

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1281 of 2012

IN

Civil Writ Jurisdiction Case No. 12242 of 2005

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1. The Bihar State Housing Board, Patna through its Managing Director-6, Sardar Patel Marg, Patna-15.
 2. The Managing Director, Bihar State Housing Board, 6, Sardar Patel Marg, Patna-15.
 3. The Estate Officer, Bihar State Housing Board, 6, Sardar Patel Marg, Patna-15.
 4. The Executive Engineer, Bihar State Housing Board, Patna Division 2, Patna.
 5. The Revenue Officer, Bihar State Housing Board, 6, Sardar Patel Marg, Patna-15.
- Respondents/Appellants.

Versus

1. Gunjeshwari Devi, wife of Late Kalika Prasad Thakur.
2. Kamlesh Kumar.
3. Bimlesh Kumar.

Both sons of Late Kalika Prasad Thakur.

All residents of Village- Bisikhurd, P.S- Dinara, District- Rohtas, at Present residing at Mohalla- West Patel Nagar, Ganga Path Road, Road No. 6, Patna-23, P.S- Shastri Nagar, District- Patna. Petitioners/Respondents 1st Set.

4. The Officer-in-Charge, Public Grievance Cell, Bihar Housing Board, 6, Sardar Patel Marg, Patna. Respondents/Respondent 2nd Set.

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Appearance :

For the Appellants : Mr. Anshuman Singh, Adv.

For the Respondents : Mr. Ras Bihari Thakur, Adv.

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 26-02-2015

Heard Mr. Anshuman Singh, learned counsel for the

Bihar State Housing Board (hereinafter referred to as the 'Housing

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Board') at length, learned counsel for the writ petitioners, who are the respondents in this Intra-Court appeal and with their consent this appeal has been heard for final disposal at this stage itself.

2. The writ petitioners/respondents in this appeal had made an application for allotment of residential plots to the Housing Board. They had deposited earnest money and then from time to time deposited money towards the cost of plot as quantified by the Housing Board. They waited for over a decade. They were initially told that they had been allotted a plot of land but delivery could not be given because the Housing Board had no physical possession thereof. Ultimately, finding no way out, the writ petitioners filed a writ petition seeking refund of money as deposited from time to time by them. Let it be noted that they had made an application in the year 1970 and deposited the earnest money in 1978. Thereafter, as demanded from time to time, they deposited further money towards the cost of land. Having waited for 35 years, the writ petition was filed in the year 2005 seeking refund of money. When the writ petition was taken up on 01.03.2012, as apparent from this order which is impugned before us, the learned counsel for the Housing Board conceded that the writ petition may be disposed of in terms of order passed in C.W.J.C. No.10728 of 2005 (Anant Jha Vs. the State of Bihar

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& Ors.). In that case, which was disposed of on the same very date by the same very Court, it had been ordered that so far as the earnest money is concerned, the same should be refunded with simple interest at the rate of 5% per annum. So far as the other payment is concerned i.e. towards cost of land, that amount be refunded with interest at the rate of 12% compounded quarterly. The writ petition was, accordingly, allowed. The Housing Board challenges this order.

3. Mr. Anshuman Singh, learned counsel for the Housing Board, submits that different Courts have passed different orders at different times. The orders are varied from 6%, 8% and 12% per annum. Earlier when orders were passed for refund of amount at 6% that were affirmed by the Supreme Court. He clearly states that in other cases the Supreme Court did not interfere with the orders of this Court.

4. Learned counsel for the writ petitioners/respondents points out that even recently in the case of **Dr. Nitendra Prasad Sinha Vs. the Chairman-cum-Managing Director, Bihar State Housing Board & Ors.** since reported in **2011 (4) PLJR 219** this Court passed identical order and the judgment in the case of **Anant Jha (supra)** was following the aforesaid Division Bench judgment. He further points out that the

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appeal of the Housing Board to the Apex Court was not entertained by the Apex Court against the order in this case.

5. Mr. Anshuman Singh further submits that the Housing Board is a public authority and must not be saddled with such interest of payment which is even otherwise contrary to the regulation-45 framed in the Bihar State Housing Board Act, 1982, which prescribes refund of earnest money deposited by any person with interest of 5% only.

6. Having considered the matter, in our view, this is not a case for interference in appeal. We would first like to point out that the order of the learned Single Judge was passed virtually on consent of parties. That being so, there cannot be an appeal against the consent decree. It is not shown to us that in any manner the consent was vitiated. Even if there was anything wrong recorded by the learned Single Judge, this record could only be corrected by approaching the learned Single Judge as per the judgment of the Apex Court in the case of **State of Maharashtra Vs. Ramdas Shrinivas Nayak and another** since reported in **AIR 1982 Supreme Court 1249**. The Housing Board not having taken such a step, we cannot entertain this appeal.

7. There is yet another reason for not entertaining the appeal. Mr. Anshuman Singh submits that regulation-45 of

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the regulations provides refund with 5% interest only. He is not fully wrong nor fully correct for regulation 45 speaks only refund of earnest money. It does not talk of refund of money deposited by way of consideration for purchase and/or allotment of land. It is for this reason all the Courts have consistently ordered that so far as the earnest money is concerned, that is to be refunded with simple interest at rate of 5% per annum but for the other money there is nothing specified in this regulation. Thus, interest being a matter of discretion of the Court upon circumstances obtaining in a case. That cannot be subject to appeal unless it is shown that the discretion was perverse exercise of power.

8. To the argument that the Housing Board is a public authority, our reply is that this Court has to do justice and justice means justice to the citizens and to the Housing Board. Justice is not a one way movement. We have to see the plight of the writ petitioners who had applied for land to make his house. He was made to wait for over 35 years and then they were forced to move the Court for refund. The original writ petitioner did not survive to see the refund for during the pendency of the writ petition itself he died. Can the Court shut its eyes to the plight of such citizens merely because the Housing Board is a public authority? The answer is no. Where public authority takes upon

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itself to discharge public functions it has the responsibility along with it. If it fails to discharge its responsibility in a responsible manner it has to blame itself and not to others. It cannot push the burden to protect it.

9. Before parting, we may notice a further argument of Mr. Anshuman Singh, learned counsel for the Housing Board, which argument in fact does not arise in the present case but as it was vehemently pointed out we must notice it. He has drawn attention of this Court to Section-4 of the Digha Acquired Land Settlement Act, 2010 which was enforced with effect from 27.11.2013. It is for this reason we had held just above that it does not apply. He submits that in Digha Acquired Land Settlement Act, 2010 statutorily now interest for refund has been provided at the rate of 8% per annum. We are afraid. That is not the provision. The provision is that where, pursuant to this Act, i.e., Digha Acquired Land Settlement Act, 2010, any plot of land, which was allotted and could not be delivered, is cancelled in such an event the money deposited by the applicant is to be returned. Such return has to be with 8% **not** simple but 8% compound interest from the date of payment of money till the date refunds are made. It is not simple interest of 8%. This supersedes regulation 45 of the Housing Board regulations. In the present

case, the writ petition was filed in the year 2005 and it was allowed on 01.03.2012 long before the Digha Acquired Land Settlement Act, 2010 was enforced.

10. In view of the aforesaid, we see no reason to interfere with the order of the learned Single Judge. Accordingly, this appeal is dismissed.

(Navaniti Prasad Singh, J.)

(Jitendra Mohan Sharma, J.)

Trivedi/NAFR

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