

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No 1074 of 2016

In

Civil Review No 196 of 2015

=====

Manjushree aged about 48 years wife of Dilip Kumar resident of Gandhi Nagar Kamla Bhawan, PS - K Hat District Purnea

... .. Appellant/s

Versus

1. The Bihar State Housing Board through its Managing Director having his office at 6 Mangles Road, PS - Sachivalaya, District Patna
2. The Revenue Officer, Bihar State Housing Board having his Office at 6 Mangles Road, PS - Sachivalya, District Patna.
3. The Manager Estate Bihar State Housing Board having his office at 6 Mangles Road, PS - Sachivalaya, District Patna.
4. The Executive Engineer, Patna Division No 2, Bihar State Housing Board having his office at Bhootnath Road PS - Agam Kuan, District Patna.

... .. Respondent/s

WITH

Letters Patent Appeal No. 1128 of 2016

In

Civil Writ Jurisdiction Case No.134 of 2014

=====

Manjushree Wife of Dilip Kumar resident of Gandhi Nagar Kamla Bhawan, P.S. K Hat District Purnea

... .. Appellant/s

Versus

1. The Bihar State Housing Board through its Managing Director having his office at 6 Mangles Road, P.S. Sachivalaya, District - Patna
2. The Revenue officer, Bihar State Housing Board having his office having his office at 6 Mangles Road, P.S. Sachivalaya, District - Patna
3. The Manager Estate Bihar State Housing Board having his office at 6 Mangles Road, P.S. Sachivalaya, District - Patna
4. The Executive Engineer, Patna Division No. 2, Bihar State Housing Board having his office at Bhoothnath Road, P.S. Agam Kuan, District - Patna

... .. Respondent/s

=====

Appearance :

For the Appellant/s	:	Mr Vikas Mohan, Advocate
For the Respondent/s	:	Mr Lalit Kishore, Sr Advocate with Ms Binita Singh, Mr Ravindra Kr Priyadarshi, Advs

=====



**CORAM: HONOURABLE DR JUSTICE RAVI RANJAN
And
HONOURABLE MR JUSTICE MADHURESH PRASAD**

ORAL JUDGMENT

(Per: HONOURABLE DR JUSTICE RAVI RANJAN)

Date : 28-09-2018

Heard the learned counsel for the petitioner/appellant and the Bihar State Housing Board (for brevity, *Housing Board*).

2 Petitioner/appellant was allotted housing accommodation in the Higher Income Group (for brevity, *HIG*) bearing HIG Flat No 7H.F2/15 at Bahadurpur Housing Colony. Allotment was done on 17.03.1990. Admitted position is that neither the agreement was executed in respect of the said flat, nor the entire amount has been deposited towards allotment by the petitioner/appellant.

3 Writ petition was filed praying for a direction to the Housing Board to recalculate the cost of the flat taking into account deposits made by the petitioner/appellant after waiving the interest which the petitioner/appellant was liable to pay on account of the delay in making balance payments from the date of allotment.

4 Petitioner alleged that the flat is in illegal occupation and prayed that the respondents be directed to evict the encroacher. However, the alleged encroacher has not been made a party to the writ petition.



5 The brief facts are that the flat in question was allotted to the petitioner/appellant on 17.03.1990. She had made certain deposits. Thereafter, she sought extension of time for making the balance payments. Thereafter, allotment letter was issued on 02.06.1992. Clause 3 of the allotment letter contained the tentative cost of the flat as Rs 2,81,143/-. Clauses 4, 5 and 6 of the allotment letter makes it clear that the petitioner/appellant had made a deposit of Rs 1,20,000/-. A balance of Rs 1,61,143/- remained outstanding. Apart from that, Rs 1,05,200/- was required to be deposited for processing/documentation. The petitioner/appellant was required to deposit the balance outstanding i.e. Rs 1,61,143/- in eighty-four equal monthly installments at the rate of Rs 3,269.85 per month. Further requirement under the allotment letter was execution of an agreement upon deposit of Rs 1,05,200/-. Clause 5 clearly provides that if the aforesaid stipulations are not fulfilled within time and the agreement is not executed, the allotment would stand cancelled.

6 After giving opportunity twice i.e. vide letter dated 05.08.1995 and 01.03.1996, when the petitioner/appellant failed in fulfilling the stipulations, her allotment was cancelled by letter dated 03.03.1998 bearing No 666/AA.



7 Petitioner/appellant pursued the matter before the departmental Minister. Matter travelled to the Housing Board and under letter dated 11.02.1999 bearing No 5672, petitioner/appellant was given another opportunity and directed to deposit Rs 7,33,498/- by 30.06.1999. This obligation was also not complied/fulfilled by the petitioner/appellant.

8 As late as on 21.04.2010, under letter No 3011, the petitioner/appellant was again asked to deposit the escalated cost of the alleged flat i e Rs 32,60,968/-. This opportunity was also not availed by the petitioner/appellant. She chose not to respond to this opportunity. From the aforesaid, it is quite evident that in spite of repeated indulgence by the respondent-Housing Board, the petitioner/appellant has chosen not to take appropriate steps for execution of the agreement under the terms of allotment, and the allotment stood cancelled.

9 The fact that the flat in question, which had been allotted to the petitioner, has later come to be unauthorisedly occupied by someone, cannot give the petitioner/appellant a right to claim eviction of the occupant without impleading him as a party in the writ proceedings. The Housing Board, however, had already initiated steps by instituting Eviction Suit No 31 of 2014.



10 The allotment of the petitioner/appellant stood cancelled long back due to continuous and repeated laches on the part of the petitioner/appellant in complying with the terms of allotment. The learned Single Judge has rightly refused the prayer of the petitioner in the writ proceedings. The claim of the petitioner/appellant, apart from being barred by delay and laches, is also not sustainable for the reason that the allotment of the petitioner/appellant had stood cancelled for non-compliance of the stipulations in the terms of allotment. Once the same stood cancelled, the petitioner cannot claim eviction of the flat in her favour and the relief of recalculation of cost of the flat as prayed for in the writ petition.

11 There is no reason to interfere with the order of the learned Single Judge in the writ petition. The Letters Patent Appeal is devoid of merit and the same is dismissed.

(Dr Ravi Ranjan, J)

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.09.2018
Transmission Date	NA

