

A THE VICE CHANCELLOR, RANCHI UNIVERSITY & ORS.

v.

JHARKHAND STATE HOUSING BOARD & ORS.

(Civil Appeal No. 8113 of 2009)

B OCTOBER 23, 2018

[ABHAY MANOHAR SAPRE AND INDU MALHOTRA, JJ.]

Eviction – Eviction of unauthorised occupants – Respondent-State Housing Board allotted flats to the appellant-University for the residence of the University’s employees – In terms of allotment agreement, University was required to pay 10% of the total consideration fixed and balance in 180 installments – University got possession of the flats and they allotted few flats to its employees – However, University defaulted in payment of installments and consequent to which Board raised demand of defaulted sum – University failed to make the payment and consequently, the Board cancelled the allotment, but decided to allot the flats to some of the occupants (retired employees) on request made by the University – Thereafter, University realised that there was some foul play in sending of letter of request for allotment to the Board and therefore, cancelled the request letter, and warned the concerned employees to not act upon such request and nor should make any payment to the Board – Despite this, employees (including retired employees-respondent nos. 4 and 5) made payments for the flats allotted to them and University also made some payments towards the sale consideration – Whether retired employees-respondent no.4 and 5 were in unauthorised occupation of the flats and were liable to pay penal rent to the University for their wrongful use and occupation of flats – Held: The occupants (respondent nos. 4 and 5) had right to remain in lawful occupation of the flats only so long as they were in the employment of the University, and on payment of the house rent fixed by the University as per their policy – The day their services came to an end, their possession in flats became unlawful and unauthorised, and they were under contractual and legal obligation to handover the possession of flats to their employer – Insofar as money deposited by the respondent nos.4 and 5 to the Board contrary to the directions issued by the University is concerned, the payment

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made by the respondent nos.4 and 5 did not create any independent right in their favour and nor such payment even if made by the employees impaired the rights of the University in any manner in relation to the allotment of flats qua Board – Furthermore, the cancellation order of the Board was revoked when it accepted the lump sum payments of monthly installments from the University and resultantly, the original allotment stood restored in favour of the University – Thus, respondent nos. 4 and 5 liable to be evicted from the flats and also liable to pay penal rent to the University for their use and occupation till the date of their eviction – Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

Allowing the appeal, the Court

HELD: 1. The writ petitioners’ (respondent nos. 4 and 5) right to remain in lawful occupation of the flats could subsist only so long as they were in the employment of the University, and that too on payment of house rent fixed by the University as per their policy. In other words, the writ petitioners could exercise their right of occupation qua the University only during their service tenure subject to fulfillment of the requisite terms and conditions and their right of occupation was terminable on their service tenure coming to an end. [Para 19][1090-C]

2. It is not in dispute that the writ petitioners (respondent nos. 4 and 5) had retired long back from their services and yet they retained unlawful possession of the flats in question. The Single Judge of the High Court has rightly held that writ petitioners (respondent nos. 4 and 5) were in unauthorized occupation of the flats from the date they ceased to be in the employment of the University and hence were liable to be evicted from the flats and were also liable to pay penal rent to the University for their use and occupation till the date of their eviction. [Paras 21 and 22][1090-F-G]

3. The contention of the respondent nos. 4 and 5 that since they had deposited some money with the Board for allotment of the flats in their personal capacity pursuant to the decision of the University taken by them in that behalf, a right had accrued in their favour to remain in occupation of the flats even after they had ceased to be in the employment of the University in their

A individual rights is rejected for more than one reason. First, It is not in dispute that the University had withdrawn its decision to allot the flats to its employees immediately and also warned them not to enter into any transaction with the Board directly in relation to the flats, else they will have to face the disciplinary action. This was sufficient indication to the employees not to deal with the Board in any manner in their individual capacity: Second, it is also not in dispute that the University even after cancellation of the initial allotment order went on paying monthly installments in lump sum to the Board and the Board in turn also went on accepting the money as and when paid by the University. The acceptance of payment from the University subsequent to cancellation by the Board amounted to revocation of the cancellation order and resulted in restoration of the initial allotment made in favour of the University: Third, the issue in the writ petitions was between the writ petitioners (employees) and the University because the writ petitioners had come into possession of the flats through the University. They had, therefore, no independent cause of action in relation to the issue of flats qua the Board; Fourth, the writ petitioners did not file any suit for specific performance of contract against the Board for enforcement of their alleged independent contractual right in relation to the flats. Their alleged disputes qua the Board in relation to flats, therefore, could not have been gone into in these proceedings: Fifth, in any event, mere payment of Rs.10,000/- to the Board by the writ petitioners contrary to the directions issued by the University did not create any independent right in their favour and nor such payment even if made by the employees impaired the rights of the University in any manner in relation to the allotment of flats qua Board and lastly, the cancellation having been revoked on account of acceptance of payment from the University by the Board, the original allotment dated 05.07.1976 stood restored in favour of the University. [Paras 23 and 25]

G [1090-G-H; 1091-A, B-G]

4. The University would be at liberty to proceed against the writ petitioners seeking their eviction from the flats in question by filing appropriate proceedings before the Competent Authority under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and also claim in the said proceedings arrears of penal

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rent payable by the writ petitioners from the date their possession became unauthorized in the flats till their delivery. Likewise, the writ petitioners and other employees (occupants) would also be at liberty to take refund from the Board of their paid amount, which they claimed to have deposited with the Board for allotment of the flats along with interest at a reasonable rate. [Paras 28 and 30][1092-B, D]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 8113 of 2009

From the Judgment and Order dated 21.11.2006 of the High Court of Jharkhand at Ranchi in L.P.A. No. 440 of 2006.

Gopal Prasad, Adv. for the Appellants.

Pradeep Kant, Sr. Adv., Ms. Lalita Kohli, Sharif Hussain, Divyanshu Sahay, Sanjay Goel for M/S. Manoj Swarup and Co., Pavan Kumar, Himanshu Shekhar, S. D. Singh, Ms. Bharti Tyagi, Ms. Shweta S., Advs. for the respondents.

The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J. 1. This appeal is directed against the final judgment and order dated 21.11.2006 passed by the High Court of Jharkhand at Ranchi in L.P.A. No. 440 of 2006, whereby the High Court setting aside the order of the Single Judge allowed the L.P.A. filed by the respondent Nos.9 and 10 herein.

2. In order to appreciate the issues involved in this appeal, it is necessary to set out the facts in detail hereinbelow.

3. The appellant is the University at Ranchi (hereinafter referred to as “the University”) whereas respondent no.1 is the State Housing Board (hereinafter referred to as “the Board”) created under the State Law.

4. On 05.07.1976, the Board allotted 192 Flats to the University for the residence of the University’s employees known as “Ranchi University Housing Colony” for a total consideration of Rs.42,24,000/-.

5. In terms of the allotment agreement, the University was required to pay 10% of the total consideration to the Board and the balance money was to be paid in 180 monthly installments - each for Rs.31,195.30.

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A 6. The University paid 10% of the total consideration and started paying monthly installments, which they paid up to the year 1991 regularly. However, there were some defaults made by the University in paying remaining installments.

B 7. The University in the meantime got possession of the flats and they allotted few flats to its employees. The University also in the meantime converted some flats for its use as Girls Hostel Block. In the meantime, the University paid lump sum Rs.5 Lakh towards monthly installments to the Board towards total consideration.

C 8. The Board on 19.10.1989, however, raised a demand of Rs.2,62,44,149/- on the University, which included partly balance money towards principal amount and remaining towards interest accrued on the defaulted sum. Since the University did not satisfy/pay the demand of Rs.2,62,44,149/-, the Board cancelled the allotment by order dated 29.11.1992 and decided to allot the flats to some of the occupants (employees) who were by that time retired but continued to occupy the flats. This allotment was made on the request made by the University to the Board.

D 9. The University, however, on 29.01.1993 realized at their end that there was some foul play behind sending of the letter of allotment from the University to the Board for allotment of the flats to its employees which was done apparently at the instance of some occupants. The University, therefore, immediately cancelled the request letter and warned the concerned employees that they should not act upon the request earlier sent by the University to the Board and nor should make any payment to the Board to obtain allotment of flats in their personal capacity. The employees were also warned not to enter into any independent transaction with the Board in relation to the flats in question, else erring employees would have to face disciplinary action. The University also wrote to the Board on 30.01.1993 that the University is also on its part requesting the State to arrange for payment of balance money to the Board to enable them to complete the transaction in terms of the allotment order.

E F G 10. Despite this, 19 employees deposited Rs.10,000/- for allotment of the flats to them. In the meantime, the University also paid Rs.one lakh, Rs.five lakh and some more money towards the sale consideration to the Board on different dates. The Board also accepted the said money paid by the University.

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11. It is with these background facts, three writ petitions, namely, Writ Petition (C) No.3652/1996, Writ Petition (C) No.3442/2002 and Writ Petition (C) No.1342/2002 were filed by the employees-occupants against the Board and the University seeking therein a prayer for issuance of the writ of mandamus directing the Board to execute the lease deed of the flats in question and allot the said flats in their favour. The University contested these writ petitions on several grounds. A B

12. By order dated 08.08.2006, the learned Single Judge dismissed the said writ petitions. It was held that the writ petitioners were in unauthorized occupation of the flats in as much as they had no right whatsoever to either remain in occupation or to ask for any relief in relation to the flats except to pay penal rent to the University for their wrongful use and occupation of the flats. C

13. The writ petitioners felt aggrieved and filed intra-court appeal before the Division Bench of the High Court. By impugned order, the Division Bench allowed the appeal, set aside the order of the learned Single Judge and while allowing the writ petitions issued a writ of mandamus directing the Board to execute the lease deed of the flats in question in favour of each occupant on the basis of terms and conditions as prevailing today and as may be mutually agreed between them. D

14. It is against this order; the University has felt aggrieved and filed the present appeal by way of special leave to appeal in this Court. E

15. Heard Mr. Gopal Prasad, learned counsel for the appellant and Mr. Pradeep Kant, learned senior counsel for the respondent(s).

16. Having heard the learned counsel for the parties and on perusal of the record of the case, we are constrained to allow the appeal, set aside the impugned order and restore that of the learned Single Judge as indicated below. F

17. In our considered opinion, the approach, reasoning and the conclusion arrived at by the Learned Single Judge was just, legal and proper as against that of the Division Bench for the reasons mentioned hereinbelow. G

18. Firstly, it is not in dispute that the original allotment of the flats made by the Board was in favour of the University. Secondly, it is also not in dispute that the University had made substantial part payment to the Board pursuant to the allotment order, which the Board had accepted. H

A Thirdly, it is also not in dispute that the writ petitioners were the employees of the University, and therefore they were allotted flats by the University by virtue of their employment conditions. In other words, the writ petitioners came in occupation of the flats through their employer i.e. University. If they were not in the employment of the University, they would not have been able to occupy these flats in their individual right at that point of time for want of any privity of contract with the Board.

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C 19. In our considered opinion, the writ petitioners' (respondent nos. 4 and 5) right to remain in lawful occupation of the flats could subsist only so long as they were in the employment of the University, and that too on payment of house rent fixed by the University as per their policy. In other words, the writ petitioners could exercise their right of occupation qua the University only during their service tenure subject to fulfillment of the requisite terms and conditions and their right of occupation was terminable on their service tenure coming to an end.

D 20. The day on which their services came to an end, whether due to their tendering the resignation, or on attaining the age of superannuation or for any other reasons, their right to continue in occupation of the flats came to an end. Their possession in the flats became unlawful and unauthorized. They were under contractual and legal obligation to handover vacant and peaceful possession of the flats to their employer i.e. the University so as to enable the University to allot the flats to other employees who were eligible for allotment.

E 21. It is not in dispute that the writ petitioners (respondent nos. 4 and 5) had retired long back from their services and yet they retained unlawful possession of the flats in question.

F 22. In our opinion, the learned Single Judge has rightly held that respondent nos. 4 and 5 (writ petitioners) were in unauthorized occupation of the flats from the date they ceased to be in the employment of the University and hence were liable to be evicted from the flats and were also liable to pay penal rent to the University for their use and occupation till the date of their eviction. So far it has not been done.

G 23. We are not impressed by the submission of the learned Senior counsel for the respondent nos. 4 and 5 (writ petitioners) when he contended that since the writ petitioners (Respondent Nos. 4 and 5) deposited some money with the Board for allotment of the flats in their

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personal capacity pursuant to the decision of the University taken by them in that behalf, a right had accrued in their favour to remain in occupation of the flats even after they had ceased to be in the employment of the University in their individual rights. A

24. This submission is wholly untenable and deserves rejection for more than one reason. B

25. First, It is not in dispute that the University had withdrawn its decision to allot the flats to its employees immediately and also warned them not to enter into any transaction with the Board directly in relation to the flats, else they will have to face the disciplinary action. This was sufficient indication to the employees not to deal with the Board in any manner in their individual capacity: Second, it is also not in dispute that the University even after cancellation of the initial allotment order went on paying monthly installments in lump sum to the Board and the Board in turn also went on accepting the money as and when paid by the University. The acceptance of payment from the University subsequent to cancellation by the Board amounted to revocation of the cancellation order and resulted in restoration of the initial allotment made in favour of the University: Third, the issue in the writ petitions was between the writ petitioners (employees) and the University because the writ petitioners had come into possession of the flats through the University. They had, therefore, no independent cause of action in relation to the issue of flats qua the Board; Fourth, the writ petitioners did not file any suit for specific performance of contract against the Board for enforcement of their alleged independent contractual right in relation to the flats. Their alleged disputes qua the Board in relation to flats, therefore, could not have been gone into in these proceedings: Fifth, in any event, mere payment of Rs.10,000/- to the Board by the writ petitioners contrary to the directions issued by the University did not create any independent right in their favour and nor such payment even if made by the employees impaired the rights of the University in any manner in relation to the allotment of flats qua Board and lastly, the cancellation having been revoked on account of acceptance of payment from the University by the Board, the original allotment dated 05.07.1976 stood restored in favour of the University. C D E F G

26. In the light of the foregoing discussion/reasons, we cannot concur with the reasoning and the conclusion of the Division Bench and are inclined to agree with that of the learned Single Judge. H

A 27. The appeal thus succeeds and is allowed. The impugned order is set aside, and that of the learned Single Judge restored. The writ petitions out of which this appeal arises is accordingly dismissed.

B 28. Needless to observe, the University would be at liberty to proceed against the writ petitioners seeking their eviction from the flats in question by filing appropriate proceedings before the Competent Authority under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and also claim in the said proceedings arrears of penal rent payable by the writ petitioners from the date their possession became unauthorized in the flats till their delivery.

C 29. The University is also at liberty to finalize the issue of allotment of the flats with the Board with the intervention of the State expeditiously. It will be for the benefit of the University and its employees, in service.

D 30. Likewise, the writ petitioners and other employees (occupants) would also be at liberty to take refund from the Board of their paid amount, which they claimed to have deposited with the Board for allotment of the flats along with interest at a reasonable rate.

E 31. On such request being made by the writ petitioners, the Board will refund the money to the writ petitioners and any such employees within three months from the date of making a demand after verification as an outer limit.

 32. In the light of this order, the intervention application and impleadment application stands disposed of.