

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12698 of 2013

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Smt. Urmila Devi W/O Late Heera Lal, Resident Of Village- Sakunath Kala,
P.S.- Bihar Sharif, District- Nalanda

... .. Petitioner/s

Versus

1. Bihar State Housing Board, 8, Sardar Patel Marg, Patna through Managing Director
2. Manager, Estate Officer, Bihar State Housing Board, 8, Sardar Patel Marg, Patna
3. Executive Engineer, Bihar State Housing Board, Patna Division No. 1
4. Revenue Officer, Bihar State Housing Board, 8, Sardar Patel Marg, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Abhinay Raj

For the Respondent/s : Mr.Anshuman Singh

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 16-04-2019

Heard learned counsel for the petitioner and learned counsel representing the Bihar State Housing Board.

2) Petitioner is aggrieved by the arbitrary determination of fine for delay in construction. In the counter affidavit stand has been taken that petitioner has caused delay of 18 years in construction and as such the Housing Board is justified in charging fine from the petitioner for causing delay in construction.



3) Mr. Devendra Kumar Sinha, learned Senior Counsel, appearing for the petitioner submits that husband of the petitioner had participated in auction on 15.01.1985 and was declared successful. Husband of the petitioner died on 11.11.1985. After the death of her husband petitioner approached the Housing Board for transfer of the plot in her name in place of her deceased husband. Mr. Sinha submitted that vide Annexure-4 to the writ application the Housing Board granted possession to the petitioner. On 25th May, 1989 hire purchase agreement was executed. In terms of the said hire purchase agreement petitioner was required to construct the house within five years and in the event of failure to construct the house the petitioner was liable to pay fine. Vide Annexure-4 petitioner was handed over possession on 28.05.1993. After the possession was handed over to the petitioner she approached the PRDA for sanction of map for construction. After the map was sanctioned by the PRDA on 31.01.1994 the petitioner approached the Estate Officer for approval of the map which was sanctioned by PRDA the map was approved by the PRDA was sanctioned by the Housing Board on 5.5.1004. On 22.11.2000 water connection was sanctioned by the Executive Engineer of the Housing Board and on 22.11.2000 agreement of sale was executed.



4) Petitioner paid the entire price of the plot in question as per the agreement. The only issue in the instant case is the liability to pay fine by the petitioner for causing delay in construction. With reference to Annexure-C learned counsel for the Housing Board submits that construction was not complete even up to 12.02.2013. In view of the above conflicting stand of the parties the only issue required to be adjudicated in the instant case is whether the petitioner is liable to pay fine on her failure to complete the construction within the stipulated period and how much delay petitioner has committed in completion of construction?

5) Material available on record would manifest that after the death of the husband name of the petitioner was entered on 9.1.1987, Thereafter, agreement was made on 5.5.1989. Learned counsel for Housing Board submits that five years period would reckon from the date of agreement dated 5.5.1989. However, prima facie the Court feel that the Board is justified if all the formalities on the part of the Housing Board were completed and possession of the plot was handed over to the petitioner. In fact, possession was handed over only on 28.5.1993 and as such there is absolutely no question of reckoning the period of five years before handing over possession. So in any view of the matter



reckoning of five years period will begin from the date of handing over possession, i.e. on 28.5.1993. After the PRDA sanctioned the plan on 21.1.1994 the Housing Board approved the plan on 5.9.1994. Water connection was given on 22.11.2000 which indicates that house was constructed that is why water connection was given to the petitioner. So the period of delay in construction shall be counted from 28.5.1993 to 22.11.2000. Any other date for counting the delay is wholly impermissible as prior to handing over possession counting of period of five years is unsustainable and once the water connection was extended the Housing Board is precluded from raising the issue of incomplete construction.

6) Under the aforesaid circumstances, the Court does not approve the claim of the Housing Board that there was delay of 18 years in making construction. The construction period in between 28.5.1993 to 22.11.2000 shall be the period of actual construction and shall be decisive for counting delay and the petitioner shall be liable to pay fine for the period beyond five years from 28.5.1993 to 22.11.2000 and as such the respondent-Board is directed to raise fresh demand for such fine within a period of 30 days from today. In case fresh demand is raised the petitioner has to pay fine for the period as indicated hereinabove within a further period of 30 days from the date of such demand.



7) With the aforesaid, the writ application is allowed
and disposed of.

mrl./- (Anil Kumar Upadhyay, J)

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	17.04.2019
Transmission Date	

