

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1445 of 2019

In

Civil Writ Jurisdiction Case No.15471 of 2016

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Lohianagar Mt. Carmel High School A-14, Kankerbagh Colony, Patna through its Director Minu Singh W/o Late Ashok Singh, age 57 years, Female, resident of A/4 Housing Board Colony, P.S. Kankerbagh, District-Patna.

... .. Appellant/s

Versus

1. The Bihar State Housing Board through Managing Director 6, Sardar Patel Marg, Police Station-Sachiwalaya, Patna-800 015.
2. The Managing Director, Bihar State Housing Board, 6, Sardar Patel Marg, Police Station-Sachiwalaya, Patna-800 015.
3. The Estate Officer, Bihar State Housing Board, 6, Sardar Patel Marg, Police Station-Sachiwalaya, Patna-800 015.
4. The Executive Engineer, Patna Division II, Bihar State Housing Board, 6, Sardar Patel Marg, Police Station-Sachiwalaya, Patna-800 015.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Shravan Kumar, Sr. Advocate Mr. Krishna Kumar Singh
For the Respondent/s	:	Mr. Lalit Kishore, Sr. Advocate Ms. Vinita Singh, Advocate Mr. Pawan Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 09-05-2022

Heard Mr. Shravan Kumar and Mr. Lalit Kishore,
learned senior Advocates for the appellant and the Bihar State
Housing Board respectively.



Pursuant to an advertisement issued on 10.05.2008, inviting application for allotment of land ear-marked for Educational Institutions and Health Centres in various housing colonies situated in Lohianagar and Bahadurpur Housing Colony, Patna, the appellant applied for a plot in Lohianagar Housing Colony for an area admeasuring 0.61 acres for the purposes of opening a school.

However, the application of the appellant was rejected by the Board and the amount of Rs. 1,00,000/-, which the appellant had deposited with the Housing Board, was directed to be refunded.

The appellant thereafter approached this Court vide C.W.J.C. No. 7421 of 2010 when this Court, finding the decision to be cryptic and without giving any reason, set aside the same on 24.09.2013 and remanded the matter to the Managing Director of the Board for taking a fresh decision with respect to the claim of the appellant for allotment of land. The Board thereafter again rejected the claim of the appellant on 10.07.2014 but such rejection was on the ground that one of the measures which the appellant had to take, namely,



furnishing of the recommendation letter of the Department, was not done and therefore the application was not entertained. The aforesaid order of the Managing Director dated 10.07.2014 was again put to challenge before this Court vide C.W.J.C. No. 15471 of 2016.

The learned Single Judge vide his judgement dated 17.10.2019, taking into account that even though the Housing Board had asked for a recommendation letter from the concerned Department, the same was not furnished by the appellant, held that the appellant could not have claimed that the decision to reject the application of the appellant was bad in the eyes of law. The learned Single Judge has referred to the format in which the application had to be made which inter alia required an Institution to be recognised by Central or Bihar Board and a recommendation from the Department.

The aforesaid order of the learned Single Judge upholding the decision of the Managing Director of the Housing Board refusing to allot the land in favour of the appellant is under challenge in the present appeal.



Mr. Shravan Kumar, learned Senior Advocate for the appellant has assailed the aforesaid judgement on the ground that in the advertisement dated 10.05.2008, there was no requirement of submitting any recommendation letter of any authority whatsoever and therefore such a requirement could not have been surreptitiously included in such requirement by way of providing a format to be filled up by the aspirants. Apart from this, it has been submitted that once the Institution was recognized by a Central Board, there could have been no justification for obtaining any recommendation letter. Additionally, it has been argued that even the format which was introduced later does not indicate as to from which authority, recommendation letter was to be obtained in case the school was affiliated to any Central Board. The further ground of assail is that the land in question though belonging to the Bihar State Housing Board has been ear-marked for setting up of Primary Schools and the same cannot be put to a back-burner for no apparent good reason. Since there was no dearth of bona fides of the claim of the appellant, such flimsy



ground ought not to have been taken by the Managing Director of the Board for rejecting the claim of the appellant.

As opposed to the aforesaid contention, Mr. Lalit Kishore, learned Senior Advocate appearing for the Housing Board has submitted that the plots which were advertised for allotment for the purposes of setting up schools have till date remained vacant because out of seven such applicants like the appellant, nobody was found to be suitable. He further submits that once the appellant subjected himself to the process involved in the allotment of the land, he cannot question the correctness of the requirement of a format to be filled by the aspirants. It has further been argued that the Housing Board is the custodian of the property and in the absence of finding any suitable aspirant for being allotted such land, the lands have yet remained vacant which ultimately would be put to use in accordance with the lay-out plan as also the master-plan of the area.

As of now, the vacant land is being used as play-field for children.



In response to the aforesaid arguments, Mr. Shravan Kumar, learned Senior Advocate has submitted that such an argument on behalf of the Board is meaningless in as much as it is a trite law that the terms of the advertisement cannot be changed mid-way. Once such requirement is introduced which is not in the advertisement, then the whole process is rendered bad in the eyes of law and is void ab initio, which may or may not be challenged separately but could be decided in any collateral proceeding.

In support of the aforesaid contention, certain case laws have been cited which are not being reproduced in this order for the reason that this appeal is being disposed off on other grounds.

We have noticed that the advertisement in question was issued in the year 2008 and no entity which had applied for the allotment of land was found to be suitable. We do find force in the contention of Mr. Shravan Kumar, learned Senior Advocate that in the absence of any specific direction as to from which authority such recommendation had to be obtained, specially for any institution which is recognized by a Central



Board, the Housing Board ought not to have taken such objection. We also find that the only reason assigned by the Managing Director in refusing the claim of the appellant is that there was no corresponding recommendation of any authority as was required in the format in which the application had to be made.

Nonetheless, finding that no entity was allotted land for the purposes of setting up of the school and taking into account that there is no vested right of any person to have the allotment made in his favour, we are not inclined to direct for allotment of the land in question to the appellant primarily for the reason of efflux of time. However, while saying so we do take note of the fact that the Housing Board was absolutely unjustified in refusing the claim of the appellant on the sole ground of there being no recommendation of any authority which was never asked for and therefore never clarified by the Housing Board.

Be that as it may, taking clue from one of the judgements brought on record by the appellant wherein a Division Bench of this Court in C.W.J.C. No. 7885 of 2015,



had disposed off on 15.09.2015, holding that the State of Bihar and the Housing Board would be well advised to rise to the occasion and take all possible measures, in accordance with law to ensure that the plots in the Housing Colonies earmarked for the Schools are utilized for the said purpose by establishing Primary and High Schools with proper infrastructure and teaching staff in order to cater the needs of the residents of the locality, in furtherance of the constitutional scheme of the citizens, as guaranteed under Article 21 A of the Constitution of India, we direct that if the plots have still remained vacant and have not been put to any use whatsoever and there has been no change in the lay out plan as well as the master-plan of the locality, such land be re-advertised for allotment to desirous persons for opening up Schools. The advertisement which the Housing Board shall take out shall mention with clarity, the requirements to be fulfilled by the aspirants. In case, the appellant applies against such advertisement, his case shall be considered, without being prejudiced by the fact that this litigation has been fostered by him because of non-allotment of land in the previous exercise.



The appeal stands disposed off accordingly.

(Ashutosh Kumar, J)

(Anjani Kumar Sharan, J)

skm/-

AFR/NAFR	AFR
CAV DATE	
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