

THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7538 of 2021

Shri Baj Kishore Prasad, son of Late Parmeshwar Singh @ Parmeshwar
Sinha, resident of village- Gulni, P.O.- Hilsa, P.S.- Hilsa, District- Nalanda.

... .. Petitioner

Versus

1. The State of Bihar through Chief Secretary, Govt. of Bihar, Patna
2. The Principal Secretary, Urban Development Department, Govt. of Bihar, Patna
3. The Managing Director, Bihar State Housing Board, 6, Sardar Patel Path Marg, Patna-15
4. The Secretary, Bihar State Housing Board, Patna
5. The Land Revenue Officer, Bihar State Housing Board, Patna
6. The Estate Officer, Bihar State Housing Board, Patna, Division-3, Bahadurpur Housing Colony, Patna

... .. Respondents

Appearance :

For the Petitioner : Mr. Binay Kumar Choubey, Advocate
For the Respondent : Mr. Subhash Prasad Singh (GA-3)

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT

Date : 19-01-2024

By way of this writ petition, the petitioner has
prayed for the following reliefs:-

“(i) For issuance of writ/writs, order/orders, direction/directions in the nature of mandamus for commanding the respondent concerned to allot a piece of land to the petitioner in Bahadurpur area in Middle Income Category (MIC) as the petitioner was in category of land acquired category in Land acquisition process.

“(ii) For issuance of writ/writs, order/orders, direction/directions in the nature of mandamus for commanding the respondents concerned to hand over the possession of a



plot/piece of land to the petitioner in Bahadurpur Area in M.I.G. category.”

2. It is the case of the petitioner that his plot no.740 khata no.256, Thana no.10 having an area of 0.045 acre in Bahadurpur was acquired by Bihar State Housing Board in year 1979. Thereafter, compensation was paid to the petitioner by Land Acquisition Officer. After acquisition of land by the Housing Board, the petitioner became a landless person and applied for allotment of a plot in Bahadurpur area, Patna. After the submission of application, registration was made and receipt was issued. On the basis of lottery system in Middle Income Group, M.I.G. Plot No.10M/116 was allotted in favour of the petitioner vide letter no.671 dated 20.07.1991 in Digha Housing Colony, Patna. Thereafter, the Bihar State Housing Board prepared a list of applicant waiting for allotment of land in which petition was at serial no.04.

3. It is the further case of the petitioner that there is specific provision of allotment of land in favour of a land looser, from whom the land was acquired by Bihar State Housing Board. The said provision is enshrined under Rule 10(A)(1) of the Bihar State Housing Board Regulation, which clearly speaks that priority is given to land losers. According to the petitioner though he was allotted a plot by the Housing



Board in Rajeev Nagar but the physical possession of allotted land was not given to the petitioner due to some acquisition dispute in Rajeev Nagar. After which, proposal was made in the meeting of the Board to shift allotment of plot to the petitioner in Bahadurpur Housing Colony.

4. It is the case of the petitioner that similarly situated persons namely, Nand Lal Tibriwal and Ashok Kumar Sah, who were at serial no. 23 & 24 in the waiting list were allotted the plots after the direction of this Court in C.W.J.C no.4969/1996 vide order dated 24.09.1998, which was affirmed till the Hon'ble Supreme Court. Similarly, one Angiri Devi & Angeer Devi, who also approached this Court in C.W.J.C. No.10340 of 2003 was allotted a plot.

5. It is also the case of the petitioner that the Housing Board in its second counter affidavit tried to distinguished the petitioner's case from others who have been allotted the plots by the orders of this Court. The Housing Board has also taken a new ground that since the wife of the petitioner owns M.I.G. plot no. 8M/28 in Bahadurpur Housing Colony, the petitioner cannot be allotted the plot in terms of regulation 8 (D) of the Bihar State Housing Regulation 1982, but this regulation does not come in the way of allotment of plot to the petitioner as



the same has been purchased in the year 2001 in which he has given an affidavit that there was no land either in the name of petitioner or in the name of his family members and the petitioner comes in the category of land looser.

6. Learned counsel for the Bihar State Housing Board submits that pursuant to the application of the petitioner for allotment of M.I.G. plot and taking into account the provisions of the Bihar State Housing Board Regulation, 1983 priority was given to him in allotment of plot and accordingly M.I.G. Plot no. 10 M/116 at Digha Housing Colony was allotted in favour of the petitioner. The decision of allotment of MIG Plot No. 10M/116 at Digha Housing Colony was duly communicated to the petitioner vide letter dated 20.07.1991 but despite knowledge about allotment, the petitioner had not taken any steps for depositing the initial amount of the tentative price of allotted plot nor had entered into any agreement with the Board in respect of said allotment. On the contrary, he had submitted an application on 09.02.2001 for allotment of MIG plot at Bahadurpur Housing Colony in place of the earlier allotment of MIG Plot at Digha Housing Colony.

7. Learned counsel for the Bihar State Housing Board further submits that the wife of the petitioner owns a



dwelling unit in MIG Plot No. 8M/28 at Bhahdurpur Housing Colony, Patna on free-hold basis. He further submits that Regulation 8 of the Bihar State Housing Board Regulation, 1983 provides that a dwelling unit of flat of house site shall be allotted to only such persons *“who or his wife/her husband or his/her dependent minor children do not own any land or house fully or partly either on free hold or leasehold basis in the town within 8 Km. of the area of the Municipal Corporation, Municipality or Notified Area Committee or area of the Housing Estate of the Board, Improvement Trust or any other Government undertakings for which application is made”*. Hence, in terms of Regulation 8(d) of the Bihar State Housing Board Regular, 1983, the petitioner is not entitled for allotment/re-allotment.

8. Learned counsel for the Bihar State Housing Board also submits that about 1024.42 acres of land was acquired by the Government of Bihar at Digha for the Bihar State Housing Board with an object to develop and provide urban housing facilities to the citizen and the acquisition proceeding was upheld by the Hon'ble Supreme Court. However, with lapse of time, approximately 600 and odd acres of land was unlawfully acquired by members of



society/individuals and view a view to solve this problem, the Digha Acquired Land Settlement Act, 2010 was enacted. It is stated that Section 4 of the Digha Acquired land Settlement Act, 2010 prescribed for cancellation of allotments and refund of the deposits made by the allottee/applicant with the Board along with interest. Further, Section 5 of the Act prescribes that the previous allotment shall be deemed to be cancelled. Subsequently, Digha Acquired land Settlement Rule, 2014 and Digha Acquired land settlement Scheme, 2014 was formulated and in terms of the provision of the Act, 2010; Rules 2014 and Scheme, 2014, the petitioner was duly communicated to submit Form-C, for refund of deposited amount, against MIG plot No.10M/116 at Digha Housing Colony.

9. Learned counsel for the Housing Board also submits that in C.W.J.C. No.3991 of 1987 the Housing Board brought of record a seniority list of applicants whose land were acquired in the land acquisition proceeding and in the meeting of the Housing Board it was decided to constitute a committee, which will examine the claim of the applicants whose land has been acquired. Subsequently, in another meeting, it was decided to refund the deposited amount to the applicants as it will not be possible to allot land to all the 45 persons, whose names figures



in the seniority list, in absence of availability of land. He further submits that one Ramashray Prasad was allotted MIG 10M/22, who has preferred C.W.J.C. No. 6643/2012 which is still pending for adjudication. Similarly, Smt. Sharda Sinha whose name figured in the seniority list of the affected person and was also allotted MIG 8M/19 has also preferred CWJC No. 6336 of 2002 which is still pending for adjudication.

10. Learned counsel for the Housing Board further submits that even if there are few un-allotted plots of M.I.G. at Bahadurpur Housing Colony are available, that has to be allotted after following the provisions of the Bihar State Housing Board Regulation, 1983.

11. In course of hearing, the Bihar State Housing Board has produced a list of vacant plots in Bahadurpur area, Patna and the petitioner has been prayed that he may be allotted any plot from the list of vacant plots in Bahadurpur area in lieu of allotment in Rajeev Nagar area as the Housing Board has failed to allot the plot in Rajeev Nagar.

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

13. From the facts brought on record, the prayer of the petitioner is that he may be given an alternative plot in



lieu of the plot which has been allotted to him in Rajiv Nagar by the Housing Board. Since the petitioner was a land-looser, he was eligible for allotment of plot in view of Rule 10(A)(1) of the Bihar State Housing Board Regulation. In the opinion of this Court, once the petitioner was allotted a plot in Rajiv Nagar area considering his application and he being found eligible for allotment, now the Housing Board cannot take advantage of its own failure of not giving possession to the petitioner and they cannot say that the petitioner cannot be allotted an alternative plot by the Housing Board.

14. The ground for opposing the allotment is that the petitioner's wife has purchased a plot in the town of Patna belonging to the Housing Board. The petitioner was allotted a plot in Rajeev Nagar on 20.07.1991 by the Housing Board. The wife of the petitioner had no property at that point of time. The regulation of the Board does not prohibit any subsequent purchase of any plot by the family members of the allottee and therefore, the objection of the Housing Board that of having a plot in the name of the wife cannot be sustained. In the opinion of this Court, this acquisition of plot by the wife of the petitioner after 20 years the petitioner was allotted a plot from the Housing Board will not defeat the legal right of the



petitioner which has accrued to him and therefore, he is entitled to a plot which is vacant and free from all encumbrances and litigation and the immediate possession of which can be handed over to the petitioner forthwith.

15. Considering the aforesaid, I am of the view that this writ petition should succeed and the petitioner is entitled to an alternative plot from the list produced by the Housing Board of vacant plots.

16. In view of the aforesaid discussions, this application is allowed. Consequently, Plot No. 8M/22 situated at Bahadurpur, Patna, which is shown at serial no.1 of the list produced by the Housing Board, is directed to be allotted to the petitioner within 15 days from the date of receipt/production of a copy of this order. The paper work must also be completed within next two months.

17. Let a copy of this order be communicated to the Managing Director, Bihar State Housing Board, Patna forthwith through FAX or e-mail for its compliance.

(Sandeep Kumar, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A
Uploading Date	25.01.2024
Transmission Date	

