

Lala Sachindra Kumar Vs. Patna Regional Development Authority and ors.

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Court : Patna

Decided On : Apr-08-1993

Judge : S.B. Sinha, J.

Acts : [Constitution of India](#) - Articles 12 and 14; Bihar Regional Development Authority Second Ordinance, 1978 - Sections 27 and 99; Patna Regional Development Authority (Disposal of Land) Rules, 1978 - Rule 17

Appeal No. : C.W.J.C. No. 4962 of 1991

Appellant : Lala Sachindra Kumar

Respondent : Patna Regional Development Authority and ors.

Advocate for Def. : Shrawan Kumar, Sanjay Singh

Advocate for Pet/Ap. : Keshav Srivastava, Prasant Vedasan and Binod Kumar Ambastha, Advs., Ashok Kr. Sinha

Disposition : Application allowed

Judgement :

S.B. Sinha, J.

1. In this writ application

the petitioner has sought for issuance of a writ of or in the nature of mandamus commanding upon the respondents to allot a suitable house-building plot to the petitioner preferably at Rajindra Nagar in the town of Patna.

2. The fact of the matter lies in a very narrow compass.

3. On 16-1-1966 the father of the petitioner applied for allotment of plot of land at Rajendra Nagar where for a sum of Rs. 100/- was deposited. The petitioner has contended that neither he nor his father has/had any vacant land in the town of Patna.

4. An advertisement had been issued in the year 1973 inviting allotment of residential plots at Rajendra Nagar. The petitioner applied for a house-building plot with a request that on an earlier occasion for a sum of Rs. 100/- was deposited by his father on 16-1-1966 and the same may be credited to the petitioner as the new applicant of the year 1973. The petitioner also filed an affidavit and complied with all other formalities required by the respondent-authority.

5. In the year 1979 Land Disposal Committee of the respondent No. 1 took a decision regarding allotment of house building plot of lands at Rajendar Nagar but despite the same, no land has actually been allotted to the

petitioner. In the year 1981, orally the petitioner was asked to file a fresh affidavit which he complied with. According to the petitioner, he has filed several representations, but no action thereupon has been taken by the respondents.

6. Respondent No. 4 by a letter dated 16-10-1990 wrote to the petitioner alleging there in that no vacant land fit for allotment is available at Rajendra Nagar as realising the need of the houses, respondent No. 1 has decided to construct multi-storied buildings on the vacant lands. He, therefore, by reason of the said letter advised the petitioner to take refund of the security amount deposited by him.

7. The petitioner replied to the above letter of respondent No. 4 by his letter dated 3-11-1990 which is contained in Annexure-5 to the writ application wherein he has stated as follows:

'The Estate Officer seems to have overlooked the alternative prayer/claim made for a residential flat at Rajendra Nagar, in my earlier letter dated 16-8-1990 without prejudice, I reiterate my alternative claim and request you to kindly allot a residential flat to me at the earliest.

I again repeat that I have got no land or flat anywhere in Patna and I am living in a rented house. I am a lawyer practising in Patna High Court and present change of tenanted residence has been causing great professional loss to me. Although, I am one of the oldest applicant but, unfortunately, neither any land nor flat has been allotted to me so far.

In this view of the matter, I request you to kindly allot a residential flat to me at the earliest.'

8. The petitioner in his aforementioned letter further stated as follows:

'That the petitioner has been surprised to discover that resolution No. 58/90 dated 28th Nov. 1990, the Land Disposal Committee of P.R.D.A. confirmed its resolution No. 52/90 dated 24th Nov. 1990. by which it has decided to allot one house-building plot of land to Sri Triloki Nath Sharma, respondent No. 7 and

by resolution No 58/90 the said committee allotted a piece of land measuring 65' x 32' near I and flated of P.R.D.A. By the said resolution it was further decided that since no land was available, therefore, it was not possible to allot any land to any of the employees of the P.R.D.A. whose necessity can be considered at the stage of allotment of accommodation if any house-building project was finalised by the P.R.D.A.

That respondent No. 5, Murlidhar Pandey was allotted a plot of land in Rajendra Nagar. A complaint was received against allotment of plot of land to Murlidhar Pandey from certain individuals. That objection had been considered under resolution No. 59/90 dated 28th Nov. 1990 of the Land Disposal Committee. Subsequently, the matter was re-examined at the meeting of the Land Disposal Committee which was held on 14th March, 1991. At that meeting it was resolved to request the Vice Chairman to inspect the plot of land himself and report be

submitted by him before the meeting of the Board of P.R.D.A. on the same date, however, resolution No. 58/90 allotting land to respondent Triloki Nath Sharma was confirmed.

'That at its meeting held on 24-7-1990 the Land Disposal Committee by its resolution No. 23/90 also allotted house-building plot of land to respondent Smt. Saroj Sahay in Rajendra Nagar itself. The said resolution No. 23/90 dated 24-7-1990 was confirmed on 18/25-8-1990 by resolution No. 73/90.'

9. The petitioner has further contended that he has come to learn that plot numbers 5/Z and 6/Z near Rajendra Nagar Hospital are still vacant. He has further stated that plot No. 34/F behind Vindhya Kala Mandir in Road No. 10, plot numbers 1 to 10 in Road No. 10 and plot numbers R/1 and R/2 near Bahadurpur Gumti within Rajendra Nagar are still vacant and, thus, available for allotment.

10. The petitioner has contended that as the aforementioned allottees could not have been given any preference and, thus, the respondent-authority must be held to have acted arbitrarily. It was also contended that,

thus, the petitioner has been discriminated against.

11. No one has appeared on behalf of the respondents despite the fact that the matter was heard on 4-2-1993 and 12-2-1993. However, a counter-affidavit and supplementary counter-affidavit has been filed on behalf of respondent numbers 1 to 4.

12. In the said counter affidavit it has been contended that there is no vacant plot at present available for settlement. With regard to the allotment of plots in favour of Murlidhar Pandey and Triloki Nath Sharma, it has been contended that they were allotted lands as they are employees of the respondent-authority.

13. With regard to the land allotted to Smt. Saroj Sahay, it has been contended that, although, she has been allotted a plot but as no plot was available, the possession of the same had not been given to her.

14. In the supplementary counter-affidavit, it has been contended that the following persons have been allotted plots for the reasons stated therein:

'Sri Tegan Gope was allotted plot No. 14 on the orders of the Hon'ble High Court, as his status was that of a displaced person.

'Sri Syed Imam Ali was allotted plot No. R-1 on the orders of the Hon'ble High Court, as his status was that of a displaced person.

'Smt. Saroj Sahay was allotted plot No. 1-2, as she had been allotted a plot prior to 1973, but the possession of which was not handed over to her due to non-availability of plots, therefore, after due consideration of her application, Plot No. 1-2 was allotted to her.'

'The Senior Supdt. of Police, Patna, has been allotted a plot of land measuring 3.5 kathas in Block No. 24 of Rajdendra Nagar for the construction of the Kadamkuan police Station. However, the possession of the plot has not been handed over as the payment for the same has not been made till date.

15. It has also been contended that Sri R.J.

Bahadur and Sri Vasant Prasad Singh have been allotted lands on the orders of Hon'ble High Court.

16. According to the respondent-authority, the said lands are not parts of cluster of plots which were the subject matter of the aforementioned advertisement.

17. The petitioner has filed a reply to the said counter-affidavit and supplementary counter-affidavit wherein it has been contended that there is no statutory rule in terms whereof any preferential allotment can be given to the employees of the respondent-authority. It has also been submitted that in any event even if such preference could be given to the employees of P.R.D.A., but the fixation of quota in relation thereto is wholly without jurisdiction and arbitrary exercise of power. It has been further contended that there is nothing in the Rule conferring any preferential claim to the persons falling under Rule 17(d) of the P.R.D.A. (Disposal

of Land) Rules, 1978, over those claimants who fall within Sub-rules (a), (b) and (c) thereof.

18. It has further been contended that there cannot be any justification in allotting the plots of land to those persons who had applied in the year 1984 whereas the petitioner's father had made an application for allotment of lands in the year 1966 and, thereafter, the petitioner applied in the year 1973.

19. It has also been reiterated that from the records, it would appear that most of the lands are still vacant. It has also been stated that the list of persons who have been allotted lands pursuant to the advertisement of the year 1973 cannot be said to be complete as it is not believable that only four persons had been allotted the house building plot. It has further been contended that in the year 1982, an enquiry was set up wherein large number of irregularities regarding allotment of plots of land by the respondent-authority was detected.

20. In a second supplementary counter-affidavit it has been contended that the petitioner has not yet been recognised as an

applicant, as no application has been received from the petitioner.

21. In reply to the second supplementary counter-affidavit it has been contended that as the respondent-authority has accepted that the petitioner's father was an applicant in the year 1966 and the petitioner being the legal heir is entitled to be allotted lands on that basis alone.

22. On 10-2-1993 another supplementary affidavit has been filed on behalf of the petitioner wherein it has been stated as follows:

'That in continuation of the facts stated in Paragraph 19 of the main writ petition as also in Paragraph 9 of the reply of the petitioner to the counter-affidavit and the supplementary counter-affidavit of the respondents, it is further stated that the petitioner has reliably learnt that many isolated residential plots of small area not fit for construction of multi-storied residential flats are still vacant e.g. plots Nos. 5Z and 6Z near 'Shakha field' behind the Rajendra Nagar Hospital and plot No. R2 near Bahadurpur Gumti. The petitioner believes the information regarding the

above vacant plots to be true.'

23. The legislature enacted Bihar Regional Development Authority for providing for development of various plots of lands.

24. In exercise of powers conferred by Clause 2(a) of Section 79 of the Bihar Regional Development Authority Second Ordinance, 1978 (Bihar Ordinance No. 33 of 1978) read with Section 27 of the said Ordinance, the State Government made rules known as Patna Regional Development Authority (Disposal of Land) Rules, 1978.

25. Section 2(h) of the said Rule read as

follows:

'Plot 'means a plot of land carved out by the Authority in execution of a scheme for this purpose of being leased and includes any building or flat constructed by the Authority.'

26. Rules 3 and 17 of the said Rules which are relevant for the purpose of this case read as follows:

Rule 3. 'When the execution of a scheme framed under the ordinances has so far progressed that vacant lands within the limits of the scheme have been divided into convenient plots of lands for the use of public, such as roads, parks and playgrounds or lands required by the Authority for its own use or for such other use as the Authority may desire, have been indicated either on the site or on a map prepared by the Authority, the Authority shall decide-

(a) Whether the plots are to be leased out, exchanged with other lands let out or otherwise disposed of.

(b) The use to which plots or lands should be put, i.e. residential, business, industrial, recreational, health, educational, etc.

(c) In case of lease or letting on hire, the period of lease or letting on hire.

- (d) The minimum rate or profit to be charged above the cost or acquisition and development or improvement.
- (e) The rate of annual rent in case of lease, and the rate of hire in case of letting on hire.
- (f) Which of the plots should be reserved for lease at actual cost with the displaced persons.
- (g) Which of the plots should be reserved for lease at standard cost to persons of specified income group, and the classifications of the income groups and persons of a special category, be reserved by the Authority or the State Government.
- (h) Which of the plots should be reserved for lease to persons who had made deposits with the Authority for the execution of the scheme.
- (i) Which of the plots should be reserved for lease at standard cost to Co-operative Housing Societies recognised by the Authority and on what terms.
- (j) Which of the plots should be leased under Rule 11.
- (k) Whether or not a prior right to take on lease, or to purchase, any plot is to be offered, without detriment to the scheme or the carrying out of the purpose of the Ordinance to any person from whom any land was acquired for the scheme or his heirs, executors or administrators in case such an offer can be made.
- (l) What special direction should be given, for, and what conditions should be imposed upon the disposal of land provided in classification of income-groups under Clause (g) and allottees under Clause (h).
- Rule 17. In case of plots to be leased for residential purposes, preference will be given to one:
- (a) Who is ordinarily a resident of Patna or is engaged in Patna in some profession, e.g. medical, teaching, journalism, legal engineering, architecture,

town planning, etc. trade, commerce, business or service;

(b) who or his dependants do not own a residential house of his own at Patna;

(c) Who does not own, or has a share in any land at Patna suitable for construction of a residential house; and

(d) any other category as may be directed by the State Government or considered expedient by the Authority:

Provided that the plot of land owned by the applicant is very small in size and is situated in a slum area notified as such by the appropriate authority, where a residential building of a size suitable as per the income group to which the applicant belongs cannot be constructed or reconstructed.

27. It is admitted that the father of the petitioner was an applicant. It is also evident that the petitioner was intimated by a letter dated 16-10-1990 issued by the Estate officer that he may take back his security as no land is available at Rajendra Nagar. Even in that letter it has not been contended by the respondent-authority that the petitioner's application was not available with the respondent-authority or he has not been recognised as such. Thus, the contents of the second supplementary counter-affidavit filed by the respondents ex facie appear to be incorrect.

28. It is strange that such a stand has been taken by the respondent-authority even after issuance of the aforementioned letter dated 16-10-1990 as contained in Annexure-4 to the writ application.

29. Further, from the contents of the counter-affidavit as noticed hereinbefore, it is absolutely clear that the respondent-authority had been allotting plots to different persons either on its own or in the orders of this Court from time to time. It has not been explained by the respondent-authority in the counter-affidavit as to why the claim of the petitioner has been ignored.

30. The respondent No. 4 seems to have been making allotment of lands on its own whims and caprice without following the guidelines as provided for in the

Rules.

31. The Land Disposal Committee is a statutory body governed by a statute. It has to exercise its jurisdiction within the four corners of the statute. Any deviation or departure from the procedure laid by the statute would attract the wrath of Article 14 of the [Constitution of India](#).

32. It is strange that no explanation in the counter-affidavit has been offered as to under what circumstances, orders were passed by the Hon'ble High Court for allotment of plots of lands.

33. In view of the fact that nobody appeared on behalf of the respondent-authority, this Court also could not ask for the record of the case to be placed before this Court. It appears that the respondent-authority has wilfully and deliberately taken recourse to suppressio veri and suggestio falsi.

34. Further, the learned counsel for the petitioner is correct in his submission that no preference could be given to the employees of the authority. It has not been contended that the employees of the authority have been given preference upon direction by the State Government or by the authority. Such a decision has to be taken either by the State Government or by the authority in a duly constituted meeting. Neither, any direction of the State Government nor any resolution of the authority in this regard has been produced before this Court.

35. In *S.C. Labour Contract Co-operative v. Director, Mines and Geology, Hyderabad*, reported in 1993 (1) Pat LJR (SC) 30 : (AIR 1993 SC 147) the Supreme Court while considering Section 15 of the Mines and Minerals (Regulation and Development) Act, 1957, has held that in the matter of grant of mining lease, preference has to be given in accordance with the Rules applicable in relation thereto.

36. In this view of the matter, there cannot be any doubt that the respondent-authority has committed an irregularity in granting allotments without taking into consideration the case of the petitioner. The action on the part of the respondents, thus, must be held to be illegal and irrational. The petitioner had a reasonable or

legitimate expectation that the respondent-authority being a State within the meaning of Article 12 of the [Constitution of India](#) that he would be allotted a piece of land or a flat in due course; but the authority has failed to act in accordance with its policy decision. It is now well known that doctrine of legitimate expectation imposes in essence a duty on the public authority to act fairly by taking into consideration all relevant factors relating to such legitimate expectation.

37. Reference in this connection may be made to Navjoyti Co-operative Society v. Union of India reported in 1993 (1) SC 3, pages 6 and 16 : (AIR 1993 SC 155). In this view of the matter too, the action must be held to be irrational as has been held in Council of Civil Service Unions v. Minister for the Civil Service reported in 1984 (3) All ER 935.

38. In this situation, the respondents are hereby directed to allot an available plot of land at Rajendra Nagar in the town of Patna to the petitioner. In the event, if it is found by the respondent-authority that such an allotment is not possible, the same must be stated by the competent authority by a speaking order. The respondent No. 4 shall in that event allot a residential flat in favour of the petitioner. The respondent-authority must communicate its decision to the petitioner within one month from the date of receipt of a copy of this order. Any such allotment, however, shall be subject to such terms and conditions which are normally imposed by the respondent-authority.

39. This application is, therefore, allowed with the aforementioned directions.

40. In the facts and circumstances of the case, the petitioner is also entitled to costs which is assessed at Rs. 1,000/-

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