

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13546 of 2015

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Dr. Madan Mohan Dubey, Son of Late Krishna Kumar Dubey, Resident of 67
M.I.G.H. Kankarbagh, P.S.- Kankarbagh, District- Patna (Bihar)

... .. Petitioner

Versus

1. The State of Bihar
2. The Principal Secretary, Urban Development and Housing Department,
Government of Bihar, Patna
3. The Bihar State Housing Board through its Managing Director, 6 Sardar Patel
Marg, Patna
4. The Managing Director, Bihar State Housing Board, null 6 Sardar Patel Marg,
Patna
5. The Estate Officer, Bihar State Housing Board, 6 Sardar Patel Marg, Patna
6. The Revenue Officer, Bihar State Housing Board, 6 Sardar Patel Marg, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dr. Madan Mohan Dubey
For the Respondent/s : Mr. Rajesh Singh, GP 16

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 28-01-2019

Heard Mr. (Dr.) Madan Mohan Dubey, the petitioner in
person and Mr. R.S. Pradhan, learned Senior Counsel for the
Housing Board.

The present writ application has been filed for a
direction to the Respondent Housing Board to recalculate the
interest as per the agreement dated 30.10.1975 and to refund the
excess interest amount with 12% interest as the same had been
realized by the respondent Housing Board on threat of execution
of sale deed with regard to M.I.G. House No. 67, Lohiyanagar,



Patna. The prayer as stipulated in paragraph 1 of writ application reads as:

“That, this is an application for issuance of a writ of Mandamus directing/commanding the respondents to recalculate the interest as per the agreement dated 30.10.75 and to refund the excess amount which the Respondent have illegally compelled the petitioner for payment for execution of sale deed for MIG 67 Lohia Nagar, Kankarbagh Patna-20 with 12% cumulative interest as given in L.P.A. No.1943/2011.”

The factual matrix of the case is that prior to creation of Bihar State Housing Board (hereinafter referred to as the Board) in 1972, the allotment of land/house/flat used to be done by the Housing Department, Government of Bihar. The Housing Department published a notice on 20.3.1965 inviting applications for allotment of houses in Lohiyanagar at Patna on rental basis. In pursuance to the said notice dated 20.03.1965, the petitioner submitted application and consequently, the Housing Department allotted a house to the petitioner being M.I.G. House No.67, vide Letter No. 5373, dated 28.09.1968, on the monthly rent of Rs. 107/-. The petitioner was given possession of the house in question and he started residing therein. The petitioner started making payment of the rent to the concerned authority.



Subsequently, after coming into existence of the Board on 01.05.1972, applications were invited from public including the persons who were residing on the rental basis, if interested, for purchase of the houses/flats on hire purchase basis in pursuance to the decision of the Board. The Board vide letter dated 12.6.1975, communicated the decision to the petitioner to allot him MIG 67, Lohiyanagar at the tentative price of Rs.38,600/- to be paid in installments. In pursuance to the said decision, the petitioner entered into the agreement, as contained in Annexure 3, with Respondent No. 3, the Board through its Managing Director on 30.10.1975 for purchase of said house on hire purchase basis. As per the aforesaid agreement, the petitioner was required to make payment of interest at the rate of 7%, provided the installments of Rs.278/- is paid by 7th day of every month, failing which the petitioner was supposed to pay interest at the rate of 9.5% and the amount of installment at the enhanced rate of interest would come to Rs.322/- and the agreed amount was to be paid in total 180 installments. The petitioner claims that in pursuance to the agreement, he deposited the entire amount in 1979. Thereafter, the petitioner requested the Board to inform whether there is any due amount to be paid, so that the deed may be registered in his name. On the request of the petitioner, the Housing Board



provided calculation chart showing that the petitioner has to pay Rs.9159/-. After receipt of the said calculation chart dated 30.5.1979, as contained in Annexure 4, the petitioner came to know that the Board has charged the interest at the rate of 8% instead of 7% on the timely payment of the monthly installments and at the rate of 10.5% instead of 9.5% on the delayed payment of monthly installments. The petitioner also came to know that enhancement in the rate of interest was made without any proper decision of the Board of Directors of the Housing Board. However, final registration of the said flat MIG 67, Lohiyanagar was done on 30.12.1996. Thereafter, the petitioner continued demanding refund. However, vide letter dated 24.9.1996, the petitioner was asked to pay additional sum of Rs.79,062/- and the said demand notice was challenged by the petitioner in a writ application being CWJC No. 2896 of 2009 wherein the said demand was quashed and the petitioner was held entitled to refund of the interest from the Board for the period 1974 to 1996. Relevant portion of the order dated 15.11.2011 passed in CWJC No. 2896 of 2009 reads as follows:

“This writ petition is accordingly allowed and the order contained in Annexure 13, dated 24.9.1996 demanding payment of sum of Rs.79,062/- is quashed. The subsequent order as contained in Annexure 8, dated



5.12.2008 so far as it relates to payment in pursuance of the earlier decision, dated 24.9.1996 is also quashed. Since the petitioner has already made payment of the entire amount, he would be entitled to refund of interest only charged by the Board for the period 1974 to 1996.”

In pursuance to the order dated 15.11.2011 passed in CWJC No. 2896 of 2009, the Board recalculated the excess interest amount realized and refunded to the petitioner Rs.26081/- vide Board's letter contained in Memo No. 5701 dated 21.6.2012, as contained in Annexure R-5 to the counter affidavit filed on behalf of Respondent nos. 3 to 6. The petitioner, thereafter, again filed another writ application being CWJC No. 12804 of 2012 which was disposed of by a Bench of this Court vide order dated 13.5.2013 with a direction to the Managing Director of the Board to consider the representation of the petitioner alleged to have been submitted on 4.6.2012. The said representation was disposed of by the Managing Director vide order dated 22.7.2013 whereby, after deducting the amount to the tune of Rs.26081/- already paid to the petitioner, the balance amount was calculated as Rs.44011/- and the Managing Director vide letter contained in Memo No. 6153 dated 26.7.2013, as contained in Annexure R-8 to the counter affidavit, also refunded Rs.44011/- to the petitioner.



It is submitted by the petitioner, in person, that the rate of interest was enhanced from 9.5% to 10.5% without any such decision of the Board. Consequently, the learned Senior Counsel appearing for the Board was granted opportunity to bring on record the decision of the Board since it was initially claimed by the counsel that decision was taken by the Board but no such decision was brought on record and ultimately a supplementary counter affidavit was filed by Respondent Nos. 3 to 6 dated 12.4.2018 wherein it was admitted that from July, 1974 to January, 1979 the petitioner deposited Rs.27205.79 on the basis of which interest was calculated at the rate of 10.5% but if the interest at the rate of 9.5% is calculated, the amount which the petitioner was liable to pay, comes to Rs.25528.14. Hence, the petitioner made excess payment of Rs.1677.64, moreover, an excess amount of Rs.618.41 was also deposited, hence the total excess amount deposited by the petitioner was Rs.2,296.06. Paragraphs 4 and 5 of the supplementary counter affidavit dated 12.4.2018 read as follows:

“4. That in view of the said direction of the Hon’ble Court, the matter of interest has been re-examined by the Revenue Section of the Office of the Board and after reverification and calculation, it has been found that from July 1974 to January 1979 and again from January 1985 to January 1989, the interest has been charged at the rate of 10.5%. However, on



calculation of the amount payable by the petitioner from July 1974 till January 1979, the petitioner made deposit of Rs.27,205.79/- in which interest was calculated at the rate of 10.5% but, if interest at the rate of 9.5% is calculated, the amount payable by the petitioner comes to Rs.25,528.14/- and if the said amount of Rs.25,528.14/- which was at the rate of 9.5% is deducted from Rs.27,205.79/-, excess amount at the rate of 1% comes to Rs.1,677.64/- and in that way, the Board issued letter as zero dues in 1988. Thereafter, an excess amount of Rs.618.41/- was also deposited. In this way, the allottee deposited Rs.1,677.64/- + Rs.618.41/- i.e. total excess amount on account of interest was deposited by the allottee which comes to Rs.2,296.6/-. The Office has also prepared computerized detail calculation chart month wise. A photo copy of the calculation chart month wise is annexed herewith and is marked as Annexure-R10 to this affidavit.

5. That, thus, it is stated that the excess amount on account of interest deposited by the petitioner i.e. Rs.2,296.6/- has been worked out and calculated in the chart which is based on calculation of interest at rate of 9.5% and according to the said calculation, an excess amount of Rs.2,296.6/- on the basis of interest at the rate of 10.5% for certain period comes as per the calculation chart as annexed above in the present third supplementary counter affidavit.”



Mr. R.S. Pradhan, learned Senior Counsel for the Board submits that the Board is ready to refund the excess paid amount to the petitioner. Mr. Dubey, the petitioner in person, submits that even the present calculation made by the Board is wrong, however, taking into account the fact that the matter has remained pending since long and the petitioner, due to his old age, is not inclined to continue with the litigation and accepts the present calculated amount with interest. However, no affidavit with regard to the aforesaid acceptance has been filed by the petitioner. It is submitted by the petitioner that the entire payment was made in 1980, hence the refund of admitted excess payment be made with interest.

Considering the rival submissions of the parties, since the Housing Board admits that excess amount to the tune of Rs.2296.06 has been realized from the petitioner due to calculation of interest at the enhanced rate without proper approval of the same by the Board of Directors and the petitioner is ready to accept the calculated amount, the Managing Director of the Board is directed to refund the said amount with interest of 4% to be calculated from 1st of January, 1981 till the date of actual payment. It is expected that the whole exercise be completed within three months.



Accordingly, this writ application is allowed to the extent indicated above.

Amrendra/-Anil/ (Dinesh Kumar Singh, J)

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

