Housing Board vide letter dated 28.09.2013 directed for resubmission of the documents in accordance with the Rules and accordingly, the petitioner submitted the required documents. In the meantime, in compliance of the direction contained in order passed by this Court dated 02.09.2008, the petitioner was issued show cause notice vide letter dated 26.05.2009, to which the petitioner submitted his representation dated 06.07.2009.

13. It has also been argued that on account of non-availability of the main file pertaining to plot 6H/65 at Bahadurpur, a part file was opened and since the information regarding the cancellation of the allotment of the plot vide letter dated 11.11.2011 was not available therein, the relevant order of



cancellation was overlooked and documents were called from the petitioner by the Housing Board, however upon getting the information from the main file, no action for transfer was initiated. Thus, it is submitted that Annexure 9 and 10 was inadvertently issued.

14. In this case, the petitioner has filed a rejoinder, wherein it has been stated that the Housing Board failed to place on record the fact that the original allottee passed away on 12.07.2003 i.e. within 10 months of acquiring the possession of the plot and the transfer of plot to her legal heir had not taken place before this Court in C.W.J.C. No. 12376 of 2007 in which the order dated 02.09.2008 was passed.

15. It has also been stated in the rejoinder that the application of the petitioner for substitution of the legal heir of the original allottee was pending consideration on the date of issuance of cancellation letter dated 11.11.2011. The contention of the Housing Board regarding letter dated 22.03.2006 on balance payment is denied and disputed by the petitioner by submitting that the Housing Board has failed to place on record any such letter/document. However, the Housing Board did send the letter dated 22.09.2008 in reference to the letter by the petitioner dated 20.11.2003 and 13.06.2008 to deposit



Rs.35,089/- paid before 29.02.2008 or Rs.35,410/- after 31.03.2008 and accordingly, the petitioner deposited the amount of Rs.35,410/- on 16.09.2008.

16. I have considered the submissions of the parties and perused the materials on record.

17. It is not in dispute that the original allottee died within ten months of the allotment of the plot in question. The legal heir i.e. the petitioner has taken all steps for substitution of his name in place of original allottee and has deposited the entire amount, as directed by the Housing Board. This Court in the case of ***Krishna Murari Prasad Singh vs. State of Bihar & Ors.*** (supra) had never said that the allotment should be cancelled without giving proper opportunity to the allottees and principles of natural justice are not to be followed.

18. It is required to be noted that the impugned cancellation order was also subject matter of challenge in C.W.J.C. No.23195 of 2011 (Anil Kumar vs. Meghan Yadav and Ors.) and this Court vide judgment and order dated 11.09.2013 quashed the impugned cancellation order with respect to the petitioner of the aforesaid case. The judgment and order dated 11.09.2013 was challenged in L.P.A. No.556 of 2015 successfully. While affirming the order of the learned Single



Judge, it has been held by the Division Bench as under:-

“In so far as the binding nature of the directions present in the case of Krishna Murari Prasad Singh (supra) is concerned, we note from the record of the proceedings that the directions in the said case, was issued on 2.9.2008 for taking action against the defaulter allottees who had failed to construct their houses as per the conditions of the Hire Purchase Agreement. This direction was issued on 2.9.2008 but it is only after a contempt proceeding was initiated through M.J.C.No. 999/2011 that the authorities of the Housing Board woke up from their slumber to pass the impugned order of cancellation on 11.11.2011 which is confirmed from the opening paragraph of the cancellation order.

The reason for such hurried action followed by the mechanical discharge by the authorities of the Housing Board is eloquent from a reading of the order passed on the contempt application dated 21.10.2011 enclosed at Annexure- 12 of the writ proceedings. The Division Bench after rejecting the show cause of the Managing Director, directed for his presence along with a fresh show cause and posted the matter on 15.11.2011 for enabling the authorities of the Housing Board to show substantial compliance. It is after passing of the order on 21.10.2011 that the authorities in the Housing Board showing utmost expediency, passed the



order of cancellation on 11.11.2011 without verification of individual cases so that they can show substantial compliance when the matter next comes up on 15.11.2011 as manifest from Annexure 14.

In the circumstances so eloquent, it has been rightly observed by the learned Single Judge that the order of cancellation was passed with undue haste and is without application of mind.

*The directions issued in the case of **Krishna Murari Prasad Singh (supra)** can be gathered from the operative portion of the judgment which runs under:*

".. ... The respondent no.2 shall ensure that pursuant to the general notice dated 14th March, 2008, the action against the defaulting allottees, who have not constructed houses within the time provided in clause 13 of the hire-purchase agreement, is completed in exercise of the power under Clause 19(a) within six months from today."

In our opinion, before passing any order of cancellation, in purported obedience of the directions passed by the Division Bench in the case referred to above, the Housing Board was under an obligation to hold enquiry before concluding that the allottee was a defaulter and a mere delay by an allottee to construct his house, did not vest jurisdiction in the Housing Board to mechanically apply the



directions to order for cancellation of the allotment. This is the first gross infirmity committed by the Managing Director, Housing Board in mechanically applying the directions of the Division Bench in so far as the case of the present petitioner is concerned.”

19. In the present case, the petitioner was regularly been following his case before the Housing Board diligently for transfer of the said plot in his name after the demise of his mother since other legal heirs had already given no-objection in favour of the petitioner. He was not given any notice by the Housing Board before cancelling the allotment of the plot and therefore, the delay caused in the construction of the plot in question is *bona fide*.

20. In the present case also, the Housing Board was required to issue notice to the petitioner, hold an enquiry before concluding that the petitioner was a defaulter and the delay in construction did not vest jurisdiction in the Housing Board to mechanically apply the directions of the order for cancellation of the allotment. Moreover, the order of cancellation has been passed against a dead person which cannot be sustained.

21. In view of the aforesaid facts, I am of the opinion that the impugned cancellation order dated 11.11.2011



passed by the Housing Board is not sustainable and accordingly, it is set aside. The Housing Board is directed to complete the formalities of substitution of the petitioner in place of original allottee i.e. mother of the petitioner and allot plot no.6H/65 in favour of the petitioner within two months from the date of receipt/production of a copy of this order. The petitioner is given two years' time to make construction over the aforesaid plot as per the terms of the hire-purchase agreement.

22. With the aforesaid observations and directions, this writ petition is allowed.

(Sandeep Kumar, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	28.08.2024
Transmission Date	

