

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3886 of 2017

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The Bihar State Housing Board

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Ashutosh Kumar, Son of Mritunjai Kumar (Retd. D.I.G. of Police) 302, Kanti Palace Apartment, Post Office Road, Patna-District-Patna 800023.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Dr. Anand Kumar, Advocate
For the Respondent/s	:	Mr. Abbas Haider-Sc6
For respondent No.2	:	Mr. Shekhar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

8 22-04-2024 Heard the learned counsel for the Housing Board,

Mr. Anand Kumar and learned counsel for the respondent, Mr.

Shekhar Singh.

2. The petitioner seeks following relief in this writ
petition :-

“That the present writ application is for setting aside the order contained in Memo No. 569 dated 03.12.2014 passed by the Hon’ble Court of the Minister, Urban Development & Housing Department, Government of Bihar, Patna whereby and whereunder the Hon’ble Minister cum-Appellate Authority has passed the order for final transfer of the ownership of the plot No.7RC-4 situated at Barari Bhagalpur, without charging further any interest after 29.05.2002. Further it has also been directed that the respondent should be charged principle and interest for the delayed period between 19.10.2001 to 20.05.2002.

3. The case of the petitioner is that the respondent No.



2 Mr. Ashotosh Kumar has been allotted residential cum commercial plot No. 7RC-4, through an auction in highest bidding of Re. 3,81,000/- vide Board's Letter No. 2999 dated 13.07.2001, after depositing Rs. 15,000/- against the earnest money along with the application form by the petitioner. Thereafter a demand of 35% of highest bid amount adjusting the earnest money i.e. after (Rs. 1,33,350+ Legal Deed writing fees Rs. 300 Rs. 15,000 earnest money) which comes to Rs. 1,18,650/- was sent to the petitioner to deposit it within 7 days from the date of allotment order. The private respondent deposited the above required amount 18.08.2001, beyond the time limit of 7 days. Thereafter an order was issued vide letter No. 4303 dated 29.10.2001, in favour of the allottee with a demand to deposit a total sum of Rs. 2,78,779/- against the said allotted plot, in eight quarterly instalments i.e. (1) January, 2002, (2) April, 2002, (3) July, 2002, (4 ^ (1/1)) October, 2002, (5 ^ (th)) January, 2003, (6 ^ (th)) April, 2003, (7 ^ (tn)) July, 2003 and lastly (8 ^ (2h)) in October, 2003, along with the interest of Re. 570 /- . It is pertinent to mention here that the private respondent only deposited Rs. 3,82,300/- at one time against the demand amount of Rs. 2,78,779/- with delay on 24.05.2002. Thereafter an agreement between the



petitioner/Board and respondent No. 2 was executed on 31.05.2002.

4. The further case of the petitioner is that the Executive Engineer, Housing Board, Bhagalpur Division requested the petitioner for final costing of the plot after depositing Rs. 3,82,300/- by the private respondent against the tentative calculated interim cost vide letter no. 543 dated 29.10.2004. In response thereof, the petitioner sent a final demand notice vide Letter No. 7769 dated 20.10.2014 of Rs. 1,92,457.46 against the final costing of the said residential-cum-commercial plot allotted to him and also a demand notice of Rs. 69,622/- against the ground rent, sent vide Letter No. 7775 dated 20.10.2014.

5. The further case of the petitioner is that the respondent No. 2 preferred an Appeal before the Minister-cum-Appellate Authority for waiver of interest. The appeal was disposed of by the Appellate Authority without considering the provisions of the Housing Board Regulation and Act that he cannot decide the matter relating to the price/cost of the plot and the Appellate Authority passed an order contrary to the Statutory provision mentioned in the Act of the Board and directed the petitioner vide order dated 03.12.2014 not to charge the interest



for the period of delay by the allottee in depositing the instalments. The allottee should have invoked the remedy of arbitration before the Arbitrator as per Para-27 redressal of the agreement grievances for before preferring the appeal and the appellate authority should also not have entertained this appeal prior to invoking this remedy by the allottee.

6. The learned counsel for the petitioner has further argued that the impugned order has been passed in violation of the principle of natural justice and the order is without jurisdiction. He has also tried to argue on the case on merits though there is no pleading in the writ petition with regard to violation of principal of natural justice and the issue of the case on merits.

7. Learned counsel for the respondent No.2 has submitted that the present case, the impugned order has been passed on 3.12.2014 whereas the writ application has been filed on 10.03.2017, i.e., after more than 2 years therefore, it is fit to be dismissed on the ground of delay and laches. He further submits that the impugned order dated 03.12.2014 has been passed by the Hon'ble Court of the Minister, Urban Development & Housing Department, Govt. of Bihar, Patna under Section 33 of the Bihar State Housing Board Act, 1982.



The Minister has power to hear an application for setting aside any resolution or order of the Managing Director or the Board. He also submits that there is no illegality in the impugned order. The entire payment was made till 24.5.2002 and thereafter the registration has been delayed by the Board and therefore, the Board cannot ask for extra amount by way of interest from the petitioner once the final payment was made and the impugned order should not be interfered with, by which it has been directed that no interest will be paid by the petitioner on or after 29.05.2002.

8. I have considered the arguments of the parties did not dispute that the impugned order has been passed on 3.12.2014 and the present writ application has been passed on 10.03.2017, i.e., after a great delay of more than two years.

9. Section 23 of the Housing Board Act reads as follows :-

“Power to set aside resolution or order of the Board :- The Government may stay or set aside any resolution of the Board or any order of the Managing Director or of the Board, if in the opinion of the Government the resolution or order is in excess of the power conferred by law, or is not in consonance with the public interest.”

10. In my opinion, the impugned order passed by the Minister, Urban Development & Housing Department,



Government of Bihar, Patna is within the jurisdiction and there is no jurisdictional error in the impugned order. The learned Minister has held that the entire auction amount was deposited on 29.5.2002 and 24.05.2002 and the Rest of Rs.2,47,650/- was also deposited with the Board for execution of the agreement. The respondent No.2 has given his new address to the Board but the Board has been writing only on the old address and because of this, this litigation has occurred. The Board cannot take advantage of its own fault.

11. The writ petition has been filed by the Board though the argument had been advanced by the Board that the impugned order has been passed without hearing the petitioner but there is no pleading in the entire writ petition about the same. I am of the view that the impugned order cannot interfered with and the same has been rightly passed by the Minister, Urban Development & Housing Department, Government of Bihar, Patna who has a power under Section 23 of the Housing Board Act moreover the writ petition has been filed after a great delay. Even if the Minister would not passed the impugned orders, the Board cannot take advantage of the delay caused by the Board and ask for interest.

12. This application is dismissed.



Re:- CWJC No. 15929 of 2023.

Heard the parties.

2. List this case on 25.04.2024.

(Sandeep Kumar, J)

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