

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4452 of 2014

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Randheer Prasad Singh, Son of Late Shilanath Prasad Singh, Resident of
Mohalla- Mig 197 Kankarbagh Colony, P.S.- Kankarbagh, District- Patna

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar Patna
2. Bihar State Housing Board through its Managing Director, 6 Sardar Patel Marg, Patna, Dist.- Patna, Bihar
3. The Managing Director, Bihar State Housing Board, 6 Sardar Pael Marg, Patna, Dist.- Patna, Bihar
4. Executive Engineer, Bihar State Housing Board, Bahadurpur Housing Division II Bhutnath Ashram, District- Patna
5. The Revenue Officer, 6 Sardar Patel Marg, Patna, Dist.- Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dinu Kumar, Advocate

Ms. Ritika Rani, Advocate

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

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL ORDER

4 16-05-2019 Heard learned counsel for the petitioner and the

Housing Board.

2. The petitioner is aggrieved by the arbitrary demand raised by the Housing Board against the flat allotted to the petitioner bearing MIG 3 MF 1/19 Mohalla Bahadurpur P.S.- Sultanganj, District- Patna.

3. The petitioner was applicant of 1972. After 12 long years the Housing Board allotted flat to the petitioner. An agreement between the petitioner and the Housing Board on



17.09.1991. In the agreement the tentative price of the flat was shown as 82,530/-. After completion of the construction, the possession of the flat was handed over to the petitioner on 04.09.1996. The handing over the possession of the flat is indicative of the fact that the flat in question was complete in all respect and therefore the actual price against the tentative price in the agreement dated 17.09.1991 was known to the Housing Board on the date of handing over possession.

4. Mr. Dinu Kumar, learned counsel for the petitioner submits that after handing over possession of the flat the Housing Board issued letter no. 2722 dated 22.11.1997 to the petitioner indicating therein that up to September 1997 Rs.33,426/- is due. Again vide letter no. 2011 dated 19.11.1998 the petitioner was intimated that Rs.37,998/- is due. Letter no. 2372 dated 15.05.1999 indicates that Rs.38,922/- is due. On 19.08.2002, the Housing Board raised a demand of Rs.35,956/- and in reply to the letter of the petitioner as to the actual due for satisfaction of the entire dues, on 19.08.2002, the petitioner was intimated as Rs.35,956/-. On 20.12.2014 vide letter no. 1155, the Housing Board informed the petitioner the due to the tune of Rs.22,170/-. These are the communications from the Housing Board about the dues payable by the petitioner and now the



Housing Board has taken the plea in the counter affidavit that the price indicated in the agreement (Annexure-6) was the tentative and the final price was determined by the Housing Board. On 31.03.1998, a demand of Rs.3,54,200/- was raised and on the aforesaid amount the Board calculated 13.75% interest from the date of allotment.

5. Mr. Dinu Kumar, learned counsel for the petitioner has made manifold submissions: Firstly; he highlighted the conduct of Housing Board in raising demand even after providing details of the final dues to be payable by the petitioner and up to 2004, the Housing Board kept on intimating the petitioner about the payment of Rs. 22,170/- to Rs. 38,000/-and at no point of time up to 2004, the petitioner was apprised that the price of the flat is Rs.3 lakh and odd and interest is payable by the petitioner from the date of allotment.

6. He submits that the Housing Board is not justified in realizing the interest at the rate of 13.75% from the date of allotment i.e. 1984, as the Housing Board invited application in 1972 and the Housing Board consumed 12 years consumed in making allotment. The Housing Board consumed 7 years in execution of agreement after allotment, as the agreement was made on 17.09.1991. The Housing Board consumed 5 years in



handing over the possession of the flat.

7. Mr. Dinu Kumar next submits that when the possession of the flat was handed over on 04.09.1996 on that day the price was known and it ought to have been determined on that date. The subsequent determination of the price after more than one year and eight months by the Housing Board was not justified, as the fixation of the final price is relatable at the time flat was constructed. It must have been constructed before 04.09.1996 when the housing Board handed over the possession of the flat and fresh determination of price on 31.03.1998 is not justified in any manner and the Housing Board was required to determine the price of the flat on the date it was completed and in any view of the matter on 04.09.1996 when the possession of the flat was handed over to the petitioner.

8. Mr. Dinu Kumar next submits that for the lapse of the Housing Board, the petitioner cannot be made to suffer. The time consumed by the Housing Board in between 1984 to 1996 and 04.09.1996 to 31.03.1998 cannot be a ground to realize the interest and capitilizing the price and as such the act of the Housing Board would amount to taking advantage of better bargaining power.

9. Mr. Anshuman Singh, learned counsel for the



Housing Board submits that in terms of Clause 24 of the agreement, the allottee was obliged to pay interest from the date of allotment to the date of fixation of actual price.

10. The Court is of the considered view that the demand of interest at the rate of 13.75% from 1984 to 31.03.1998 is most arbitrary, as it would amount to taking advantage of its own wrong. In this regard, the judgment of the Apex Court in the case of **Central Inland Water Transport Corporation & Ano. Vs. Brojo Nath Ganguly and Ano.**, reported in **AIR 1986 SC 1571** appropriate and is settler on the point that if the conditions are unconscionable, the same cannot form part of the valid contract.

11. After hearing the parties and on consideration of the reasons discussed herein-above, the Court cannot approve the demand of Rs.3,54,200/- on the basis of fixation of final price approximately one year eight months after handing over the possession and demanding interest right from the date of allotment, as approving such demand would amount to granting premium to incompetence of the Housing Board.

12. Accordingly, the demand raised by the Housing Board is quashed. The Housing Board is directed to work out the actual price not on the date i.e. 31.03.1998, but the price



when the Housing Board handed over possession of the flat to the petitioner i.e. 04.09.1996. So far as realization of 13.75% interest is concerned, the Court does not approve such demand of interest as that would amount to taking advantage of its own wrong in causing delay in construction of flat and realizing interest over the price for their own incompetence.

13. The Housing Board is accordingly directed to raise a fresh demand after calculating the price of the flat on 04.09.1996 and thereafter deducting tentative price paid by the petitioner. While raising fresh demand Housing Board shall not realize the interest from the date of allotment, but from the date of execution of agreement. The Housing Board shall not realize any interest on dues after payment of part installment as per the agreement dated 17.09.1991, except the penalty for delayed payment of installment. Fresh demand shall be raised by the Housing Board within a period of 60 days from the date of receipt/production of a copy of this order and the petitioner would deposit the entire amount within a further period of 60 days and thereafter the Housing Board would execute the deed in favour of the petitioner after completing all the formalities.

14. Necessary fees shall be paid by the petitioner for registration of flat.



15. With the aforesaid observations, this application is
allowed and disposed of.

(Anil Kumar Upadhyay, J)

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