

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.500 of 2003

IN

Civil Writ Jurisdiction Case No. 7739 of 2002

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1. The Bihar State Housing Board, through its Managing Director.
 2. The Secretary, Bihar State Housing Board.
 3. The Executive Engineer, Bihar State Housing Board.

All having their offices at 6-Sardar Patel Marg, P.S. – Secretariat,
Town and District – Patna.

.... Appellants

Versus

1. Ram Keshwar Chaudhary, son of Late Amrit Chaudhary, resident of village Himi, P.S. – Daniama, District Patna at present residing at J-12, P.C. Colony, Kankarbagh, Patna 800 020.
2. The State of Bihar, through the Commissioner-cum-Secretary, Department of Housing, Government of Bihar, Patna.

.... Respondents

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Appearance :

For the Appellants	:	Mr. Sri Lalit Kishore, Sr. Advocate Mr. Anshuman Singh, Advocate
For the Respondents	:	Mr. Sri Banwari Sharma, Advocate Mr. Shiv Kumar, Advocate

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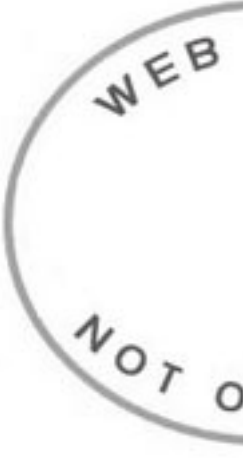
CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH
And
HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 03-08-2015

The appellants, in this Intra-Court Appeal, is the
Bihar State Housing Board. The contesting respondent no. 1 is
Ram Keshwar Choudhary.



2. The contesting respondent had filed the writ petition for a direction to the Bihar State Housing Board (in short the “Housing Board”) and its officers to deliver physical possession of the plot of land allotted to the writ petitioner, for which, he had paid substantial amount of money. The land to be allotted to the writ petitioner was situated within, what is known as, the “Digha Housing Board Colony”. The Housing Board took the stand that because of illegal encroachments it was not in a position to take and deliver possession of land to the petitioner.

3. Upon this plea being taken, the learned Single Judge, by the judgment and order under appeal, directed the Housing Board to refund the money received from the writ petitioner with interest at the rate of 12% with quarterly interest. Housing Board, being aggrieved by this high rate of interest, filed the appeal. Upon notice, the writ petitioner, who is the contesting respondent in this appeal, appeared and filed application seeking leave to file cross objection/cross appeal. Leave is granted. In the cross appeal, the writ petitioner seeks to challenge the order of the learned Single Judge and seeks a mandamus to the Housing Board and deliver possession to him of the allotted piece of land.

4. Heard learned counsel for the appellant, Sri Anshuman Singh and learned counsel for the respondent no. 1, Sri Banwari Sharma, and with their consent, this appeal is being disposed of at this stage itself.

5. It appears that substantial lands were acquired under the provisions of the Land Acquisition Act (hereinafter referred to as the “Act”) for the purposes of the Bihar State Housing Board. Notwithstanding the Housing Board making full payment towards the cost of acquisition, it could not get possession thereof. Without having possession it proceeded to make allotments of the said land. Persons like the writ petitioner made applications and were allotted plots, they paid substantial amount, but, the Housing Board did not get possession thereof, as there were large scale encroachments. There were several litigations including litigation going up to the Apex Court, wherein the Apex Court held, the acquisition to be valid but no court could manage to get the encroachers vacated from the said land. The net result was that on one hand, people were present for delivery of possession of allotted land, whereas on the other hand, there were encroachers who had allegedly encroached and constructed upon those lands. With this problem the State Government



came up with “Digha Acquired Land Settlement Act, 2010”
i.e. 8 years after the judgment in this case.

6. In the writ proceedings, Section 4 of the Act, *inter alia*, provides that all allotments made by the Housing Board in respect of land within Digha area shall stand cancelled, and the allottee would get refund of the money paid along with 8% interest. This court has to see effect of this subsequent legislation on the pending controversy.

7. In our view, filing of cross appeal/cross objection by the writ petitioner to a great extent sorts this out. Had the writ petitioner not filed cross appeal/cross objection, the effect would be that there was a mandamus issued for refund and the only dispute was whether the interest would be 12% compounded quarterly or any other. By filing of the cross appeal/cross objection, the very judgment in so far as it rejects the claim of the petitioner, to get their physical delivery of the plot has become an open question.

8. That being so, in view of the Act aforesaid, the prayer of the writ petitioner in cross appeal/cross objection cannot be granted, because, the relief being claimed by the writ petitioner is satisfactorily denied by Section 4 of the aforesaid Act. Thus, cross appeal/cross objection would now



be liable to be dismissed subject to the provisions of Section 4 of the Act i.e. the Housing Board would now be required to forthwith refund the entire amount paid by the writ petitioner along with interest at the rate of 8% compounded annually to avoid the dispute as to the quantum.

9. We would only rely on the judgment of the learned Single Judge which noticed that the writ petitioner had deposited Rs. 96,518.00 and that would be the amount liable to be refunded apart from Rs. 2000.00 earnest money, as per the Housing Board Regulation alone, and would carry interest of 8% compounded annually, as the petitioner is a senior citizen and awaiting allotment since 1978 i.e. nearly 40 years and the money value having been eroded all these years.

10. We would direct the Housing Board to forthwith refund the money with the aforesaid statutory interest i.e. 8% compounded from the time the money was deposited up to date. The aforesaid payment would have to be made directly through NEFT in the account of the writ petitioner within one month from today, peremptory, otherwise, the Managing Director and the Housing Board would be liable to be proceeded in contempt.

11. Sri Banwari Sharma, learned counsel for the



petitioner would give the Bank particulars to Sri Anshuman Singh, learned counsel for the Housing Board, within a week from today, which would be transmitted to the Housing Board for necessary compliance without any excuse.

12. With this observation and direction, these appeals are, accordingly, disposed of.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

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