

PETITIONER:
BIHAR STATE HOUSING BOARD AND OTHERS

Vs.

RESPONDENT:
LALIT RAM

DATE OF JUDGMENT: 03/02/1997

BENCH:
MADAN MOHAN PUNCHHI, K.T. THOMAS

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

Thomas j.

This appeal by special leave is in challenge of 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. Appellants herein are the Bihar State Housing Board, its Managing Director and its Executive Engineer at Harun-Ranchi.

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.6,500/- 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 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 allotment was to pay the balance amount of Rs.68,320/- in monthly instalments alongwith 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 on account of it. Respondent then filed a writ petition before the High Court for appropriate reliefs.

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 respondent was to execute the date when respondent deposits that last instalments.

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 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.

The main thrust of argument of Sri 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 allotment 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 respondent is liable to pay interest on the amount of Rs.68,320/- since respondent has failed to pay the monthly instalment of Rs.980/- from the date of allotment.

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. 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. 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.

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 to the Housing Board to comply with the directions issued by the High Court in the order dated 2.2.1993.