

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7886 of 2015

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Ramyash Sharma, Son of Late Mukhlal Sharma, Resident of village - Mani, Police Station - Mani, District - Rohtas.

.... Petitioner

Versus

1. The State of Bihar.
2. The Secretary, Building Construction Department, Bihar, Patna.
3. The Joint Secretary, Building Construction Department, Bihar, Patna.
4. The Managing Director, Bihar State Housing Board, Patna.
5. The Executive Engineer, Bihar State Housing Board, Patna.
6. The Assistant Engineer, Bihar State Housing Board, Division No.-2, Patna.
7. The Junior Engineer, Bihar State Housing Board, Division No.- 2, Patna.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Kumar Ranjit Ranjan, Advocate
For the State : Mr. Ravish Chandra, AC to SC-6
For the Housing Board : Mr. Anil Kumar Sinha, Advocate

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 22-11-2016

Heard parties.

This writ application has been filed for grant of following
reliefs :-

(i) For direction to the respondents to bring to the notice of this Court about the execution of the respondents who have failed to give the physical possession of Plot No.8M/221 in Sector-8 under M.I.G. at Digha, Patna.

(ii) For direction to the respondents to hand over the physical possession of the aforesaid plot in favour of the petitioner, who aid total installments of Rs.97,635/- to the Bihar State



Housing Board, Patna Division No.2.

*(iii) For any order/orders,
direction/directions as this Court may deem fit and
proper in the facts and circumstances of the case.*

Admittedly, the petitioner was allotted Plot No.8M/221 of Section 8 under M.I.G. Scheme at Digha and after payment of some amount even possession on paper was also given to the petitioner but the physical possession could not be given. A Hire-purchase Agreement was also executed between the parties (Annexure-5). The payments made in installments have been dealt in Annexure-5.

It is contended on behalf of the petitioner that in view of the delay caused in development of Housing Scheme at Digha, the Bihar State Housing Board (hereinafter referred to 'the Board'), vide Annexure-6 dated 25.02.2002, had given a proposal for allotment of MIG flat at Bahadurpur, Patna in place of Plot of Digha, Patna. However, the petitioner vide Annexure-7 had informed the Board that he is not interested in flat rather he would be interested in any plot if it is allotted at Lohiyanagar. Thereafter, no communication was there despite the petitioner having been represented several times.

Thus, it is contended that the petitioner should be either allotted a plot at Digha or in alternative a plot at Bahadurpur or



Lohiyanagar.

Counter affidavit has been filed on behalf of the Housing Board stating that the possession was given to the petitioner on paper of Plot No.8M/221 on 20.10.1995 but it is admitted position that no physical possession of the plot has been given. Subsequently, the Digha Acquired Land Settlement Act, 2010 (hereinafter referred to as 'the Act') was enforced in the State of Bihar and Section 5 of the Act declares that any allotment made by the Board under the Digha Scheme shall deem to be annulled provided that such allottees of land by the Board, who are in actual physical possession of the land and have constructed residential or commercial building, shall not be subjected to annul.

In the case in hand, it is not the stand of the petitioner that he has been given physical or actual possession of the land and, thereafter, he has constructed a residential or commercial building.

Accordingly, it has to be understood that the petitioner's allotment at Digha has also to be annulled as the alternative proposal of flat was not accepted by the petitioner and, thereafter, his proposal for allotment of plot anywhere else was not considered by the Board.

Be that as it may, in my view, the petitioner's case would be covered under Section 4 of the Act. Section 4 speaks not only regarding cancellation of allotments but also for refund of the deposits



made by allottees/applicants. For better appreciation, the aforesaid provisions is quoted as under :

“4. Cancellation of allotments and refund of the deposits made by the allottees/applicants, with the Board along with interest- The Board may cancel the allotment/allotments made over the acquired land under the Bihar State Housing Board (Management and Disposal of Housing Estates) Regulation, 1983 framed under the Bihar State Housing Board Act, 1982 and make refund of the deposits made by such allottees/applicants along with compound interest @ 8% per annum from the date of its deposit till the date of refund”.

The validity of the aforesaid provisions of the Act is not under challenge in the case in hand.

In such a situation, I do not have any hesitation in holding that the petitioner being an applicant though not reaching the stage of allottee would also be covered for the relevant purpose under Section 4 of the Act and, thus, would be entitled for refund along with interest.

Accordingly, it is ordered that the entire amount which has been paid by the petitioner should be refunded within a period of two months along with compound interest @ 8% per annum to be calculated from the date of its deposit till the date of refund in terms of Section 4 of the Act.

The two months' period would be counted from the date of production of a copy of this order by the petitioner before the Managing Director of the Housing Board who would get all



formalities done on the same day with regard to refund.

This writ application stands disposed of.

(Dr. Ravi Ranjan, J)

V.K. Pandey/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	16.01.2017
Transmission Date	N.A.

