

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.484 of 2021

In
Civil Writ Jurisdiction Case No.2835 of 2014

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1. The Bihar State Housing Board through its Managing Director.
 2. The Executive Engineer, Bihar State Housing Board, Patna, Division-3, Bhootnath Road, Bahadurpur, Patna.
 3. The Revenue Officer, Bihar State Housing Board, Patna.
 4. The Estate Officer, Bihar State Housing Board, Patna.

... .. Appellant/s

Versus

Bimla Devi W/o Sri Ranjit Singh, Resident of Flat No. -KSFA-3-1/15, Lohia Nagar, Kankarbagh, Police Station-Lohia Nagar, Town and District-Patna.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Rabindra Kumar Priyadarshi, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE JITENDRA KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 02-08-2022

The entire records viz. the memo of appeal, copy of the writ petition and other connected documents have been filed across the board.

Let it be taken as part of the record.

With the aforesaid document having been filed, all the defects stand removed.

Heard Mr. Rabindra Kumar Priyadarshi, learned Advocate for the Bihar State Housing Board.



The appellant has challenged the order dated 20.06.2019 passed by the learned Single Judge in CWJC No. 2835 of 2014, whereby the respondent has been asked to make payment of Rs. 29,090/- in lieu of interest for such amount to have remained in his bank account from 27.09.2006 to 11.06.2013.

A perusal of the writ petition on which such an order was passed reflects that a notice was issued to the respondent under the signature of the Revenue Officer on 31.12.2011, asking him to deposit an amount of Rs. 1,86,452.04/- for registration of Flat No.- KSFA3-I/15 in occupation of the respondent (allottee) situated at Lohia Nagar.

A further direction was sought to the appellant/Housing Board to make final registration of the flat in question without any further delay and for any other relief which the respondent would have been found entitled to in the facts of the case.

The notice asking the respondent to pay an amount of Rs. 1,86,452.04/- merely stated that such figure had been arrived at by making calculation of the dues which was payable by the allottee/respondent.



It was brought to the notice of the learned Single Judge that in the year 1991, the price of the flat in question was determined at Rs. 4,60,560/- which was paid by the allottee. The possession of the flat in question was handed over to the respondent/allottee but without completing the bathroom and other necessary electrical works.

Since the allottee had to incur an expenses to the tune of Rs. 29,090/- for making the house habitable, such amount was permitted to be deducted from the amount payable by the allottee to the Housing Board. After deducting the aforesaid amount, a figure had been arrived at which was directed to be paid.

Be it noted that the matter was taken to the Consumer Court which directed the allottee to make payment to the Housing Board after deduction of Rs. 29,090/-, which the allottee had incurred in the repairs.

For some reason or the other, because of wrong understanding of the order of the Consumer Court, which stood affirmed by the Consumer Appellate Authority, a further cheque of Rs. 29,090/- was paid to the allottee by the Housing Board, which remained in his bank account for good



many number of years. Later, on the allottee coming to know of the same, that amount was returned.

These facts are not in dispute.

From the supplementary counter affidavit filed by the appellant/Housing Board, it appears that as per the Clause 2 of the agreement between the parties, the flat was handed over on "*as is where is*" basis. Clause 3 of the agreement authorized the Board for the hike of the total cost as per the circumstances of the case.

It was the case of the Board before the learned Single Judge that the final agreement was never entered into between the allottee/respondent as he had not taken any steps for final settlement and in the meantime, there was an increase in the cost of the building which had to be realized from the allottee.

Such fact which was brought on record by the appellant before the learned Single Judge was in the context of the prayer made on behalf of the respondent/allottee seeking quashing of the demand notice of Rs. 1,86,452.04/-.

There was no statement on behalf of the Board before the learned Single Judge that the amount of Rs.



1,86,452.04/- was not on the basis of interest calculated over the amount of Rs. 29,090/-, which was wrongly given to the allottee on an erroneous understanding of the order of the Consumer Court as well as the Consumer Appellate Authority.

The learned Single Judge has passed the order on the assumption, and rightly so, that such amount of Rs. 1,86,452.04/- was calculated as interest on wrong payment of Rs. 29,090/- to the respondent/allottee.

The learned Single Judge, therefore, found that since the payment was made to the allottee/respondent wrongly by the Board for which no misrepresentation was made by the respondent, the cause of justice would be served, if the petitioner is directed to make a further payment of Rs. 29,090/- as interest on such amount because of such amount having remained parked in the bank account of the respondent/allottee.

We do not find any fault with the order passed by the learned Single Judge.

If at all, money was required from the allottee towards total hike in the cost as per the agreement between the



parties, that fact ought to have been brought to the notice of the learned Single Judge.

That not having been done even by way of preferring review, it would be presumed that the demand notice which was modified by the learned Single Judge was only with respect to the interest calculated on wrong payment by the Board to the allottee.

No interference is thus required in the present matter.
The appeal is dismissed.

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

krishna/-

AFR/NAFR	NAFR
CAV DATE	NA
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