IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.497 of 2014
Arising out of
Civil Writ Jurisdiction Case No. 20820 of 2010

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1. The Bihar State Housing Board through the Managing Director, near Old Secretariat, Bihar, Patna
2. The Managing Director, Bihar State Housing Board, near Old Secretariat, Bihar, Patna
3. The Revenue Officer, Bihar State Housing Board, Bhutnath Road, Bahadurpur Housing Colony, Patna - 26
4. The Executive Engineer, Bihar State Housing Board, Patna Division - 2

.... Appellant/s

Versus

Sita Nath Thakur Son of Late Pandit Baidyanath Thakur Resident of L.F. 3/1, Bahadurpur Housing Colony, Bhootnath Road, P.O. & P.S. Agamkuan, Distt. – Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Anshuman Singh, Advocate.
For the Respondent/s : Mr. Awadhesh Kumar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
and
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)
Date: 05-08-2016

The order dated 31.01.2013 passed by the learned Single Bench is the subject matter of challenge in the present Letters Patent Appeal whereby the additional demand of Rs. 2,14,546/- raised on 26.10.2010 was interfered with and it was directed to recalculate the amount which would be payable by the writ applicant. The Court issued the following direction:

> " Accordingly, this writ application is allowed. It is held that in view of the fact that nothing could be brought forward by the respondent-Board showing the petitioner at fault, for the error committed by the respondents the petitioner cannot be saddled with interest upon any escalation of price
>
> So far the principal amount is concerned, let the respondent-Board recalculate the same and re-examine as to

> when such loan was taken by the respondent-Board and if the loan was taken before the Hire Purchase Agreement or handing over the possession of the flat to the petitioner then why a decision was taken only after 12 years for recovery of the amount. However, if it reaches to the conclusion that the loan was actually taken then it would record every fact commencing from the date of raising loan till taking any decision for escalation of price and then fix instalment for payment on principal amount which shall be paid by the petitioner. However, the petitioner would not be fastened with any liability to pay any interest upon such amount."

As per the admitted facts, the LIG Flat in question was allotted on hire purchase basis to the writ applicant on 27.07.1986 on tentative price determined as Rs. 35,500/-. The monthly installment payable was of a sum of Rs. 392/- per month. It was also contemplated that in case there is default, the interest at the rate of 1% per month shall be charged on all dues and Rs. 5/- per default towards administrative and financial charges in respect of the flat allotted.

The applicant was served with a demand on 15th May, 2010 that the balance amount of Rs. 2,14,546/- is payable. Such demand was reiterated on 26th October, 2010.

In a writ petition filed on behalf of the applicant, the respondent herein, the stand of the appellant is that the price initially communicated to the applicant is tentative and that the Board has finalized the price in its Board's meeting on 30.04.1998 whereby the applicant was found liable to pay total sum of Rs. 1,47,075.10. The amount demanded includes the default amount, amount of installment and the interest thereon in terms of the letter of allotment. The detailed calculation has been appended with the reply as Annexure-B. The learned Single Bench allowed the writ application *inter alia* holding that the Board has reasonably failed to make out a case i.e., the escalation of price of rise.

We find that the claim of the Board is in two parts, one regarding payment of installment in terms of the Hire Purchase Agreement and the interest thereon on account of delayed payments, the second is the final price and then its demand from the writ applicant for payment.

The calculation-sheet appended with the counter affidavit mentions the revised cost of Rs. 1,84,700/- on 31st March, 1998 at the rate of 11.75% interest. Admittedly, the revised cost was not communicated to the writ applicant prior to 15th May, 2010 and even in the said communication there is no reference of the revised cost. The interest could be claimed from the writ applicant only after revised cost is communicated and after, the applicant is given time to pay the revised cost either in installment or in lump-sum. But no such process has been adopted by the Board, therefore, we find that the order of the learned Single Bench quashing the demand raised by the Board cannot be said to be illegal in any manner. However, the direction to calculate the demand in a particular manner cannot be said to be sustainable. The interest has to be calculated on the due amount in terms of the agreement and policy decisions of the Board.

Therefore, while upholding the quashing of the demand notice dated 15th May, 2010, the present appeal is disposed off with a direction to the appellants to recalculate the final price and give an option to the writ applicant to pay the same either in lump sum or in monthly installments. The interest would be chargeable only thereafter. This is apart from default committed of installment, if any, in terms of original letter of allotment. The appellants shall calculate and communicate the said amount as well including interest therein.

The Letters Patent Appeal stands disposed off accordingly.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

P. Kumar/Anjani

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	N/A