

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8423 of 2015

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Pramila Sinha W/o Late Satyendra Prassana Sinha Residing in Flat No. MIG 6MF2/22/58 at Bahadurpur Housing Colony, Police Station Agamkuan, District Patna.

... .. Petitioner/s

Versus

1. The Bihar State Housing Board
2. The Bihar State Housing Board through its Managing Director, Office situated in 5 Mangles Road, Pat
3. The Executive Engineer Division Patna Division-1, Office situated in Bhoothnath Road, Bahadurpur Ho
4. The Secretary, Bihar State Housing Board, 5 Mangles Road, Patna.
5. The Revenue Officer Bihar State Housing Board, Office situated in 5 Mangles Road, Patna.
6. I.D.B.I. Bank through its Manager situated in the premises of Housing Board, 5 Mangles Road, P.S. S

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Subodh Kumar Sinha
For the Respondent/s	:	Mr.R.K. Singh- Sc16
For BSHB	:	Mr. Pawan Kumar

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

3 16-05-2019 Heard learned counsel for the petitioner and the
counsel appearing on behalf of the respondents.

2. Petitioner has filed this present writ application for quashing the order dated 17.4.2013 passed by the Managing Director, Housing Board whereby the Managing Director passed order and held out that Rs. 641969.94/- is payable by the petitioner.

3. The brief facts for the purpose of deciding the present writ application is that petitioner applied for allotment



of house prior to 1970.

4. On 25.10.1984 a flat no. 6MF2/22/58 at Bahadurpur Housing Colony, Patna was allotted to the petitioner. The tentative cost of the house shown as Rs. **80350/-** as apparent from the allotment letter vide Annexure-1 and 1/A. The flat allotted to the petitioner was not complete and it was under occupation by the stranger. On 2.7.1993 an agreement was entered into between the petitioner and the Housing Board. On 10.9.1994 the possession of the flat was handed over to the petitioner.

5. On 14.9.2004 a request letter was written on behalf of the petitioner for disclosing the final price of the flat and also for taking steps for final registration.

6. On 21.1.2006 a letter was issued by the Executive Engineer in relation to settlement of the price but failed on the point of actual amount payable by the petitioner.

7. vide Annexure-5 a letter was issued by the IDBI bank addressed to the late husband of the petitioner indicating therein that the bank has been authorized by the Housing Board for recovery and in that letter it was indicated that up to 31.12.2011 Rs. 641969.94 was payable by the petitioner.

8. The petitioner, thereafter, filed C.W.J.C. No. 23040



of 2012 which was disposed of on 14.12.2012 with the following direction which is quoted below:-

“3. It is submitted on behalf of the Board that earlier lease deed with respect to aforesaid flat was not being executed and petitioner filed arbitration case vide petition, Annexure-3 and during the pendency of the said arbitration case the present demand has been served on the petitioner.

4. Let petitioner assail the aforesaid demand dated 7.2.2012, Annexure-2 also in the same arbitration case, Annexure-3 which should be decided in accordance with law by the Arbitrator as early as possible, in any case within three months from the date of receipt/production of a copy of this order before the Arbitrator. Until any decision in the arbitration matter is taken, no coercive steps will be taken against the petitioner”

9. After order of the writ court dated 14.12.2012, the Managing Director passed order which is impugned in the present application. The Managing Director of the Housing Board intimated the petitioner the price as Rs. 6416909 up to December, 2011 and vide Annexure-8 petitioner was informed that under the OTS scheme Rs. 739003=08 is due to the flat which was allotted to the petitioner's husband in 1984. The final possession was handed over on 10.9.1994 after making substantial payment to the Housing Board.

10. From the materials available on record, it appears that Housing Board has capitalized the price of the flat in most



arbitrary manner. The allotment was made on 25.10.1984 but possession was handed over to the petitioner after ten years and after payment of substantial amount, the Housing Board kept mum for nearly more than a decade and then instead of communicating the petitioner the actual final price and obligation to pay dues, the Board authorized HDFC Bank for recovery who communicated the petitioner about the dues payable by the petitioner and thereafter the Managing Director of the Housing Board passed order on 17.4.2013 and thereafter vide Annexure-1 and 1/A demand of Rs.739003=08 which is approximately more than nine times of the tentative price was raised.

11. The Court finds that the demand of interest was made from the date of allotment and not from the date of handing over the flat. Secondly the Court finds arbitrariness in the process of fixing final price. The flat was constructed and thereafter flat was allotted. The tentative price indicated in the allotment letter and handing over the possession. The Board cannot realise interest in the process of fixing price from the date of allotment. The delay in fixing the final price is attributed to the Housing Board and Housing Board cannot take advantage of their lapse and in no case the Housing Board can realize



interest component from the date of agreement to the date fixation of final price and raising demand.

12. In the totality of the facts situation, the Court is of the view that the petitioner cannot be fasten with the liability of interest and the exorbitant price which course was adopted by the Housing Board after construction of the flat in question and handing over the same. Accordingly, the order contained in Annexure-7 and 8 is quashed. The Housing Board is directed to work out final price of the flat allotted to the petitioner on the date of handing over the possession i.e. 10.9.1994 while reaising demand, the Housing Board is precluded from raising and calculating interest from the date of allotment i.e. 25.10.1984 to the date of fixing the price. They have to only realize the difference of the tentative price and actual price and they are required to raise demand within a maximum period of sixty days from the date of receipt/production of a copy of this order and thereafter, the petitioner shall make payment of the demand of the difference between the tentative and actual price within a further period of sixty days.

13. With the aforesaid, the writ petition stands allowed and disposed.

14. It is made clear that the Housing Board shall not



realize any interest on the price for the period the Housing Board has not raised demand after communicating the actual price.

(Anil Kumar Upadhyay, J)

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