

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 8630 of 2014

- 1.1. Dhananjay Kumar Son of Late Devendra Prasad Sinha Resident of M.I.G.- 224, Lohia Nagar, P.S.- Kankarbagh, District- Patna- 800020.
- 1.2. Sanjeev Kumar Son of Late Devendra Prasad Sinha Resident of M.I.G.- 224, Lohia Nagar, P.S.- Kankarbagh, District- Patna- 800020.
- 1.3. Sushila Sinha Wife of Late Devendra Prasad Sinha Resident of M.I.G.- 224, Lohia Nagar, P.S.- Kankarbagh, District- Patna- 800020.

... .. Petitioners

Versus

1. The State of Bihar through the Secretary, Housing Department, Government of Bihar, New Secretariat Building, Patna.
2. The Bihar State Housing Board, through its Chairman, 6, Sardar Patel Marg, Patna- 15.
3. The Chairman, Pricing Committee, Bihar State Housing Board, Patna.
4. The Managing Director, Bihar State Housing Board, 6, Sardar Patel Marg, Patna- 15.
5. The Manager Estate-cum-Joint Secretary, Bihar State Housing Board, 6, Sardar Marg, Patna 15.
6. The Executive Engineer, Patna Division no.- 1, Bihar State Housing Board, 6, Sardar Patel Marg, Patna- 15.
7. The Revenue Officer, Bihar State Housing Board, 6, Sardar Patel Marg, Patna- 15.

... .. Respondent/s

Appearance:

For the Petitioners : Mr. Bindhyachal Singh, Sr. Adv.
Mr. Krishna Chandra, Adv.

For the State : Mr. Pankaj Kumar Singh, AC to GA-9

For the Housing Board : Mr. Ansuman Singh, Adv.

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

CAV JUDGMENT

Date: 02-05-2025



The present writ petition has been filed for quashing the order dated 25.1.2014, passed by the Chairman, Pricing Committee, Bihar State Housing Board, Patna, by which the application, filed by the petitioner for waiving the interest charged over the enhanced price has been rejected. The petitioner has also prayed for quashing the consequential fresh demand notice dated 31.01.2014, issued by the Revenue Officer, Bihar State Housing Board, Patna. Lastly, it has been prayed to direct the Respondent authorities to execute the registered lease deed for 90 years in favor of the petitioners.

2. The brief facts of the case, according to the petitioners, are that the father of the petitioners, late Sri Devendra Prasad Sinha (hereinafter referred to as “the original petitioner”) had applied for allotment of house in the middle income group, vide Application No. 168850, before the Bihar State Housing Board, Patna (hereinafter referred to as “the Board”), whereupon the Respondent-Board, after due scrutiny and verification, had issued an allotment letter, vide Memo No. 6184, dated 2.8.1980, for MIG House No. 224, ad-measuring 2.06 kattha, situated at Lohiyanagar, Kankarbagh, Patna, wherein the interim (tentative) cost of the land was mentioned as Rs. 59,200/-. Thereafter, the Respondent-Board had entered into an agreement with the



original petitioner on 04.08.1980, after payment of 40% amount i.e. a sum of Rs. 23,680/-. The Respondent-Board had then issued a letter dated 08.08.1980, acknowledging payment of 40% of the estimated cost of the land in question, as also admitting entering into an agreement with the original petitioner. In this letter, it was also acknowledged by the Respondent-Board that the original petitioner is residing in the allotted plot on rent since 01.08.1977 and that allotment of the said land/house has been regularized on rent cum purchase basis. It is stated by the learned Senior Counsel for the petitioners that as per the terms and conditions mentioned in the allotment letter as well as in the lease agreement, the original petitioner was required to pay the balance amount, after deduction of a sum of Rs. 23,680/- from the estimated total cost of Rs. 59,200/- in 180 equal installments of Rs. 403.26 per month, which the original petitioner had paid in 142 installments only and in fact, the original petitioner had deposited a sum of Rs. 709.57 in excess.

3. Nonetheless, the Respondent-Board, all of a sudden issued a demand notice dated 10.1.2006 for a sum of Rs. 2,98,716/-, which was challenged by the original petitioner by filing a writ petition bearing CWJC No. 4211 of 2007 and a



coordinate Bench of this Court, by an order dated 29.02.2012, had disposed off the said writ petition with liberty to the petitioner to move the Managing Director, Bihar State Housing Board, Patna, by filing a representation/ application raising his grievances, who in turn was directed to forward the matter to the Pricing Committee, which was directed to consider the claim of the respective parties and take a decision by passing a reasoned order, after granting opportunity of hearing to all concerned, within a period of four months of filing of such representation. Thereafter, the original petitioner had filed a representation before the Managing Director of the Respondent-Board, whereafter the Pricing Committee of the Respondent-Board, after hearing the parties had passed the impugned order dated 25.01.2014, holding that as per the agreement the cost has been revised, whereafter demand has been made as per the agreement and along with the revised cost, interest also becomes automatically applicable, hence no exemption can be granted as far as the interest amount is concerned, thus there is no error in the calculation made by the Board, therefore the claimant should make payment of the amount calculated by the Board immediately. The Board had then issued a fresh demand notice dated 31.01.2014, raising a demand of Rs. 6,39,981.61/-.



4. It is submitted by the learned Senior Counsel for the petitioners that the original petitioner had written a letter dated 22.06.1992 to the Executive Engineer, Patna Division-1, Bihar State Housing Board, Patna, stating therein that full payment of the house in question has been made by the month of June, 1992, hence a statement of amount deposited by the original petitioner as per the Respondent-Board's account be furnished so that the house can be transferred in the name of the original petitioner, whereafter the Executive Engineer, Bihar State Housing Board, Patna Division-1, Patna, had written a letter dated 01.07.1992 to the Manager, Estate-cum-Joint Secretary, Bihar State Housing Board, Patna, stating therein that he has verified from the divisional ledger that the original petitioner has made full payment of the house in question, hence in case any further amount is to be paid by the petitioner, the same be intimated to him, however no intimation was then made to the original petitioner regarding any balance amount to be paid by him. Nonetheless, the Revenue Officer of the Respondent-Board, vide letter dated 10.01.2006, had raised a demand of Rs. 2,98,716/- on the head of balance payable amount and interest thereon, pertaining to the land/house in question apart from a sum of Rs. 1,875/- on the head of outstanding rent.



5. The learned Senior Counsel for the petitioners has next submitted that as per the terms and conditions of the lease agreement dated 04.08.1980, the original petitioner had paid the entire balance amount including the principal amount and the interest in only 142 installments instead of 180 installments and had in fact deposited an excess amount of Rs. 709.57/-, which is not disputed by the Respondent-Board. In fact, the original petitioner had repeatedly written letters and approached the Respondent authorities to intimate him about any outstanding dues to be paid by him as well as requesting the authorities to finally transfer the land and house in his name, however to no avail. The learned Senior Counsel for the petitioners has, at this juncture, referred to an office order dated 02.08.1980, issued by the Chairman, Bihar State Housing Board, Patna, wherein it has been admitted that after the year 1974, no further development of any kind has been made and the Board has already charged the capitalized cost, which includes the cost of land acquisition, development charges as well as interest over the same. Thus, it is submitted that no escalation cost could have been charged from the original petitioner. The learned Senior Counsel for the petitioners has further referred to an office order dated 18.3.2008, issued by the Chairman-cum-Managing Director,



Bihar State Housing Board, Patna, wherein it has been directed that it would be incumbent upon the Housing Board to complete the process of final transfer of the allotted house/flat/plots etc. within 45 days of payment of the last installment and in case any delay takes place in completing the process of final transfer, after payment of last installment by the allottee, no interest or penalty would be charged for the said period as also the concerned Executive Engineer had been directed to send details of payment of installments by the allottee and spot inspection report within 15 days of payment of the last installment, to the Estate Officer. Thus, it is submitted by the learned Senior Counsel for the petitioners that since the Respondent-Board had failed to complete the process of final transfer of the aforesaid land/house in question in favor of the original petitioner within a period of 45 days of payment of the last installment i.e. June, 1992, no interest / penalty can be charged from the petitioners.

6. The learned Senior Counsel for the petitioners has contended that for the first time, the original petitioner was intimated about the outstanding dues on account of price escalation and the interest levied thereon, vide letter dated 10.01.2006 and along with the same a copy of the ledger account of the original petitioner was enclosed showing



payment of all the installments before time i.e. in 142 installments instead of 180 installments as also admittedly excess amount to the tune of Rs. 709.57/- was depicted to have been paid by the original petitioner, as is apparent from running pages no. 184 to 188 of the brief. The learned Senior Counsel for the petitioners has also referred to the calculation chart, appended to the said demand notice dated 10.01.2006, to submit that for the first time, the Respondent-Board had disclosed that though as per the agreement balance amount of Rs. 35,520/- was to be paid in 180 installments, starting from the month of September, 1980, however, by mistake a sum of Rs. 37,371/- had been left out to be mentioned in the agreement (so-called escalated price), hence after levying interest thereon for the period September, 1980 upto the month of February, 2006, the balance amount totals up to a sum of Rs. 2,98,715.65/-, apart from outstanding rent to the tune of Rs. 1,875/-.

7. Thus, it is the submission of the learned Senior Counsel for the petitioners that for the first time, the escalated differential amount / left out amount to the tune of Rs. 37,371/- was demanded from the original petitioner vide demand notice dated 10.01.2006, which the original petitioner was also ready to pay, nonetheless the Respondent-Board had illegally



demanded extra amount over and above the said amount of Rs. 37,371/- on the head of interest at the rate of 8.5 per cent per annum starting from September, 1980 upto the month of February, 2006, which is unlawful, inasmuch as the entire fault lies with the Respondent-Board and is not attributable to the original petitioner. In this regard, the learned Senior Counsel for the petitioners has referred to a judgment dt. 05.12.2007, rendered by a coordinate Bench of this Court, in CWJC No. 9630 of 1999 (***Smt. Shanti Verma & Ors. vs. The State of Bihar & Ors.***), relevant portion whereof is produced herein below:-

“Now in 1999 that is almost two decades after the house was constructed on the already acquired lands and almost two decades after petitioner's occupation thereof and almost two decades after its allotment to the petitioner, the impugned communications are issued by the respondent-Housing Board informing the petitioner that as on 30.04.1999, the final dues of the petitioner in respect of the house allotted to him is about Rs 1,70,641/-, which the petitioner was required to deposit immediately. As noted above, in 1981 when the house was allotted to the petitioner, the tentative cost, as disclosed, was about Rs 61,000/- which having been paid, a further sum of over Rs. 1,71,000/- was being demanded. This prima facie unreasonable demand brought the petitioner to this Court.



It may be mentioned that the petitioner has annexed a calculation (Annexure-7) in which it is shown that in fact the cost escalation as on the date of allotment of house to him in 1981 was about Rs 39,224.87 P only as against which the demand now is of over Rs, 71,000/-.

It was urged that the difference between the two figures is nothing but the interest that has been charged by the Board over the said amount from 1981 to 1999. It is not in dispute that this demand of escalated price or any part thereof was ever earlier made from the petitioner. It is not disputed that this cost escalation is being demanded for the first time in the year 1999. Ultimately, the question is whether the demand is justified, is it fair and equitable? The petitioner submits that for the inordinate delay caused by the Housing Boards, exclusively in finalizing the demand, the petitioner, who was not at any fault whatsoever, cannot be burdened with the phenomenal interest burden as if the demand was made in 1981 itself and the petitioner neglected to pay the same.

It may also be relevant to note one important fact at this stage. As noted above, petitioner enclosed a chart (Annexure-7) alleging that the cost of escalation was in fact only about Rs 39,000/- as on 1981 and the rest amount of the demand as being made in the year 1999 out of about Rs 1,71,000/- was interest but these facts have not been disputed or denied much less specifically by the respondent-Board. They have accepted that the actual cost was marginal but the balance was interest which is also evident from the submissions made on behalf of



respondent-Board as noted above.

First coming to the submission of the respondent-Board that it is a non-profit making organization working on no profit no loss basis and, as such, its actions in charging interest as aforesaid in respect of a demand raised for the first time in 1999, interest being demanded from 1981 to 1999 is, thus, justified, I have only to say that if such a stand is permitted and accepted by the Court as just, fair and reasonable, it will only put premium on delay and inefficiency to the detriment of citizens who have no say in the matter. The Housing Board could have slept over the matter for another decade and then raised the demand adding another decade's interest and forced petitioners to pay the same leaving them no alternative but to pay. This, to my mind, is neither just nor fair. It is for the respondent-Housing Board to manage its affairs in an efficient manner and it cannot make the citizens pay for its gross inefficiencies. Holding otherwise would be making citizens pay for not what they have done but for the mistakes committed by someone else who would benefit from his own mistakes to the detriment of the innocent citizen. This Court cannot permit such a situation. If Housing Board seeks equity then it is well established it must do equity as well. It cannot say that my acts have been inequitable to the detriment of the citizen, but citizens must recompensate it even though they are not at fault or have committed no breach. It is like punishing another for fault of yet another over whom the punished has no control.



*The petitioners have relied on a judgment of Hon'ble Single Judge of this Court in the case of **Smt Bina Singh @ Sinha Versus Bihar State Housing Board & Others** being CWJC No 236 of 2001, which was allowed by judgment and order dated 07.07.2006 of this Court. In my view, the facts are virtually the same. That related to MIG House No 172 at Lohianagar, Kankerbagh, Patna. Most of the submissions as advanced before this Court were also raised therein and they were considered and the stand of the Board was rejected. Ultimately, this Court directed in that case that the respondent-Housing Board could lay a demand only in respect of actual price escalation as on the date of allotment and not any interest thereon, thereafter, till demand was made. The petitioners have also placed reliance on judgment of this Court in CWJC No. 10818 of 2000. disposed of on 15.09.2003, which is similar to the case of **Smt Bina Singh** (supra) and in this case also similar view was taken that interest for anterior period to the demand could not be charged. Against that judgment, it is stated at the Bar and not disputed that Board's Letters Patent Appeal and then Special Leave Petition to the Apex Court were dismissed in limine. While delivering the said judgment in CWJC No. 10818 of 2000, this Court placed reliance on a Division Bench judgment of this Court in the case of **Bihar State Housing Board & Others Versus Sardar Singh** since reported in (1999) 1 BLJR 694. In that case, Division Bench of this Court in the Letters Patent Appeal by the Board challenging the judgment of the Single Judge held that no interest could be charged for the*



period prior to demand being made. There, it was found that when the house was allotted in 1980 it was allotted at a particular price and it was only in 1994 additional demand was sought to be made for additional amount and interest thereon. This demand was for the first time being made by the Board. The respondent (writ petitioner) it was held was not responsible for the delay and it cannot be punished for the negligence on part of the Board. The Division Bench then held that the learned Single Judge was fully justified in striking off the interest from the demand raised by the Board. No exception was taken to the judgment delivered by the learned Single Judge. The Letters Patent Appeal was dismissed. The said Division Bench judgment of this Court still holds the field.

Thus, in view of the judgments aforesaid, it is clear that the interest component of the demand cannot be sustained. The petitioner is, thus, liable to pay only the actual cost escalation as on 1981 and not interest thereon upto the date when finally the demand has been raised because the delay in raising the demand is squarely on part of the Board with which the petitioner had nothing to do. Petitioner cannot be permitted to suffer because of negligence, inefficiency or otherwise of the Board.

Thus, in the facts as noted above and in view of the law as discussed above, I find that the demand as raised by the respondent-Housing Board was wholly unjustified and unsustainable in fact or in law in so far as it related to the interest component on the escalated cost as



determined with effect from 1981 which is the date of allotment of the house to the petitioner. The petitioners would, thus, be liable to pay only the cost of escalation as calculated as on 1981 and as the demand was for the first time raised in 1999, no interest, can be charged for the period in between that is from 1981 to 1999 and, thus, the impugned letter of the year 1981 is quashed to the extent indicated above. The petitioner would now, thus, be liable to pay only the cost of escalation calculated with effect on 1981 when allotment was made to him and he came in possession pursuant to the said allotment.”

8. Thus, it is the submission of the learned Senior Counsel for the petitioners that no interest could have been charged by the Respondent-Board for the period prior to raising of the demand vide demand notice dated 10.1.2006 and further no interest is payable on the left out amount / escalated amount till date, inasmuch as the Respondent-Board has deliberately demanded illegal amount from the petitioners, hence it is submitted that the demand notices dated 10.1.2006 as also the one dated 31.1.2014 be quashed and the petitioners be granted liberty to deposit the escalated price i.e. a sum of Rs. 37,371/-, whereafter the Respondent-Board be directed to execute the registered lease for 90 years, pertaining to the house in question, in favor of the petitioners.

9. *Per contra*, the learned counsel for the Respondent-Board



has submitted, by referring to the counter affidavit / supplementary counter affidavit / second counter affidavit / third supplementary counter affidavit, filed on behalf of the Respondent-Board that as per Clause 3 of the allotment letter dated 02.08.1980, the tentative cost of the house was Rs. 59,200.00, subject to escalation on certain conditions. Clause 4 of the said allotment letter states that payment would be followed by execution of the agreement, possession of the house and cancellation of the allotment in case of non-compliance. Thus, after adjusting the earnest deposit, the petitioner was required to pay the balance amount of Rs. 35,520.00 for the house in 180 monthly installments of Rs. 351.16 each, if paid before the 7th of the month or Rs. 403.26, if paid after the 7th. It is stated that Clause 4 of allotment letter dated 02.08.1980 states that the property cost is tentative, subject to increase and Clause 6 thereof specifies the ground rent to be Rs. 2.00 per 10 square meters annually for 260.22 square meters with the board having the right to revise the rent every 30 years. Clause 7 states that 1% interest will be charged on all dues and a sum of Rs. 50.00 as administrative fee per default will apply for MIG. Clause 8 states that upon full payment and clearance of dues and there being no violation of the terms, a 90-year leasehold deed will be



executed in favor of the settlee.

10. The learned counsel for the Respondent-Board further submits that the petitioner was informed vide letter No. 124 dated 10.01.2006 (Annexure-C to the Counter Affidavit of the Respondent-Board) that a sum of Rs. 2,96,616.00 is outstanding for payment as on 31.01.2006 (Rs. 2,98,716.00 by 28.02.2006) plus Rs. 1,875.00 on the head of due rent, hence he should pay the same but to no avail.

11. It is stated by the learned Counsel for the respondent-Board that in pursuance to the order dated 29.02.2012, passed in CWJC No. 4211 of 2007, the Pricing Committee, after hearing both the parties upheld the Board's demand for payment under Clause 4(a) of the agreement including revised costs and interest. A fresh demand notice for a sum of Rs. 6,39,981.61 was issued on 31.01.2014 but the petitioner did not pay the same, hence the final lease transfer could not take place.

12. In the supplementary counter affidavit filed on behalf of the respondent-Board it has been stated that the valuation of the MIG, house No. 224 is based on the total construction expenditure incurred in 1973-74 with capitalization up to 31.03.1980, amounting to a sum of Rs. 69,804.00. Thus, the revaluated price was calculated to the tune of Rs. 1,45,706.00,



payable by 30.04.1997 and communicated vide Board's Letter No. 1285 dated 05.03.1997 (Annexure- H of the Supplementary counter affidavit). In the 2nd supplementary counter affidavit filed on behalf of the respondent-Board, it has been stated that the petitioner has not deposited the full amount as per the Hire Purchase Agreement and has failed to pay the required 148 installments in time.

13. Lastly, the learned counsel for the Respondent-Board has relied on an order dated 10.02.2020, passed by the Hon'ble Supreme Court of India, in Civil Appeal No. 1406 of 2020 (***Bihar State Housing Board vs. Meera Prasad, dead through LRS. & Ors.***). The learned counsel for the Respondent-Board has also relied on a judgment dated 13.09.2019, rendered by the Hon'ble Apex Court in Civil Appeal No. 7243 of 2019 (***The Bihar State Housing Board & Ors. vs. Radha Ballabh Health Care & Research Institute Private Limited***), paragraphs no. 28 and 31 whereof are reproduced herein below:-

“28. The question raised before the High Court was whether the appellant is entitled to updated price or the market price. We find that such discussion by the High Court is totally irrelevant inasmuch as the respondent has accepted the price on three occasions; firstly on March 21, 2014, then on April 2, 2014 whereby, the respondent



remitted a sum of Rs.40 lakhs by two cheques as well. The respondent has accepted the payment schedule but subject to final measurements of plots. It is thereafter the letter of allotment was issued on December 11, 2014. Thirdly, the respondent remitted another sum of Rs.1,71,00,000/- vide three separate cheques in January, 2015 so as to complete 20% of the interim price of letter of allotment dated December 11, 2014. It is thereafter an agreement was executed on March 12, 2015 unequivocally and categorically accepting the offer of the appellant. It was not open to the respondent to dispute the price of allotment offered by the appellant. The respondent is estopped to dispute the allotment price in these circumstances.

31. The action of the respondent to dispute the allotment price after accepting the price is neither fair nor reasonable and cannot be accepted.”

14. At this juncture, the learned Senior Counsel for the petitioners has submitted, by referring to the second supplementary affidavit filed by the petitioners that the letter dated 05.03.1997 brought on record by the Respondent-Board by way of Annexure-H to the supplementary counter affidavit, stated to have been written by the Revenue Officer, Bihar State Housing Board, Patna, to the Executive Engineer, Bihar State Housing Board, Patna Division-1, Patna, with a copy stated to have been forwarded to the original petitioner was never either



received nor served upon the original petitioner or the present petitioners and the detailed calculation chart has been received by the original petitioner only vide the aforesaid demand notice dated 10.01.2006, thus reliance placed on the said letter dated 05.03.1997 by the Respondent-Board is misplaced. Nonetheless, it is submitted by the learned Senior Counsel for the petitioners that the same reasoning put forth during the course of arguments for assailing the demand notice dated 10.01.2006, would also apply for annulment of the said letter dated 05.03.1997, inasmuch as the same also contains interest element for anterior period to the demand which cannot be charged.

15. I have heard the learned counsel for the parties and gone through the materials on record. The admitted facts which are not in dispute are that the MIG house bearing No. 224, situated at Lohia Nagar, Kankarbagh, Patna, was allotted in favor of the original petitioner, vide letter dated 02.08.1980, whereafter a lease agreement was entered into between the Respondent-Board and the original petitioner on 04.08.1980, wherein it had been specifically stated that the settlee Board has agreed to allot MIG House No. 224 to the original petitioner at a total cost of Rs. 59,200/-, out of which initial payment of a sum of Rs. 23,680/- has been made and the balance amount shall be paid by



the original petitioner in 180 equal monthly installments, starting from the first day of the month of September, 1980. The original petitioner had then paid the balance cost, totaling to a sum of Rs. 35,520/- in only 142 monthly installments and in fact had paid an excess amount of Rs. 709.57. Thereafter, the original petitioner had written a letter dated 22.6.1992 to the Executive Engineer, Patna Division-1, Bihar State Housing Board, Patna, stating therein that he has paid the entire cost of the house in question, hence in case any outstanding amount is required to be paid, he be intimated about the same so that the process of final transfer can be completed. In pursuance thereof the Executive Engineer, Patna Division-1, Bihar State Housing Board, Patna, had vide letter dated 01.07.1992, written to the Manager, Estate-cum-Joint Secretary, Bihar State Housing Board, Patna that the original petitioner has paid the entire cost of the house in question which has been verified from the divisional ledger, hence it be intimated as to whether he has to pay any further amount. The respondent-Board had then slept over the matter and suddenly a demand notice dated 10.1.2006 was sent to the original petitioner demanding a sum of Rs. 2,98,716/- which comprised of a sum of Rs. 37,371/- on the head of left out amount / escalated price and rest of the amount



was by way of interest for the period September, 1980 upto the month of January/February, 2006.

16. The aforesaid demand notice dated 10.01.2006 was challenged by the original petitioner by filing a writ petition bearing CWJC No. 4211 of 2007 and a coordinate Bench of this Court, by an order dated 29.02.2012, had disposed off the said writ petition with liberty to the petitioner to move the Managing Director, Bihar State Housing Board, Patna, by filing a representation raising his grievances, who was in turn directed to forward the matter to the Pricing Committee, which was directed to consider the claim of the respective parties and take a decision within a period of four months of filing of such representation. The original petitioner had then filed a representation before the Managing Director of the Respondent-Board, whereafter the Pricing Committee of the Respondent-Board had passed the impugned order dated 25.01.2014, holding that as per the agreement the cost has been revised, whereafter demand has been made and along with the revised cost, interest also becomes automatically applicable, hence no exemption can be granted as far as the interest amount is concerned, thus there is no error in the calculation made by the Board, therefore the claimant should make payment of the amount calculated by the



Board immediately. The Board had then issued a fresh demand notice dated 31.01.2014, raising a demand of Rs. 6,39,981.61/-.

17. This Court finds that while the learned Senior Counsel for the petitioners has submitted that since the left-out amount/escalated price demand, to the tune of Rs. 37,371/- was raised by the Respondent-Board for the first time vide demand notice dated 10.01.2006, the Respondent-Board is precluded from charging interest for the prior period, i.e September, 1980 to February, 2006 and even, thereafter whereas the learned counsel appearing for the Respondent-Board has submitted that the original petitioner had given his consent for paying the revised cost as per the terms and conditions entered into by him with the Respondent-Board, hence along with the revised cost, the amount of interest automatically gets levied, thus the petitioners will have to pay the interest amount as well, in case they want execution of the registered lease agreement.

18. Having gone through the materials on record, this Court finds that admittedly the calculation chart, showing the levy of revised cost / left out amount / escalated price amount, was furnished to the original petitioner along with the demand notice dated 10.01.2006, which has not been disputed by the Respondent-Board and a bare perusal of the said calculation



chart would show that the amount of revised cost / left out amount / escalated price is only a sum of Rs. 37,371/-, whereas the remaining amount i.e. approximately a sum of Rs. 2,61,345/- is on the head of interest for the period September, 1980 up to the month of February, 2006 i.e. for a period of about 26½ years. It is a well-settled law that interest can be charged only on an amount which was not paid upon legitimate demand being raised and interest for anterior period to the demand cannot be charged at all. In this connection, reference be had to the judgment rendered by a coordinate Bench of this Court in the case of **Smt. Shanti Verma & Ors.** (supra).

19. In **Bihar State Housing Board vs. Sardar Singh**, reported in (1999) 1 BLJR 694, a learned Division Bench of this Court has held that interest can be charged only on an amount, which was not paid after demand, however if no demand has been made, no interest can be charged. It would be gainful to refer to yet another judgment, rendered by a coordinate Bench of this Court in the case of **Krishna Deva Prasad vs. The State of Bihar & Ors.**, reported in (2003) 2 PLJR 46, paragraphs no. 17 and 18 whereof are reproduced herein below:-

“17. I have some doubt whether it was open to the Board to take a decision not to allow the adjustment of



rent five years after the payments were accepted on that basis and the contract was practically closed. But even assuming that the Board was at liberty to unilaterally re-open the issue of fixing the price of the house, there can be absolutely no justification for not intimating the petitioner and not making a demand from him for twelve years even after the price of the house along with interest was finally determined in November, 1984. In these facts the demand for payment of interest on the outstanding balance for the period November, 1984, to 20.3.1996 would plainly mean asking the petitioner to pay a heavy penalty for the laches, oversight and inefficiency of the Board. Though it is an admitted position that no notice or intimation was sent to the petitioner prior to the letter, dated 20.6.1996, with regard to the outstanding liability in the light of the reversal of decision and adoption of a different mode of calculation of interest, it is stated on behalf of the Board that the petitioner was otherwise aware of the outstanding dues against him. In this regard, reliance is placed on a representation filed by the petitioner on 11.6.1986, a copy of which is at Annexure 'D'. In my view, the reliance is wholly misplaced. In that representation, the petitioner primarily made a request for execution of the final transfer deed with regard to the house allotted to him and all that was said in that representation was that it was not open to the Board to unilaterally change the terms or revise and re-fix the price against the terms embodied in its proposal and offer. In the rejoinder affidavit filed on behalf of the petitioner it is explained that he used to go to the Board's



office from time to time and he had vaguely learnt that there was some proposal to refix the valuation of the house by a different mode and he was protesting against that. Moreover, he did not receive any reply to this representation filed in June, 1986, and he had, therefore, no means to know that his pleas were not accepted and the outstanding balance shown against him in the Board's books of account was attracting huge Interests and that by 1996 the dues had accumulated to a sum of over Rs. 01,67,528/-, In Bihar State Housing Board v. Sardar Singh 1998 (3) All P.L.R., 404, a Division Bench of this Court held that interest could be charged only on an amount which was not paid after demand. In the facts and circumstances of this case, the Division Bench decision applies with full force and I have no hesitation in holding that even if the Board's decision not to allow adjustment of rent towards the value of the house is upheld it cannot be held entitled to charge interest on the outstanding dues as on 31.3.1979. From the discussion, made above, it is clear that the Board can claim from the petitioner only a sum of Rs. 26,445.90 but no interest accruing on that amount for the simple reason that no demand for payment of that sum was ever made to the allottee.

18. In the result, this writ petition is allowed. The order, dated 8.4.2000, passed by the Board's Committee (Annexure 10) and the Impugned demand (Annexure 7), are quashed. The petitioner is directed to make payment of the sum of Rs. 26,445.90 within one month from today and the Board in turn is directed to execute the



document(s) of title with regards to MIG. House No. 119 and to submit them for registration within two months from the date of the deposit made by the petitioner.”

20. It would also be apt to refer to a judgment rendered by a coordinate Bench of this Court in the case of ***Smt. Nawlakha Devi & Anr. vs. State of Bihar & Ors.***, reported in (2005) 2 PLJR 184, paragraphs no. 1 and 2 whereof are reproduced herein below:-

“1. On 2.2.1976 the husband of petitioner no. 1 was allotted M.I.G. quarters No. 164M, Lohia Nagar, Kankarbagh, Patna. The price of the quarters was fixed at Rs. 58,000/-. The allottee deposited Rs. 6,500/- at the time of filing of the application. However, it was clear stipulation that the price may escalate due to acquisition of land and further construction. On 12.4.1980 the allottee was directed to deposit Rs. 8,000/-. He deposited the said amount. After deposit of the said amount the balance stood at Rs. 43,500/-. The allottee was permitted to deposit the said amount in 60 monthly equal instalments. He accordingly deposited the entire amount till 1985. After deposit of the amount on 26.3.1985 petitioner no. 2 made a request to the Housing Board for registration of the document. However, nothing was done. Again, the respondent-Board raised a demand for Rs. 4,704/- towards principal and interest. The petitioners deposited the said amount. The petitioners thereafter have always been requesting the Housing Board to



register the deed. They also served legal notice for the said purpose but nothing was done. The petitioners thus filed C.W.J.C. No. 3170 of 1997 for direction to the Housing Board to register the document. The said writ petition was disposed of on 5.8.1998 directing the petitioners to go before the Price Committee constituted by virtue of the order of this court. The petitioners filed written statement before the Price Committee of the Board on 22.9.1998. For the first time the respondent -Housing Board issued annexure 11, the calculation chart. This annexure 11 was issued admittedly in the year 1997/1998. By annexure 11 the Housing Board raised the price of the quarters in question to the tune of Rs. 18,981.17. However, the interest over the said amount was calculated to the tune of Rs. 75,958.22. The dispute is with respect to interest. It has been stated by the learned counsel for the petitioners that whenever the demand was made, the petitioners used to deposit and they deposited the entire amount. Thereafter no demand was made and calculation chart was made available to the petitioners in the year 1998. Since there was no demand, therefore, no Interest can be charged. Learned counsel for the respondents, however, submitted that there was a clause in the agreement that even though demand was not raised interest could be charged over the due amount. The submission, in my view, is fallacious. It is well settled rule of law that interest over the due amount can be charged only after demand. Admittedly, the house in question was allotted to the husband of petitioner no. 1 in the year 1976 and the possession, according to the



Board, was delivered in the year 1980. The demand was raised till 1987 and deposit was made by the petitioners and thereafter no demand was made. Unless demand is made no interest can be charged. In support of the submission learned counsel relied upon a Division Bench decision in the case of Bihar State Housing Board v. Sardar Singh, (1999) 1 BLJR 694, wherein it has been held that since no demand was made, therefore, no interest can be charged. Similar view has been expressed in the case of Krishna Deva Prasad v. State of Bihar 2003 (2) PLJR 46.

2. Thus, on consideration as discussed above demand with respect to interest by the Housing Board cannot be held to be legal. The said part of annexure 11 is hereby quashed. The petitioners will pay Rs. 18,981.17 within a period of three weeks from today and on deposit of the said amount the Housing Board will execute registered deed in favor of the petitioners within two months thereafter.”

21. Having regard to the law laid down by the learned Division Bench of this Court in the case of **Sardar Singh** (supra) and by the learned coordinate Benches of this Court in the case of **Krishna Deva Prasad** (supra), **Smt. Nawlakha Devi & Anr.** (supra) and **Smt. Shanti Verma & Ors.** (supra), this Court is of the view that interest can be charged by the Respondent-Board only on an amount, which has not been paid after demand, however interest for anterior period to the demand



cannot be charged. Thus, in the present case even if the demand notice dated 10.01.2006 is considered to be a notice intimating the original petitioner about the balance cost / left out amount / escalated price, no interest could have been charged for the prior period, hence the petitioners are liable to pay only a sum of Rs. 37,371/-, which is the left out amount / balance cost / escalated price amount. As far as the interest for the period after 10.01.2006 is concerned, this Court finds that the Respondent-Board is responsible for creation of the aforesaid situation, whereby and whereunder a wrong demand was raised, vide demand notice dated 10.01.2006, inasmuch as the same also includes interest for the prior period i.e approximately a sum of Rs. 2,61,345/- and then the Pricing Committee had also rejected the case of the original petitioner illegally, vide impugned order dated 25.1.2014 on a wrong premise that once the original petitioner has agreed to make payment of revised price, interest would be levied automatically, which in any view of the matter cannot be justified in law, since unless and until a demand is raised pertaining to the revised cost and the allottee fails to pay the same, no interest can be charged, a situation which had not arisen prior to 10.01.2006. As far as the demand notice dated 31.1.2014 is concerned, by which further interest amount has



been added and demand to the tune of Rs. 6,39,981.61 has been raised, the same is also not justified, rather is illegal on the aforesaid analogy hence, this Court is of the view that the Respondent-Board cannot be permitted to profiteer out of its own wrong, thus the interest amount, post 10.01.2006 till date can also not be charged from the petitioners. The law in this regard is no longer res integra, inasmuch as the Hon'ble Supreme Apex Court in a judgment, rendered in the case of ***Kusheshwar Prasad Singh vs. The State of Bihar & Others***, reported in (2007) 11 SCC 447, has held in paragraphs no. 14 to 16, as follows:-

“14. In this connection, our attention has been invited by the learned counsel for the appellant to a decision of this Court in Mrutunjay Pani v. Narmada Bala Sasmalt wherein it was held by this Court that where an obligation is cast on a party and he commits a breach of such obligation, he cannot be permitted to take advantage of such situation. This is based on the Latin maxim commodum ex injuria sua nemo habere debet (no party can take undue advantage of his own wrong).

15. In Union of India v. Major General Madan Lal Yadav the accused army personnel himself was responsible for delay as he escaped from detention. Then he raised an objection against initiation of proceedings on the ground that such proceedings ought to have been initiated within



six months under the Army Act, 1950. Referring to the above maxim, this Court held that the accused could not take undue advantage of his own wrong. Considering the relevant provisions of the Act, the Court held that presence of the accused was an essential condition for the commencement of trial and when the accused did not make himself available, he could not be allowed to raise a contention that proceedings were time-barred. This Court (at SCC p. 142, para 28) referred to Broom's Legal Maxims (10th Edn.). p. 191 wherein it was stated:

"It is a maxim of law, recognised and established, that no man shall take advantage of his own wrong; and this maxim, which is based on elementary principles, is fully recognised in courts of law and of equity. and, indeed, admits of illustration from every branch of legal procedure."

16. It is settled principle of law that a man cannot be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law. It is sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. To put it differently, "a wrongdoer ought not to be permitted to make a profit out of his own wrong".

22. It would be gainful to refer to yet another judgment, rendered by the Hon'ble Supreme Court of India in the case of ***Municipal Committee, Katra & Others vs. Ashwani Kumar***, reported in 2024 SCC Online SC 840, paragraphs no. 18 and 19



whereof are reproduced herein below:-

“18. The situation at hand is squarely covered by the latin maxim nullus commodum capere potest de injuria sua propria', which means that no man can take advantage of his own wrong. This principle was applied by this Court in the case of Union of India v. Maj. Gen. Madan Lal Yadav' observing as below:-

"28....In this behalf, the maxim nullus commodum capere potest de injuria sua propria meaning no man can take advantage of his own wrong squarely stands in the way of avoidance by the respondent and he is estopped to plead bar of limitation contained in Section 123(2). In Broom's Legal Maxim (10th Edn.) at p. 191 it is stated:

it is a maxim of law, recognised and established, that no man shall take advantage of his own wrong; and this maxim, which is based on elementary principles, is fully recognised in courts of law and of equity, and, indeed, admits of illustration from every branch of legal procedure."

The reasonableness of the rule being manifest, we proceed at once to show its application by reference to decided cases. It was noted therein that a man shall not take advantage of his own wrong to gain the favourable interpretation of the law. In support thereof, the author has placed reliance on another maxim frustra legis



auxilium invocat quaerit qui in legem committit. He relies on Perry v. Fitzhowe [[L.R.] 8 Q.B. 757:15 QB 239]. At p. 192, it is stated that if a man be bound to appear on a certain day, and before that day the obligee puts him in prison, the bond is void. At p. 193, it is stated that "it is moreover a sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned". At p. 195, it is further stated that "a wrong doer ought not to be permitted to make a profit out of his own wrong". At p. 199 it is observed that "the rule applies to the extent of undoing of taking away a right previously possessed".

19. It is beyond cavil of doubt that no one can be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law. It is a sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. To put it differently, 'a wrong doer ought not to be permitted to make profit out of his own wrong. The conduct of the respondent-writ petitioner is fully covered by the aforesaid proposition.'"

23. At this juncture, it would not be fair to the Respondent-Board in case the judgment referred to by its learned counsel are not dealt with by this Court. As far as the order passed by the Hon'ble Supreme Court of India in the case of **Smt. Meera Prasad** (supra) is concerned, firstly the same does not lay down



any law and secondly the facts and circumstances of the said case are distinguishable from the present case. As regards the judgment referred to by the learned counsel for the Respondent-Board, rendered by the Hon'ble Supreme Court of India in the case of *Radha Ballabh Healthcare & Research Institute Private Limited* (supra) is concerned, the same is also distinguishable in the facts and circumstances of the present case, inasmuch as it has been held in the said judgment that the action of the allottee to dispute the allotment price, after accepting the price is neither fair nor reasonable and cannot be accepted, based on the fact that an agreement was executed unequivocally and categorically accepting the offer of the Housing Board, as also in view of the stipulation in the advertisement that if the allotment letter is issued after 31.05.2008, the price of the allotted plot will be on the updated rates as on the date of allotment, whereas in the present case, though the original petitioner had paid the cost of the house in question, as mentioned in the agreement executed by him with the Respondent-Board, however after a lapse of about 26 ½ years, the Respondent-Board has revised the cost of the aforesaid house and has sought to charge interest for the said 26 ½ years, for which the original petitioner cannot be faulted



and laches are wholly attributable to the Respondent-Board.

24. Having regard to the facts and circumstances of the case, for the foregoing reasons and taking into account the law laid down by the Hon’ble Apex Court as also this Court in various pronouncements, as referred to herein above in the preceding paragraphs, I deem it fit and proper to quash the impugned order dated 25.01.2014, passed by the Chairman, Pricing Committee, Bihar State Housing Board, Patna as also the demand notices dated 10.01.2006 and 31.01.2014 respectively, issued by the Revenue Officer, Bihar State Housing Board, Patna and direct the Respondent-Board to accept the revised cost / left out amount / escalated price to the tune of Rs. 37,371/- from the petitioners and in case the same is paid within a period of four weeks from today, the Respondent-Board shall initiate process for final transfer of the house in question and execute the necessary registered lease deed in favor of the petitioners within a period of four weeks, thereafter.

25. The writ petition stands allowed.

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	AFR
CAV DATE	12.12.2024
Uploading Date	02.05.2025
Transmission Date	NA

