

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2136 OF 2009

(Arising out of S.L.P. (C) No.17106 of 2007)

Umesh Pandey

...Appellant(s)

Versus

**Chairman, Bihar State Housing Board,
Bihar and Ors.**

...Respondent(s)

O R D E R

Leave granted.

In response to an advertisement issued by the Bihar Housing Board (for short, “the Board”), a number of persons including the respondent applied for allotment of MIG house in the town of Arrah. The respondent submitted the required documents. A lottery was drawn on 12.1.1983 to determine as to which house would go to the particular applicant but only 23 out of 30 applicants were allotted houses measuring 2250 sq. fts. At an estimated cost of Rs.86,913/-. The respondent was not allotted the house on the pretext that he had not submitted affidavit in the prescribed format. He filed a writ petition, which was registered as CWJC No.5774 of 1986 for issue of a direction to the Board to allot him MIG house. By an order dated 9.9.1987, the High Court directed the Board to file a detailed affidavit giving particulars of the persons whose cases were considered for allotment of houses and names of the persons whose applications were rejected on the ground of being defective. However, the required affidavit was not filed.

During the pendency of the writ petition, the respondent was allotted a house at Dalpatpur (Arrah) at an estimated cost of Rs.1,49,370/-. The area of the new house was 1237 sq. feet as against 2250 sq. feet of the houses allotted in 1993 at an estimated cost of Rs.86,913/-.

...2/-

At the hearing of the writ petition, counter-affidavit was filed on behalf of the Board wherein it was stated that the cost of each of the four houses which were not allotted in 1983 had been worked out as Rs.3,73,719/- as on 31.12.1995. This amount was arrived at by adding interest for the period from 1.12.1983 to 31.12.1995.

The learned Single Judge allowed the writ petition on 20.3.1996. He held that the action of the Board to exclude the writ petitioner from the lottery held in 1983 was wholly unreasonable, arbitrary and unjustified and accordingly directed the Board to allot a house to the writ petitioner. On appeal, the Division Bench of the High Court set aside the order of the learned Single Judge on the premise that during the pendency of the writ petition, the Board had offered another house to the writ petitioner, which was not challenged by him.

Having heard the learned counsel appearing on behalf of the parties and perused the records, we are of the view that the learned Single Judge was quite justified in allowing the writ petition because the Board did not offer any valid ground for excluding the respondent's application at the time of lottery held in 1983. Undisputedly, the respondent was neither informed about the so-called defect in the affidavit nor he was given opportunity to rectify the same. This being the position, the Division Bench was not justified in setting aside the direction given by the learned Single Judge.

Accordingly, the appeal is allowed, impugned order passed by the Division Bench of the High Court is set aside and the one passed by the learned Single Judge is restored.

[B.N. AGRAWAL]J.

[G.S. SINGHVI]J.

New Delhi,
April 02, 2009.