

Bihar State Housing Board and Others

Vs

Lalit Ram

Civil Appeal No. 5245 of 1996

(M. M. Punchhi, K. T. Thomas JJ)

03.02.1997

JUDGMENT

THOMAS, J.

1. This appeal by special leave is in challenge to an order of the High Court of Patna dated 8-5-1995 by which a Division Bench has refused to modify an earlier order dated 2-2-1993. The appellants herein are the Bihar State Housing Board, its Managing Director and its Executive Engineer at Haran - Ranchi.

2. The Bihar State Housing Board (for short "the Housing Board") put up flats under a housing scheme. As per the allotment order dated 9-12-1983, a flat bearing No. H-1/200 was allotted to the respondent at a tentative cost of Rs. 85,400. The respondent was to pay a sum of Rs. 17,230 as the initial payment. As the respondent had paid an advance of Rs. 6500 he was permitted to deduct it from the initial payment and thus he was to pay Rs. 10,730 in a lump within thirty days from the date of allotment order. But the respondent paid that amount only in 1987 presumably with interest (as he paid an amount of Rs. 17,541). As per clause 6 of the allotment order the allottee was to pay the balance amount of Rs. 68,320 in monthly instalments along with interest. The case of the respondent is that he could not execute the agreement as was required in the allotment order as the flat remained incomplete. He informed the Housing Board that he had to take another house on rent to live in and he was incurring a huge loss on account of it. The respondent then filed a writ petition before the High Court for appropriate reliefs.

3. By order dated 2-2-1993, a Division Bench of the High Court directed that if the respondent would deposit the balance amount of Rs. 68,320 as mentioned in clause 6 of the allotment order, the Housing Board shall deliver vacant possession of the flat to him with all the fittings and fixtures required to be done "within one month from the date of last deposit of the amount". The Board was further directed to indicate the date when the respondent was to execute the necessary agreement after the respondent deposits the last instalment.

4. On 15-2-1993, the Executive Engineer of the Housing Board required the respondent to get the agreement executed after depositing the amount of Rs. 68,320 within two months and to take physical possession of the flat. It is now admitted that the respondent had paid the said amount. But the Housing Board thereafter moved the High Court for modification of the order dated 2-2-1993 on three different occasions, and the High Court has declined to modify the order on all those three occasions.

5. The main thrust of argument of Shri Ranjit Kumar, learned counsel for the Housing Board, is that

the amount of Rs. 85,400 was fixed in the allotment order only tentatively and the allottee is liable to pay the revised rate when the Housing Board estimates the final amount. That is altogether a different aspect since the claim of the Board now is that the respondent is liable to pay interest on the amount of Rs. 68,320 since the respondent has failed to pay the monthly instalment of Rs. 980 from the date of allotment.

6. At the first blush, it appeared that there is merit in the aforesaid claim of the Housing Board. But on a closer look we noticed the other side of the picture. The respondent has been intimating the Board time and again that they have to make the flat residential by putting up the fittings and fixtures as it remains only in a skeleton form. The respondent further alleges that the flat in the present incomplete form is being used by the Housing Board for storing cement stock with them. It is a fact which is not disputed before us that the flat remains incomplete. The appellants blame the respondent for it as no agreement was executed but liability to execute the agreement cannot be insisted on without completing the construction of the flat.

7. In the above situation, we do not think that this is a fit case for interference with the order of the High Court. While dismissing this appeal we grant two months' time from today to the Housing Board to comply with the directions issued by the High Court in the order dated 2-2-1993.