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SITA DEVI

v.

BIHAR STATE HOUSING BOARD AND ORS.

DECEMBER 8, 2006

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[S.B. SINHA AND MARKANDEY KATJU, JJ.]

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Interest—Entitlement to—Housing Scheme—Non-completion of construction within time—Demand for refund of entire amount by applicant—Cancellation of allotment thereafter—Writ Petition seeking refund of entire amount with interest—Refund of only 80% of the amount deducting 20%—Deduction held not justified, and direction to refund the deducted amount with interest—On appeal, held: Applicant was entitled to interest on the entire amount and not on the deducted 20% amount alone—Bihar State Housing Board (Management and Disposal of Housing Estates) Regulations, 1983—Sub-rule 36 Clause (3).

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Appellant had applied for a flat constructed by respondent-Board. She deposited the sum towards the price of the flat. When the flat was not constructed within stipulated and reasonable period, she filed application for refund of the amount. Board, after 3 months from the application for refund, cancelled the allotment made in favour of the appellant.

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Appellant filed Writ Petition praying that she was entitled to refund of entire amount with interest on the entire amount alleging that her representation for refund of the entire amount was not acceded to. During pendency of the Writ Petition, a cheque refunding 80% of (deducting 20%) the entire amount was purported to have been issued by the Board. Single Judge of High Court held the deduction as not warranted and directed refund of the 20% deducted amount to the appellant with interest thereon. Division Bench of High Court upheld the order of Single Judge.

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The question for consideration in the appeal was whether the appellant was entitled to interest on the entire amount deposited by her or only on 20% thereof.

Allowing the appeal, the Court

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HELD: Respondent-Board cannot take recourse to the terms and conditions of allotment or of Clause (3) of Sub-Rule 36 of the Bihar State Housing Board (Management and Disposal of Housing Estates) Regulation, 1983 in the instant case. The appellant is entitled to interest at the rate allowed by the Single Judge on the entire amount subject to the adjustment of the amount already paid at the rate fixed by the High Court. [519-H; 520-A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5927 of 2006.

From the Judgment and final Order dated 15.4.2005 of the High Court of Judicature at Patna in L.P.A. No. 301/2005.

Manish Kumar Saran and Sujit Saurabh for the Appellant.

Shrawan Kumar and S. Chandra Shekhar for the Respondents.

The Judgment of the Court was delivered by

Leave granted.

The short question which arises, for consideration in this appeal which arises from the judgment and order passed by the Division Bench of the High Court dated 15.4.2005 in L.P.A.No. 301/2005 is as to whether the appellant herein is entitled to interest on the entire amount deposited by her with the respondent-Board for allotment of a flat.

The respondent is a Corporation constituted under the Bihar State Housing Board Act. It constructs houses for allotment thereof to various categories of people. Appellant filed an application for allotment of a flat constructed by the respondent-Board at Bahadurpur. Patna Under the Self Financing Scheme in the year 1994. He deposited a sum of Rs. 17,000/- on 13.1.1994 and the balance sum of Rs. 1.54.876/- on 31.3.1994.

The flats were not constructed within the stipulated period. They were not constructed within a reasonable period even thereafter. The respondent filed an application for refund of the amount on 29.10.1996. The respondent-Board purported to have cancelled the allotment made in favour for the appellant on 30.1.1997. Appellant filed a writ petition before the High Court in May, 2000 as his representation of the appellant to the effect that the entire amount should be paid back her had not been acceded to. In the said writ Petition the following prayers were made:

A “(i) for direction upon the Respondents to refund petitioner’s entire amount which she had deposited on 31.3.1994 for purchase of Flat. Since the physical possession of the Flat is not being given to her.

(ii) Petitioner also prove for the direction to the respondents to pay interest at the rate of 18% per annum on her entire amount to be
B calculated from 31.3.1994 to till the actual date of payment.

(iii) the petitioner also prays for compensation of Rs. 50,000/- for harassing the petitioner.”

During pendency of the said writ petition a Cheque for a sum of Rs.
C 1,37,341/- was purported to have been issued by the respondent-Board on 11.4.2001. As the said Cheque did not reach the hands of the appellant and as the fact of issuance of Cheque was disclosed only in the counter affidavit, the Cheque was revalidated on the request of the appellant.

Admittedly, 26% of the amount deposited by the appellant was deducted.
D The learned Single Judge of the High Court having regard to the facts and circumstances of this case opined as follows:

“....The letter Annexure-4 under which the petitioner had claimed
E refund was not an absolute offer. It was a conditional offer that the total amount be refunded to her. If the respondents were not ready and willing refund the entire amount and wanted to cut 20% of the deposit, the lapses being on their side, they were obliged to inform the petitioner that 100% refund cannot be made. It also appears from their conduct that finding an opportunity in their favour, they pounced
F upon it and readily agreed to refund 80% amount so that they can pocket the balance. If the flat was not complete in the year 1996 and is yet not complete, it would too much to say that a person if out of sheer frustration says that he/she does not want a flat then too the respondents would be entitled to a cut. Paragraph 8 of Annexure 2 says that some delay would be condonable but some delay does not mean notorious delay. Since delay should only mean a reasonable
G delay. If the possession was to be delivered to the petitioner in 1994, or immediately thereafter, then the respondents cannot say that they would not deliver the possession in the year 1996 and would not complete the construction even up to 2004 and would is still be entitled to deduct the amount of 20%. The conduct of the respondent is not fair. It perilously touched the boundaries of dishonesty. A
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public authority has to act fairly and in favour of the Public. These institutions/organisation are not to act like Shylock but have to act in favour of the public in a welfare State. A

It is held that the respondents are not entitled to deduct the said 20% amount. Let the said 20% amount be refunded to the petitioner within a period of three months from today with 6% interest from the date of the application made by the petitioner seeking refund. If the amount is not refunded to the petitioner within a period of three months then from the date of the petitioner's entitlement/application, the respondents would be obliged to pay interest at the rate of 15% on the delayed payment." B C

However, under a misconception that the prayer of the appellant in the said writ petition was confined to interest on 20% of the amount which had been withdrawn by the respondent-Board, a direction was made that the respondent must pay interest at the rate of 6% from the date of the application made by the appellant seeking refund. D

The Division Bench of the High Court in an intra Court appeal preferred by the appellant, however, refused to interfere with the said order. It is not disputed that the respondent-Board accepted the judgment of the learned Single Judge. It acted thereupon. The findings arrived at by the learned Single Judge are not thus open to question by it. Respondents are bound thereby as the same had attained finality. E

The short question, therefore, which arises for consideration is as to whether the appellant was entitled to interest on the entire deposited by her or on 20% thereof. It is neither in doubt or in dispute that the appellant had asked for refund of the amount only on 29.1.1996. F

When the appellant had asked for refund of the said amount, the respondent-Board could have done so. It could have refused to accede to the said prayer and could have cancelled the allotment. It did not do so immediately. It purported to have passed an order to the said effect only on 30.1.1997. That part of the action on the part of respondent-Board has been found to be unjustified and was set aside by the learned Single Judge of the High Court. G

We, therefore, keeping in view the facts and circumstances to this case are of the opinion that at this stage the respondent-Board cannot take recourse to the terms and conditions of allotment or of Clauses (3) of Sub-Rule 36 of H

A the Bihar State Housing Board (Management and Disposal of Housing Estates) Regulation, 1983 in the instant case.

For the reasons aforesaid, we are also of the view that the appellant is entitled to interest at the rate allowed by the learned Single Judge on the entire amount subject to the adjustment of the amount already paid at the rate fixed by the High Court on 27.10.1995.

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The appeals is allowed.

K.K.T.

Appeal allowed.