

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17694 of 2015

Radha Ballabh Health Care and Research Institute (P) Ltd., through its
Chairman, Dr. Rabindra Narain Singh, Son of Late Radha Ballabh Singh, G
75-77, P.C. Colony, Kankarbagh, Police Station, Kankarbagh, District Patna
(800020)

.... Petitioner

Versus

1. The Bihar State Housing Board through The Managing Director, 6, Sardar Patel Marg, Police Station Secretariat, Patna 800015. null null
2. The Managing Director, Bihar State Housing Board, 6, Sardar Patel Marg, Police Station Secretariat, Patna 800015.
3. The Estate Officer, Bihar State Housing Board, 6, Sardar Patel Marg, Police Station Secretariat, Patna 800015.

.... Respondents

Appearance :

For the Petitioner : Mr. Shravan Kumar, Sr. Advocate,

For the B.S.H.B. : Mr. Lalit Kishore, Sr. Advocated,
Ms. Binita Singh, Advocate

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 19-09-2016

Heard parties.

The petitioner claims to be a Company constituted
under the provisions of Company Act in the name and style of
“Radha Ballabh Health Care and Research Institute (P) Ltd”.



In response to the notice dated 10.05.2008 issued by the Bihar State Housing Board, Patna (hereinafter referred to as “the Board” for the sake of brevity) and published in the local newspaper on 10.05.2008, the petitioner made an application for allotment of plot H.C. 1 in Sector 1 of Lohia Nagar Housing Colony, Patna measuring about 43000 sq. feet and earmarked for Health Centre. Price of the land, as calculated till 31.05.2008, was reflected as Rs.1,71,89,057/-. However, when the petitioner did not hear anything from the Board regarding allotment of plot concerned despite several reminders, it was constrained to approach this Court by filing C.W.J.C. No.9519 of 2009. In the aforesaid writ petition, the Board took a stand that the petitioner’s application was rejected on 11.07.2009 on the premise that the petitioner could not submit the document of recognition from the State Government. However, the counter affidavit also did not dispute that the State Government vide communication dated 5.8.2008 had granted necessary permission / recognition. In the background of the aforesaid fact and circumstance, the writ petition was disposed of vide Annexure 3 directing the Board to take a decision on the petitioner’s application in accordance with the discussion made in the order within maximum period of one month. However, when nothing was done then M.J.C. (Contempt)



No.68 of 2012 was filed in which again Board took stand that his application has again been rejected by the Board. Then a liberty was granted vide Annexure 4 to the petitioner to agitate such issue by filing a fresh writ application. This promoted the petitioner to approach this Court again by filing C.W.J.C. No.9744 of 2012.

It was contended on behalf of the petitioner in the aforesaid writ application that, after the remand of the matter by this Court in the earlier C.W.J.C. No. 9519 of 2009, the petitioner requested the Board to issue allotment letter. When it did not receive the same its Chairman approached the Managing Director of Board and during the discussion with him, he, having no other option than to agree to the proposal of the Managing Director, had accepted alternative plots for construction of hospital in lieu of original plot offered though area thereof was much less than the earlier. The petitioner submitted the technical and financial proposal also stating that the plot, which was advertised, was of an area of 43000 sq. feet for a consideration of Rs. 1,71,89,057/-, thus, there should be proportionate reduction of price as well on account of lesser area being offered. The two plots offered as alternative to the earlier one were plot no. G-5 and G-6 measuring an area of 10,000 and 14000 sq. feet respectively situated near the Rajendra Nagar Over Bridge in Patna. However, the Board took a



decision to allot the aforesaid plots on the basis of Swiss Challenge Method. The said decision was communicated to the petitioner vide letter no. 10871 dated 14.12.2011. This was objected by the petitioner and it requested the Board to consider its request for allotment on the terms and conditions of the advertisement (Annexure 1) itself. Thus, the aforementioned writ application was filed. Matter was heard and disposed of vide order dated 10.5.2013 holding that the advertisement cannot be given a go by by adopting a method of allotment other than described in the advertisement. As such, Swiss Challenge Method cannot be applied in the case of the petitioner. However, change of plot was allowed in view of the fact that the petitioner had agreed for that. The respondent Board was directed to consider to issue allotment letter in favour of the petitioner in terms of the advertisement but with respect to the plot Nos. G-5 and G-6 in place of the original plot, as mentioned in the advertisement, on the same terms and conditions with proportionate cost reduction on account of the area of the plots having been reduced. The decision of the Single Judge Bench of this Court dated 10.5.2013 has been appended as Annexure 5.

However, the Board filed Civil Review No. 458 of 2013 which was disposed of vide Annexure 6 dated 9.1.2014

clarifying the order to the extent that as per the advertisement the price of the plots would be on updated as per the terms and conditions of the advertisement contained in Annexure 1.

Thereafter, the Board had written letter dated 14.2.2014 (Annexure 7) informing the petitioner that, after aforesaid review order, the price of the plot now comes to Rs. 13,09,95,041/- which should be paid by the petitioner. The payment schedule was communicated vide Annexure 8A. The petitioner through its Chairman, communicated to the Managing Director that the payment schedule is being accepted but under protest and subject to final measurement of the plots and, thereafter, the payments were started to be made. Subsequently, possession was also given vide Annexure 12A. However, the petitioner has approached this Court for grant of following reliefs:

“I. The letter No.1902 dated 13.03.2014 (Annexure 8) be quashed and the Respondents be directed to raise the demand on the basis of the price quoted in the advertisement as contained in Annexure 1, i.e., the proportionate cost for 24302 square feet vis-à-vis price of HC-1 Sector 1 fixed as Rs.1,71,89,057/- for 43000 square feet.

II. This court may hold the price fixed in the advertisement dated 10.05.2008, for HC-1 Sector 1, alone shall be the basis of calculating the price of the allotted plot G-5, which was allotted in lieu of the Plot HC-1 Sector 1 on

the direction of the Hon'ble court.

III. Respondents be directed not to charge more than the price quoted in Annexure 1, as there has been no delay on the part of the petitioner.

IV. During pendency the writ application the respondents may be restrained from insisting for further payment as the petitioner was already paid a sum of Rs.4,92,49,500/-

V. On determination of these issues involved the excess payment may be refunded to the petitioner with interest @ 18% per annum.

VI. Any other relief/reliefs for which the petitioner is found entitled to.”

It is contended that the details of calculation were never supplied to the petitioner to show as to how the cost of the plot which is lesser in area than the plot which was originally allotted has enhanced 8 to 9 times.

During the course of hearing this Court had directed the Board to bring on record the calculation on which the price was fixed in 2008, i.e., in the advertisement and also calculation by which new price has been fixed.

Counter affidavit and, thereafter, two supplementary counter affidavits have been filed and rejoinders to the counter affidavits have also been filed by the petitioner.

In the counter affidavit it has been admitted by the Board that a letter dated 19.2.2014 was written by the petitioner



through its Chairman to the Managing Director of the Board stating that the allotment was delayed arbitrarily by the Board for which the petitioner had to approach this Court twice by filing writ applications and, thus, the price of the plot should have been the price as on 31.5.2008 which stood described in the advertisement but the Board has increased the price several times. The petitioner requested the Board to calculate the updated price considering the reduction in area which should be come to Rs. 96,03,4888/-. The aforesaid letter has been appended as Annexure B to the counter affidavit. The petitioner was again directed on 13.3.2014 to deposit Rs. 10,58,91,736/-. The petitioner again wrote a letter dated 21.3.2014 (Annexure D) referring the aforesaid letter stating that, though it had raised issue of price in earlier letter, however, the payment is being made subject to its rights and without prejudice and it is ready to take possession of the plots on the price communicated under protest. Then a Hire Purchase Agreement was executed by the Board as well as the petitioner. Thus, Mr. Lalit Kishore, learned Senior Counsel appearing for the Board has questioned the petitioner's competency to raise the issue by filing writ application when the petitioner itself has signed the agreement of Hire Purchase Agreement. It is urged that once the petitioner entered into the



agreement and executed the quoted price then it cannot challenge the same at a subsequent stage. It is next contended on behalf of the Board the even if there is a dispute between the parties, the petitioner could have well invoked the Clause 24 of the Hire Purchase Agreement, a copy of which has been brought on record as Annexure E so that the matter could have been referred to arbitration. It has further been urged on behalf of the Board that the order passed in Civil Review No. 458 of 2013 (Annexure 6) has clarified that the allotment of plot would be on updated rate as on the date of allotment as per the terms of the advertisement contained in Annexure 1 and a committee was constituted for that purpose which has decided that the price of the lands of the area in which the plot concerned is situated, being commercial in nature, price was fixed as Rs. 23,50,000/- per decimal if the same is situated on a main road similarly the price has been fixed for the commercial land on other roads or lanes. Price, on the basis of report of the Committee constituted for the said purpose vide Annexure J and K, has been revised, which is just, appropriate and fair.

Mr. Sharwan Kumar, learned Senior Counsel appearing for the petitioner has submitted that there is no question of going for invoking arbitration clause in this case as the



petitioner is ready to pay the updated price for the plots concerned in terms of advertisement (Annexure 1). However, despite several reminders Board did not sent any detailed calculation as to how the price has increased 9 to 10 times, i.e., from about one crore to more than thirteen crores as the petitioner would only be required to pay the updated price as per the advertisement and not the revised price by any committee for any other purpose. It has been urged that the price fixed vide Annexure J and K is entirely for other purpose and it has nothing to do with the fixation of price of the plots in question.

Upon appreciation of rival contention, in my view, following issues fall for consideration before this Court:-

(I) Whether the petitioner can maintain this writ application in view of the objections raised by the Board?

(II) Whether in view of the spirit of the order passed in C.W.J.C. No. 9744/2012 (Annexure 5) and Civil Review No. 458/2013 (Annexure 6) the Board could have fixed the price of the plots in question on the basis of Annexure K?

Issue No. I

Learned counsel for the Board has submitted that the petitioner cannot maintain this writ application for two reasons. First is that petitioner itself has entered into a Hire and



Purchase Agreement on the price fixed by the Board, therefore, it cannot subsequently backtrack and challenge the same. Secondly, if there is any dispute with respect to fixation of price the petitioner could have invoked the clause of arbitration. Learned counsel has placed reliance upon a decision of Single Judge bench of this Court upon the aforesaid issue rendered in **C.W.J.C. No. 22948/2011 (Umesh Sharma & ors. Vs. The Bihar State Housing Board & Ors.)** and analogous matter disposed of on 29.1.2016, specially paragraph 13 thereof under which it has been observed that alternative remedy to the petitioner by invoking the arbitration clause in the Hire Purchase Agreement was also available to the petitioner and petitioner ought to have resorted to such arbitration proceeding. However, the Court was finally of the opinion that the arbitration could have been resorted in respect of the matter not specifically stipulated in the agreement or provided in the relevant rules / regulations of the Board which was not available in the aforesaid case.

In my view also arbitration Clause 24 of the Hire and Purchase Agreement (Annexure E) could only be available if the matters are not specifically stipulated in the agreement or provided for in the relevant rules and regulations of the Board. The petitioner in fact is not raising any dispute that it has not to



pay the updated price. But the updation of price cannot be arbitrary. It has been urged on behalf of petitioner that the price has been raised in arbitrary manner without following any procedure, rules or regulation and, thus, suffers from the vice of arbitrariness. On that count it has preferred this writ application. It is contended that the arbitrator has to be the Managing Director of the Board himself, thus, it would be meaningless and futile exercise as everything has been at the behest of the Managing Director himself. It is urged that the petitioner would not get any justice in such a situation.

Thus, I am of the opinion that in case the petitioner is able to substantiate its case that the revised price suffers from the vice of arbitrariness and is against the settled norms then the petitioner can maintain the writ petition. The counter affidavit filed on behalf of the Board itself discloses that the petitioner was all along writing to the Managing Director regarding its grievance and, thereafter, letters were issued by the Revenue officials, for example, Annexure 9 dated 02.04.2014 and, even prior to that, Annexure B to the counter affidavit dated 19.02.2014. However, nothing was replied by the Managing Director and enhanced price was slapped upon the petitioner. The petitioner, for getting allotment, had approached this Court thrice before filing the



present writ petition as he had to file two writ petitions and one contempt petition. In both the writ petitions action of the Board has been held to be illegal and in both of them the Managing Director was also a party. Thus, in my view, if the issue of arbitrariness in fixing the price has been raised by the petitioner and claim is being made that the price has been fixed without following any procedures, rules or regulations, and if that is found to be true then in my view, the petitioner can maintain the writ petition. Now the second question would arise as to whether the petitioner, after accepting the price and entering into Hire and Purchase agreement, can still maintain this application? Ordinarily, answer would have to be in negative but in present case, the situation is bit different. The petitioner admittedly, vide Annexure B to the counter affidavit which is a letter dated 19.02.2014, had written to the Managing Director of the Board that price fixed is incorrect and request was made to calculate the updated price over and above the amount of Rs.96,63,488/- shown in the advertisement. By another letter dated 21.03.2014, the petitioner conveyed its readiness for taking possession of the plots by depositing the demand made by the Board **under Protest** as the issue of enhancement of price was raised by it in the earlier letter. Annexure 9, which is again a letter written to the Managing Director dated 02.04.2014, same thing

was reiterated that the petitioner is accepting the payment schedule **under Protest**. Not only that, even in the Hire Purchase agreement, a clause has been inserted which reads as follows:-

“And whereas the settlee in acceptance of the terms and conditions mentioned in the said allotment letter under protest and without prejudice to its legal rights has made an initial payment of Rs.2,11,98,400/- (Two crore eleven lakhs ninety eight thousand four hundred) only, towards 20% of the cost of the said plot and has promised to pay the remaining cost for the said plot of land allotted to the settlee in the manner mentioned below:”

The Board is also the signatory of the Hire Purchase agreement and, thus, it would be deemed that the Board has also accepted that the petitioner is promising to pay under protest and without prejudice to its legal rights, therefore, in my view, the writ petition cannot be thrown out on the aforesaid ground either.

Issue No. II

The advertisement, which has been appended as Annexure 1, lays down in clear terms that the price shown against the offered plots is as on 31.05.2008 and if the allotment letter is issued after the aforesaid date then the updated price would be payable. Before coming to the issue, it has to kept in mind that the petitioner had applied for the plot of Sector I, H.C. 1 measuring



about 43000 square feet and price being 1,71,89,057.00 as on 31.05.2008 and only the petitioner remained in the race as admittedly either there was no application or all other applications were rejected on certain grounds by the Board. The advertisement was of 10.05.2008, and the petitioner had applied on 13.05.2008. However, when nothing was done by the Board then the petitioner was compelled to approach this Court by filing C.W.J.C. No.9519 of 2009 which was disposed of vide Annexure 3 dated 03.02.2011 observing as follows:-

“In view of the recitals contained in the communication dated 5.8.2008 Counsel for the Board finds it difficult to persuade the Court that the petitioner had submitted no evidence vis a vis the State Government and he submits that the matter may be remanded to the Board for appropriate consideration afresh.”

On such aforesaid submissions having been made on behalf of counsel for the Board, learned Single Judge refrained himself from adjudicating the matter and remanded the same for a decision to be taken by the Board itself. However, when nothing was done, the petitioner had to approach this Court once again by filing M.J.C. (Contempt) No.68 of 2012, during the pendency of which, it was informed that the petitioner's application has again been rejected. This compelled the petitioner to again approach this



Court by filing C.W.J.C. No. 9744/2012 which was disposed of vide Annexure 5 dated 10.05.2013 holding in clear terms that Swiss Challenge Method adopted by the Board was absolutely wrong being against the spirit of the advertisement. The Board was directed to issue allotment letter with respect to plot nos. G-5 and G-6 but on the proportionate cost. Thus, it can be safely construed that it was not the petitioner who was delaying the matter but it was the Board which was either on this ground or that ground, was dilly-dallying the matter and taking wrong decisions which were rectified by this Court. Now, the question would be, if such delay has been caused by the Board, whether in such circumstance the petitioner can be compelled to pay the enhanced price as the allotment letter could not be issued on or before 31.05.2008, the date fixed in the advertisement? Ordinarily, the question has to be answered in negative as the petitioner cannot be penalized for the fault of the Board but in the present case, since the petitioner itself is ready to pay the updated price and that apart, in Civil Review No.458 of 2013, this Court has clarified that price would mean updated price on the date of allotment as per the advertisement, this issue now would not be open for consideration by this Court.

The main issue to be decided in this case is whether the enhancement of price is in accordance with the advertisement



or any rules or regulations or settled norms or it is arbitrary? For answering this issue another question would have to be answered as to on what basis the price was fixed in the advertisement itself. This question was specifically asked from the Board. A counter affidavit has been filed bringing on record Annexure H which is the calculation done by the Board for fixing the tentative price. It appears that base price of the plot was taken as it was fixed on 31.03.1974 by the Board and, thereafter, for following two years or 5 years, it was enhanced on the basis of existing rate of interest on the principal amount fixed on 31.03.1974 and lastly it was for 21 years 2 months after calculating interest @ 14%, the amount was fixed as Rs.1,71,89,098.77/-. Another question was asked by the Board as to under what mode the present calculation updating the price has been done then reliance has been placed on Annexure J which is a decision dated 16.04.2013 nominating members of a Committee for deciding market value of the plots and such Committee has taken a decision vide Annexure K fixing the market price of the plots to be charged per decimal. The submission made on behalf of Board, though at first instance appears to be attractive that a decision was taken by the competent authority for constituting a Committee for fixation of market value of the plots and that Committee has fixed the price, however, on deeper



scrutiny of Annexure J and K, it appears that this Committee was constituted absolutely for a different purpose, i.e., not for fixation of price for allotment of the plots through the advertisement (Annexure D) but specifically for the purpose of transfer of the land by the allottees in favour of a third party. Reason is that whenever such transfer is made then the allottee, by selling his land in market, earns huge profit as allotment is always made at a lesser price and transfer to third party is always on market value. Therefore, according to the norms of the Board, 50% of such dividend earned by the allottee has to be transferred to the Board. However, for such purpose another norm has been made by the Board that there would always be a tripartite lease transfer deed in cases of transfer to third party in which one party would be the transferor/allottee of the Board, another party would be the transferee and lastly the Board itself would be a party to lease agreement and such transfer would be allowed only after 50% of the dividend earned by the allottee / seller is deposited with the Board. Now, for calculating 50% of the dividend, one has to be sure about the market value of the property as it has to be deemed that the third party transfer would always be on market value by which the allottee would earn huge profit. Thus, it necessitated the constitution of the Committee for fixing market value of the



land for the said purpose. The Annexure J lays down in clear terms that, for Tripartite Agreement, dividend has to be calculated and for calculation of such dividend for the year 2013-14, the market value of the plots would have to be fixed and, therefore, a Committee was constituted and such Committee vide Annexure K, for the purpose of realizing 50 % of profit earned by the allottee, has fixed market price.

Thus, in my view, such price fixed for specific purpose cannot be taken to be the updated price as per the advertisement as the price shown in the advertisement has been fixed admittedly following altogether different procedure which would be evident from Annexure H which is a document produced by the Board itself for demonstrating before this Court as to how the price shown in the advertisement was fixed. If such was the procedure being adopted then a revision in any other manner would have been made only after a decision of the Board to deviate from the procedure of calculation as envisaged under Annexure H. This Court, time without number, directed the counsel of the Board to show that such decision was ever taken by the Board or any competent authority but nothing could be shown except the Annexure J and K which was not for that purpose. Thus, it has to be held that the updated price should have been calculated in the

manner which has been shown in Annexure H only as this was admittedly the manner in which the price was calculated, fixed and reflected in the advertisement. In my considered view, only that procedure could have been followed for updation of price of allotment.

Thus, it is held that the Board has acted in arbitrary manner in fixing the price of the plots concerned due to which the petitioner has been fastened with a liability to pay a price several times higher than which could have been charged. It has also to be kept in mind that due to the delay caused by the Board, the allotment could not be finalized on the date fixed.

Accordingly, this writ petition is allowed. The price fixed by the Board is quashed and set aside. The board is directed to re-calculate the cost of the plots of the petitioner in accordance with the procedure adopted under Annexure H appended with the counter affidavit within a period of three months from the date of receipt/production of a copy of this order and return the excess amount, if any, having been paid by the petitioner in terms of the calculation done by the Board. If the same is not done within the aforesaid period of three months, the petitioner would be entitled for interest @14% per annum on the said amount to be calculated from the date of expiry of the aforesaid period of three months till

the date of final payment.

(Dr. Ravi Ranjan, J)

Spd/-

AFR	AFR
CAV DATE	NA
Uploading Date	08.10.2016
Transmission Date	NA