

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.229 of 2017
IN
Civil Writ Jurisdiction Case No. 17694 of 2015**

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1. The Bihar State Housing Board through the Managing Director, 6, Sardar Patel Marg, Police Station Secretariat, Patna 800015
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

.... Appellant/s

Versus

1. 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

.... Respondent/s

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Appearance :

For the Appellants : Mr. Lalit Kishore Singh, Sr. Advocate.
Ms. Binita Singh, Advocate.
For the Respondents : Mr. Shravan Kumar, Sr. Advocate.
Mr. Dinesh Maharaj, Advocate.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY)

Date: 21-11-2017

The instant Letters Patent Appeal has been preferred by the Housing Board against the judgment/order dated 19.09.2016 passed in C.W.J.C. No. 17694 of 2015. The Writ Court after hearing the parties allowed the writ application and quashed the price fixed by the Board and directed the Board to recalculate the cost in accordance with the procedure indicated under Annexure-8 appended with the counter affidavit (sic.) supplementary counter affidavit.

2. C.W.J.C. No. 17694 of 2015 was filed by the writ



petitioner against the fixation of price of land and the demand vide Letter No. 1902 dated 13.03.2014 and for a direction to the respondents to raise demand on the basis of price calculation indicated in the advertisement contained in Annexure-1 dated 10.05.2008 whereby the Board had published advertisement for allotment of commercial plots of land.

3. The material facts necessary for deciding the present Letters Patent Appeal lies in a narrow compass; The Bihar State Housing Board (hereinafter referred to as the 'Board') published advertisement in the daily newspaper inviting application for allotment of 10 plots at commercial rate in Lohia Nagar Housing Colony and Bahadurpur Housing Colony. The advertisement was issued for the purpose of allotment of land for educational institution and health centre. The writ petitioner-respondent herein submitted application in response to the advertisement dated 10.05.2008. The writ petitioner was not allotted the land and as such petitioner filed C.W.J.C. No. 9519 of 2009. The writ petition was disposed of on 03.02.2011.

4. The relevant part of the order dated 03.02.2011 reads as follows:

2. The petitioner, a medical institution, applied for allotment of specified plot to the Housing Board. One of the conditions was recognition to such an institution either by the State Government or Central



Government. The petitioner enclosed a communication from the Health Department of the State Government dated 5.8.2008 that there was no provision for recognition but that the State Government had no objection to the establishment of the institution on the plot of the Housing Board provided the petitioner agrees to comply with the provisions of the Private Clinic Establishment Act. It is not in controversy at Bar that the Act has still to be enforced.

The respondent Board on 11.7.2009 rejected the application on the premise that the petitioner had not submitted documents of recognition from the State Government reiterated in Para 7 of the counter affidavit.

The counter affidavit does not dispute that the State Government communication dated 5.8.2008 was submitted to the Board.

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.

There is no occasion for this Court to adjudicate the matter any further but to direct the respondent Housing Board to take a decision on the petitioner's application in accordance with the discussions contained in this order within a maximum period of one month from the date of receipt and/or presentation of a copy of this order before them.

5. However, the order of the Writ Court was not carried out and as such the petitioner filed MJC No. 68 of 2012, the contempt



proceeding was dropped vide order dated 04.04.2012 with observation that the grievance of the petitioner can be agitated only in fresh writ application. The petitioner, thereafter, filed C.W.J.C. No. 9744 of 2012, the said writ application was disposed of by CAV order dated 10.05.2013.

The relevant part of the order dated 10.05.2013 reads as follows:

In view of the reasons and discussions made above, the decision of the board to allot the Plot Nos. G-5 and G-6 in favour of the petitioner vide office order no. 160 of 2009 as contained in Memo No. 10792 dated 09.12.2011 (Annexure-16) as also the Letter No. 10871 dated 14.12.2011 (Annexure-17) on the basis of Swiss Challenge Method is hereby quashed. The respondent-Board is directed to consider the letter dated 3rd of January 2012, written by the petitioner to the respondent-Board and on considering the same, issue allotment letter in terms of the advertisement, as contained in Annexure-1 with respect to the plot nos. G-5 and 6 in lieu of the original plot as mentioned in the advertisement on the same terms and conditions with proportionate cost on account of the area of the plots being reduced.

6. After the order of the Writ Court dated 10.05.2013, the Board filed Civil Review No. 458 of 2013. The Court on consideration of the rival submission of the parties passed the order on 09.01.2014. The case of the petitioner was that the area of the plot



originally mentioned in the advertisement has been reduced therefore, the proportional cost on account of the area of the plot be reduced whereas the Board's contention was that in terms of the advertisement if the allotment letter issued after 31.05.2008 the price of the allotment would be on up-to-date rate basis on the date of allotment as per the terms of advertisement contains in Annexure-1 to the writ application.

7. The order date 09.01.2014 whereby Civil Review No. 458 of 2013 as well as the Miscellaneous Jurisdiction Case No. 4953 of 2013 was disposed of, the Court clarified the order dated 10.05.2013 to the extent of up-to-date rate from the date of allotment. The order dated 09.01.2014 was neither challenged by the petitioner nor by the Board and as such, it become final between the parties.

8. The 3rd round of litigation started when the Board raised a demand vide Letter No. 1902 dated 13.03.2014 and revised the price of the land at Rs. 10,58,91,736/-. The petitioner under protest deposited Rs. 40 lacs by way of Banker's cheque on 02.04.2014, Rs. 52 lacs on 02.01.2015 and Rs. 52 lacs on 02.01.2015 and Rs. 67 lacs on 08.01.2015 and an agreement was executed on 13.03.2015 against the petitioner entered into the agreement under protest.

9. In the aforesaid circumstance, the petitioner filed



C.W.J.C. No. 17694 of 2015 challenging the price fixed by the Board and the demand for payment of cost of the land, vide Letter No. 1902 dated 13.03.2014 (Annexure-8 of the writ application). In the counter affidavit the Board took the stand in para-12 that up-to-date price of the land was Rs.13,09,95,041/- and in para-15 it has been said that after the request of the petitioner, the Board calculated the price of the two plots of the land to be allotted to the petitioner being Rs. 10,58,91,736/-. In para-17 the stand was taken that the petitioner was informed the cost of the land to be allotted and he was inform that if he is agreeable to the mode and manner he should informed the Board its consent. Then the writ petitioner has informed the Board about the acceptance of payment schedule under protest subject to final measurement of the plot and in para-20 stand was taken that the petitioner do not make any objection of price at the time of execution of the agreement, therefore, the petitioner cannot challenge the price of the property. Para-23 and 24 of the counter affidavit is reproduced here:

23. That the Hon'ble Court in its decision dated 10.05.2013 passed in C.W.J.C. No. 9744/2012 was pleased to direct the Board to allot the two plots is GC/5 and GC/6 in lieu of the original plots as mentioned in the advertisement dated 10.05.2008 in its same terms and conditions as contained therein but with proportionate cost on account of the area of the plots being less than that applied for by the petitioner. Thereafter the Hon'ble court vide order dated 09.01.2014 passed in Civil Review No.



458/2013 filed by the Board by way of an abundant precaution seeking clarification on the above direction of the Hon'ble Court dated contained in order dated 10.05.2013 passed in C.W.J.C. No. 9744/2012 in view of the submission made before it on behalf of the Board that the advertisement states that if the allotment letter is issued after 31.05.2008 the price of the allotted plot would be on updated rate as on the date of allotment as per the terms of advertisement dated 10.05.2008, was pleased to clarify that the order dated 10.05.2013 passed in C.W.J.C. No. 9744/2012 is clarified to the said extent (as submitted by the Board). Thus the petitioner in view of the orders dated 10.05.2013 and 09.01.2014 of the Hon'ble Court is bound by the inter party decision and directions as contained therein i.e. the Board would charge upto date price of the two plots of land which have been allotted to the petitioner.

24. That in view of the above on the ground that the petitioner is bound by the term and conditions of the advertisement dated 10.05.2008 and also by the two orders of the Hon'ble Court dated 10.05.2013 and 09.01.2014 as also on the ground of constructive res-judicata the present writ petition is not maintainable for the relief sought for by the petitioner i.e. not to charge upto date price of the plots and charge price thereof as on 31.05.2008, moreso when it has already entered into a hire hire-purchase agreement with the Board and taken possession of the said two plots of land. Further the facts and circumstances would show, there was no delay or laches by the Board so as to allow the petitioner to claim that said relilef in its favour.

10. The Writ Court issued direction to the court to bring on record the documents on the basis of which the price was fixed in



the year 2008 and thereafter, in the year 2014. Annexure-H was enclosed by the Board as the basis of calculation of the cost of the land on 31.05.2008. The Writ Court after hearing the parties and considering the entire gamut of facts and controversy in the instant case allowed the writ petition and quashed the price fixed by the Board and the Board was directed to re-calculate the price of the plots in accordance with the procedure adopted under Annexure-H appended with the counter affidavit (sic.) supplementary affidavit.

11. The Housing Board aggrieved by the order of the Writ Court has preferred the present Letters Patent Appeal. Mr. Lalit Kishore, Senior Advocate appearing on behalf of the Housing Board has contended that as per the order in Civil Review No. 458 of 2013 dated 09.01.2014 the Board was justified in demanding up-to-date rate and he submitted that the up-to-date rate means market rate. On various dates this LPA was heard and on 31.10.2017 on behalf of the Board proceedings of the 193rd meeting of the Board which took place on 10.02.2000 and on that basis communication dated 02.03.2001 issued by the Board was placed before the Court and as such the Court directed the appellants to file supplementary affidavit by competent authority. On behalf of the Board supplementary affidavit has been filed. In paragraph-4, 5 of the supplementary counter affidavit stand was taken that in terms of the Resolution dated 10.02.2001, the Board



has decided to calculate the up-to-date rate of the plot which is the maximum price. Similar land, house and flat auction price or the up-to-date cost calculated at the commercial rate or market price whichever is higher should be the up-to-date price, referring to the said resolution and follow up order Mr. Lalit Kishore submitted that the Board is justified in raising the demand at the market price in view of the Board Resolution dated 02.03.2001.

12. When Mr. Lalit Kishore was confronted with the difference between the market price and up-to-date price in terms of the order of this Court in Civil Review, which has become final between the parties. Mr. Lalit Kishore submitted that although the order of the Review Court was only up-to-date price and not market price, but in view of the resolution of the Board enclosed with the supplementary affidavit in the LPA the up-to-date price has to be read as market price although he has conceded that there is difference between the market price and up-to-date price. The Review Court has not permitted market price rather on the application for review filed by the Board the Court only clarified the order of the Writ Court dated 10.05.2013 to the extent of up-to-date price in terms of Annexure-1.

13. Per contra, Mr. Shrawan Kumar, learned Senior Counsel appearing on behalf of the writ petitioner submitted that the Board right from the beginning is acting in a hostile manner, which is



evident from the fact that the petitioner has to approach this Hon'ble Court in the matter of allotment of land. Mr. Singh submitted that the Writ Court directed the Board to take a decision for allotment in terms of the advertisement as contained in Annexure-1. He has drawn the attention of the Court to Annexure-1 which in most unambiguous manner mentioned that the price of the plot was fixed up to 31.05.2008 in the advertisement dated 15.05.2008 and, as such, there was no scope for any speculation or scope for calculation of market price for allotment of the plots in question. He submitted that the Board has preferred application for review and the Court has only clarified the order dated 10.05.2013 to the extent that the price of the allotted land would be on up-to-date rate as on the date of allotment, as per the terms of the advertisement Annexure-1 and as such, that the Board cannot determine the price of the plot contrary to Annexure-1, which has become final and binding as rule of game between the writ petitioner and the Housing Board in view of the order of the Writ Court in C.W.J.C. No. 9744 of 2012 dated 10.05.2013 and Civil Review No. 458 of 2013 dated 09.01.2014. Referring to the supplementary affidavit filed on behalf of the Board, Mr. Singh submitted that in writ proceeding after filing of the counter affidavit, the Writ Court directed the Board to file supplementary counter affidavit to place on record. The basis of the price of the plot fixed in



question in the year 2008 and thereafter in the year 2014. The Board filed the supplementary counter affidavit and enclosed Annexure-H, the basis of calculation. Mr. Singh submitted that in the supplementary counter affidavit stand was taken with reference to the proceeding of 2013 to justify raising demand at market price and now the Board has taken a misleading stand by supplementary affidavit and enclosing the resolution of the Board to substantiate that way back on 10.02.2001, the Board resolved to determine up-to-date cost of the plot on the basis of market value, as per the circle rate fixed by the District Magistrate. He has drawn the attention of the Court to the Resolution dated 10.02.2001, which was the resolution in the matter of prescribing reserved price in the matter of auction of plot, house and flat. He submitted that the instant case is not a case of auction of the commercial plot, but from Annexure-1, it is crystal clear that it was for allotment on the rate fixed by the Housing Board. Annexure-1 is not for auction rather it was a firm decision of the Board in connection with the allotment of land for educational institution and health centre. He submitted that the modality of fixation of reserved price for auction is only relevant in the matter of auction and the same cannot be applicable to the case of allotment of plot in terms of Annexure-1.

14. Mr. Lalit Kishore in reply submitted that the plot is a



commercial plot and as such, the Board is justified in demanding market price for allotment of the plots in question. He submitted that the writ petitioner has made payment and has accepted the registration with protest and as such, he cannot question the price of the plots and the Writ Court was in error in directing re-calculation of the cost in terms of Annexure-H.

15. After consideration of the rival submission of the parties and on perusal of the order of the Writ Court in C.W.J.C. No. 9744 of 2012 and in Civil Review No. 458 of 2013, it is manifest that the Board was required to allot plot to the petitioner on the conditions enumerated in Annexure-1. More particularly, on the point that the up-to-date rate in terms of the advertisement has to be worked out on the date as on the date of allotment as per the terms of the advertisement Annexure-1 is unambiguous in the matter of up-to-date cost and it does not recognize market price as up-to-date price.

16. I have gone through the Resolution of the Board on which Mr. Lalit Kishore, Senior Advocate heavily relied to contend that up-to-date means market price. It is evidently clear that distinction was made between market price and up-to-date price and in view of the difference between up-to-date price and the market price maintained by the Board, itself, the only question require for determination in the present case is what is the method of determining



the up-to-date price. In fact, the mechanism to determine the up-to-date price is no more issue in view of the fact that in C.W.J.C. No. 17694 of 2015 when the Board was asked to file supplementary counter affidavit to indicate the basis of price fixation of the plot the Board enclosed Annexure-H which is clinching on the point as to fixation of up-to-date price. It was specifically mentioned in Annexure-H that the price of the plot was Rs. 3,07,988/- on 31.03.1974 and the method of calculation of the up-to-date price on 31.05.2008 was on the basis of interest added on the cost of the plot as on 31.03.1974. Annexure-H indicates that the cost of plot on 31.05.2008 was worked out on the basis of 14% interest as Rs. 1,71,89,098.77/-. Thus, from perusal of Annexure-H it becomes crystal clear that the method of calculating up-to-date price is addition of 14% interest on the price of the land.

17. In view of the above, I have no hesitation in holding that the up-to-date price of the plot has to be worked out on the basis of the mechanism indicated in Annexure-H. In fact, the Writ Court after due consideration of the entire facts and circumstances of the case and on consideration of the method of calculation of up-to-date price, has rightly quashed the arbitrary fixation of up-to-date price by the Housing Board which was determined on the basis of market price. The Writ Court has rightly directed the calculation of the price



of the plots on the basis of the modality indicated in Annexure-H. I have no manner of doubt that the resolution dated 10.02.2001 and the office order 02.03.2001 Annexure-1A and 1B of the supplementary affidavit in the instant LPA are not applicable in the matter of determination of up-to-date price of the plot in question.

18. As the resolution and the office order aforesaid are relatable to fixation of reserved price for auction of plot, house and flat it has no application in the present case, where the price was worked out for allotment and which only permits updation of the price on the date of allotment and as such, I am of the considered view that the Writ Court has committed no illegality or error, warranting interference and as such, I do not find any substance in the present LPA and the appeal is accordingly dismissed. The order of the Writ Court is affirmed for the reasons indicated hereinabove.

(Anil Kumar Upadhyay, J)

Rajendra Menon, CJ : I agree.

(Rajendra Menon, CJ)

KKSINHA/-

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