

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10121 of 2022

1. Ranjeet Kumar Choudhary Son of Krishna Mohan Chaudhary, Resident of E1, B3, Near Don Bosco School, Jai Prakash Nagar Colony, P.S. - Digha, District - Patna, Bihar - 800011.
2. Nutan Choudhary, Wife of Ranjeet Kumar Choudhary, Resident of E1, B3, Near Don Bosco School, Jai Prakash Nagar Colony, P.S.- Digha, District - Bihar - 800011.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Urban Development and Housing, Government of Bihar, Vikas Bhawan, New Secretariat, Patna.
2. The Bihar State Housing Board, 6 Sardar Patel Marg, Patna through its Chairman.
3. The Managing Director, Bihar State Housing Board, 6 Sardar Patel Marg, Patna.
4. The Secretary, Bihar State Housing Board, 6, Sardar Patel Marg, Patna.
5. The Manager Estate, Bihar State Housing Board, 6, Sardar Patel Marg, Patna.
6. The Revenue Officer, Bihar State Housing Board, 6, Sardar Patel Marg, Patna.
7. The Executive Engineer, Patna Division - II, Bihar State Housing Board, Bahadurpur Kankarbagh, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mrs.Nivedita Nirvikar, Senior Advocate Mr.Amit Pandey, Advocate
For the State	:	Mr.Abbas Haider, SC-6 Mr.Ravish Chandra, AC to SC-6
For the Respondent/s	:	Mr.Aditya Narayan Singh-I, Advocate

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 03-10-2023

1. The present writ petition has been filed for directing the officials of the Bihar State Housing Board, Patna



(hereinafter referred to as 'Respondent-Board'), to execute the Conveyance Deed for final transfer of the Residential-cum-Commercial Plot No. RC-F/98 (Sector 4, Bahadurpur Housing Colony, Patna), in the joint name of the petitioners, after completing the legal formalities and payment of the registration charges.

2. The brief facts of the case are that the petitioners had purchased the prospectus on 9.5.2011, after paying its cost of Rs. 1,000/-, whereby the Respondent-Board had called for bids for purchase of 90 years lease rights, with regard to any one of the 88 residential-cum-commercial plots, situated in the major cities of Bihar, by way of auction. The petitioners had participated in the auction bid held on 6.7.2011 and were declared successful bidder qua the aforesaid plot in question and letter of confirmation dated 7.7.2011 was issued, wherein it was stated that the petitioners are entitled to allotment of Plot No. RC-F/98 (Sector-4, Bahadurpur Housing Colony, Patna) at an agreed bid amount of Rs.34,50,000/- and the schedule of payment was also mentioned therein. It is not in dispute that the petitioners had then paid the entire amount, mentioned in the letter of confirmation, within the stipulated time frame and then allotment letter dated 20.12.2011, was issued to the petitioners.



It is the case of the petitioners, that the petitioners had then been requesting the officials of the Respondent-Board by writing various letters, from time to time, for executing the Conveyance/Lease Deed, however the officials of the Respondent-Board had failed to respond to the same and instead the Revenue Officer of the Respondent-Board vide letter dated 30.12.2021, had informed the petitioners that since they had not constructed the house on the plot in question, within time, a penalty to the tune of Rs.25,31,307/- has been levied hence, the same be deposited and the house be constructed within a period of one year.

3. The learned senior Counsel for the petitioners has submitted by referring to Clause 9 of the brochure annexed as Annexure-1, to the present petition that four copies of Conveyance Deed along with the copy of site plan is required to be supplied to the highest bidder, along with the demand letter, by the Respondent-board, to get the Conveyance Deed papers stamped, from the office of Collector of Stamps, whereupon the auction purchaser is required to submit Conveyance Deed within 60 days from the date of issue of the same from the Office of the Manager Estate, Bihar State Housing Board, Patna. Clause 9, further stipulates that possession of the plot will be handed over



only after submission of the said documents in the Office of the Manager Estate, Bihar State Housing Board, Patna and in case execution of Conveyance Deed is not completed within a period of 2 months, on account of any lapse on part of the auction purchaser, action for cancellation of allotment of plot shall be taken.

4. The learned Senior Counsel for the petitioners has thus submitted that the officials of the Respondent-Board, despite reminders on several occasions by the petitioners had not supplied either the Conveyance Deed or the Lease Deed or the Site plan, resulting in non-execution of the Conveyance/Lease Deed, nonetheless the possession of the plot in question was handed over to the petitioners vide possession letter dated 29.12.2011. It is also submitted that since there was no lapse on the part of the petitioners, the Respondent-Board has not cancelled the allotment of plot till date. It is next contented that as per Clause 5 of the allotment letter dated 20.12.2011, the Lessee is required to start construction of building as per the approved plan within one year of the date of signing of the Lease Deed, however, in the present case, the Lease Deed is yet to be signed hence, no penalty could have been imposed for not constructing house over the plot in question.



5. Per contra the learned counsel for the Respondent-Board has submitted that the Estate Officer, Bihar State Housing Board, Patna vide letter dated 29.01.2013, had informed the petitioners to submit certain documents along with ground rent amounting to a sum of Rs.2000/-, legal and processing charge to the tune of Rs.300/- and Lease Deed preparation charge of Rs. 500/-, for the purposes of execution of Agreement/Lease Deed, however, the petitioners did not respond thus, Lease Deed could not be executed, hence the board has rightly imposed penalty on the petitioners for not constructing house over the plot in question within the stipulated time frame.

6. The learned counsel for the Respondent-Board has referred to clause 5, 8, 9 and 12 of the Allotment Letter dated 20.12.2011, which are being reproduced hereinbelow :-

“5. The Lessee shall obtain prior approval of the Board and/or Patna Municipal Corporation, the authority prescribed in the Bihar Restriction of Lease of Land Act, 1948 or any other authority prescribed in any Law, Rules and Regulation for the time being in force for the Building Plan before starting any construction over the Plot. The Lessee shall start with the construction of building as per the approved plan within one year from the date of signing the Lease Deed and shall



ensure that the construction of the building is completed in all respects within the next two years, failing which a penalty of Rs. 1000/- (Rs. One thousand only) per day per unit shall be payable by the Lessee to the Board for the period of delay beyond three years from the date of this Lease Deed, up to a further period of two years and in case the Lessee fails to complete the stipulated construction within a total period of five (5) years from the date of this Lease Deed, this Lease Deed shall be terminated by the Board at its sole discretion, his/her allotment shall be cancelled and all amount deposited by him/her to the Board shall stand forfeited. Any addition or alteration in the Building, thereafter, shall be made in accordance with the approved plan and specification by the authorities concerned and shall be subject to the prior written permission of the Board.

8. The Lessee shall have to pay ground rent at the rate of Rs. 1,000/- (Rupees One thousand only) annually to the Board. The ground rent for the initial year shall be paid before execution of this Lease Deed, and for every subsequent year the ground rent shall be payable by the end of the first month (ie. January) of the year failing which penal interest at the rate of 26% shall be charged for



the period of default.

9. The Lessee, from the date of possession of Plot, shall be solely responsible for payment of Municipal taxes, Water Charges, Electricity Charges and such other charge and taxes. etc. to the relevant authorities concerned for the said Plot.

12. The Lessee agrees with the right of the Board to recover all or any of the dues payable to the Board in terms of this Lease Deed as Public Demand under the Bihar and Orissa Public Demand Recovery Act, 1914 and also as per the provisions of the Bihar State Housing Board Act, 1982, and will be first charge on property.”

7. Thus, the learned counsel for the Respondent-Board has submitted that it is clearly stated in Clause 5 of the aforesaid Allotment letter dated 20.12.2011, that the construction of building has to be started within one year of the date of signing of the Lease Deed and the same has to be completed within the next two years, failing which a penalty of Rs. 1000/- per day, per unit, shall be payable by the Lessee to the Board, for the period of delay beyond 3 years from the date of the Lease Deed, upto a further period of 2 years and in case the Lessee fails to complete the stipulated construction within a



total period of 5 years, from the date of the lease deed, the Lease Deed shall be terminated by the Board. Hence, it is contended that since the petitioners did not start construction of building within one year of issuance of the aforesaid letter dated 20.12.2011, penalty, as aforesaid, has been rightly imposed by the impugned letter dated 30.12.2021, hence there is no merit in the present writ petition and the same is fit to be dismissed.

8. I have heard the learned counsel for the parties and gone through the materials on record from which it is apparent that the facts which are not in dispute are that the petitioners were successful bidder, they had won the entitlement for allotment of Plot No. RC-F/98 (Sector-4, Bahadurpur Housing Colony, Patna), at an agreed bid amount of Rs. 34,50,000/-, which had also stood paid by the petitioners, however, despite them having made several requests, neither the Conveyance Deed nor the Lease Deed was ever provided to them so that the same could be signed/executed, thus the petitioners could not start construction of the building inasmuch as Clause 5 of the Allotment Letter dated 20.12.2011, clearly stipulates that the Lessee can start construction of building as per the approved plan, within one year of the date of signing of the Lease Deed. It is also apparent from Clause 9 of the brochure in question that



the copies of Conveyance Deed etc., along with the site plan is required to be supplied to the highest bidder along with the demand letter by the Respondent-Board and only then the Lessee is required to submit the same at the Office of the Manager Estate, Bihar State Housing Board, Patna and in case the execution of Conveyance Deed is not carried out within two months thereafter, the Respondent-Board is required to cancel the allotment of the plot in question, however, this Court finds that the allotment in question has not been cancelled till date, which clearly shows that it was not the fault of the purchasers / petitioners but that of the Respondent-Board, thus consciously the Respondent-Board has desisted from cancelling the allotment of the plot in question, made in favour of the petitioners. This Court further finds that since admittedly the Conveyance/Lease Deed has not been executed till date, there is no question of the petitioners having engaged in construction of building over the plot in question, inasmuch as the same is not permissible, hence the penalty imposed by the Respondent-Board, by the impugned letter dated 30.12.2021 is illegal and bad in the eyes of law, hence is quashed. Consequently, the Respondent-Board is directed to ensure that the Conveyance/Lease Deed in question is executed within a period of eight weeks,



from today subject to the petitioners paying the charges, as mentioned in Clause 8 and 9 of the allotment letter dated 20.12.2011, apart from making payment of the registration charges and the processing charges/documentation charges.

9. The writ petition stands allowed.

(Mohit Kumar Shah, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	23.10.2023
Transmission Date	NA

