

BIHAR STATE HOUSING BOARD & ORS.

v.

ASHA LATA VERMA

(Civil Appeal No. 5779 of 2008)

JULY 28, 2011

[P. SATHASIVAM AND H.L. GOKHALE, JJ.]

Housing – Allotment of flat – Re-determination/re-fixation of price after delivery of possession – Allotment of flat in favour of original allottee on payment of the prescribed amount – Death of allottee – Transfer of flat in the name of allottee's wife on her furnishing the proof of payment and other documents – Subsequently permission sought by wife-respondent to transfer the flat in the name of her daughter-in-law – Issuance of notice by Housing Board to the respondent raising huge demand towards outstanding dues against the flat – Writ petition filed by the respondent – Single Judge of the High Court quashed the demand notice and directed the Board to grant permission for transfer of the flat in favour of the respondent's daughter-in-law; and ordered for Vigilance inquiry against the Board and its officials – Order upheld by the Division Bench – On appeal, held: In absence of specific complaint furnishing required details by the respondent or anyone pointing mismanagement in the affairs of the Housing Board, the Single Judge was not justified in issuing directions for Vigilance Inquiry – Order relating to the relief granted to the respondent is upheld and all other directions relating to the Board and its officials are set aside.

Appellant-State Housing Board allotted a flat in favour of original allottee. The allottee paid the entire amount to the Board within the time prescribed. The original allottee expired and his wife (respondent) applied for transfer of the flat in her name. The respondent furnished the proof of payment and other documents and the flat was

A transferred in her name. Thereafter, the respondent sought transfer of the flat in her daughter-in-law's name. The Housing Board raised a huge demand towards outstanding dues against the flat. Aggrieved, the respondent filed a writ petition for quashing the demand notices and that the Board was not entitled to re-determine/re-fix the price after delivery of the possession of the flat. The Single Judge of the High Court quashed the demand notice and directed the Board to grant permission for transfer of the flat in favour of the respondent's daughter-in-law. It also directed the Additional Director General of Vigilance to institute a case against the Board and to inquire into the activities of the officials involved in the process of decision making and also to initiate enquiry into the assets and properties of such officials of the Board. The Division Bench of the High Court upheld the order passed by the Single Judge. Therefore, the appellant-Housing Board filed the instant appeal.

Partly allowing the appeal, the Court

E HELD: 1.1 As early as on 07.02.2008, the Single Judge disposed of the writ petition by allowing the same and granted relief to the respondent and ordered for Vigilance inquiry against the Board and its officials. Thereafter, even though the L.P.A. filed by the Board against the order of the Single Judge was also disposed of by the Division Bench, it is not clear and understandable how the matter was heard by the Single Judge then and there. Even after perusing the report of the Vigilance Department based on the opinion of the Advocate General, the Single Judge passed further order on 03.05.2010 and again directed the Vigilance Department to submit further report. It is the grievance of the Board that inasmuch as the writ petitioner has secured an appropriate relief and in the absence of any

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specific claim/complaint furnished with required details, the Single Judge was not justified in directing the Vigilance Department for roving inquiry into the affairs of the Board. [Para 9] [569-D-G]

1.2 The only question before the Single Judge was related to the demand notice issued by the Board. No doubt, the petitioner made certain statements against the officials of the Board, however, there is no specific complaint either by the writ petitioner or anyone pointing mismanagement in the affairs of the Board. If there is any specific complaint giving all the details, undoubtedly, the Court can forward it to the forum concerned for investigation and further action pursuant to the outcome of the same. Merely on the basis of certain observations in the orders of the High Court in other matters which were either set aside or modified or not applicable to the case on hand, the Single Judge was not justified in issuing directions for Vigilance inquiry. The direction also proceeds as if that the officials of the Board benefited with the huge amount without basing reliable and acceptable materials. Normally, the function of the Court is to sort out the dispute raised and only in exceptional cases that too when adequate materials are there such inquiry can be ordered but not on the basis of the general information, assumption or presumption. Apart from this, after disposal of the writ petition as early as on 07.02.2008, how the Single Judge assumed jurisdiction and issued several directions in the matter. [Para 10] [569-H; 570-A-E]

1.3 The direction relating to inquiry by the Vigilance Department and subsequent orders and directions by the Single Judge cannot be sustained. While confirming the order of the Single Judge relating to the relief granted to the respondent, all other directions relating to the Board and its officials are set aside. However, it is made clear that if there is any specific complaint with facts and figures against any of the officer of the Board, it is for the

A person concerned to move the appropriate prosecuting agency and if any such complaint is made, the agency is free to proceed in accordance with law. [Para 11] [570-E-G]

B *Smt. Meera Mishra vs. State of Bihar* 2001 (3) PLJR 809; *SanjeevKumar Singh vs. Managing Director* 2003 (2) PLJR 513; *Sita Devi vs. Bihar State Housing Board* 2007 (1) PLJR 246 – referred to.

Case Law Reference:

C	2001 (3) PLJR 809	Referred to	Para 7
	2003 (2) PLJR 513	Referred to	Para 7
	2007 (1) PLJR 246	Referred to	Para 7

D CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5779 of 2008.

From the Judgment & Order dated 02.07.2008 of the High Court of Judicature at Patna L.P.A No. 211 of 2008.

E S. Chandra Shekhar, Manoj Kumar, Ramraghvendra, Suraj Rathi for the Appellants.

Praneet Ranjan, Pranay Ranjan, Raghwendra Tiwari for the Respondent.

F The Judgment of the Court as delivered by

G **P. SATHASIVAM, J.** 1. This appeal is directed against the final judgment and order dated 02.07.2008 passed by the High Court of Judicature at Patna in L.P.A. No. 211 of 2008 whereby the Division Bench of the High Court declined to interfere with the order dated 07.02.2008 passed by the learned single Judge of the High Court in CWJC No. 11753 of 2007 and disposed of the appeal filed by the appellants herein.

H 2. Brief facts:

(a) In 1972, the Bihar State Housing Board (hereinafter referred to as "the Board") floated a Scheme for construction of Flats for Middle Income Group (in short "MIG") at Hanuman Nagar, Patna. Ram Chandra Prasad Verma (since expired) - the husband of the respondent submitted his application. Subsequently, on demand being made, on 28.09.1978, he deposited a sum of Rs.6500/- for allotment of a MIG flat/house. The allotment fructified in his favour and MIG Flat No. 171, Hanuman Nagar, Patna was allotted to him vide Board's Order No. 7273 dated 23.09.1981. After execution of hire-purchase agreement, the possession was handed over to him on 28.11.1981. At that time, the total cost of the flat determined by the Board was Rs.66,382/-. The entire amount was paid to the Board within the time prescribed.

(b) On 25.03.1991, the husband of the respondent died and in the year 1992, she sought for transfer of the Flat in her name. The flat was transferred in the name of the respondent after furnishing the details of payment and other required documents to the Board vide letter No. 1459 dated 05.05.1998.

(c) Later on, the respondent decided to transfer the flat in favour of her daughter-in-law, Ms. Meera Verma and sought transfer of the same. At this time, the Board raised a demand of Rs. 3,64,419/- towards outstanding dues against the flat in question vide Letter No. 2169 dated 29.06.2006, asking the respondent to deposit the same by 31.07.2006.

(d) Against the said demand notice, the respondent filed writ petition bearing CWJC No. 11753 of 2007 before the High Court of Patna for quashing the same on the ground that the payment of the flat had already been made in 144 equal instalments and that the Board is not justified in raising such demand and not entitled to re-determination/re-fixation of the price after delivery of possession. The learned single Judge, by order dated 07.02.2008, allowed the writ petition and quashed the demand notice and directed the Board to grant permission for transfer of the flat in favour of Ms. Meera Verma,

A daughter-in-law of the respondent herein. The learned single
 Judge also directed the Additional Director General of
 Vigilance, State of Bihar to institute a case against the Board
 and to enquire into the activities of the officials involved in the
 process of decision making and also to initiate enquiry into the
 B assets and properties of such officials of the Board.

(e) Against the said order of the learned single Judge, the
 Board filed appeal being L.P.A. No. 211 of 2008 before the
 Division Bench of the High Court. The Division Bench, by
 impugned order dated 02.07.2008, declined to interfere with
 C the order passed by the learned single Judge disposed of the
 appeal filed by the appellants herein. Aggrieved by the same,
 the Board preferred this appeal by way of special leave petition
 before this Court.

D 3. Heard Mr. S. Chandra Shekhar, learned counsel for the
 appellants-Board and Mr. Praneet Ranjan, learned counsel for
 the respondent.

E 4. Since the learned single Judge of the High Court while
 allowing the writ petition filed by the respondent expressed his
 anguish over the manner in which the Board and its officials
 are conducting its affairs, issued certain directions for Vigilance
 inquiry, the Board being aggrieved by the said directions filed
 an appeal before the Division Bench. The Division Bench, by
 impugned order dated 02.07.2008, after observing that since
 F the Vigilance Department has already started preliminary
 inquiry, declined to interfere with the order passed by the
 learned single Judge. The Board is very much aggrieved by the
 directions of the learned single Judge directing Additional
 Director General of Vigilance, State of Bihar to institute a case
 G against the Board and to enquire into the activities of all
 persons who are involved in the decision making process as
 well as who have been responsible in creating false accounts
 and raising false demands in relation to the writ petitioner,
 namely, Asha.Lata Verma. In the same order, the learned
 H single Judge also directed that an inquiry into the assets and

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properties of such officials of the Board be carried out to see whether they have been benefited at the cost of innocent citizens.

5. Before considering the directions of the learned single Judge asking the Additional Director General of Vigilance, State of Bihar to enquire into the conduct of the officials of the Board, we have to see the grievance of the respondent. The grievance of the respondent is that even though entire money for MIG flat bought by her husband in the year 1981 was paid yet the officials of the Board acting in most arbitrary manner have raised huge demand. By various orders of the High Court, ultimately the Board transferred the ownership of the flat in question in favour of daughter-in-law of the respondent. Though the counsel appearing for the Board has stated that the Board was justified in demanding an additional amount, in the absence of such details and in view of the fact that now the Board has transferred the title of the flat in favour of the daughter-in-law of the respondent, as requested, we are not inclined to go into the claim of the Board.

6. Let us consider the directions issued by the learned single Judge in the foregoing paragraphs. The learned single Judge having noticed that the cost of the flat as determined by the Board was paid by the allottee, after the death of the original allottee, his wife – respondent herein applied for transferring the flat in her name, at this stage, the Board officials required her to furnish proof of payments and other documents which were duly furnished by her, thereafter permission was granted for transfer of the flat in her name, ultimately, on a request being made by the respondent for transferring the said flat in the name of her daughter-in-law, the officials of the Board calculated huge amount showing as outstanding and with this background, the learned single Judge examined the claim of the writ petitioner and considered the stand of the Board. It is the grievance of the Board that whether in a writ proceeding where the writ petitioner challenged the demand notice issued by the Board, the writ Court could have gone beyond the relief sought by the

- A petitioner and ordered an inquiry by the Vigilance Department after registering FIR? It is also the grievance of the Board that whether in a writ proceeding, the learned single Judge could have ordered registration of FIR without there being an allegation of any offence committed by anyone and whether in
 B the absence of any specific allegation, the learned single Judge is justified in ordering a roving inquiry?

7. The learned single Judge took note of many findings and observations of the High Court in several similar cases. It is important to mention here that the learned single Judge while
 C passing the order dated 07.02.2008 placed reliance on the following judgments, viz., *Smt. Meera Mishra vs. State of Bihar* 2001 (3) PLJR 809, *Sanjeev Kumar Singh vs. Managing Director* 2003 (2) PLJR 513 and *Sita Devi vs. Bihar State Housing Board* 2007 (1) PLJR 246. It was pointed out that
 D these matters were either set aside or modified or not applicable to the case on hand. In those observations, the High Court has indicted the Board for its mismanaged affairs and the manner in which it was conducting its functioning. Heavily relying on those observations and findings, the learned single
 E Judge held that the demand notice was totally unjustified and, therefore, it was quashed and the Board was directed to issue permission to the writ petitioner for transfer of the flat in favour of her daughter-in-law. Having noticed the conduct of the Board, the learned single Judge felt that its functionaries should be
 F subjected to an investigation by the State Vigilance and accordingly a direction was issued to the Additional Director General of Vigilance, State of Bihar to institute a case against the Board and inquire into the activities of all persons who were involved in the decision making process as well as who have
 G been responsible in creating false accounts and raising false demands. The learned single Judge also directed to enquire into the assets and properties of such officials of the Board.

8. It is seen from the additional documents filed by the Board that based on the direction of the learned single Judge,
 H Additional Director General Vigilance had sought opinion from

the Advocate General. By letter dated 19.07.2008, after verifying the relief sought for by the writ petitioner and after analyzing the directions of the learned single Judge and the materials placed by the investigation team, the Advocate General has opined that the materials, which are collected so far during preliminary inquiry and placed on record do not constitute any prima facie criminal offence against the officials of the Board so as to warrant institution of a regular case. The said report was placed before the learned single Judge by the Superintendent of Police, Vigilance, on 03.05.2010. After going through the report of the Vigilance Department and the opinion of the Advocate General, the learned single Judge directed the Vigilance Department to spend more time on the investigation and file a report on the issue since the earlier report was not up to the expectation of the Court.

9. It is not in dispute that even as early as on 07.02.2008, the learned single Judge disposed of the writ petition by allowing the same and granted relief to the respondent and ordered for Vigilance inquiry against the Board and its officials. Thereafter, even though the L.P.A. filed by the Board against the order of the learned single Judge was also disposed of by the Division Bench, it is not clear and understandable how the matter was heard by the learned single Judge then and there. Even after perusing the report of the Vigilance Department based on the opinion of the Advocate General, the learned single Judge passed further order on 03.05.2010 and again directed the Vigilance Department to submit further report. It is the grievance of the Board that inasmuch as the writ petitioner has secured an appropriate relief and in the absence of any specific claim/complaint furnished with required details, the learned single Judge was not justified in directing the Vigilance Department for roving inquiry into the affairs of the Board.

10. It is not in dispute that the only question before the learned single Judge was related to the demand notice issued by the Board. No doubt, the petitioner therein has made certain

A statements against the officials of the Board, however, there
is no specific complaint either by the writ petitioner or anyone
pointing mismanagement in the affairs of the Board. If there is
any specific complaint giving all the details, undoubtedly, the
Court can forward it to the forum concerned for investigation
B and further action pursuant to the outcome of the same. Merely
on the basis of certain observations in the orders of the High
Court in other matters which were either set aside or modified
or not applicable to the case on hand, the learned single Judge
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C direction also proceeds as if that the officials of the Board
benefited with the huge amount without basing reliable and
acceptable materials. Normally, the function of the Court is to
sort out the dispute raised and only in exceptional cases that
too when adequate materials are there such inquiry can be
D ordered but not on the basis of the general information,
assumption or presumption. Apart from this, after disposal of
the writ petition as early as on 07.02.2008, how the learned
single Judge assumed jurisdiction and issued several
directions in the matter.

E 11. In the light of the above discussion, we are satisfied
that the direction relating to inquiry by the Vigilance Department
and subsequent orders and directions by the learned single
Judge cannot be sustained. While confirming the order of the
learned single Judge relating to the relief granted to the
F respondent, all other directions relating to the Board and its
officials are set aside. However, it is made clear that if there
is any specific complaint with facts and figures against any of
the officer of the Board, it is for the person concerned to move
the appropriate prosecuting agency and if any such complaint
G is made, the agency is free to proceed in accordance with law.

12. The civil appeal is allowed to the extent mentioned
above. There shall be no order as to costs.

N.J.

Appeal Partly allowed.

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