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BIHAR STATE HOUSING BOARD AND ORS.

v.

SATYA NARAYAN PRASAD (DEAD) BY L.R.S. AND ORS.

JANUARY 28, 1998

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[G.B. PATTANAIK AND M. SRINIVASAN, JJ.]

Rules for Settlement of Land Acquired and Developed by the State Government at Patna—Rules 2(g) and 14—No residential plot to be allotted if that person has another plot in Patna—Written undertaking to be given to this effect—Intimation to be given to authorities if some land is acquired later—Acquisition of another plot of land not intimated as per undertaking—Allotment of first plot of land cancelled—High Court quashed order of cancellation—On appeal Held, allotment liable to be cancelled being contrary to Rules—Undertaking had not been carried out—Hence equitable relief cannot be claimed.

Constitution of India—Article 226—Order of cancellation quashed on principles of equity—Held, High Court erred while exercising its extra ordinary jurisdiction.

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Words and Phrases—“Family”—Meaning of in context of Rules for settlement of Land Acquired and Developed by the State Government of Patna—Rules 2(g).

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The appellant Housing Board had allotted a plot of land to the respondent in Sri Krishna Nagar. He has also applied to the Patna Improvement Trust for another plot of land earlier, which was pending. While completing the formalities regarding the Sri Krishna Nagar plot he swore two affidavits to the effect that neither he nor his wife or any of his minor children possess any land within urban areas of Patna and also undertook to inform the Housing Department if he acquires any land, even on a later date. The Patna Improvement Trust later allotted a plot of land to him in Sri Krishna Puri.

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Possession of the Sri Krishna Nagar plot was delivered after the respondent had already taken possession of the Sri Krishna Puri plot and the same was not intimated to the Housing Department. He constructed a house and started to reside in Sri Krishna Puri. A show cause notice was issued to him. He replied that the said facts regarding possession of another

plot were not disclosed as no information was demanded from him. A

The appellant Board thereafter cancelled the allotment of the Sri Krishna Nagar plot which was challenged in a writ petition before the High Court. The High Court quashed the order cancelling the allotment.

Aggrieved the appellant appealed to this Court contending that the relevant rules did not permit allotment of land to a person, if his wife or any dependant children possessed land within the municipal area of Patna; and that an affidavit had been sworn to this effect with an undertaking that the authorities would be informed of any future acquisition by the respondent. B

Allowing the appeal, this Court C

HELD : 1.1. A combined reading of the Rules for Settlement of Land Acquired and Developed by the State Government at Patna make it clear that an individual will not be entitled to an allotment of a second plot or a second house within the municipal limits if he or any members of his family are in possession of a plot or a house within the municipal limits. Allotment and possession of plot of land in Sri Krishna Puri had been given much earlier to the date on which possession of the land in Sri Krishna Nagar was given. The respondent was not entitled to get allotment of land in Sri Krishna Nagar, which was liable to be cancelled being contrary to the Rules of Allotment and the Competent Authorities rightly cancelled the same. D

[386-D-E]

1.2. The expression "family" has been defined in Rule 2(g) to mean family includes the wife or husband and the relations of the applicant who are entirely dependant on him, sons and step-sons, daughters and step-daughters, parents and minor brothers. [385-G] E

2. An unequivocal undertaking was given to intimate the fact of acquisition of any house or land after the date of the affidavit. The expression "acquisition" would obviously mean the date on which payment for the allotted land is made, the agreement entered into and possession delivered. A mere letter of allotment would not tantamount to acquisition of the land in question. When possession of the land in Sri Krishna Nagar was given, possession of the land in Sri Krishna Puri had already been delivered. The undertaking had not been carried out as the fact of acquisition of plot of land in Sri Krishna Puri had not been intimated notwithstanding the solemn undertaking and as such equitable relief cannot be claimed and the High Court was wholly in error in interfering with it in exercise of extra ordinary jurisdiction H

A under Article 226 of the Constitution. [386-F-H; 387-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 395 of 1987.

From the Judgment and Order dated 27.3.84 of the Patna High Court
B in CWJC No. 1564 of 1983.

Ranjit Kumar for the Appellants.

S.B. Sanyal and S.K. Sinha for the Respondents.

C The Judgment of the Court was delivered by

G.B. PATTANAIK, J. This appeal is directed against the Division Bench judgment of Patna High Court dated 27th March, 1984 in C.W.J.C. No. 1564 of 1983. By the impugned judgment Patna High Court has quashed the order of cancellation of allotment in favour of Respondent No. 1 on the ground that

D the foundation of issuing the order of cancellation becomes non est.

Respondent no. 1 had been posted as Deputy Secretary in the Local Self-Government Department of the State Government at Patna in the year 1962. At that point of time different authorities were considering the case of allotment of house site or flats and the respondent no. 1 had made three different applications for allotment of land and/or flat. His first application for allotment of plot of land under Middle Income Group Scheme in Sri Krishna Puri area was in the year 1961 and this application was made to the Patna Improvement Trust which Authority later on was known as Patna Regional Development Authority. He also made another application on 8th February, 1962 for allotment of a piece of land to the Housing Department in Srikrishna Nagar area under Low Income Group Housing Scheme. He had also made a third application to the Housing Department in the year 1965 for allotment of a residential flat in Kankarbagh area. He, however, was not successful in getting the flat in Kankarbagh area but by letter dated 21st June, 1962, the Government communicated to respondent no. 1 that he has been allotted a

G Plot in Srikrishna Nagar for which some initial deposits were required to be made. In accordance with the aforesaid letter of allotment the said respondent no. 1 did make the initial deposit on 26th June, 1962. The earlier application made by the respondent no. 1 to the Patna Improvement Trust for allotment of a plot of land in Sri Krishna Puri remained undisposed of. On 17.4.1965 the H respondent no.1 filed an affidavit before the Housing Department, Government

of Bihar stating therein that neither he nor his wife nor any of his minor child possess any house or land within urban areas of Patna and in the event it is found any of them have possession of such house or land then the State of Bihar in the Housing Department shall have the right to cancel the allotment and to forfeit the earnest money in addition to any criminal prosecution. He further undertook to inform the Secretary to the Government in the Housing Department if he acquires any house or plot after the date of the said affidavit. Substantially in the same manner another affidavit was also sworn to on 29.4.1965 and was submitted before the State Government. On 2.8.1966 the Patna Improvement Trust communicated to the respondent no. 1 that Plot no. 72D in Shri Krishna Puri has been allotted in his favour pursuant to the application of the year 1961. On receipt of the said intimation the respondent no.1 made the initial deposit as required and then got the said land allotted in the name of his wife and the Registered agreement to that effect was executed on 19.4.1967. On 7.7.1967 the Housing Department made some query as to whether the respondent no. 1 or his wife, mother, father or dependent child had been allotted any plot of land or house by any Governmental Agency to which the respondent no.1 alleges to have given a reply on 29.7.67. The Housing Board as well as the Housing Department, however, denied receipt of the aforesaid communication from the respondent no.1. Ultimately the respondent no.1 entered into a hire-purchase agreement with the Housing Department on 7.12.1970 and the delivery of possession was given on 19.12.1970. The land that had been allotted to respondent no.1 in Sri Krishna Puri area was given Possession to respondent no. 1 on 12.1.1971 and the other land which had been allotted in Sri Krishna Nagar area was given possession on 10.12.1971. It may be stated that after getting possession of the land in Sri Krishna Puri area on 12.1.1971 the said respondent no. I had not intimated this fact to the Housing Department notwithstanding his undertaking in the affidavits dated 15.4.1965 and 29.4.1965, referred to earlier. The said respondent no.1 built a house on the plot of land which was allotted to him in Sri Krishna Puri area and started residing in the same. So far as the land which had been allotted in Sri Krishna Nagar area, though the respondent no. I took possession of the same on 10.12.1971, but no construction had been raised thereon till 1982. It was the stipulation in the agreement that the houses should be built within 36 months from the date of allotment. Bihar State Housing Board which is the successor Authority in the matter of allotment of land issued a notice to the respondent no.1 on 18.6.1982 requiring him to show cause why the allotment in his favour be not cancelled since he had failed to comply with the terms of agreement regarding construction of house over the plot land within 36 months. A reply was given to the aforesaid

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A notice indicating therein that respondent no.1 had started construction of a house and reason for delay in starting the construction was the shortage of funds. The said Housing Board, however, issued a fresh notice on 6.9.82 calling upon the respondent no.1 to show cause why the allotment in his favour should not be cancelled for the reason that he had submitted a false affidavit and obtained an allotment of land from the Patna Improvement Trust even though by the date of entering into the agreement he had already acquired a plot of land and had taken possession thereof in Sri Krishna Puri area but had not intimate the said fact to the concerned Authorities. Pursuant to the said notice dated 6.9.82 the respondent no.1 did send his reply on 8.9.82 and the stand taken therein is that since Housing Department did not ask him to give any information at the time of handing over possession of land he was not required to give such information. Not being satisfied with the aforesaid reply and having found that the respondent no.1 had already been given possession of a plot of land in Sri Krishna Puri area the said Housing Board finally cancelled the order of allotment made in favour of the respondent no.1 in Sri Krishna Nagar area by order dated 19.3.1983. Aforesaid order of cancellation was challenged by respondent no.1 by filing a Writ Petition before the Patna High Court and by the impugned judgment Patna High Court having allowed the Writ Petition and quashed the order of cancellation, the present appeal has been preferred.

Mr. Ranjit Kumar, learned counsel appearing for the appellant contended before us that under the relevant rules in force dealing with the allotment of land in Municipal area of Patna no person can be allotted a plot/flat/house if he, his wife or any dependent children have in there possession a plot of land/flat or house and, therefore, the allotment of the land in Sri Krishna Nagar area and the handing over of possession of the same to the respondent no. 1 is invalid and inoperative and, therefore, the Competent Authorities have rightly cancelled the same. The High Court committed gross error in interfering with the said order of cancellation. He further contended that the respondent no. 1 had filed an affidavit stating therein that he would inform the Secretary of the Government in the Housing Department of Bihar if he acquires any house or land within the Municipal area and that undertaking not having been adhered to the Authorities concerned were fully within their powers to order cancellation of the land allotted and the High Court was in error in interfering with the order of cancellation. Mr. Sanyal, learned senior counsel appearing for the allottee respondent no.1 on the other hand contended that at no point of time the respondent no.1 has filed any false affidavit and he had duly intimated the facts and yet if the second allotment of plot of land

is made in his favour the same could not be cancelled by the allotting authorities. Mr. Sanyal, learned senior counsel further contended that the High Court had interfered with the impugned order of cancellation after having held equity lies in favour of the allottee respondent no.1 and that equitable relief granted should not be interfered by this Court under Article 136 of the Constitution. A

After the Independence of the country the desire of citizens to have houses in urban areas gradually increased. With the rapid industrial growth when cities began to develop people became crazy to have houses in Urban areas. State Governments started exercising control over such acquisition and framed Rules and Regulations indicating the guiding principle of allotment of land/house in the cities. Different Housing Societies came into existence in some States and different independent bodies like State Housing Boards and Regional Improvement Authorities were created for allotment of lands after developing the same to cater to the need of the public. Almost in every State uniform rule was applied to the fact that no applicant would be allotted a plot of land or a house if he, his wife or his dependent children are in possession of land or a house within the Municipal limits. The State of Bihar also framed a set of rules for settlement of land acquired and developed at Patna under Low Income Group Scheme as well as Middle Income Group Housing Scheme called "the Rules for Settlement of Land Acquired and Developed by the State Government at Patna." B C D E

Rule 9 of the said Rules speaks of the undertaking required to be given in writing by an allottee. F

Rule 14 of the said Rule clearly stipulates that the land would be settled with individuals who do not own residential house nor any land for construction of houses of Patna in their names or in the names of any member of their family and who are in genuine need of houses. G

The expression "family" has been defined in 2(g) to mean family includes the wife or husband and the following relations of the applicant who are entirely dependent on him sons and step-sons, daughters and step-daughters, parents and minor brothers. Rule 2(g), Rule 9 and Rule 14 are quoted herein below in extension:-"Rule 2(g) - "family" includes the wife or the husband and the following relations of the applicant, who are entirely dependent on him:- sons and step-sons, daughters and step-daughters, parents and minor brothers; H

Rule 9 - Every allottee shall have to give an undertaking in writing that

A the settlement is on his own behalf and exclusively for his own use, and that if at any time subsequent to the allotment it is found that the allottee was a Farzidar, or that he took settlement of land on behalf of any other person or persons, the Government shall have the right to cancel the allotment and to re-allot to any other suitable person or persons and to forfeit the entire amount deposited by him towards the cost of the land.

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Rule 14 - The land shall be settled primarily with individuals who do not own residential houses, nor any land for construction of houses at Patna in their names or in the names of any member of their family and who are in genuine need of houses."

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A combined reading of the aforesaid rules make it clear that an individual will not be entitled to an allotment of a second plot or a second house within the Municipal limits if he or any of the member of his family is in possession of a plot or house within the Municipal limits. Admittedly, the respondent no. 1 had been allotted a plot of land in Sri Krishna Puri and possession had been

D given to him much earlier to the date on which he got possession of the land in Sri Krishna Nagar and in terms of the aforesaid Rules he was not entitled to get the allotment of land in Sri Krishna Nagar. In that view of the matter the allotment and possession of the land in favour of the respondent no. 1 in Sri Krishna Nagar was liable to be cancelled being contrary to the Rules of Allotment and the Competent Authorities, therefore, rightly cancelled the same.

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That apart it also transpires from the records of the case that respondent no. 1 had given an unequivocal undertaking to the effect that he would intimate the fact of acquisition of any house or land if he acquires any after

F the date of the affidavit. The expression "acquisition" would obviously mean the date on which the payment for the allotted land is made, the agreement entered into the possession delivered. A mere letter of allotment would not tantamount to acquisition of the land in question. That being the position by the date the respondent no. 1 was given possession of the land in Sri Krishna Nagar area he had already got the possession of a land in Sri Krishna Puri area.

G On that piece of land he had built a house and was residing. The fact that he had already received possession of a plot of land in Sri Krishna Puri area on 12.1.1971 had not been intimated to the Housing Department of Bihar at any point of time notwithstanding the undertakings by the respondent no. 1 in his affidavits dated 15.4.1965 and 29.4.1965. Thus, the respondent no. 1 had

H not carried out the undertaking and had not intimated the fact of his acquisition

of plot of land in Sri Krishna Puri area notwithstanding his solemn undertaking A and as such cannot claim any equitable relief. The High Court was, therefore, wholly in error in granting the relief sought for on an equitable consideration. We are also of the considered opinion that in the matter of allotment of land within a Municipal area in accordance with the Rules and Regulations framed by the State Authorities no citizen can claim to get more than one plot of land or house and the plea of equitable relief is wholly misconceived. B

In the aforesaid premises, we see no illegality or infirmity with the order of the cancellation passed by the State Government and the High Court was wholly in error in interfering with the order of cancellation passed by the authorities in exercise of extraordinary jurisdiction under Article 226 of the Constitution. Accordingly, we set aside the impugned judgment of the Patna High Court and hold that the order of cancellation of the plot of land allotted in favour of respondent no.1 in Sri Krishna Nagar area is legally valid. The Writ Petition filed by the respondent, therefore, stands dismissed and this appeal is allowed. C

Before parting with the case a disquieting feature was brought to our notice, namely, an affidavit of a dead man was filed in the Registry by the concerned advocate-on-record but later on he has tried to wriggle out of the situation by trying to exclude the document from the Paper Book. We have already directed for an enquiry into the matter as to how the concerned Oath Commissioner could attest the signature of the deponent of the date on which he was not alive. We would have also taken a serious view of the matter against the advocate-on-record who filed the same in the Registry of this Court but we refrain from doing so in view of the unconditional apology tendered by the advocate-on-record in course of hearing. We, however, would observe that the atmosphere of the Court may not be polluted by filing of any forged document for some benefit in any individual case and no advocate-on-record who is an officer of the Court should involve himself in filing such a document. D

A.Q.

Appeal allowed. E

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