

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.25697 of 2013

Krishana Kumar Das S/O Late Ram Dayal Das Resident of Village And Post
Dighwara, P.S. Dighwara, District Saran Chapra.

... .. Petitioner/s

Versus

1. Bihar State Housing Board Patna
2. Prabandhak Bhu-Sampada-cum-Additional Secretary, Bihar State Housing Board, Patna.
3. The Managing Director, Bihar State Housing Board, Patna.
4. The Executive Engineer, Bihar State Housing Board, Muzaffarpur.
5. The Junior Engineer, Bihar State Housing Board, Bhapra.
6. The Account Officer, Bihar State Housing Board, Muzaffarpur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Sanjay Kumar Saroj, Advocate
For the B.S.H.B. : Mr. Lalit Kishore, Sr. Advocate
Mrs. Binita Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
C.A.V. JUDGMENT

Date: 13.08.2020

The present writ petition has been filed for directing the respondent authorities to execute registered perpetual lease deed in favour of the petitioner allottee, in whose favour allotment was made on 08.11.1996 and the entire payment was made by him on 07.12.2001 i.e. within the prescribed time. It is further prayed to set aside the demand notice dated 10.08.2011 and 25.10.2013 respectively.

The brief facts of the case are that the petitioner had applied for allotment of middle income group plot in the town of Chapra vide application dated 24.03.1994 pursuant to an advertisement issued by the respondent Bihar State Housing Board and had made an advance payment of Rs. 3500/-. On 08.11.1996, plot no. MP-174 situated at village-Sadha, Town-



Chapra admeasuring 1625 sq. feet was allotted to the petitioner on the basis of draw of lots held on 07.11.1996. The tentative price of the plot in question was fixed as Rs. 74,425/- which was to be paid in 60 monthly installments, whereafter the petitioner had made the requisite payment and a hire purchase agreement was executed on 08.06.1999 with regard to the plot in question in between the petitioner and the respondent no. 4 and the possession of the plot in question was given to the petitioner, as is apparent from the possession report dated 10.05.2000, prepared by the Junior Engineer i.e. the respondent no. 5. The petitioner is stated to have made the entire payment of the total sale consideration in between the period 11.09.1999 to 07.12.2001, whereafter the petitioner had requested the respondent authorities to execute and register a perpetual lease in respect of the aforesaid plot in question, however, the respondent authorities did not do the needful and on the contrary illegal and unlawful demands totaling to a sum of Rs. 3,03,871.98 and Rs. 4,14,248.39 were made by the respondents vide demand letters dated 10.08.2011 and 25.10.2013.

Per contra, the learned counsel appearing for the Housing Board, has submitted that as per clause-3 of the hire purchase agreement in question, the petitioner was required to



pay to the Board without waiting for any demand, the balance amount of cost/premium in 60 installment of Rs. 1380.20/- per month. It is further submitted that as per clause 4A of the agreement in question, the total disposal price indicated therein was according to the estimate, hence, was tentative and in case of any increase in the cost of development or due to increase in cost for land acquisition or on account of increase in cost due to variation upon final valuation being made or for other reasons, incremental cost would be payable by the settlee either in installment or in lump sum. It is the case of the respondents that the calculation chart annexed as Annexure-A to the counter affidavit would show that the petitioner had not paid the installments within time. The learned counsel for the respondent Housing Board has also referred to the supplementary counter affidavit filed in the present case to contend that though the installment had started on 07.07.1999 but the petitioner had paid the installments as per his convenience and not in the first week of every month resulting in levy of interest amount. It is also submitted that the petitioner had stopped paying installments with effect from 07.12.2001, on which day the due amount was Rs. 20,154/-, hence the same has also resulted in levy of interest. It is also submitted that at the time of payment of 60th



installment, the outstanding dues to be paid by the petitioner was a sum of Rs. 23,376.49. The respondent Board, after completion of payment of all the 60 installments, made the final calculation and informed the petitioner about the outstanding dues vide letters dated 04.01.2006, 30.10.2007 and 10.01.2008, however, the petitioner did not act accordingly. Lastly, it is submitted that the outstanding amount up to the month of September, 2012 was Rs. 2,29,619.39, which does not take into consideration the period of delay, however, the outstanding dues as on date i.e. up to the month of June, 2019 is Rs. 6,08,213.29.

The learned counsel for the petitioner has relied upon various judgments which are being discussed herein below:-

(i). 2001(1) PLJR 144 (Manju Singh vs. Bihar State Housing Board & Ors.).

The learned counsel for the petitioner has relied on the aforesaid judgment to contend that the respondent Board cannot be justified in raising the cost of the plots/flats in question in an exorbitant manner on account of delay caused by the Board in finalizing the cost of the house.

This Court finds that the said judgment is distinguishable in the facts and circumstances of the present case inasmuch as in the said case, though allotment was made



on 03.09.1983, no steps for executing an agreement was taken by the Board till 23rd March, 1985, hence, it was held that there was no delay on the part of the petitioner in entering into the requisite agreement. However, in the present case the petitioner is not complaining about any delay having been caused in entering into an agreement.

(ii).2006(4) 264 PLJR (Shiv Sahai Verma vs. The State of Bihar & Ors.).

The said judgment deals with a situation wherein though the allotment was made by the authorities to the petitioner as far back as in the year 1983, however, the agreement was executed only on 03.04.1989 and since the entire infrastructure had been completed and cost of land as well as that of construction had already been paid prior to the execution of the agreement, this Court held that thereafter, there was no question of any increase of the cost of acquisition of land or increase in the cost of construction since it had already been done much before allotment was made to the petitioner and agreement was executed with the petitioner.

(iii). 2007(3) PLJR 624 (Bihar State Housing Board and Ors. vs. Manju Singh).

This judgment, rendered by the learned Division Bench of this Court, arises out of the aforesaid judgment



rendered by the learned Single Judge in the case of Manju Singh (supra) and in this judgment rendered by the learned Division Bench, the aforesaid judgment at serial no. (i) has been set aside and the matter has been referred for arbitration in view of the agreement/contract in question containing an arbitration clause. It would suffice to state here that this Court is also not averse to the idea of referring the matter for arbitration.

(iv). 2008(2) PLJR 384 (Bihar State Housing Board & ors. vs. Shiv Sahai Verma & Anr.).

The present case pertains to the judgment rendered by the learned Division Bench of this Court in a case arising out of the judgment rendered by the learned Single Judge in case of Shiv Sahai Verma (supra), which has been referred to herein above at serial no. (ii). In this case the learned Division Bench has upheld the order of the learned Single Judge on the ground that no material was placed before the Court, by the Housing Board, showing reasons which had compelled the Board to increase the cost of the house.

(v). 2013(1) PLJR 864 (Rajiv Kumar vs. the Bihar State Housing Board).

A coordinate Bench of this Court has held that there should be good reasons showing sufficient ground for



escalation of the cost of the plot in question and the same cannot be on the basis of a similar plot in the same locality fetching higher price to the Board.

At this juncture, the learned counsel for the respondent Board has submitted that disputed question of facts cannot be decided in a writ jurisdiction under Article 226 of the Constitution of India and if the petitioner is aggrieved with the price/cost determination of the plot in question, he is required to approach the Pricing Committee which has been constituted by the respondent Board, pursuant to orders/directions issued by the learned Division Bench of this Court on 20.10.1995 in ***CWJC No. 47 of 1999 and CWJC No. 2724 of 1994***, for the purposes of examination of such disputes regarding price, in-between the flat/plot owners and the respondent Board. The learned counsel for the respondent Board has also referred to a judgment rendered by the learned Division Bench of this Court, reported in *2006(2) PLJR 126* wherein this Court has again reiterated that grievances of the allottees pertaining to determination of cost/price of the land/flat/house allotted by the Housing Board are required to be determined by the Pricing Committee. In this regard various other judgments/orders have been referred to by the learned counsel for the Housing Board



which are:-

1. Order dated 13.12.210 passed in CWJC No. 6059 of 2000;

2. Order dated 02.03.2012 passed in CWJC No. 17872 of 2009 and analogous cases.

I have heard the learned counsel for the parties and perused the materials on record and I find from the record that no explanation or material whatsoever has been produced by the respondent Housing Board in order to justify the revision of cost of the plot in question, hence relying on the aforesaid judgments rendered by this Hon'ble Court as referred to by the learned counsel for the parties and considering the fact that a bonafide dispute exists regarding the genuineness and veracity of the revision of the cost of the plot in question, I deem it fit and proper to relegate the petitioner to the remedy of approaching the Pricing Committee by filing an appropriate petition, challenging the aforesaid demands in question, made by the respondent Housing Board, and in case such a petition is filed by the petitioner within a period of twelve weeks from today, the Pricing Committee would issue notice to the respondent Board and call for an explanation from the respondent Housing Board as also seek the details and the reasons which has led to increase in the cost of the plot in



question and after considering the entire materials on record as also the law laid down by this Hon'ble Court in the judgments referred to herein above by the learned counsel for the petitioner and upon grant of ample opportunity of hearing to the petitioner, shall pass a reasoned and a speaking order, in accordance with law, within a period of three months of filing of appropriate petition/complaint by the petitioner.

It is needless to state that till the final adjudication of the complaint of the petitioner by the Pricing Committee, the aforesaid impugned demands dated 10.08.2011 and 25.10.2013 shall remain in abeyance, however, in case no complaint/claim petition is filed by the petitioner before the Pricing Committee within a period of twelve weeks from today, the respondent Housing Board would be free to take appropriate action, in accordance with law.

The writ petition stands disposed off with the aforesaid observations and directions.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	AFR
CAV DATE	15.11.2019
Uploading Date	19.08.2020
Transmission Date	

