

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4257 of 1988

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Baba Bhootnath Charitable Trust

.... Petitioner/s

Versus

The State of Bihar and others

.... Respondent/s

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Appearance :

For the Petitioner : Ms. Mahasweta Chatterji
Mr. Janardan Singh
Mr. Akhilesh Kumar
Mr. Nitesh Kumar

For the State : Mr. Ravindra Kumar Priyadarshi
For Housing Board : Mr. Anshuman Singh
Mr. Sriram Krishna
Mr. R. Shekhar
Mr. S.H. Pandey

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

and

HONOURABLE DR. JUSTICE RAVI RANJAN

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

Date: -23-11-2016

Heard learned counsel for the petitioner and learned
counsels for the State and for the Bihar State Housing Board.

The writ application has been filed for quashing the
letter dated 31.05.1988 issued by the Building Construction and
Housing Department, Government of Bihar under the signature of the
Deputy Secretary addressed to the Managing Director, Bihar State
Housing Board stating that with reference to his letter dated
23.05.1988, the Government has decided to withdraw the
departmental letter dated 05.06.1985 and it was, accordingly,
withdrawn.

The litigation between the petitioner-trust and the respondent-State as also the respondent-Housing Board has a chequered history. The facts may, accordingly, be noted. Baba Bhootnath Charitable Trust was created by registered deed dated 03.07.1972 before the District Sub- Registrar, Lucknow. A Branch of the said Trust was established at Patna on 05.04.1977.

Land acquisition proceedings were initiated under the Land Acquisition Act, 1894 and Section 4 notification dated 05.11.1973 was published in the Official Gazette on 27.11.1973 for the construction of houses. On 14.04.1977, one Moti Lal Khaitan styling himself as Secretary of the petitioner Trust wrote to the Chairman of the Board to release Survey Plot No.563 appertaining to Khata No.254, bypass road, Kankerbagh from the acquisition stating that an old temple existed on the said plot and a new temple was being built. On 22.07.1977, the possession of the entire acquired land was delivered to the Housing Board by the Collector, Patna. A letter dated 07.4.1978 was obtained by the petitioner-Trust which was allegedly signed and issued by P.A. (Personal Assistant), non-technical to the Chief Engineer stating that the land was not under acquisition. On 12.05.1978, permission was given by the Court of Urban Land Ceiling in Case No.774 of 1978 to one Smt. Bhagwati Devi Khaitan for execution of a deed of gift. On 16.05.1978, Smt. Bhagwati Devi Khaitan registered a deed of gift in favour of Boothnath Ashram with



respect to Municipal Survey Plot No.563, Village- Bahadurpur, Revenue Thana No.10, Touzi No.268, area 28 decimals mentioning the land as occupancy agricultural land. Thereafter, in the year 1978 a doubled storeyed building called Matri Mandir and another three storeyed building for residential purpose was constructed. The idol of Goddess Kamakhya was installed in the Mandir. The Circle Officer by his order dated 01.06.1981 directed mutation in the name of Baba Bhoothnath Ashram over the said land. The petitioner claims to have started paying rent to the revenue authorities.

It is the stand of the respondent Housing Board that in the meanwhile on 22.07.1978 the layout plan of housing scheme was prepared by the Board which was approved by the Chief Town Planner and in Sector 3 of the said plan, lands were earmarked for playground, primary school, health centre, shopping and 80 feet wide road connecting the old Patna bypass road on the north of the Housing Colony.

On 05.06.1981, the Executive Engineer, Housing Board filed Eviction Case No. 1 of 1981 before the competent authority under the Act for eviction of the petitioner. By order dated 11.02.1982, the competent authority directed the demolition of construction and removal of encroachment and eviction of the petitioner from all survey plots, including plot No.563. On 14.06.1983, the Commissioner-cum- Secretary, Urban Development



and Housing Department wrote to the Managing Director of the Board referring to the decision of the competent authority and stated that forcible removal of the encroachment would lead to serious condition of law and order and therefore in special circumstances, the Government has taken a decision to regularize the encroachment on the condition that the cost of the land along with 25% penalty should be realized from the Ashram and if the Ashram does not pay the same then the State Government and the Housing Board should take steps in accordance with law for removal of the encroachment. The said decision of the Government was considered by the Executive Committee of the Board. The Board, however, in the meeting of the Executive Committee held on 9th July, 1983 declined to accept the proposal of the State Government.

The petitioner having failed to challenge the order dated 11.02.1982 of the competent authority in Eviction Case No. 1 of 1981 before the appellate authority, filed writ petition, being C.W.J.C. No.2430 of 1983, for quashing the order dated 11.02.1982 which was dismissed by a Division Bench of this Court by order dated 29.06.1983 except the part of the order which related to award passed for past and future damages, leaving it to the competent authority to re-determine the damages in according with law after giving notice to the parties concerned and after permitting them to adduce materials or evidence in support of their respective contentions in relation to the

award for past and future damages. The petitioner filed SLA (Civil) No. 287 of 1983 before the Supreme Court against the said order which was allowed to be withdrawn by order dated 06.10.1983.

Thereafter on 17.08.1984 the lay out plan of Section 3 of the Bahadurpur Housing Scheme was approved by the Managing Director, Bihar State Housing Board which was subsequently approved as part of the Master Plan for development of Patna by the Council of Ministers.

Again the letter dated 05.06.1985, of the Urban Development and Housing Department addressed to the Chairman-cum-Managing Director of the respondent-Board, reiterated the proposal of the Government as contained in letter dated 14.06.1983 for regularization of the encroachment and to settle 3.5 katha of land, including 2 katha on which the temple had been constructed and 1.5 katha on which three storeyed building stands with the Ashram on accepting payment of Rs.4.88 Lacs.

One Tulsi Singh ex-Legislator filed C.W.J.C. No.261 of 1986 with a prayer for quashing the Government's order dated 05.06.1988 and for demolition of pucca structure over the land and for restraining the respondents from passing any order for settlement of the said land in favour of the Trust. By order dated 24.02.1988, the writ application was dismissed with the direction that in accordance with the impugned order no part of the encroached land of the Ashram

would be demolished and the settlement of the land as indicated in the said order will be made with the Ashram on their depositing an amount of Rs.4.88 Lacs which was to be done within one month and the Board shall vacate the said premises in which they have opened their small office in the temple.

The petitioner filed an appeal, being L.P.A. No. 65 of 1983, challenging the said order in which the stand taken was that while dismissing the writ application filed by the said Tulsi Singh, the learned Judge had issued a writ of mandamus against the Board and in favour of the respondent-Trust which was beyond the scope of the writ application. Upon this, learned senior counsel for the Trust took the stand that there was no question of issuance of mandamus in favour of the respondent and against the respondent of the writ application. According to him the order should not be read as a writ of mandamus issued against the Board but it only amounts to reiterating the reasons given in the earlier paragraph in respect of the impugned order. The L.P.A. Bench thereafter held that in its opinion there was no occasion to issue any direction against the Board in the writ application to comply with the directions given by the State Government in the communication dated 05.06.1985 as the respondent-Trust as well as the Board were respondents to that writ application and it need not be pointed out that the writ application had not been filed on behalf of the Trust for a writ of mandamus on



the Board to comply with the directions given by the State Government by the impugned communication dated 05.06.1985. It was further held that in view of the stand taken on behalf of the respondent-Trust itself that the judgment cannot be treated as a writ of mandamus against the Board directing them not to demolish the encroachment and to make the settlement with the Trust and to vacate the premises, there was no occasion on the part of the Board to be aggrieved from any part of the judgment and accordingly, the appeal was disposed of at the stage of admission itself.

The petitioner had also filed a contempt application being M.J.C. No.330 of 1988 in which a show cause was filed on behalf of the Managing Director as also the Chairman of the Board stating that they had been advised by the counsel to file L.P.A. and further that the money could have been deposited through pay-in-slip and unqualified apology was also tendered and it was stated that the premises would be vacated and the possession delivered and that they were willing to carry out the direction of this Court. Accordingly, the petitioner counsel stated that he would deposit an amount of Rs.4.88 Lacs positively by 1st June, 1988 and further that the petitioner would take delivery of possession on 2nd June, 1988 on which date the photo copy of the pay-in-slip would be handed over to the Board. It was also directed that the petitioner's counsel shall furnish the requisite non judicial stamp on 8th June, 1988 for registration of the deed of

settlement. The matter was, thereafter, adjourned.

Another L.P.A. No.70 of 1988 was filed against the order dated 11.04.1988 by the said Tulsi Singh which was disposed of by order dated 24.07.1998 in view of the statement made by learned counsel that L.P.A. No.65 of 1988 filed by the Housing Board has been disposed of on 07.06.1988, upon which the court held that since the matter in issue was covered in the above LPA and the same had been disposed of finally, hence, the present LPA stood rendered infructuous. By order dated 24.07.1998, MJC No.330 of 1988 was also disposed of in view of the order dated 07.6.1988 passed in L.P.A. No.65 of 1988 holding that it had been rendered infructuous.

In the meantime, by the impugned letter dated 31.05.1988, the State Government withdrew its letter dated 05.06.1985. Aggrieved by the same, the present writ application has been filed.

At the outset, learned counsel for the petitioner submits that the petitioner does not dispute the land acquisition as in the said matter, the direction of the competent authority dated 11.02.1982 in the Eviction Case No. 01 of 1981 for demolition of construction and removal of encroachment and eviction of the petitioner from all survey plots including plot No.563 had acquired finality on the withdrawal of the S.L.P. by the petitioner. It is, however, submitted that the case of the petitioner in the present round of litigation is on

the basis of application for settlement made before the State Government which led to the passing of the letter dated 05.06.1985 in favour of the petitioner. The letter of the State Government dated 05.06.1985 directed the Housing Board to allot 3.5 Kathas of land to the petitioner at the market rate plus 25%, which was subsequent to the withdrawal of the S.L.P. by order dated 06.03.1983.

Learned counsel for the petitioner submits that no valid reason is to be found in the impugned order dated 31.05.1988, by which the earlier order dated 05.06.1985 directing the settlement in favour of the petitioner was withdrawn. It is further submitted that even in the counter affidavit no valid reason is to be found for withdrawal of the order. It is, thus, asserted that the order cannot stand and must be quashed.

It is contended by learned counsel for the petitioner that the letter dated 05.06.1985 had created a right in favour of the petitioner, and therefore it could not have been withdrawn by the letter dated 31.05.1988 unless the petitioner was given an opportunity of hearing in the matter. It is thus submitted that the impugned order is also violative of the principles of natural justice.

It is also submitted by learned counsel that the respondent-Housing Board cannot be permitted to go back from the detailed affidavit or from the show cause filed in the contempt proceedings in M.J.C. No.330 of 1988, by which they had agreed to



carry out the direction of this Court given in C.W.J.C. No.261 of 1986 and to deliver the possession to the petitioner upon an amount of Rs.4.88 Lacs being deposited and also for registering the deed of settlement on production of requisite non-judicial stamp by the petitioner. It is submitted that pursuant to the same, the petitioner had deposited the amount which was accepted on 27.05.1988 by the respondent-Board and thus it is not permissible to the respondent Board to go back from their undertaking accepting the money and the principle of waiver and estoppel would apply in the matter against the Board.

In support of the aforesaid stand, learned counsel relies upon the decision of a learned single Judge of this Court in the case of Sudha Sharma.vs. Bihar State Housing Board and others: 2000 (2) PLJR 12, in paragraph No.5 of which it has been observed as follows:-

“5. Learned counsel for the respondent Board does not raise any objection as to refund of the money in question, obviously because the Board is in no position to effect delivery of possession of the land in question inspite of such long lapse of time. Petitioner’s right to get delivery of possession of land is complete with the deposit of the entire sale price and she has acquired an enforceable right.”

It is also urged by learned counsel that in view of the



acceptance of the amounts the principle of promissory estoppel will apply in the matter. The submission of learned counsel is that the stand taken in the counter affidavit regarding the earlier direction not being in accordance with the Rules of Executive Business is not permissible as the letter dated 05.06.1985 talked of 'Nirdeshanushar Sarkar Dwara Nirnay'. Thus, it was not a case of action by an individual officer but a decision of the Government communicated to the Housing Board. It is also pointed out that there is no statement made in the impugned order of recall nor it is stated anywhere in the counter affidavit that any action against the officer responsible for the issuance of the said letter was taken.

It is submitted that the State Government had taken the decision earlier taking into account the fact that the Ashram was a public religious trust and thus the allotment of land to it would serve the public purpose.

Lastly, it is submitted that the stand regarding the plots coming in the way of the construction of 80 feet road also does not appear to be justified for several reasons, including the acceptance of the fact in the counter affidavit that only 32 feet road is left for the road on account of the grave-yard and there is nothing to show that any action has been taken to acquire the land of the opposite flank so that the said road may be constructed. It is urged that the construction of road is an eye wash and no steps have ever been taken for



construction of the said road. It is pointed out that the present writ petition itself stood dismissed for default in the year 2001 and thereafter restored only in the year 2012 but no step for construction of the road was taken after dismissal of the writ petition and consequential vacation of the interim order. It is further submitted that if there was any intention to construct the road then the respondents would not have been using the said plots as their office which they have also been renovating from time to time. It is, thus, contended that there is absolutely no substance in the stand of the respondents regarding the allotment of land to the petitioner coming in the way of the construction of 80' road as per the Master Plan.

With regard to the stand of the Housing Board that it had disapproved the Government request, it is stated that the same evidently stands overruled in view of the provisions of Section 23 of the Bihar State Housing Board Act as also the provisions of Section 109 of the Act under which the Government issued the direction to the Board.

Learned counsels for the State and for the Housing Board, on the other hand, have sought to support the stand of the respondents stating that no allotment could have been made contrary to the statutory scheme that had been framed by the Board for the land used for the Housing Board Colony. It is submitted that Section 30 of the Act prohibits any housing or improvement scheme inconsistent

with a master plan sanctioned by the State Government under the Bihar Town Planning and Improvement Trust Act, 1951. It is further submitted that the first proviso to Section 33 of the Bihar Town Planning and Improvement Trust Act also reiterates the same.

In support of their stand, learned counsels rely upon various decisions of the Supreme Court, including the case of R.K. Mittal and others vs. State of Uttar Pradesh and others: (2012) 2 SCC 232, in paragraph Nos. 49 and 51 of which it has been held as follows:-

“49. The Development Authority is inter alia performing regulatory functions. There has been imposition of statutory duties on the power of this regulatory authority exercising specified regulatory functions. Such duties and activities should be carried out in a way which is transparent, accountable, proportionate and consistent. It should target those cases in which action is called for and the same be exercised free of arbitrariness. The Development Authority is vested with drastic regulatory powers to investigate, make regulations, impute fault and even to impose penalties of a grave nature to an extent of cancelling the lease. The principles of administrative justice squarely apply to such functioning and are subject to judicial review. The Development Authority, therefore, cannot transgress its powers as stipulated in law and act in a discriminatory manner. The Development Authority should always be reluctant to mould the statutory

provisions for individual, or even for public convenience as this would bring an inbuilt element of arbitrariness into the action of the authorities. Permitting mixed user, where the Master Plan does not so provide, would be glaring example of this kind.

51. Still, in K.K. Bhalla v. State of M.P., this Court did not approve and attach any validity to the action of the Chief Minister directing and calling for a proposal from the said Development Authority to make allotment for development of an industrial area on concessional terms and held that the purpose for which the allotments were made might be well meaning, but the allotments, being contrary to the mandatory provisions of the Act and the Rules were void and of no effect, being illegal.”

The respondents also rely upon a decision of the Supreme Court in the case of Bangalore Medical Trust vs. B.S. Muddappa and others: (1991) 4 SCC 54, in paragraph No.51 of which it has been held as follows:-

“51. In sub-section (1) the Authority is empowered to draw up development scheme with approval of government whereas under sub-section (2) it is entitled to proceed on its own provided it has fund and resources. Sub-section (3) is the power of State Government to direct it to take up any scheme. The main thrust of the sub-section is to keep a vigil on the local body. But it cannot be stretched to entitle the government to alter any scheme or convert any site or



power specifically reserved in the statute in the Authority. The general power of direction to take up development scheme cannot be construed as superseding specific power conferred and provided for under Section 19 (4). The Authority under Section 3 functions as a body. The Act does not contemplate individual action. That is participatory exercise of powers by different persons representing different interests. And rightly as it is the local persons who can properly assess the need and necessity for altering a scheme and if any proposal to convert from one use to another was (sic not) an improvement for residents of locality such an exercise could not be undertaken by the government. Absence of power apart, such exercise is fraught with danger of being activated by extraneous considerations.”

Learned counsel also relies upon the decision of the Apex Court in the case of S.N. Chandrashekhar and another vs. State of Karnataka and others: (2006) 3 SCC 208, in paragraph Nos. 27 and 28 of which it has been held as follows:-

“27. The Planning Authority has no power to permit change in the land use from the Outline Development Plan and the Regulations. Sub-section (1) of Section 14, as it then existed, categorically stated, that every change in the land use, inter alia, must conform to the Outline Development Plan and the Regulations which would indisputably mean

that it must conform to the Zoning Regulations.

28. The provisions of the Act are to be read with the Regulations, and so read, the construction of Sections 14 and 15 will lead to only one conclusion, namely, such changes in the land use must be within the Outline Development Plan and the Zoning Regulations. If running of a hotel or a restaurant was not permissible both under clauses (a) and (b) of the Zoning Regulations in a residential area, such change in the land use could not have been permitted under Section 14 read with Section 15 of the Act. It is precisely for that reason, Section 14-A was introduced”.

It is urged by learned counsels for the respondents that the Government had earlier allotted the land for religious purpose when the same had not been so earmarked in the Scheme framed by the Housing Board.

Learned counsel also contends that there is no application of either the principles of waiver or estoppel in the matter as the respondents being aggrieved by the order dated 24.02.1988 passed in C.W.J.C. No.161 of 1986 had filed L.P.A. No.65 of 1988 against the same, in which the contention of the respondents was ultimately accepted by this Court that there could not have been any direction to the Housing Board in favour of another respondent, i.e, the present writ petitioner. It is, thus, submitted that since the learned single Judge in the contempt proceedings in M.J.C. No.330 of 1988



despite the said submission had proceeded with the contempt matter, the respondents had absolutely no option except to provisionally comply with the order but while doing so they did not give up the right to challenge the said order under contempt in the appeal filed by them and ultimately that order did not stand. Thus, it cannot be considered to be a case for applying the principles of waiver and estoppel against the respondent Housing Board, as there was not a willing acceptance of money rather acceptance of money was forced upon the respondent Board by the action of the petitioner itself and the same was accepted only under the threat of punishment under contempt.

It is strongly urged by learned counsel for the respondent Housing Board that there is no power conferred upon the Government under the Housing Board Act to give any such directions as were contained in the letter dated 05.06.1985 and the Government was also well aware of the same. It is submitted that the decision of the Government by letter dated 05.06.1985 reiterating the earlier request to the Board to allot the land cannot be considered as a setting aside of any resolution or order of the Board or its M.D. under Section 23 of the Act, rather it was only a reiteration of its previous request. It is submitted that under Section 23 of the Act, the power of the Government to set aside the order and resolution of the Board is limited by the precondition that the Government must form an opinion

that the resolution/order is in excess of the power conferred or is not in the interest of the public and on no other ground, and even the letter dated 05.06.1985 has not been expressed in terms of setting aside any resolution or order of the Board and thus it cannot be treated as having set aside the decision not to act upon the request of the Government vide its previous letter dated 14.06.1983.

It is further submitted that even under Section 109, the power of the Government to give direction to the Board is only for the purpose of carrying out the purpose of the Act and thus such direction can only be in the nature of general policy directions and not specific direction for the allotment of land to an individual.

In continuance of the aforesaid submissions, it is further submitted that the power of the Housing Board to allot land is regulated by the Bihar State Housing Board (Management and Disposal of Housing Estates) Regulation, 1983 framed under the powers conferred upon the Board by Section 115 of the Act and this regulation nowhere provides for allotment being made upon the direction of the Government, rather detailed provisions with respect to procedure of allotment have been made in Chapter-III thereof, which can only be done on a public notice issued and applications received on the basis of the same. It is further submitted that there was no application by the petitioner before the Board for allotment in terms of the notice issued by the Board and thus any application made by the

petitioner directly to the Government for settlement could be of no avail. In this regard, it is submitted that the Housing Board having been handed over the possession of the land by the Government on 22.07.1977 it was not open to the Government to make any settlement of the land, thereafter and such land could be allotted solely as per the procedure provided in the said Regulation of the Board.

In support of the aforesaid, learned counsel again relies upon the decision of the Supreme Court in the case of Bangalore Medical Trust (supra).

He also cites the decision of the Apex Court in the case of Machavarapu Srinivasa Rao and another vs. Vijayawada, Guntur, Tenali, Mangalagiri Urban Development Authority and others: 2011 (12) SCC 154, in paragraph No.24 of which it has been held as follows:-

“24. The matter deserves to be considered from another angle. It is neither the pleaded case of Respondent 3 nor was any document produced before the High Court and none has been produced before this Court to show that 15 cents of land forming part of Town Survey No.2/3 was allotted to it by any public authority after following a recognized mode of disposal of public property. It has surprised us that even though Respondent 3 was not an owner of the site, it made an application for grant of permission to construct the temple and functionaries of Respondent 1 accepted the same without making any inquiry about the title of

Respondent 3. Thus, the illegality committed by Respondent 1 in issuing order dated 30-3-2010 is writ large on the face of the record.”

Learned counsel strongly relies upon the decision of a Division Bench of this Court in the case of Anil Kumar Sinha vs. The Bihar State Housing Board and others: 1998 (3) PLJR 437, in paragraph Nos. 27 to 29 of which it has been held as follows:-

“27. However, in fairness to respondent no.5, who appeared in this case in person, I must take notice of the submissions made by him. He submitted that no relief could be granted to the substituted petitioners in this case because in the amendment petition filed by them they did not seek quashing of the Government direction issued to the Board as contained in the letters dated 29.8.85 (Annexure 33-A) and 3.9.86 (Annexure-3A) but simply sought quashing of the Board’s resolution, dated 11.7.1991 (Annexure 36-A). According to him the Board’s resolution was based on the Government direction and unless the Government direction was challenged and set aside by the Court, no relief could be granted to the petitioners. I find no substance in this



submission. A copy of the Government's letter was not furnished either to Sinha or his heirs and they were, therefore, not in possession of that letter. Moreover, as it would be shown presently, it would not at all be necessary to quash the Government letter in order to set aside the Board's resolution which can be interfered with by this Court independently and separately.

28. He next submitted that the allotment of the house made in his favour could not be questioned as it was made on the basis of a direction issued by the Government. He further submitted that the State Government had ample powers to give such a direction to the Board. In support of his submission he relied upon Sections 23 and 109 of the Housing Board Act. Section 23 of the Act is as follows:

“23. 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.”

And section 109 is re-produced below:

“109. Powers of Government to give

directions to the Board and local authorities-

(1) The Government may give the Board such directions as in their opinion are necessary or expedient for carrying out the purposes of the Act, and thereupon it shall be the duty of the Board to comply with such directions.

(2) The Government may give any local authority such directions as in their opinion are necessary or expedient for carrying out the purposes of this Act after giving an opportunity to the local authority concerned to state its objections, if any to such directions and after considering the said objections, and it shall there upon be the duty of the local authority to comply with such directions.”

29. I am unable to accept the submission. In the first place it is erroneous to describe the contents of the letter dated 5.9.1985 (Annexure-3A) as a direction from the Government. That letter simply enclosed a copy of a letter from Shri Laloo Prasad Yadav and a few other members of the legislative assembly making recommendation in favour of respondent no.5 and made a request to the Chairman of the Board to allot that house to respondent no.5. Had the Board acted legally and with propriety the letter ought to have been ignored instead of being used as the pretext for cancelling the allotment of the house in favour of Sinha. Secondly, I am unable to accept that the provisions contained in sections 23 and 109 give any power to the Government to direct the



Board that any particular house be allotted to a particular person. Under sections 23 and 109 the Government can issue general directions concerning policy matters but not specific directions of the kind contained in that letter. In this case it was not permissible for the Government to give any such direction for the additional and far more weighty reason that the house in question was already allotted to Sinha and a hire purchase agreement in respect of the house had been executed by the Board in his favour.”

Learned counsel for the petitioner has also strongly relied upon the constitution of a three member High Level Committee under the Chairmanship of the Secretary, Urban Development and Housing Department, in which the Managing Director of the Housing Board was also a Member and it is submitted that this Committee had at no stage made any recommendation for recalling the order of allotment and, therefore, it was not open to the Government to withdraw the earlier letter dated 05.06.1985.

Learned counsel for the respondents with respect to the argument regarding the High Level Committee on behalf of the petitioner, submits that the said committee was also constituted by the Government which had met on one or two occasions but had not made any recommendation of any nature and thus nothing depends upon the constitution of the said High Level Committee and nothing is on the record that any recommendation was made in favour of the petitioner.

We have considered the submissions of learned counsel

for the petitioner and learned counsels for the State and for the Housing Board.

In our view the entire basis of the writ application appears to be misconceived as it seeks quashing of the Government letter dated 31.05.1988, by which the Government had withdrawn its earlier letter dated 05.06.1985 by which letter the request had been made to the Housing Board to allot 3.5 katha of land to the petitioner after receiving an amount of Rs. 4.88 Lacs. The crucial issue herein is as to whether the Government had any authority under the Bihar State Housing Board Act to issue a letter of the nature dated 05.06.1985. It is evident that any land which has been handed over to the Housing Board for the purpose of a Housing Scheme and for which the possession after the land acquisition has been given to the Housing Board by the State Government, then under the provisions of the Housing Board Act once the Scheme has been framed by the Board, as held in several decisions cited, it was not open to either the Housing Board or even the Government to interfere with the said Scheme except on broad grounds of public interest. Such grounds cannot include any order of allotment by the State Government to an individual or Trust, etc. The allotment thereafter has to be in accordance with the Bihar State Housing Board (Management and disposal of Housing Estates) Regulations, 1983. The principles of allotment have been laid down in Chapter-II of the said Regulation.

The procedure of allotment has been laid down under Chapter III thereof. It is not the case of the petitioner that it has sought any allotment and had applied before the Board when the public notice inviting applications for allotment had been issued by the Board at the relevant time.

The whole case of the petitioner rests upon a so-called application for settlement made to the Government. The possession of the land after the land acquisition having been handed over to the Housing Board, there was no occasion for the Government to make any settlement of the land. Section 109 of the Act on which reliance has been placed by the petitioner is clearly a broad power in the State Government to issue directions for carrying out the purpose of the Act. It is only such general policy directions which are mandatory upon the Board to comply with. Obviously, such directions for the purpose of the Act cannot extend to allotment of land contrary to the statutory Regulations framed under the Act. It cannot be said that the order to allot to individual persons or trusts would be for carrying out the purpose of the Act, apart from the fact that any such order of allotment of land covered by a Housing Scheme under the Act would be arbitrary, discriminatory and violative of Article 14 of the Constitution. As held by the earlier decision in Anil Kumar Sinha's case (supra), the provisions contained in Sections 23 and 109 of the Act does not confer any power to the Government to direct the Board

to allot any particular house or land to a particular person and the Government can only issue general directions concerning policy and not specific direction of the kind as contained in the letter dated 05.06.1985.

Section 23 of the Housing Board Act merely grants the power to the State Government to set aside the resolution or any order of the Board or its Managing Director if in the opinion of the Government, the resolution or order is in excess of power conferred or is not in consonance with the public interest. No such resolution or order of the Board or its Managing Director in respect of the petitioner was ever issued for the Government to have set aside the same nor in any of the letters of the Government anything is to be found that the Board or its Managing Director has acted in excess of the powers conferred or contrary to the public interest in the present matter. Rather, it is the Government which was intending to act contrary to the statutory scheme under the Housing Board Act and not otherwise. Thus, the order dated 31.05.1988 sought to be impugned in the present writ petition is more in the nature of wisdom having belatedly dawned upon the Government in the matter. The direction contained in the letter dated 05.06.1985 was patently illegal and contrary to law although it is not stated in so many words in the impugned order.

Once the aforesaid position is accepted that the letter



dated 05.06.1985 did not confer any legal right upon the petitioner and was merely in the nature of a request to allot a particular piece of land to the petitioner, which request was not acceded to by the Housing Board, withdrawal of the said letter would not require any opportunity of being heard to the petitioner as no right of the petitioner has been taken away by the said letter nor could it be said to be illegal only on the ground that no reason has been stated therein in the facts and circumstances of the present case.

For the other submission of learned counsel for the petitioner, that on deposit of Rs. 4.88 Lacs a right accrued to the petitioner, reliance upon the decision of the learned single Judge in Sudha Sharma's case (supra) is wholly misconceived. In the said case there was valid allotment by the Housing Board in favour of the petitioner, Sudha Sharma and the entire money had also been deposited by her. Only in the said circumstances, it was held that the right to get delivery of possession of the land was complete and she had acquired an enforceable right. Even in the said case, this Court had merely directed the refund of the amount deposited by the petitioner with interest as per clause 6 of the letter of allotment and cost. In the present matter, there had never been an allotment in favour of the petitioner; therefore, no right could accrue to it on the basis of any such so called acceptance of money, that too, under the threat of contempt of court.



In this regard, it has also to be seen that the Board was seriously aggrieved by the order dated 24.02.1988 of the High Court passed by a learned single Judge of this Court in C.W.J.C. No. 261 of 1986 and had taken the stand that LPA against the said order had been filed which was pending. However, faced with the prospect of being punished for contempt, the officers of the Board had absolutely no option left but to comply with the order dated 22.04.1988 under the threat of contempt, but they did not give up their right under the appeal filed by them which they successfully contested before the Appellate Bench. Such acceptance of any deposit of money during contempt proceedings cannot be considered as any waiver by the Board nor could it act as estoppel against it in the present writ petition. The order issuing direction to one respondent in favour of another respondent was ex facie an illegal order which was even accepted by the Senior Counsel for the Housing Board during the course of arguments in the LPA, wherein he clearly admitted that there cannot be any mandamus in favour of the respondent. Hence, no right could have accrued to the petitioner on the basis of the said order which was found to be contrary to law in the Letters Patent Appeal and merely under threat of contempt the Board had to accept the money and agree to hand over the possession to the petitioner. Although the possession was not finally handed over to the petitioner but even if the same had happened then after the decision of the LPA

Bench, the Board would have been entitled to restitution of the said property and thus nothing depends upon the acceptance of the deposit of the amount by the Board from the petitioner.

So far as the ground that the Board is not serious about the construction of 80 feet road and merely using the same as an excuse, does not make any difference so far as the claim of allotment to the petitioner is concerned. From what has been held above, it is evident that the petitioner had no right over the said plot and was ultimately an encroacher in view of the order passed by the competent authority which was upheld by this Court and an appeal against the same was withdrawn by the petitioner in the Supreme Court and thus the question as to whether the Board has acted in the matter under the Scheme or not is wholly irrelevant so far as the petitioner is concerned.

So far as the petitioner to the urban development authorities and such local authorities including the Housing Board from making any change in the master plan scheme is concerned, the same squarely applies in the present matter. Hence, the Housing Scheme having been framed and different plots having been earmarked for different purposes, the same was not liable to be interfered with by the Housing Board or even by the State Government unless there was a clear public interest. No such situation exists in the present matter.

For the aforesaid reasons, the reliance placed upon the constitution of the Three Member High Level Committee has no relevance as such committee did not have any statutory force under the provisions of the Housing Board Act, Rules or Regulation and it could not confer any legal benefit upon the petitioner, apart from the fact that the Committee did not conclude its work and made no recommendation to the State Government.

Thus, in the light of the aforesaid discussions, we do not find any merit in the writ application and it is, accordingly, dismissed.

(Ramesh Kumar Datta, J)

Dr. Ravi Ranjan, J.

(Dr. Ravi Ranjan, J)

V.P.Sinha/-

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Uploading Date	
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