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**(2011) 06 PAT CK 0010**  
**In the Patna High Court**  
**Case No : CWJC No. 4963 of 2002**

Dr. Nitendra Prasad Sinha

APPELLANT

Vs

The Chairman-cum-Managing Director, Bihar State Housing  
Board, Mangals Road, Patna and Others

RESPONDENT

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**Date of Decision : 22-06-2011**

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation : (2011) 4 PLJR 219**

**Hon'ble Judges : R.M. Doshit, C.J;Birendra Pd. Verma, J**

**Bench : Division Bench**

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## Judgement

R.M. Doshit, Chief Justice

1. Learned Advocate for the respondent-Bihar State Housing Board is not present before us.
2. This petition under Article 226 of the Constitution is filed by an allottee of a plot of land no. 8M/242, in the housing project at Digha, Patna in Middle Income Group by the respondent-Bihar State Housing Board under the Hire Purchase Agreement executed on 27th July, 1995.
3. It is the case of the petitioner that pursuant to his application made in the year 1981, the petitioner was allotted the aforesaid plot of land no. 8M/242 at Digha in a draw held on 11th September, 1991. The petitioner has paid the price/premium as per the agreement between the Bihar State Housing Board and the petitioner in hire purchase agreement. The entire disposal price has been paid by the petitioner. The claim of the petitioner is that as the petitioner has paid the entire price, the Board is under obligation to handover the vacant possession of the said plot of land no. 8M/242 to the petitioner. However, for the reasons unknown to the petitioner the Board has not handed over the possession of the said plot of Land No. 8M/242. Therefore, the present petition.
4. The petition is not contested by the Board. Neither the Board has filed counter

affidavit nor the learned Advocate has remained present before us.

5. Ordinarily, a petition under Article 226 of the Constitution for enforcement of a contractual right shall not lie. However, in view of C.W.J.C. No. 3991 of 1987 filed in public interest in the same subject matter pending before us this petition is entertained as early as in the year 2002. The pleadings are supported by the documentary evidence. We, therefore, do not consider it expedient to relegate the petitioner to alternative remedy at this stage of the litigation.

6. In absence of denial or contest by the Board, we have to believe the statements made by the petitioner supported by the documentary evidence. Letter of allotment and the hire purchase agreement dated 27th July, 1995 are produced on record.

7. In view of the above uncontested facts, we allow this petition with cost. Cost is quantified at Rs. 10,000/-. We direct the respondent- Bihar State Housing Board to handover the vacant possession of the plot no. 8M/242 in Sector No. 8 at the housing project at Digha, Patna within two months from today. In the event the Board fails or is unable to handover the vacant possession of the aforesaid Plot No. 8M/242 to the writ petitioner, as directed, the Board will refund the amount of Earnest Money Deposit paid by the petitioner with statutory interest of five per cent per annum from the date of the deposit till the date of payment. The disposal price/cost of the land paid by the petitioner will be refunded to him with interest @ twelve per cent per annum calculated at quarterly rest from the date of the payment made by the petitioner till the date of the refund. The aforesaid amount of refund will be paid to the petitioner within three months from today. The respondent-Bihar State Housing Board shall pay the cost of Rs.10,000/- (Rs. Ten thousand) within six weeks from today.

8. The Registry will send the writ of this order to the Bihar State Housing Board forthwith.