

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5011 of 2013

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Shailendra Kumar Singh, S/O Late Channndeshwari Prasad Singh, Resident of
Village- Shahar Telpa, Police Station Karpi, District- Arwal.

... .. Petitioner/s

Versus

1. The Bihar State Housing Board through its Managing Director, Magles Road, Patna
2. The Chairman, Bihar State Housing Board, Mangles Road, Patna.
3. The Manager Estate Cum Additional Secretary, Bihar State Housing Board, Magles Road, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Dronacharya, Advocate
		Mr. Pramod Kumar, Advocate
For the Respondent/s	:	Mr. Anshuman Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 20-06-2019

Heard learned counsel for the petitioner and the Housing Board.

2. The petitioner has approached this Court for a direction to the respondent Housing Board execute registered sale deed of plot no. 4M/165, which was earlier allotted in favour of the mother of the petitioner.

3. Brief facts, which are relevant for deciding the present case, are set out hereunder:

The father of the petitioner applied for a plot vide application no. 2680 on 15.04.1965. The father of the petitioner deposited Rs.50/- in favour of the Housing Board on 12.12.1972. Thereafter deposited Rs.2,000/- on 26.12.1978. The father of the



petitioner died in 1983. During the life time of the father of the petitioner, the respondent Board had allotted land/plots to many people, who had applied subsequent to the father of the petitioner. After the death of the father of the petitioner, the mother of the petitioner, namely, Mostt. Laljadi Devi, was substituted in place of the father of the petitioner in record on 10.06.1983 for allotment of M.I.G. plot. On 30.04.1984, a lottery was conducted by the Housing Board and plot no.1/M-61 in Bahadurpur Housing Colony was allotted to the mother of the petitioner. After allotment of plot when the mother of the petitioner went on the plot she found that the land allotted to her was encroached and a house was already standing on the said plot. Thereafter the mother of the petitioner informed the Housing Board and thereafter Plot no. 4/M-165 was allotted in favour of mother of the petitioner, but the possession of the said plot was not handed over to the mother of the petitioner. Thereafter the mother of the petitioner filed C.W.J.C. 5708 of 1988. While deciding the writ application, the Court has taken note of the lapse on the part of the Housing Board and therefore the Court while directing handing over possession of the plot no. 4/M-165, Bahadurpur Housing Colony has also directed payment of Rs.25,000/- cost in favour of the mother of the petitioner. On 27.05.1992, a Hire Purchase Agreement of plot no.



4/M-165, Bahadurpur Housing Colony was made in favour of the mother of the petitioner in terms of the allotment letter dated 04.09.1991 and thereafter on 10.05.1993 possession was handed over. Thereafter the mother of the petitioner applied for fixing the price in terms of the order of the Court dated 11.01.1989 passed in C.W.J.C. No. 5708 of 1988. The representation and reminders thereafter remained pending to the Housing Board and ultimately the mother of the petitioner died on 28.05.2007. On 12.02.2012, the petitioner and his brothers filed application requesting the Housing Board to make final registry as per order of the Court in C.W.J.C. No. 5708 of 1988. An application was also made by the petitioner for substituting his name for allotment of the said plot on 24.03.2012.

4. Mr. Dronacharya, learned counsel for the petitioner submits that the action of the Housing Board right from the beginning in the matter of allotment, handing over possession and determination of final price is most arbitrary and in teeth of the direction issued by the writ Court in C.W.J.C. No. 5708 of 1988. He further submits that the Housing Board ignoring the seniority of the father of the petitioner in the matter of allotment had allotted the land in favour of the person, who applied subsequent to the father of the petitioner. On 30.04.1984, when the lottery was



conducted, the mother of the petitioner was allotted a plot, which was not a free plot, but under the encroachment and for allotment of vacant plot, the mother of the petitioner has approached this Court in C.W.J.C. No. 5708 of 1988, as the Housing Board did not respond to the request of the mother of the petitioner for allotment of free plot. On 11.01.1989, when the writ Court passed order, the Housing Board took step for allotment of plot no. 4/M-165 in Bahadurpur Housing Colony, the Housing Board consumed their own time and possession was given on 10.05.1993. At least 9 years time was consumed by the Housing Board in handing over the free from encroachment plot apart from the fact that the father of the petitioner was discriminated in allotment and not allotted plot ignoring his seniority. After handing over the possession in 1993 several representations were filed, but for 14 long years price was not finalized by the Housing Board and in the meanwhile on 28.05.2007, the mother of the petitioner died.

5. This writ application has been filed in 2013 with a request to the respondents to register the plot in favour of the petitioner. We are in 2019. The conduct of the Housing Board right from the beginning is blame worthy.

6. Mr. Dronacharya, learned counsel for the petitioner submits that it is now well settled that one cannot take advantage



of its own wrong. Referring to the totality of the facts situation, he submits that all through the Housing Board had failed to act fairly while taking decision for allotment of plot. Initially encroached plot was allotted, later on, after order of this Court vacant plot was allotted and thereafter possession was handed over after filing of writ application and contempt. Thereafter the Housing Board consumed inordinate time in settling the price.

7. Mr. Dronacharya submits that when this Court in the present proceeding directed the petitioner to approach the Pricing Committee, the Pricing Committee kept the matter pending for more than one year and during the period the matter of allotment of free plot was kept pending by the Housing Board, handing over possession and finalizing the price and the Board kept on capitalizing the price of the plot by adding 13.5% interest. He submits that the Housing Board is not justified in adding 13.5% interest over the price of the plot for its own lapse.

8. Mr. Anshuman Singh, learned counsel for the Board submits that the Pricing Committee was constituted in terms of the order of this Court and has been approved by the Apex Court. He submits that vide order dated 31.08.2017, this Court referred the matter to the Pricing Committee and as such the petitioner is obliged to accept the price determined by the Pricing Committee.



He next contended that the price fixed by the Pricing Committee has not been challenged by the petitioner and as such the petitioner is not entitled to any relief.

9. Considering the rival submissions of the parties, the Court finds the following undisputed premise of facts: Firstly; that the Housing Board consumed nearly one decade in allotting free plot to the mother of the petitioner, the allotment was made on 30.04.1984, but the free plot was allotted after the order of the High Court passed in C.W.J.C. No. 5708 of 1988 and possession was handed over in 1993 and thus nearly a decade was consumed in allotting free plot.

10. The Housing Board after allotment and handing over possession on 10.05.1993 consumed 20 years in settling the final price, compelling the petitioner to approach this Court by way of filing the present writ application. Thus, 30 years were consumed by the Housing Board in the matter of allotment and finalization of the price and taking advantage of their own lapse in taking decision (10 years in allotment and handing over possession and 20 years in finalizing the price) is not justified in taking the plea that the Pricing Committee has fixed the price.



11. The addition of 13.5% interest over the price in the facts of the case is arbitrary exercise of power and it would amount to premium on the incompetence of the Housing Board.

12. The Court in the aforesaid facts is not inclined to accept the submission of Mr. Anshuman Singh that the decision of the Pricing Committee is binding on the petitioner, as the decision of the Pricing Committee if tested at the touchstone of arbitrariness, renders the decision making process and fixation of price as illegal and arbitrary. The Pricing Committee is required to decide the issue within the time indicated by the High Court and therefore the Pricing Committee decision cannot bind the petitioner when it was not done in accordance with the mandate of the High Court, as the reference was made on the High Court decision, but the decision by the Pricing Committee was not done within the time frame and in terms of the order of the High Court and, as such, further calculation of interest and capitalizing the price of the plot cannot be justified.

13. In the totality of the facts, the Court is of the view that the respondents have to take a fresh decision determining the price as on 10.05.1993, the date when the plot in question was handed to the mother of the petitioner. The Housing Board is not justified in realizing the interest on the price, which was to be



fixed on 10.05.1993 when the possession of the plot in question was handed over to the mother of the petitioner.

14. Accordingly, the writ application is allowed. The Housing Board is directed to determine the price of the plot on the date the possession was handed over i.e. 10.05.1993 and raise demand for payment of the cost of the plot in one lump sum within a period of 60 days from the date of receipt/production of a copy of this order. On receipt of demand as per the price on 10.05.1993, the petitioner shall ensure payment of the same in one go within a further period of 60 days and thereafter the Housing Board shall execute the registered sale deed in favour of the petitioner.

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

(Anil Kumar Upadhyay, J)

uday/-

AFR/NAFR	NAFR
CAV DATE	NA
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Transmission Date	NA

