

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13554 of 2013

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Sadhana Devi Wife Of Ravindra Nath Sharma C/O Bindu Kumari Resident
Of Mohalla - E - 46, Bihar State Housing Board Colony, P.O. and P.S.
Laheriasarai, District - Darbhanga

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Managing Director, Bihar State Housing Board, Mangels Road, Patna
3. The Revenue Officer, Bihar State Housing Board, Mangels Road, Patna
4. The Executive Engineer, Bihar State Housing Board, Mangels Road,
Darbhanga

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ugranath Mallik, Advocate
For the Respondent/s : Dr. Anand Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 16-05-2019

Heard learned counsel for the petitioner and learned counsel
appearing on behalf of the respondents.

2. The petitioner is aggrieved by the demand raised by the
Housing Board.

3. The brief facts relevant for deciding the present writ
petition is as follows. The petitioner was allotted house vide letter
dated 15.2.1992 and the agreement was executed on 3.8.1999 and
as per the agreement the cost of the house was fixed as Rs.
1,14,009/-. The petitioner paid Rs. 24,476/- on the date of
execution of the hire purchase agreement i.e on 03.08.1999 as
against the total cost of Rs. 1,14,009/-. On 15.5.2010, the



Executive Engineer of the Housing Board informed the petitioner that as per the agreement clause 24 and allotment order clause 13 notice was issued in the newspaper but the petitioner did not turn up and as such he was asked to contact the Managing Director. On 23.3.2011, the petitioner was asked to deposit a sum of Rs. 1,89,285.24 either in the Divisional Office or Bank. The petitioner submitted that the flat in question was not habitable as it was incomplete and as such the demand of Rs. 2,90,935/- more than double the price of the flat was arbitrary. He further submits that the petitioner belongs to weaker section of the society.

4. The Court has already decided similar matter that once the flat is handed over, there is no question of determining tentative price as at the time of handing over possession the cost of the construction is well known.

5. Learned counsel for the petitioner submits that the petitioner has paid the entire instalments and dues as per the demand raised by the Housing Board.

6. On 28.7.2015 the Court granted time to the Board to file counter affidavit but, unfortunately, for six long years no counter affidavit has been filed by the Housing Board.

7. The Court under the aforesaid circumstances, is of the view that the averments made in the writ petition has been admitted by



the Housing Board as the Board despite specific direction on 28.7.2015 has chosen not to file counter affidavit as if the Board admits the averments made in the writ petition. The Court has reason to believe the aforesaid position, the judgment of the Apex Court in the case **Smt. Naseem Bano vs State of U.P. and Ors: AIR 1993 SC 2592** is settler on the point that if the averments made in the writ petition has not been specifically controverted, the Court has to proceed that the averments made in the writ petition has been admitted. In view of the aforesaid judgment the Court proceeds on the premise that the averments made in the writ petition stands admitted by the Board.

8. From the pleading the following facts, are deemed to be admitted (a) firstly, that the flat in question was allotted to the petitioner (b) secondly the tentative price of the flat was Rs. 1,14,009 and thirdly the petitioner deposited the entire sum on execution of the agreement.

9. From the materials on record it is also manifest that the Board is arbitrarily charging 16% interest which is higher rate of cost than what was mentioned in the agreement. The Housing Board realized the tentative price when the flat was incomplete and not habitable and taking advantage of its own better bargaining power and incompetence in completing the house has



demanded more than twice the price of the house fixed as per the higher purchase agreement.

10. Considering the aforesaid, the Court finds the action of the Housing Board as most arbitrary and not in consonance with the idea of providing house to a weaker section as in the instant case the applicant belongs to weaker section.

11. Considering the totality of the fact situation, the Court directs the Housing Board to work out the dues payable by the petitioner after excluding the interest from the date of higher purchase agreement i.e. from 15.2.1992 till the date of handing over the flat i.e. 3.8.1999 and raise fresh demand within a period of 15 days from the date of receipt/production of a copy of this order. In addition thereto the Housing Board shall not charge any interest for the period the Housing Board consumed their own time in raising the demand i.e. for the period after payment of last installment as per hire purchase agreement.

12. With the aforesaid, the writ petition stands allowed and disposed of.

(Anil Kumar Upadhyay, J)

spandey/-

AFR/NAFR	NAFR
CAV DATE	NA
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