

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.11076 of 2023**

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Kishor Kumar Banka, Son of Late Madan Lal Banka, Resident of Main Road, Upper Bazar, Ward No. 15, P.S.-Lohardaga, District – Lohardaga (Jharkhand).

... .. Petitioner

Versus

1. The Bihar State Housing Board having its Office at 6, Sardar Patel Marg, Patna through its Chairman.
2. The Chairman, Bihar State Housing Board, having its Office at 6, Sardar Patel Marg, Patna.
3. The Managing Director, Bihar State Housing Board, having its Office at 6, Sardar Patel Marg, Patna.
4. The Secretary, Bihar State Housing Board, having its Office at 6, Sardar Patel Marg, Patna.
5. The Land Estate Officer, Bihar State Housing Board, having its Office at 6, Sardar Patel Marg, Patna.
6. The Chief Engineer (Block- 1), Bihar State Housing Board, having its Office at 6, Sardar Patel Marg, Patna.
7. The Executive Engineer (Block - 1), Bihar State Housing Board having its Office at 6, Sardar Patel Marg, Patna.
8. Anil Kumar Roy, son of late Jamuna Ray, resident of A-121, Kankerbagh Housing Colony, P.S.- Kankerbagh, District- Patna.

... .. Respondents

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Bihar State Housing Board—a plot was allotted to mother of the petitioner, which was marked as a Park in Original layout plan, illegally without following due process of law—no plot meant for Park can be allotted to anyone by any authority—allotment of plot in question to the mother of the petitioner was held to be illegal, relief claimed by the petitioner, cannot be granted to him as the question of violation of terms of the lease, etc., can be looked into only if the allotment was held to be legal of a plot which was not meant to be allotted to anyone but was meant to be a Park—writ dismissed. (Paras 42 to 46)

AIR 2018 SC 220—Relied upon.

(1995) 5 SCC 762—Referred to.

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Upper Bazar, Ward No. 15, P.S.-Lohardaga, District - Lohardaga (Jharkhand).  
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6. The Chief Engineer (Block- 1), Bihar State Housing Board, having its Office at 6, Sardar Patel Marg, Patna.
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8. Anil Kumar Roy, son of late Jamuna Ray, resident of A-121, Kankerbagh Housing Colony, P.S.- Kankerbagh, District- Patna.

... .. Respondents

**Appearance :**

For the Petitioner	:	Mr. S.D. Sanjay, Sr. Advocate Mr. Mohit Agarwal, Advocate
For the Respondents	:	Mr. Dr. Anand Kumar, Advocate
For the Intervenors	:	MR. Rajesh Ranjan, Advocate Mr. Ambuj Nayan Choubey, Advocate

**CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR**  
**ORAL JUDGMENT**  
**Date : 22-04-2024**

This writ petition has been filed for the following  
reliefs:-

*“i. For quashing order dated 04.05.2023  
passed by Respondent Managing Director,*



*Bihar State Housing Board issued vide Memo No.2090 by the Respondent Secretary-cum-Land Estate Officer, Bihar State Housing Board whereby the order / sanction for conversion of leasehold land of the Petitioner to freehold land vide letter no. 2219 dated 20.06.2019 has been cancelled with direction for taking steps for cancellation of the registered deed for conversion of leasehold property to freehold of Bihar State Housing Board dated 24.09.2019 without any proper enquiry in the matter and providing the copy of alleged report of the Respondent Chief Engineer (Block 1), Bihar State Housing Board or other material and opportunity of hearing to the petitioner in the impugned proceeding and hence in violation of principles of natural justice;*

- ii. *For quashing the Memo No.1043 dated 21.10.2022 issued to respondent Sub - Registrar, Office of Registration, Patna by the Respondent Executive Engineer, Bihar State Housing Board wherein the Respondent Sub-Registrar, Patna was direct to cancel the Registered deed of Conversion dated 24.09.2019 executed in favour of the Petitioner without hearing the petitioner and withdrawing the order of*



*permission of conversion dated 20.06.2019  
the same was passed without hearing the  
Petitioner;*

*iii For holding that the Respondent has erred  
in passing the impugned order of cancella-  
tion of sanction for conversion of leasehold  
land to freehold as no enquiry on the issue  
of allege violation of Clause 6 of the order  
dated 20.06.2019 or the Clause 7 of the  
registered deed for conversion of leasehold  
property to freehold of Bihar State Housing  
Board dated 24.09.2019;"*

2. The facts of this case are that Plot No. U/469 situated at Yashoda Devi Path, Kankarbagh Housing Colony, Patna was given on lease for 90 years to the mother of the petitioner namely, Smt. Chanda Devi (now deceased) through a registered lease deed dated 26.05.1980 and since then the mother of the petitioner was in peaceful possession of the aforesaid plot and after her death, the petitioner came in peaceful possession of the same. However, in the year 1986, the Housing Board vide letter dated 03.06.1986 cancelled the allotment made in favour of the mother of the petitioner, which was challenged before this Court in C.W.J.C. No.5212 of 1988 and this Court vide judgment and order dated 28.06.1999 (since



reported as *AIR 2000 Patna 16*) quashed the said letter of cancellation of allotment.

3. After the death of his mother, the name of the petitioner was substituted vide Housing Board's letter dated 20.09.2018 and subsequently, the leasehold land of the petitioner was made freehold land vide Housing Board's letter dated 20.06.2019 and by subsequent execution of conveyance deed of leasehold property to freehold deed was registered vide Registered Deed No.11022 registered at the office of the District Registry Office, Patna in favour of the mother of the petitioner.

4. After execution of the registered deed of conversion dated 24.09.2019, the petitioner sold some parts of the plot in question to different persons. The Land Estate Officer, Bihar State Housing Board, issued a letter dated 01.09.2021 to the petitioner calling upon him to show-cause as to why the deed of conversion and the allotment be not cancelled for selling the property in question after dividing the same in three parts, which is in violation of clause 4 of the lease deed and clause 5 of the deed of conversion. In pursuance of the same, the petitioner filed his show-cause dated 13.09.2021 explaining the reasons for executing sale deeds with respect to the land in question and also the instances where part plots were



sold by other allottees in the same locality. It was also stated in the show-cause that there was no violation of any clause of the lease deed or the deed of conversion and requested the authority to accept his show-cause.

5. Being dissatisfied with the show-cause of the petitioner, the Land Estate Officer, Bihar State Housing Board issued another letter dated 04.02.2022 asking the petitioner to show cause as to why he has violated clause-5 of the deed of conversion dated 24.09.2019 which provides that "*purchaser may make any construction/alteration/addition or change in the said property only in accordance with layout plan of the Bihar State Housing Board and in accordance with various provisions of building by-laws*". In the said show-cause, the petitioner was also directed to explain whether he has taken prior approval from the officer concerned before selling the plot in question in parts.

6. The Executive Engineer, Bihar State housing Board issued a letter dated 21.10.2022 to the Sub-Registrar, Office of Registration, Patna to cancel the deed of conversion dated 24.09.2019 executed in favour of the petitioner on the basis of letter no.4089 dated 19.09.2022 issued by the Land Estate Officer, Bihar State Housing Board. Thereafter, the



Managing Director, Bihar State Housing Board issued letter dated 04.05.2023 by which the order/sanction for conversion of leasehold land in question to freehold land has been cancelled.

7. Sri S.D. Sanjay, learned Senior Counsel for the petitioner submits that clause- 6 of the order of conversion of lease hold property to freehold property issued vide letter dated 20.06.2019 provides that no change / alteration / encroachment be made on any part of the land beyond the area of 3300 sq. ft. allotted to the petitioner. Clause-3 of conveyance deed for conversion of leasehold property to freehold dated 24.09.2019 provides that the vendee has in himself good right and full power to convey and transfer by way of sale or otherwise the said conveyed property and therefore, this clause empowers the petitioner to sale the conveyed property, if so required.

8. Learned Senior Counsel for the petitioner also submits that clause- 4 of the aforesaid conveyance deed of conversion dated 24.09.2019 provides that the purchaser i.e. the petitioner may enter into the property, possess and enjoy the same for his own use or benefit without any interference of the vendor/respondents and clause-5 provides that the petitioner may make any construction/alteration/ addition or change in the



property in question only in accordance with the lay out plan of the Bihar State Housing Board and in accordance with the provisions of the building by-laws. By relying upon the aforesaid clauses, he submits that there was no restriction or prohibition in selling the property in question rather an exclusive right conferred upon the petitioner to sell out the property in question and due to financial constraint, the petitioner was compelled to sell the plot in question to different vendees in part.

9. Learned Senior Counsel for the petitioner further submits that from reading of the show-cause notice dated 01.09.2021, it appears that in the show-cause, reference of some report was made, on the basis of which the show cause was issued, but the said report was not provided to the petitioner nor any specific date or details with respect to the said report was stated or described in the show-cause, which amounts to violation of principles of natural justice. He also submits that without considering the show cause filed by the petitioner, he was again asked to file show-cause for violation of clause-5 of the deed of conversion dated 24.09.2019.

10. It has been argued by learned Senior Counsel for the petitioner that the Executive Engineer, Bihar State





Housing Board has passed the impugned letter dated 21.10.2022 directing the Sub Registrar, Patna, to cancel the deed of conversion dated 24.09.2019 in a most arbitrary manner and in utter violation of principles of natural justice as the petitioner was not heard before issuance of the aforesaid letter and even without setting aside the letter granting permission for converting lease hold property to freehold property. It has further been argued that the impugned letter dated 04.05.2023 canceling the order for conversion of leasehold land to freehold land has been passed for alleged violation of terms of deed of conversion but there is no violation of any of the terms and conditions of the deed of conversion. The petitioner was also not issued/served any report much less asked to take part in any enquiry alleged to be conducted by the Housing Board. The petitioner was never provided with any lay-out plan by the Housing Board, which is alleged to have been violated by the petitioner.

11. It has also been argued by learned Senior Counsel for the petitioner that in terms of the deed of conversion executed by the Housing Board, the petitioner was granted the right, title, interest and possession over the property in question with absolute right to transfer the same and he, in



exercise of such power, executed the sale deed and therefore, the impugned letter dated 04.05.2023 is liable to be quashed by this Court.

**12.** By making the aforesaid submissions, learned Senior Counsel for the petitioner submits that this Court may quash the impugned letters and allow this writ petition.

**13.** In this case, the Bihar State Housing Board has filed its counter affidavit and has contended that after the letter no.2219 dated 20.06.2019 was issued and the petitioner was given permission for conversion of the land from leasehold to freehold land, the plot was sold in parts without changing the size of the plot and it was found to be contrary to the provisions of the clause-4 of the lease deed and clause-5 of the deed of conversion dated 24.09.2019. Therefore, the Board vide letter no.4146 dated 01.09.2021 asked show-cause from the petitioner, who gave his reply to the show-cause and thereafter, the Board vide letter no.446 dated 04.02.2022 issued second show-cause on the ground of division of the plot and the sale thereof for acting against the term of clause-5 of the deed of conversion and further direction was given to take action in accordance with law but the explanation for the same is still not received in the office of the Housing Board.



**14.** It has also been stated in the counter affidavit that in the same situation, the Board vide letter no.4008 dated 19.09.2022 and 4089 dated 19.09.2022 issued letter to Patna Division-1 to cancel the freehold deed in accordance with law. Thereafter, the Project Director-cum-Deputy Director, Urban Development Housing Department vide letter no.2873 dated 14.10.2022 has constituted a team at Department level to enquire into the illegality/irregularity in view of the complaint received from the Vigilance Department. Thereafter, the letter no.1043 dated 21.10.2022 was passed for canceling the registered deed of conversion.

**15.** It has also been stated in the counter affidavit that the petitioner filed C.W.J.C. No.1873 of 2023 seeking quashing of the initiation of Vigilance Case No.5-B of 2022 against the petitioner is based on an application filed by the Housing Board and further for setting aside letter no.111 dated 19.09.2022 as well as Memo no.1043 dated 21.10.2022 issued by the Executive Engineer of the Housing Board and this Court vide order dated 27.06.2023 admitted the case and directed the Housing Board to file its counter affidavit.

**16.** In this case, Interlocutory Application no.01 of 2023 has been filed by one Anil Kumar Roy for his



impleadment as respondent in the present writ application.

**17.** The intervenor has been heard on his interlocutory application, which has been opposed by learned counsel for the petitioner.

**18.** The intervenor has pointed out that the plot in question, which has been allotted to the mother of the petitioner, is a plot meant for park and there is sewerage line beneath the said plot. Therefore, the said plot could not and should not have been allotted to the mother of the petitioner by the Housing Board.

**19.** In these circumstances, in the interest of justice, this intervention application is allowed. The intervenor is directed to be added as respondent no.8 in this writ petition.

**20.** The respondent no.8 in his intervention petition has stated that the plot in question i.e plot no.U/469 was initially earmarked for park and sewerage line as well as drain storm passed beneath the said plot. The said plot was allotted in utter violation of the applicable rules. Since from the very beginning, the people of the locality have been raising objections against the allotment of the land in question and when the allottee tried to construct the house over the land in question, the residents of the locality filed an application before



the S.H.O., Kankarbagh on 15.02.1984.

**21.** It has also been stated that the Assistant Engineer of the Housing Board vide letter dated 18.06.1985 communicated the Executive Engineer that underground sewerage line and storm drainage line passed through the plot no. U/469 and construction over the land in question was done by Smt. Chandrawati Devi and requested that necessary direction may be issued for stopping the said construction. When no action was taken by the authority concerned, the people of the locality filed several representations before the Housing Board about illegal allotment of plot no. U/469 which was meant for park and thereafter the Manager Estate Cum-Additional Secretary, Bihar State Housing Board vide letter dated 03.06.1986 cancelled the allotment of Smt. Chanda Devi citing the illegality committed in the said allotment, which was challenged by the mother of the petitioner in C.W.J.C. No.5212 of 1988 before this Court. The said writ petition was allowed by judgment and order dated 28.06.1999 on technical ground for non compliance of provision as contained in section 59 of the Act and liberty was granted to the Board to proceed against the petitioner either by instituting a suit or by initiating a proceeding under section 59 of the Act for cancellation of lease deed



executed in favour of the mother of the writ petitioner.

**22.** It has also been stated in the intervention petition that the Executive Engineer by his letter dated 17.02.1999 informed the Law Officer of the Board that neither the allotment letter nor the copy of lease deed was available in the concerned file and there are marked variation in the area of the plot mentioned in the letter available in the file and the actual area under possession. Further, the Commissioner of Patna Municipal Corporation in his letter dated 02.06.2022 stated that underground sewerage line and storm drainage passed through the plot no. U/469 and the said sewerage line is quite old and still in use and due to allotment of plot, sewerage line is severely affected and the Commissioner requested the Housing Board to inquire into the allotment of the said plot to ensure cleaning of the drain. Several attempts were made to obtain information under the Right to Information Act but, till today no information whatsoever had been given by the authority and when the illegality in allotment of the aforesaid plot was brought to the notice of this Court in C.W.J.C No. 18047 of 2022, this Court vide order dated 22.12.2022 directed the Housing Board not to allow any construction upon the said plot and the said writ application is still pending for



adjudication.

23. Learned counsel for the intervenor respondent submits that apart from a copy of lease deed dated 26.05.1980, there is absolutely no document on record to show that the Board has adopted any procedure for allotment of the plot in question. There was no notification/publication informing the general public that plot no. U/469 was available for allotment. There was no record to show that the mother of the petitioner had ever submitted any application for allotment of the plot in question.

24. Lastly, learned counsel for the intervenor respondent has submitted that the land which are reserved for park cannot be allotted for any purpose and such allotment amounts to misuse of the power and liable to be cancelled.

25. In support of his submissions, he has relied upon the decisions of the Hon'ble Supreme Court in the case of ***Dr. G.N. Khajuria and Ors. vs. Delhi Development Authority & Ors.*** reported as ***1995 (5) SCC 762*** ; ***Lal Bahadur vs. State of Uttar Pradesh*** reported as ***AIR 2018 SCC 220***.

26. Interlocutory Application no.02 of 2024 has been filed by one Rajesh Roushan, for impleading him as party respondent in the main writ petition, who is subsequent



purchaser from the petitioner.

27. In the opinion of this Court, since the intervenor is subsequent purchaser of the land in question from the petitioner, he is not necessary and proper party as his right flows through the right of the petitioner.

28. In view of the aforesaid fact, this interlocutory application is rejected.

29. Heard learned counsel for the parties and perused the materials on record.

30. During the course of hearing, this Court had called for the original records of the case. Pursuant to the direction of this Court, the original records have been produced by an official of the Housing Board. This Court had put a question to the official of the Housing Board as to when and whether the plot in question was offered to be allotted by public advertisement or not and what was the procedure for allotment of such plots. The official of the Housing Board has submitted that the file begins from the allotment records, which is very surprising. The allotment of plot by the Bihar State Housing Board is preceded by an advertisement and as per the argument of learned counsel for the petitioner, it is a random left over (छिटाप्लट) plot and the same has been subsequently allotted to the





mother of the petitioner. Neither the Housing Board nor the petitioner has been able to produce any document with regard to the issuance of advertisement to the general public for allotment of the plot in question. Considering the complaint received with regard to the illegality/irregularity in the allotment of the plot in question submitted by the intervenor, the Deputy Director of the Housing Board by an order dated 12.10.2022 directed for enquiry by constituting a Committee. It will be relevant to quote letter dated 12.10.2022, which reads as follows:-

**"बिहार सरकार  
नगर विकास एवं आवास विभाग  
आदेश**

का० आ० सं०-०७/न० वि०/परि- ६९/२२-२८४० न० वि० एवं आ० वि०, पटना  
दिनांक:- १२/१०/२२

निगरानी विभाग, सूचना भवन, पटना के पत्रांक-४१८२ (अनु०) दिनांक ०९.०९.२०२२ द्वारा लोहिया नगर कंकड़बाग, पटना स्थित बिहार राज्य आवास बोर्ड के भूखण्ड सं०-U/४६९ के आवंटन में बरती गई अनियमितता के संबंध में श्री अनिल राय एवं अन्य द्वारा उपलब्ध कराए गये परिवाद पत्र में वर्णित बिन्दुओं की जाँच हेतु एक समिति का गठन निम्नवत किया जाता है:-

(i) श्री सुनील कुमार यादव,- अध्यक्ष  
अपर सचिव।

(ii) श्री अभिषेक कुमार,- सदस्य  
कार्यपालक अभियंता,  
उड़नदस्ता प्रकोष्ठ, उत्तर बिहार,  
नगर विकास एवं आवास विभाग।

२. उक्त प्रस्ताव में सक्षम प्राधिकार का अनुमोदन प्राप्त है।

ह०/-

१२.१०.२२

परियोजना पदाधिकारी-सह-उप निदेशक।



Patna High Court CWJC No.11076 of 2023 dt.22-04-2024  
17/27

ज्ञापांक— 2840/न0वि0 एवं आ0वि0/पटना, दिनांक—12/10/22

**प्रतिलिपि:**—अपर सचिव/कार्यपालक अभियंता, नगर विकास एवं आवास विभाग को निगरानी विभाग से प्राप्त पत्र की छायाप्रति संलग्न करते हुए पत्र में अंकित बिन्दुओं की जाँच कर जाँच प्रतिवेदन समर्पित करने हेतु प्रेषित।

अनुलग्नक—यथोक्त।

ह0/—

12.10.22

परियोजना पदाधिकारी—सह—उप निदेशक।

ज्ञापांक— 2840/न0वि0 एवं आ0वि0/पटना, दिनांक— 12/10/22

**प्रतिलिपि:**— प्रधान सचिव के आप्त सचिव को सूचनार्थ प्रेषित।

ह0/—

12.10.22

परियोजना पदाधिकारी—सह—उप निदेशक।"

**31.** Thereafter, enquiry has been conducted and the impugned order has been passed.

**32.** The site plan of plot no. U/469 is annexed with the original records showing existing pucca constructions with Asbestos sheet roofing, compound wall, storm drainage line, sewerage line and road width at Lohianagar, Patna.

**33.** The first paragraph of letter dated 03.06.1986 written by the Additional Secretary to the mother of the petitioner reads as under:-

“उपर्युक्त विषय प्रसंग में कहना है कि आवास बोर्ड ने पटना स्थित लोहियानगर आवासीय कालोनी में आपको आवास बोर्ड द्वारा भूखंड सं० यू/469 का आवंटन छिटपुट भूखंड की कोटि के अंतर्गत किया गया था जब कि सम्बन्धित भूखंड ले आउट प्लान में पार्क के रूप में छोड़ा गया है। उक्त भूखंड से भू-गर्भ नाला गुजरता है। आप उस



भूखंड पर बिहार राज्य आवास बोर्ड अधिनियम की धारा 78 के प्रावधानों के प्रतिकूल नक्शे में प्रबन्ध निदेशक, बिहार राज्य आवास बोर्ड की पूर्व स्वीकृति के ही निर्माण कर लिया गया है।”

**34.** From Annexure-IA/4 annexed with the intervention petition of respondent no.8, it is clear that the plot in question is a park in the layout plan and there is sewerage line underneath the plot in question.

**35.** The letter dated 24.12.1985, which is there with the records, also says that sewerage and storm line as well as water supply line are there in the plot allotted to the mother of the petitioner. Further, the letter dated 21.02.1984 written by the Managing Director of the Bihar State Housing Board to the mother of the petitioner reads as follows :-

"पत्र संख्या— 822

बिहार राज्य आवास बोर्ड, पटना।

प्रेषक,

श्री फूल चन्द सिंह

प्रबंध निदेशक।

सेवा में,

श्रीमति चन्दा देवी

द्वारा श्री नमोनारायण अग्रवाल

ए-53 कंकड़बाग कालोनी

पटना-20.

पटना, दिनांक 21/2/84

विषय:- मध्यम आय वर्गीय के अन्तर्गत श्रीमति चन्दा देवी को आवंटित भू-खंड के संबंध में।

महोदय,

उपर्युक्त विषय के प्रसंग में कहना है कि आवास बोर्ड के पटना स्थित लोहियानगर आवासीय कालोनी में आपको आवास बोर्ड के पत्र संख्या— 440 दिनांक 26.5.80 द्वारा भू-खंड संख्या— यू/469 का आवंटन छिटपूट भू-खंड की कोटी के अन्तर्गत किया गया था जबकि संबंधित भू-खंड ले आउट प्लान में



पार्क के रूप में छोड़ा गया है। अतः यह भू-खंड छिटपुट भू-खंड की कोटि में नहीं आ सकता। उक्त भू-खंड से भू-गर्भ नाला गुजरता है। आप उस भू-खंड पर बिहार राज्य आवास बोर्ड अधिनियम की धारा 78 के प्रावधानों के प्रतिकूल नक्शों में प्रबंध निदेशक, बिहार राज्य आवास बोर्ड की पूर्व स्वीकृति के बिना ही भवन निर्माण/निर्माण कर रहे हैं।

अतः पत्र प्राप्त होने की तिथि से एक सप्ताह के अन्दर कारण बतावें कि उक्त आवंटित भू-खंड का आवंटन क्यों नहीं रद्द कर दिया जाए।

विश्वासभाजन

ह0/—

प्रबंध निदेशक।"

36. From reading of the aforesaid letter, it will appear that the Managing Director has written that the plot in question has been allotted under random left over (छिटपुट) plot category whereas, the plot in question was left as a park and the same cannot fall in the category of random left over (छिटपुट) plot. He has also written that the sewerage line crosses underneath the plot.

37. From reading of the records, it appears that the plot in question was meant for a park and sewerage line goes underneath the plot. It also appears that the plot, in question, is not a random left over (छिटपुट) plot but, it is a park land in the layout plan and sewerage and storm line are passing through the land in question.

38. Moreover, from perusal of the writ petition, it is not clear as to how and under what process the plot in question was allotted to the mother of the petitioner and whether



the land was allotted by the Housing Board or by the then Chairman alone. The very transactions with regard to the allotment give impression that all the processes were finalized in a single day i.e. issuance of allotment letter dated 26.05.1980, the payment of tentative cost was also made on 26.05.1980, the lay-out site plan of the plot was also prepared on 26.05.1980, the draft sale deed for 90 years typed on 26.05.1980 on a judicial stamp paper purchased on the same day and the lease deed was executed on 26.05.1980 itself, which was presented for registration before the Sub-Registrar also on the same day. This is one of the cases which has come before this Court that the Housing Board has acted in such a hurried manner as if all the departments of the Housing Board and the State of Bihar wanted to complete the transaction i.e. the allotment and registration of the leased deed on the same day. It is common knowledge that the Housing Board takes a number of years to complete this kind of procedure which has been done in the present case in one day.

**39.** From the records and the submissions of the newly added respondent no.8, it is clear that the plot in question was reserved for park, sewerage and storm line as well as water supply line passing through it and the nature of which, could not



and should not have been changed by the authorities. It also appears that the Managing Director has written that the plot in question was reserved for park and sewerage line was passing through it so it does not come under random left over (छिटापुट) plot category and therefore, it cannot be allotted to anyone. Further, there is no advertisement or any application of the mother of the petitioner on record to show that the mother of the petitioner had applied for allotment of the plot in question and the same has been allotted in a legal manner. The procedure of allotment, agreement, lease deed and registration have been done in a single day.

**40.** Moreover, in clause-8 of the minutes of 91<sup>st</sup> meeting of the Board held on 14.09.1984 there was a general direction to the effect that any plot which forms a triangle, likely to cause disturbance in traffic or to cause any obstruction in sewerage line or storm line, shall not be allotted to anyone. A list of plots including the plot in question i.e. plot no. U/469 was mentioned in the said minutes of the meeting. Thus, it is evident that the Housing Board has not taken any decision with regard to the allotment of plot no. U/469 prior to 14.09.1984. Further, the map dated 04.03.1999 available with the original records produced by the Board clearly shows that the shape of the said



plot no. U/469 is a triangle and having sewerage and storm line as well as water supply line passing underneath the said plot. Therefore, as per the decision of the Board in its 91<sup>st</sup> meeting, the said plot is not fit for allotment and could not have been allotted.

41. It will be relevant to quote the minutes of the 91<sup>st</sup> meeting held on 14.09.1984, which reads as under:-

**"बिहार राज्य आवास बोर्ड पटना।**

कार्यालय आदेश संख्या— 9056

पटना, दिनांक 11/12/84

बिहार राज्य आवास बोर्ड की दिनांक 14.9.84 की 91 वीं बैठक की पूरक कार्यावली संख्या-7 के अन्तर्गत लिए गए निर्णयानुसार निम्नांकित स्वीकृति प्रदान की गयी है:-

(1) दिनांक 21.07.79 की बोर्ड की बैठक में रखे गए सर्वे प्रतिवेदन में छिटपुट भूखंड के रूप में दिखाए गए क्षेत्र पर अवस्थित प्लाटों की बन्दोबस्ती को ..... की गयी चाहें उन प्लाटों की बन्दोबस्ती दिनांक 12.2.80 को लौटरी द्वारा हुई हो या उसके पहले या बाद में अध्यक्ष द्वारा की गई हो।

(2) लोहियानगर स्थित सेक्टर "ओ", "ई" एवं एन0सी0 में तदेन अध्यक्ष द्वारा की गयी प्लाटों की बन्दोबस्तियां इस आधार पर विनियमित करने की स्वीकृति दी गयी कि आवंटी द्वारा प्लाट सं0 जी0सी0-1 की निलामी की कीमत की दर से भुगतान किया जाए।

(3) लोहियानगर स्थित सेक्टर "ओ" में भूखंड संख्या-156 एवं 157 तथा एन0सी0 सेक्टर में भूखंड सं0-123 सी की आवासीय दर पर पूर्व में की गयी बन्दोबस्तियों इस आधार पर विनियमित करने की स्वीकृति दी गयी कि आवंटी द्वारा प्लाट सं0 जी0सी0-1 की निलामी की कीमत के दर से भुगतान किया जाए।

(4) एन सी सेक्टर में भूखंड सं0 एन सी बी-1 से एन सी बी 13 तक की बन्दोबस्ती नेबरहुड सेन्टर की जमीन को काटकर अध्यक्ष द्वारा 23.10.81 के बाद की गयी है जिसे सरकार द्वारा अपास्त किया जा चुका है इसलिये इस बन्दोबस्ती को विनियमित नहीं की जाती है।

(5) लोहियानगर स्थित विभिन्न सेक्टरों में व्यवसायिक प्रयोग के लिये सुरक्षित जमीन में से कुछ अन्य भूखंडों की बन्दोबस्ती अध्यक्ष द्वारा ऐसी



बन्दोबस्तियों को प्लॉट सं० जी०सी०-1 की निलामी की कीमत के आधार पर बोर्ड द्वारा विनियमित की गयी बशर्ते कि वे 23.10.81 के अनुरूप न हो, तथा सरकार के अपास्तीकरण के आदेश से प्रभावित न हो।

(6) लोहियानगर स्थित सेक्टर टी में भूखंड संख्या-448 से ..... भूखंड सं०- 553 से 558 एवं भूखंड सं०- 562 से 567 की बन्दोबस्तियां इस ..... विनियमित करने की स्वीकृति दी गयी कि आवंटी द्वारा व्यवसायिक .....कीमत की दर से भुगतान किया जाए।

(7) लोहियानगर स्थित सेक्टर एफ में भूखंड सं० 630 से 650 पार्क की जमीन से संबंधित है। इस पार्क को कायम रखने के संबंध में मुख्य नगर निवेशक की राय प्राप्त करने की स्वीकृति दी गयी। मुख्य नगर निवेशक की राय में इसे बरकरार रखना आवश्यक नहीं पाये जाने पर व्यवसायिक दर की कीमत के भुगतान के आधार पर इस क्षेत्र की बन्दोबस्तियों विनियमित करने के निमित्त बोर्ड विचार करेगी।

(8) निम्नांकित भूखंडों की बन्दोबस्ती व्यवसायिक दर की कीमत के भुगतान के आधार पर विनियमित करने की स्वीकृति दी गयी बशर्ते कि ये भूखंड सड़क के किनारे त्रिकोण न बनाते हों और ऐसी बन्दोबस्तियों से यातायात में कोई व्यवधान लेने की कोई संभावना न हो अथवा मलवहन और जन निकासी प्रणाली अवरुद्ध न हों तथा ये आवंटन सरकार द्वारा अपास्त न हो चुके हों:-

सेक्टर एफ भूखंड संख्या- 514,651,656,657,658,672,673,686,687,688 एवं 689

सेक्टर जी भूखंड संख्या - ए 116

सेक्टर एच भूखंड संख्या- एच-1

सेक्टर जे भूखंड संख्या- 628,629,699,705 एवं 720

सेक्टर के भूखंड संख्या- 502,503,504,505,506,507,508,509,510,511,512, 513, 600,607,608,609,610,611 एवं 703

सेक्टर एल भूखंड संख्या- 11ए, 12ए एवं 719

सेक्टर एम भूखंड संख्या- 626

सेक्टर एन भूखंड संख्या- 578,579,612,618,661,662,663,664, 682, एवं 701

सेक्टर पी भूखंड संख्या- 543,544,545,546,547 एवं 548

सेक्टर क्यू भूखंड संख्या- 82ए,458,681,698

सेक्टर आर भूखंड संख्या-58ए

सेक्टर एस भूखंड संख्या- 447,461,462,464,525,526,606,621,653,665,692, 700,713, 714 एवं 715

सेक्टर टी भूखंड संख्या- सी49ए, 481, 482,666,667,668,671 एवं 680

सेक्टर यू भूखंड संख्या- ए4ए,ए17ए, ए66ए, ए67ए, ए78बी, ए112ए, ए126ए,





बी64ए, बी66ए, 398,457,462,469,470,471,472 एवं 473

सेक्टर भी भूखंड संख्या— 466,467,468,477,478,527,528,529,530,531,531ए,  
532,549,550,551,552,571,583,584,585,659,562 एवं 684

उपर्युक्त अंकित भूखंडों के अतिरिक्त कतिपय अन्य भूखंडों की संभावना है जिसकी जानकारी अधीनस्थ कार्यपालक अभियंता कार्यालय से प्राप्त कर अग्रेतर कार्रवाई की जा सकेगी।

बिहार राज्य आवास बोर्ड के आदेशानुसार  
ह0/—  
(राम तवक्या शर्मा)  
सचिव

ज्ञाप संख्या— 9056

पटना, दिनांक 11/12/84

प्रतिलिपि, प्रबंधक भू-सम्पदा सह— अपर सचिव/मुख्य लेखा पदाधिकारी/लेखा पदाधिकारी/ राजस्व पदाधिकारी/ वास्तुविद्/ प्रशाखा पदाधिकारी एवं आवंटन/राजस्व एवं आवंटन शाखा के सभी सहायक, आवास बोर्ड/अधी ..... आवास बायर्ड, पटना अंचल, पटना/कार्यपालक अभियंता, आवास बोर्ड, पटना/कार्यपालक अभियंता, आवास बोर्ड, जन-स्वास्थ्य प्रमंडल पटना को सूचनार्थ

ह0/—  
सचिव"

**42.** From the record, it also appears that earlier the allotment of the plot in question was cancelled by the Housing Board and against the said order the mother of the petitioner had moved before this Court in C.W.J.C. No.5212 of 1988 and this Court vide judgment and order dated 28.06.1999 allowed the said writ petition and quashed the letter of cancellation of allotment but, from perusal of the aforesaid judgment, it appears that this Court had quashed the letter of cancellation of allotment only on the ground that the order of



cancellation of allotment was passed without holding any proceeding under section 59 of the Housing Board Act. In the said case, the legality of the allotment of plot in favour of the mother of the petitioner was not under consideration. In the said judgment, liberty was also granted to the Housing Board to proceed against the petitioner in accordance with law either by instituting a suit or by initiating a proceeding under section 59 of the Housing Board Act.

43. Further, the allotted plot was meant for park and even if allotted in a proper and justified manner can also held to be illegal because the land meant for park cannot be allotted to any person by any authority subsequently.

44. In a similar situation, the Hon'ble Supreme Court in the case ***Lal Bahadur (supra)*** has held in paragraph no.14 as under:-

*"14. This Court had clearly laid down that such spaces could not be changed from green belt to residential or commercial one. It is not permissible to the State Government to change the parks and playgrounds contrary to legislative intent having constitutional mandate, as that would be an abuse of statutory powers vested in the authorities. No doubt, in the instant case, the legislative process had*



*been undertaken. The Master Plan had been prepared under the Act of 1973. Ultimately, the respondents have realized the importance of such spaces. It was, therefore, their bounden duty not to change its very purpose when they knew very well that this is a low-lying area and this area is otherwise thickly populated and provides an outlet for water to prevent flood like situation. In fact, the flood-like situation occurred in the area in question. This Court has permitted the protection by raising Bandh. "*

**45.** From the discussions made above, it is clear that the mother of the petitioner was allotted the plot, which is marked as park in the original layout plan, illegally without following due procedure of law. No plot meant for park can be allotted to anyone by any authority. When the very allotment of the plot in question to the mother of the petitioner is held to be illegal, the relief claimed by the petitioner in this writ petition, cannot be granted to him as the question of violation of terms of the lease etc. can be looked into only if the allotment is held to be legal of a plot which was not meant to be allotted to anyone but was meant to be a park.

**46.** For the reasons as discussed above, this writ petition is dismissed.



47. The photocopy of the original records be retained with the file and the original records be returned to learned counsel for the Housing Board.

(Sandeep Kumar, J)

pawan/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	08.05.2024
Transmission Date	

