

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1567 of 2012

In

Civil Writ Jurisdiction Case No.2288 of 2012

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Basanti Mukherjee, W/o Late Gurudas Mukherjee R/o Radhendu Bhawan,
Mohalla- Kunkun Singh Lane, P.S.- Pirbahore, District- Patna

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Urban Development Department, Govt. of Bihar, Patna, New Secretariat, Patna
2. The Bihar State Housing Board 6, Mangles Road, Patna through the Managing Director
3. The Managing Director, The Bihar State Housing Board, 6, Mangles Road, Patna
4. The Estate Officer, The Bihar State Housing Board, 6, Mangles Road, Patna

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Sajal Kumar Sinha, Advocate
For the State	:	Mr. Manoj Kumar Sinha, A.C. to G.P. 9
For the Housing Board	:	Mr. Lalit Kishore, Sr. Advocate
		Mr. Ravindra Kumar Priyadarshi, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 09-01-2018

Appellant has filed this appeal under Clause 10 of



the Letters Patent seeking exception to an order dated 02.08.2012 passed by the learned Writ Court in C.W.J.C. No. 2288 of 2012.

Appellant had filed the writ petition challenging the memo bearing No. 9754 dated 11.11.2011 issued by the Bihar State Housing Board whereby allotment of a plot bearing No. 6H/35 initially granted in favour of the appellant's husband was cancelled on the ground that construction has not been raised in the plot within two years from the date of grant of possession in the year 1982. However, the appellant came out in the writ petition with a ground that the lease was executed in her favour on 30th of August, 2007 but due to death of her husband she could not raise the funds and, therefore, some more time should be granted.

The claim of the appellant was neither considered on its own merit either by the Board or by the Writ Court. The Writ Court simply in view of a general order passed by a Division Bench of this Court in C.W.J.C. No. 12376 of 2007 on 02.09.2008 to the effect that in case construction has not commenced in terms of Clause 13 and 19(A) of the agreement for sale the Board should cancel all such allotments. The Board came out with a case that in the case of the appellant they took



action in view of the order passed by the Division Bench in C.W.J.C. No. 12376 of 2007 and finding that the appellant had not initiated construction within two years, the action was taken.

However, while doing so, the hardship expressed by the appellant was neither considered by the learned Writ Court or by the authorities of the Board. On the contrary, when the matter was listed before us, we thought it appropriate for hearing. We noticed that on 14.07.2015 while admitting this appeal the following orders were passed:-

“Admit.

This is one of the cases in which a genuine allottee had to feel the brunt of luxury litigation in the form of Public Interest Litigation, initiated by anyone. Whatever be the circumstances under which the Division Bench directed that allotment of such of the plots in which construction is not made to be cancelled, the appellant was neither a party to that writ petition nor she was issued a notice. Once she has acquired the absolute right of ownership, she has got every right to make constructions at her own convenience and, unless there is any provision of law which exposes the allotment for cancellation on the ground of non-construction, the present cancellation cannot be sustained in law, prima facie.

We, therefore, stay the operation of the order of cancellation dated 11.11.2011 (Annexure-



V) and the appellant shall be entitled to remain in possession.”

Taking note of the aforesaid, we directed the appellant to file a supplementary affidavit indicating as to what steps have been taken by her for effecting construction and what is the position of the plot as on date. In pursuance to the same, the appellant, a widowed lady, a senior citizen, 85 years of age, has filed her supplementary affidavit on 22.11.2017 which goes to show that after due approval of the competent authority construction of the boundary wall has been completed on the basis of financial assistance provided to her by her retired son who had retired from the Indian Army, the construction activity has been commenced, foundation has been laid and the walls have been constructed and photographs showing the same have been filed as Annexure-2. Today, updated photographs are produced by the learned counsel to show that construction up to the roof level has been completed and we see no reason to disbelieve the same.

Taking note of all these circumstances and the peculiar facts of the present case pertaining to the inability of a widowed lady to effect construction within the reasonable period of time, we are of the considered view that in this case an



exception should be carved out and merely because there is technical violation in the matter, the appellant's allotment should not be cancelled on account of non-construction. It is a case where there were genuine grounds on the part of the appellant in not effecting the construction and the Board should have used its discretion in favour of such a person who is unable to carry out the construction because of reasons beyond her control.

In view of the above and in the facts and circumstances of the case, we allow this appeal, quash the order of the Board and the Writ Court and direct that the appellant shall continue with the construction and ensure that the house is constructed and completed within a reasonable period of time. Before parting, we may indicate that the order in question has been passed by us in the light of the peculiar facts and circumstances of the case and the plight of a 85 year old senior citizen widowed lady and even if we have shown some deviation from the rule on sympathetic consideration it is only the discretion exercised in case of the appellant. This order and judgment shall not be treated as a precedent and shall not be made applicable in any other case. This order has been passed only in the facts and circumstances of the present case.



With the aforesaid, the appeal stands allowed and
disposed of.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

P.K.P./-

AFR/NAFR	N.A.F.R.
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