

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10032 of 2013

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1. Pramod Kumar S/O Shri Janak Lal Yadav Resident Of Village - Basgara, P.O. Jalehi, P.S. K. Nagar, District - Purnia
 2. Dr. Milind Kumar S/O Sri Sadanand Jha Village And Post - Bhawanipur, Navagachiya, District - Bhagalpur
 3. Sri Taranand Yadav S/O Late Upendra Narayan Yadav Village - Kumariya, P.O. Parasmani, P.S. Mirganj, District - Purnea
 4. Manoj Kumar Yadav S/O Late Sundar Yadav Village - Basagara, P.O. Jagaili, P.S. K. Nagar (Sri Nagar), District - Purnea
 5. Suresh Prasad Bhagat S/O Late Ram Krishna Bhagat Village - Kash Nagar, P.O. Pakariya, P.S. Sonavarsha Raj, District - Saharsa
 6. Deepak Kumar S/O Late Srikant Choudhary Mohalla - Line Bazar, Po Head Post Office, P.S. K. Hat, District - Purnea
 7. Dileep Kumar Sharma S/O Sri Bachchu Lal Sharma Village - Jai Prakash Nagar, College Road, P.O. Purnea, P.S. Khajanchi Hat, District - Purnea
 8. Sri Chandra Shekhar Rai S/O Late Satyadev Rai Village - Naharwat, P.O. Mainagram, P.S. Mahishi, District - Saharsa
 9. Pushp Raj Bachchan S/O Bujdev Pd. Yadav Village And P.O. Singhiya, P.S. K. Nagar, District - Purnea
 10. Smt. Chandrakanta Devi Wife Of Arvind Kumar Azad Village - Champanagar, P.O. Banaili, P.S. K. Nagar, District - Purnea
 11. Pradeep Kumaar Gupta S/O Sri Gulab Chaandra Prasad Gupta Village - Champanagar, P.O. Banaili, P.S. K. Nagar, District - Purnea
 12. Jai Govind Mehta S/O Late Baldev Mehta Village - Prasadpur, P.O. Banaili (Champanagar), P.S. K. Nagar, District - Purnea
 13. Smt. Sushila Devi H/O Late Kumar Dev Yadav Vill. - Mohani, P.O. Betauna, P.S. Kasaba, Distt. - Purnea
 14. Hem Narayan Mehta S/O Bhairav Prasad Mehata Vill. - Chandi Kathava, P.O. Rani Patra, Distt. - Purnea
 15. Sri Suresh Kumar Mehata S/O Sri Neva Lal Mehata Vill. - Motinagar, P.O. Ranipatra, Distt. - Purnea
 16. Sri Bimal Kumar Mehata S/O Sri Neva Lal Mehata Vill. - Motinagar, P.O. Ranipatra, Distt. - Purnea
 17. Smt. Padma Kumari W/O Vishvanath Mehata Vill. - Chandi Kathava, P.O. Ranipatra, Distt. - Purnea

.... Petitioners

Versus

1. The State Of Bihar Through The Commissioner - Cum - Principal Secretary, Department Of Urban Development And Housing, Govt. Of Bihar, Patna
2. The Bihar State Housing Board Through The Managing Director, 6 Mangles Road, Patna
3. The Manager Estate, Bihar State Housing Board Through The Managing Director, 6 Mangles Road, Patna
4. The Executive Engineer, Bihar State Housing Board, 6 Mangles Road, Bhagalpur
5. The Assistant Engineer, Bihar State Housing Board, Purnea

.... Respondents

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Appearance :

For the Petitioners : M/s Amaresh Kumar Sinha and
Avinash Kumar

For the State : Mr. Neeraj Raj, AC to SC 19

For the State : Mr. Anshuman Singh, Advocate

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 11-09-2015

Heard learned counsel for the petitioners, the State and
the Bihar State Housing Board.

Annexure 5, which is a notice published in Hindi Daily
Newspaper Dainik Jagran on 19.1.2013, is under challenge in this
writ application by which it has been notified that certain applicants
have remained pending in the waiting list for allotment of residential/
commercial schemes due to non-availability of the plot, flat or
house in such category, therefore, the Board has taken a decision that
the waiting list would be scraped and earnest money would be
returned in accordance with law to all the applicants concerned.

The petitioners, who had applied in MIG / HIG
category in Indira Nagar Residential Colony, Purnea admit that they
could not be allotted plots under lottery system and were in the
waiting list. However, it is contended that the Divisional Allotment
Committee of the Board held a meeting on 5.8.2009 with respect to
allotment of MIG and HIG and had taken a decision that in view of



15 plots in the HIG category being available and there are only 15 persons in the waiting list, one plot should be allotted to each of the persons in the waiting list by draw of lot. So far MIG is concerned it has been decided that 41 applications are pending whereas 26 plots are already available and, that apart, since a decision has been taken that under new reservation policy there would be no reservation for Member of Parliament / Member of Legislative Assembly / Government officials / widows / physically challenged persons, the 14 plots earmarked for that purpose can also be added to that quota and as such plot number would swell up to 40 which should be allotted between 41 applicants by draw of lot and recommendation to that extent was sent to the Board for approval. Petitioners have appended the copy of the proceeding dated 5.8.2009 as Annexure 4. It is contended that though the recommendation was of the year 2009, however, matter was kept pending for four years. In the meantime, the Executive Engineer of the Bihar State Housing Board, Bhagalpur had also written to the Managing Director of the Board vide Annexure 6 dated 19.12.2012 communicating the availability of the aforesaid plots, however, nothing was done and suddenly a general direction for cancelling the entire waiting list of every category in the entire State of Bihar has been issued vide impugned Annexure 5.



It is contended that in view of the availability of the plot and in view of decision taken by the statutory authority, i.e., the Divisional Allotment Committee, a decision ought to have been taken by the Board or by the State either approving it or disapproving but without doing that, simply ignoring the recommendation, the impugned notice has been issued.

Mr. Anshuman Singh, learned counsel for the Housing Board has submitted that the writ petition is misconceived inasmuch as number of available plot was already disclosed in Annexure 1 which is notice inviting the application for allotment in the year 2004 itself. It discloses that only 68 HIG and 151 MIG plots were available in Indira Nagar, Purnea. However, in the counter affidavit filed on behalf of the Housing Board, surprisingly, not a single word has been uttered with respect to Annexure 4 upon which the claim of the petitioner is based. That apart it stands stated in earlier issued notice, i.e., Annexure 1 itself at Sl. No. 5 in clear terms that there could be a change with respect to the available plots as well as its price. Therefore, in my considered opinion, this stand cannot be taken by the Board that once certain plots were disclosed that cannot be increased.

Be that as it may, at least a decision should have been taken in this regard by the Board which does not appear to have been

taken as there is not a single word in the counter affidavit regarding any decision having been taken upon the recommendation by the Divisional Allotment Committee.

For better appreciation, it would be apt to examine the relevant provisions of Bihar State Housing Board (Management and Disposal of Housing Estates,) Regulation, 1983 which stand are extracted as under:-

“25(1) The Board shall allot property in Patna.

(2) For the purpose of allotment of property in other areas the Board shall constitute a committee at the Divisional level to be called the Divisional Allotment Committee consisting of the following:-

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| (i) Commissioner of the Division | -Chairman |
| (ii) Managing Director or his nominee | -Member |
| (iii) Concerned District Magistrate | -Member |
| (iv) One non-official member of the Board
to be nominated by the Government | -Member |
| (v) Concerned Executive Engineer of the Board | -Convenor |
| | (Member –Secretary) |

26. Subject to the approval of Government, the Board/Divisional Allotment Committee shall determine which of the applicants are eligible for allotment and the decision thus arrived at (of the committee in this regard) shall be final:-----

(i) in every category (except discretionary quota) the allotment of property to eligible applicants shall be made by draw of lots by the Board. The procedure of draw of lots will be decided by the Managing Director.

(ii) The particular plot/house /Flat to be applicant in accordance with sub-section(i) above shall be determined by drawing of lots after due notice to such applicants of the date, time and venue of the draw.

27. The Divisional Allotment Committee shall forward its decisions to the Board for onward transmission to the Government.

28. Formal allotment orders and letters shall be issued by the office of the Board. Provided decision on allotment on compassionate ground referred to in Regulation 10(h) shall be taken by the Board.

29. The Board/Divisional Allotment committee shall thereafter prepare a final list of allottee/hirers and shall place them in such group or groups as may be deemed expedient by the Board.

30. On the basis of final list of allottees /hirers drawn up by the Board/Divisional Allotment committee an allotment Register shall be prepared in which names and other particulars of allottees /hires shall be entered serially as per list.

31. Intimation about allotment shall be sent to all persons selected for allotment whose names have been entered in the allotment register.

32. In the event of a person or persons not accepting offer of allotment and failing to comply with the prescribed formalities within two months of issue of the allotment letter, the property shall be allotted to the person or persons next falling on the waiting list in the serial order or the Application Register provided the eligibility criteria is satisfied.”

The Divisional Allotment Committee finds its origin under Regulation 25 of the Bihar State Housing Board (Management and Disposal of Housing Estates). Regulation, 1983 which lays down that the Housing Board would allot property in Patna, however, for the purpose of allotment of property in other area, i.e., other than the city of Patna, the Board shall constitute a Committee at the Divisional Level which is known as Divisional Allotment Committee for certain purpose described in Regulation 26 which lays down that the Committee so constituted would determine which of the applicants are eligible for allotment and such decision would be final subject to the approval of the Government. Regulation 27 lays down that the Divisional Allotment Committee shall forward its decision to the Board for its onward transmission to the Government. In terms of the Regulation 28 formal allotment orders and letters is to be issued by the office of the Board. Coming to the case in hands, it

is nowhere stated as to what decision was taken by the State Government. State Government has not filed any counter affidavit also.

Thus, in my considered opinion, so far the petitioners are concerned or the plots of MIG or HIG, Indira Nagar, Residential Colony, Purnea are concerned, the Managing Director of the Board does not have authority to ignore the recommendation of the Divisional Committee and issue a direction for annulment of the entire waiting list after four years of such recommendation for the reason that, so far the concerned allotment is concerned, power of the Committee has been kept at par with the Board itself which would be apparent from the reading of aforesaid regulation. The Board has power to allot plots for Patna, whereas, for all other places, the Committee is entitled to make such decision. However, in the present matter question of allotment would arise after decision of the State Government taken under Regulation 26 .

At this juncture, Mr. Anshuman Singh, learned counsel , by way of last resort submits that the moment draw of lot was made in terms of Annexure 1, the Committee ceases to exist and, therefore, it did not have any power to make a further recommendation. Though such assertions is not there in the counter affidavit filed by the Board, rather not a single word has been uttered



with respect to the allegations of petitioner in this regard or no comment has been made to Annexure 4 which is the decision by the Divisional Allotment Committee, the aforesaid submission made on behalf of the Board at the time of hearing is noted only to be rejected for the reason that from bare reading of the Regulation from 25 to 32, it appears that so far the allotment part is concerned the District Allotment Committee has been kept at par with the Board itself. The power of allotment of city of Patna lies with the Board whereas for other places of the State of Bihar that lies with the Divisional Committee and both recommendations have to go ultimately to the State Government for its approval under Regulation 26.

Mr. Anshuman Singh, learned counsel, has miserably failed to point out any provision under the Statute or Regulation that the Divisional Committee is constituted with respect to a particular scheme only and its tenure also lapses with the end of the scheme, however, from perusal of the Regulation aforesaid, it appears that the Committee is constituted on permanent basis which consists of Commissioner of the Division, Managing Director of the Board or its nominee, the District Magistrate of the concerned district and one non-official member of the Board to be nominated by the Government and concerned Executive Engineer of the Board in every district. It is nowhere stated that separate committee would be

formed for every schemes as that would necessarily consist of District Magistrate of the concerned district and the Executive Engineer posted at that place, apart from one non-official member of the Board to be nominated by the State Government.

Thus, in my considered view, the Committee is not a temporary one. It is clear from impugned Annexure 5 itself that the scheme was never closed and waiting list was kept alive and that is the reason why Annexure 5 has been published by the Board ending scheme and bringing the waiting list to zero, therefore, this stand cannot be taken by the Board that at that point of time, the Committee was not in existence specially when that stand has not been taken in the counter affidavit.

Accordingly, in my considered view, the waiting list with respect to the HIG and MIG plots which was admittedly kept alive without any objection by the Board till the notice published in Annexure 5, cannot be allowed to lapse as per the impugned notice without any decision having been taken by the State Government upon the recommendation of the Committee.

Accordingly, this writ application succeeds and it is held that notice published in Annexure 5 would not affect the waiting list of the HIG and MIG category of Indra Nagar Residential Colony, Purnea which is subject matter of this writ

application till a final decision upon recommendation of the Divisional Allotment Committee is taken.

Let the State Government take a decision upon the aforesaid recommendation expeditiously.

(Dr. Ravi Ranjan, J)

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