

Modi Projects Limited Vs. State of Jharkhand and Ors

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Court : Jharkhand

Decided On : Nov-21-2014

Appellant : Modi Projects Limited

Respondent : State of Jharkhand and Ors

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (C) No. 4513 of 2011 Excel Venture Construction Co. (P) Ltd., through one of its Director, Sanjeet ... Petitioner Versus The State of Jharkhand through the Secretary, Housing Department, Govt. of Jharkhand, Ranchi and Others Respondents with W.P.(C) No.4443 of 2011 Niraj Kumar Bhattacharya ... Petitioner Versus The State of Jharkhand through the Secretary, Housing Department, Govt. of Jharkhand, Ranchi & Others. Respondents with W.P.(C) No.4444 of 2011 Kunal Anand ... Petitioner Versus The State of Jharkhand through the Secretary, Housing Department, Govt. of Jharkhand, Ranchi & Others. ... Respondents with W.P.(C) No. 4618 of 2011 Modi Projects Limited, through one of its Directors Navin Modi Petitioner Versus The State of Jharkhand through the Secretary, Housing Department, Govt. of Jharkhand, Ranchi & Others. Respondents with W.P.(C) No. 4660 of 2011 Modi Projects Limited, through one of its Directors Navin Modi Petitioner Versus The State of Jharkhand through the Secretary, Housing Department, Govt. of Jharkhand, Ranchi & Others. Respondents with W.P.(C) No. 4682 of 2011 2 Modi Projects Limited, through one of its Directors Navin Modi ... Petitioner Versus The State of Jharkhand through the Secretary, Housing

Department, Govt. of Jharkhand, Ranchi & Others. ... Respondents with W.P.(C) No. 4683 of 2011 Excel Venture Construction Co. (P) Ltd. through one of its Director, Sanjeet ... Petitioner Versus The State of Jharkhand through the Secretary, Housing Department, Govt. of Jharkhand, Ranchi & Others. Respondents with W.P.(C) No. 4720 of 2011 Excel Venture Construction Co. (P) Ltd. through one of its Director, Sanjeet ... Petitioner Versus The State of Jharkhand through the Secretary, Housing Department, Govt. of Jharkhand, Ranchi & Others. Respondents with W.P.(C) No. 4736 of 2011 Nav Nirman Builders, through its Managing Partner Dharamvir Bhadoria ... Petitioner Versus The State of Jharkhand through the Secretary, Housing Department, Govt. of Jharkhand, Ranchi & Others. Respondents with W.P.(C) No. 4766 of 2011 Simplex Infrastructures Limited, through its Senior Executive, Shri Radha Krishna Bagri ... Petitioner Versus The State of Jharkhand through the Secretary, Housing Department, Govt. of Jharkhand, Ranchi & Others. Respondents with W.P.(C) No. 5074 of 2011 3 Nav Nirman Builders through its Managing Partner Dharamvir Bhadoria ... Petitioner Versus The State of Jharkhand through the Secretary, Housing Department, Govt. of Jharkhand, Ranchi & Others. Respondents with W.P.(C) No. 5516 of 2011 M/s Kamla Aditya Construction Pvt. Limited represented through its authorized representative Sri Ram Narayan Singh ... Petitioner Versus The State of Jharkhand through its Chief Secretary, Ranchi & Others Respondents with W.P.(C) No. 5517 of 2011 M/s Kamla Aditya Construction Pvt. Limited represented through its authorized representative Sri Ram Narayan Singh ... Petitioner Versus The State of Jharkhand through its Chief Secretary, Ranchi & Others Respondents with W.P.(C) No. 5543 of 2011 M/s Kamla Aditya Construction Pvt. Limited represented through its authorized representative Sri Ram Narayan Singh ... Petitioner Versus The State of Jharkhand through its Chief Secretary, Ranchi & Others Respondents with W.P.(C) No. 5544 of 2011 M/s Kamla Aditya Construction Pvt. Limited represented through its authorized representative Sri Ram Narayan Singh ... Petitioner Versus The State of Jharkhand through its Chief Secretary, Ranchi & Others Respondents 4 with W.P.(C) No. 5787 of 2011 M/s Kamla Aditya Construction Pvt. Limited represented through its authorized representative Sri Ram Narayan Singh ... Petitioner Versus The State of Jharkhand through its Chief Secretary, Ranchi & Others Respondents

with W.P.(C) No. 5789 of 2011 M/s Kamla Aditya Construction Pvt. Limited represented through its authorized representative Sri Ram Narayan Singh ... Petitioner Versus The State of Jharkhand through its Chief Secretary, Ranchi & Others Respondents with W.P.(C) No. 5790 of 2011 M/s Kamla Aditya Construction Pvt. Limited represented through its authorized representative Sri Ram Narayan Singh ... Petitioner Versus The State of Jharkhand through its Chief Secretary, Ranchi & Others Respondents with W.P.(C) No. 5791 of 2011 M/s Kamla Aditya Construction Pvt. Limited represented through its authorized representative Sri Ram Narayan Singh ... Petitioner Versus The State of Jharkhand through its Chief Secretary, Ranchi & Others Respondents For the Petitioners : M/s. Rajiv Ranjan, Shresth Gautam, Shrey Mishra & Piyush Chitresh, Advocates (In W.P.(C) nos.4513, 4443, 4444, 4618, 4660, 4682, 4683 & 4720 of 2011) : M/s Delip Jerath, Rajesh Lala Advocates (In W.P.(C) no.4736 of 2011) : Mr. Indrajit Sinha, Adv.(In W.P.(C)no.4766 of 2011) : M/s A. K. Mehta, Rajesh Lala, Advocates (In W.P.(C) no.5074 of 2011) 5 : Mr. A.K. Sahani, Adv. (In W.P.(C) nos.5516, 5517, 5543, 5544, 5787, 5789, 5790 & 5791 of 2011) For the RespondentState: Mr. Ajit Kumar, AAG Mr. Kumar Sundaram, J.C. to AAG For the RespondentJSHB: Mr. Sachin Kumar, Advocate C.A. V. on: 14.11.2014 Pronounced on: 21 /11/2014 In all the writ petitions, the order contained in letter dated 03.08.2011 has been impugned. In some writ petitions, order dated 28.07.2011 has been challenged whereas, in most of the writ petitions order dated 12.12.2012 has also been assailed. The necessary facts, in detail, have been stated in W.P.(C) No. 4513 of 2011. FACTS: M/S EXCEL VENTURE CONSTRUCTION COMPANY PVT. LTD. W.P. (C) No. 4513 of 2011

2. The petitioner M/s. Excel Venture Construction Company Pvt. Ltd. is a company incorporated under the Companies Act, 1956. In connection with the preparation for the National Games 2007, a meeting was held on 24.09.2004 in presence of the then Chief MinisterHousing Minister, Development Commissioner, Finance Secretary, Housing Secretary, Managing Director of Jharkhand State Housing Board and others. In the said meeting, a decision was taken to develop the vacant land of the Housing Board through developers 6 and that the construction shall be completed before the start of the National Games 2007, so as to provide accommodation to the sports persons. On 05.10.2005, a meeting was again held

in presence of the then Chief Minister Housing Minister for evaluation of the work of the Housing Board. In the said meeting the Development Commissioner, Finance Secretary, Housing Secretary, Managing Director of the Jharkhand State Housing Board and others were present. In the said meeting a decision was taken to develop the vacant land of the Housing Board and construct multistoried buildings/commercial complexes through Joint Venture. The Minutes of Meeting dated 05.10.2005 was sent to the Housing Board vide letter dated 27.12.2005.

3. Pursuant to Notice dated 12.11.2005 inviting Expressions of Interest for development of residential and commercial complexes over vacant plots of the Housing Board through Joint Venture, 24 companies submitted their bid, out of which, 15 companies were finally selected for financial bid. The petitioner submitted financial bid for six plots and finally its offer for three plots that is, plot nos. 2, 8 and 9 at Harmu, Ranchi was accepted. An agreement with respect to Plot no. 9 was entered with the Housing Board on 18.07.2007 in which, 34.54 percent of the residential area (HIG and MIG) was the Housing Board's allocation. A power of attorney was also executed by the Housing Board in favour of the petitioner and possession was handed over to the petitioner. The petitioner engaged an architect namely, M/s. Axis, Ranchi and the petitioner started the project with the projected investment of around Rs. 1400 lacs besides, actual building construction expenses. The Housing Board issued Memo dated 29.03.2008 directing the allottees of the plots at Harmu, Ranchi to stop construction. The petitioner filed writ petitions being, W.P.(C) No. 2173 of 2008, W.P.(C) No. 2179 of 2008 and W.P.(C) No. 1812 of 2008 and vide order dated 08.05.2008, the petitioner and others were directed to approach the Chairman, Housing Board. Subsequently, vide order dated 18.12.2008, the Chairman, Housing Board quashed order dated 29.03.2008. In the meantime, map for the proposed construction was sanctioned in the name of the Housing Board. The project was almost complete and out of three Blocks, construction in Block A and Block A/1 is complete in all respects and possession has been handed over to allottees. The construction in Block B is also almost complete. A total of 114 flats have been constructed out of which, 74 flats have come in builder's allocation. The petitioner has issued advertisement and more than 80% of its share has already been allotted to buyers. On 29/30.07.2011, it was reported in the newspapers that

the Joint Ventures entered by the Housing Board with private builders have been cancelled. Vide letter dated 03.08.2011, the petitioner has been communicated that Agreement dated 18.07.2007 has been cancelled and it was directed to handover the possession of the plots to the Housing Board.

4. Aggrieved by order contained in letters dated 03.08.2011 and 28.07.2011, the present writ petition was filed seeking a declaration that the action of the respondents is illegal, arbitrary and wholly without jurisdiction, in as much as, Section 24(3)(b) and Section 27 of the Jharkhand State Housing Board Act, 2000 are not applicable in the facts of the present case. A further prayer has been made seeking quashing of the order contained in Memo dated 12.12.2012 whereby, approval for postfacto approval has been declined. W.P. (C) No. 4683 of 2011

5. An agreement with respect to Plot no. 2 was entered with the Housing Board on 18.07.2007 in which, 43.20% of the commercial area (MIG) was the Housing Board's allocation. A power of attorney was also executed by the Housing Board in favour of the petitioner and possession was handed over to the petitioner. The petitioner engaged an architect namely, M/s. Axis, Ranchi and the petitioner started the project with the projected investment of around Rs. 260 lacs besides, actual building construction expenses. The Housing Board issued Memo dated 29.03.2008 directing the allottees of the plots at Harmu, Ranchi to stop construction.

6. The commercial complexes consist of shops, multiplex, 9 supermarket, food court, apparel anchor store. RRDA approved the map and plan in the name of the Housing Board vide letter dated 24.12.2010 and the foundation work has started for the project. Many third party rights have already been created. In view of the encroachment over the land, the petitioner wrote several letters to the Housing Board for removal of the encroachment. The petitioner was directed to start the construction however, it could not commence the construction.

7. Vide letter dated 03.08.2011, the petitioner has been communicated that Agreement dated 18.07.2007 has been cancelled and it was directed to handover the possession of the plot to the Housing Board. Aggrieved by order contained in letters dated 03.08.2011 and 28.07.2011, the present writ petition was filed

seeking a declaration that the action of the respondents is illegal, arbitrary and wholly without jurisdiction, in as much as, Section 24(3)(b) and Section 27 of the Jharkhand State Housing Board Act, 2000 are not applicable in the facts of the present case. A further prayer seeking quashing of the order contained in Memo dated 12.12.2012 whereby, approval for postfacto approval has been declined, has also been made. W.P. (C) No. 4720 of 2011

8. An agreement with respect to Plot no. 8 was entered with the Housing Board on 30.08.2007 in which, 40.86% of the 10 commercial area was the Housing Board's allocation.

9. Vide letter dated 03.08.2011, the petitioner has been communicated that Agreement dated 30.08.2007 has been cancelled and it was directed to handover the possession of the plot to the Housing Board. Aggrieved by order contained in letters dated 03.08.2011 and 28.07.2011, the present writ petition was filed seeking a declaration that the action of the respondents is illegal, arbitrary and wholly without jurisdiction, in as much as, Section 24(3)(b) and Section 27 of the Jharkhand State Housing Board Act, 2000 are not applicable in the facts of the present case. A further prayer has been made seeking quashing of the order contained in Memo dated 12.12.2012 whereby, approval for postfacto approval has been declined. M/s. MODI PROJECTS LTD. W.P. (C) No. 4618 of 2011 10. The petitioner M/s. Modi Projects Ltd. is a company incorporated under the Companies Act, 1956. The National Housing and Habitat Policy, 1998 noticed that there will be a huge shortage of housing in the country and investment of about 1.51 lac crores would be required for which forging strong partnership between the private, public and cooperative sectors is required. The National Housing and Habitat Policy, 2007 replaced the 1998 policy with the objective to provide affordable housing to all. Considering the National Housing 11 and Habitat Policy, 2007, the Government of Jharkhand gave direction to the Housing Board for construction of multistoried apartment over vacant land of the Housing Board for providing mass shelter for public private partnership. 11. Pursuant to Notice dated 12.11.2005 inviting Expressions of Interest for development of residential and commercial complexes over vacant plots of the Housing Board through Joint Venture, 24 companies submitted their bid, out of which, 15 companies were

finally selected for financial bid. The petitioner submitted financial bid for six plots and finally its offer for three plots was accepted. Vide letter dated 14.03.2007, the petitioner was informed that its bid for Plot No.3 at Harmu, Ranchi was found highest and accordingly, an agreement with respect to Plot No. 3 was signed on 14.11.2007 in which, the Housing Board's allocation was 36.31% in residential and 41.25% in commercial construction. The petitioner engaged architects namely, M/s. Sanjay Puri Architect Pvt. Ltd., Mumbai and M/s. Axis, Ranchi for preparing drawings for Plot No. 3 at Harmu and submitted the same to the Board on 13.02.2008. The petitioner started the project with the projected investment of around Rs. 200 lacs besides, actual building construction expenses. However, in view of the encroachment of the land, the Housing Board decided not to approve the drawing. In view of the disruptions created by vested interest, the petitioner faced serious problem while erecting 12 the boundary wall. Vide letter dated 18.03.2009 Secretary, Housing Board requested the Deputy Commissioner, in view of the disturbances being created in the land, to provide security to the petitioner. The Housing Board issued Memo dated 29.03.2008 directing the allottees of the plots at Harmu, Ranchi to stop construction. The petitioner filed writ petitions which were disposed of vide order dated 08.05.2008. The petitioner and others were directed to approach the Chairman, Housing Board and vide order dated 18.12.2008, the Chairman, Housing Board quashed order dated 29.03.2008.

12. The petitioner received letter dated 25.11.2010 issued by the Executive Engineer, Housing Board directing the petitioner to stop the construction work however, the reason for the same was not disclosed to the petitioner. After several representations, the Executive Engineer issued letter dated 30.11.2010 which referred to a letter of the Deputy Chief Minister cum Minister in charge, Urban Development Department. The note dated 23.11.2010 of the Deputy Chief Minister to the Secretary, Housing Board refers to the news item dated 23.11.2010 published in Prabhat Khabar, a daily newspaper with headlines Dharmik sthal bechne ka virodh. The petitioner issued legal notice dated 09.03.2011 to the Housing Board.

13. Vide letter dated 03.08.2011, the petitioner has been communicated that Agreement dated 14.11.2007 has been cancelled 13 and it was directed to

handover the possession of the plot to the Housing Board. Aggrieved by order contained in letters dated 03.08.2011 and 28.07.2011, the writ petition was filed seeking a declaration that the action of the respondents is illegal, arbitrary and wholly without jurisdiction, in as much as, Section 24(3)(b) and Section 27 of the Jharkhand State Housing Board Act, 2000 are not applicable in the facts of the present case. A further prayer has been made seeking quashing of the order contained in Memo dated 12.12.2012 whereby, approval for postfacto approval has been declined. W.P. (C) No. 4660 of 2011 14. The petitioner's bid for Plot no. 7 at Harmu, Ranchi was accepted on 14.03.2007 and accordingly an agreement with respect to Plot no. 7 was entered with the Housing Board on 18.07.2007 in which, 41.01% of the residential area was the Housing Board's allocation. A power of attorney was also executed by the Housing Board in favour of the petitioner and possession was handed over to the petitioner. The petitioner engaged architects namely, M/s. Sanjay Puri Architect Pvt. Ltd. and M/s. Axis, Ranchi and it started the project with the projected investment of around Rs. 250 lacs besides, actual building construction expenses. RRDA sanctioned the map and plan which was submitted vide letter dated 10.05.2010 to the Housing Board. Vide letter dated 03.08.2011, the petitioner has been 14 communicated that Agreement dated 18.07.2007 has been cancelled and it was directed to handover the possession of the plot to the Housing Board. Aggrieved by order contained in letters dated 03.08.2011 and 28.07.2011, the present writ petition was filed seeking a declaration that the action of the respondents is illegal, arbitrary and wholly without jurisdiction, in as much as, Section 24(3)(b) and Section 27 of the Jharkhand State Housing Board Act, 2000 are not applicable in the facts of the present case. A further prayer has been made seeking quashing of the order contained in Memo dated 12.12.2012 whereby, approval for postfacto approval has been declined. W.P. (C) No. 4682 of 2011 15. The petitioner's bid for Plot no. 10 at Harmu, Ranchi was accepted on 27.04.2007 and accordingly an agreement with respect to Plot no. 10 was entered with the Housing Board on 18.07.2007 in which, 30% of the residential area was the Housing Board's allocation. A power of attorney was also executed by the Housing Board in favour of the petitioner and possession was handed over to the petitioner. The petitioner engaged an architect namely, M/s. GRIDS, Ranchi and the drawing was prepared and submitted before the

Housing Board vide letter dated 26.07.2011 however, the same has not been approved till date. The petitioner started the project with the projected investment of around Rs. 150 lacs besides, 15 actual building construction expenses. Vide letter dated 18.03.2009 Secretary, Housing Board requested the Deputy Commissioner, in view of the disturbances being created in the land, to provide security to the petitioner. Vide letter dated 03.08.2011, the petitioner has been communicated that Agreement dated 18.07.2007 has been cancelled and it was directed to handover the possession of the plot to the Housing Board. Aggrieved by order contained in letters dated 03.08.2011 and 28.07.2011, the present writ petition was filed seeking a declaration that the action of the respondents is illegal, arbitrary and wholly without jurisdiction, in as much as, Section 24(3)(b) and Section 27 of the Jharkhand State Housing Board Act, 2000 are not applicable in the facts of the present case. A further prayer has been made seeking quashing of the order contained in Memo dated 12.12.2012 whereby, approval for postfacto approval has been declined. KAMLA ADITIYA CONSTRUCTION PRIVATE LIMITED W.P.(C) No. 5516 of 2011 16. The petitioner is a registered partnership firm which promoted the company namely, Kamla Aditiya Construction Private Limited which is duly incorporated under the Companies Act, 1956. Pursuant to advertisement in various newspapers issued on 12.11.2005 inviting Expression of Interest in seal cover for developing residential and commercial complexes on vacant plots of 16 different sizes at Ranchi, Jamshedpur, Dhanbad, Bokaro, Hazaribag and Daltonganj. The petitioner submitted its Expression of Interest for allotment of plot no. 5 at Harmu Housing Colony, Ranchi and vide letter date 22.03.2007, the petitioner was informed that its financial bid which was opened on 29.06.2006, has been found highest. A development agreement was executed on 05.12.2007 and it is stated in the agreement that the possession of the plot admeasuring area of 0.3756 acres free from all encumbrances, was handed over. However, vide order dated 29.03.2008 construction at the plot situated at Harmu, Ranchi was ordered to be stopped. Some of the allottees moved the High Court in W.P.(C) No. 2173 of 2008, W.P.(C) No. 2179 of 2008 and W.P.(C) 1812 of 2008 challenging order dated 29.03.2008. Vide order dated 08.05.2008, the petitioners were granted liberty to approach the Chairman. After hearing both sides, the Chairman, Housing Board cancelled order dated 29.03.2008. 17. Thereafter on

07.08.2009, the petitioner submitted the proposed map/drawing for construction of vegetables and marketing complexes on plot no. 5 at Harmu, Ranchi. The Housing Board issued showcause notice dated 24.12.2010 directing the petitioner to showcause as to why and under that circumstances the construction work was not started. The petitioner vide letter dated 27.01.2011 informed the Housing Board that the plot in question was under encroachment. The respondent Housing Board vide letter dated 17 07.03.2011 requested the Deputy Commissioner, Ranchi to depute Magistrate with sufficient police force for removing the encroachment. However, the encroachment was not removed and therefore, the petitioner again requested the Housing Board vide letter dated 12.07.2011 to hand over physical possession of the land. 18. Before the possession was handed over to the petitioner company, the Secretary, Housing Department, Government of Jharkhand vide letter dated 28.07.2011 directed the Managing Director, Housing Board to take steps for cancellation of development agreement executed with the petitioner and other developers. Consequently, vide letter dated 03.08.2011 the Housing Board cancelled the agreement dated 05.12.2007. Aggrieved, the petitioner has filed the present writ petition challenging the order dated 28.07.2011 and 03.08.2011. W.P.(C) No. 5517 of 2011 19. The petitioner submitted its Expression of Interest for allotment of plot no. 1 at Bariyatu, Ranchi and vide letter date 13.11.2007, the petitioner was informed that its financial bid which was opened on 29.06.2006, has been found highest. A development agreement was executed on 05.12.2007 and it is stated in the agreement that the possession of the plot admeasuring area of 0.412 acres free from all encumbrances, was handed over. 20. Vide letter dated 28.04.2009, the petitioner requested the 18 Housing Board to take action for removing the encroachment and though, the encroachment was not removed, in the meantime, the Housing Board directed the petitioner vide letter dated 28.08.2009 to submit the map/drawing. Vide letter dated 23.12.2009, the petitioner again requested the Housing Board to get the actual measurement of the plot so as, to enable the petitioner to submit map/drawing. However, on 24.12.2010 a showcause notice was issued to the petitioner directing the petitioner to showcause as to why and under what circumstances the construction work on the plot in question was not started. The petitioner submitted its reply on 27.01.2011 and only on 11.03.2011, the Housing Board directed the petitioner to

contact the Executive Engineer for demarcation of the land and possession of the same. The Secretary, Housing Department, Government of Jharkhand vide letter dated 28.07.2011 directed the Managing Director, Housing Board to take steps for cancellation of development agreement executed with the petitioner and other developers. Consequently, vide letter dated 03.08.2011 the Housing Board cancelled the agreement dated 05.12.2007. Aggrieved, the petitioner has filed the present writ petition challenging the order dated 28.07.2011 and 03.08.2011. W.P.(C) No. 5543 of 2011 21. The petitioner submitted its Expression of Interest for allotment of plot no. 4 at Harmu Housing Colony, Ranchi. Vide letter 19 date 22.03.2007, the petitioner was informed that its financial bid which was opened on 29.06.2006, has been found highest. A development agreement was executed on 05.12.2007 and it is stated in the agreement that the possession of the plot admeasuring area of 1.015 acres free from all encumbrances, was handed over. 22. The petitioner requested the Housing Board to take action for removing the encroachment and though, the encroachment was not removed on 24.12.2010, a showcase notice was issued to the petitioner directing the petitioner to showcase as to why and under what circumstances the construction work on the plot in question was not started. The petitioner submitted its reply on 27.01.2011. The respondent Housing Board vide letter dated 07.03.2011 requested the Deputy Commissioner, Ranchi to depute a Magistrate with sufficient police force for removing the encroachment. However, the encroachment was not removed and therefore, the petitioner again requested the Housing Board vide letter dated 12.07.2011 to hand over physical possession of the land. Before the possession was handed over to the petitioner company, the Secretary, Housing Department, Government of Jharkhand vide letter dated 28.07.2011 directed the Managing Director, Housing Board to take steps for cancellation of development agreement executed with the petitioner and other developers. Consequently, vide letter dated 03.08.2011 the Housing Board cancelled the agreement dated 05.12.2007. 20 Aggrieved, the petitioner has filed the present writ petition challenging the order dated 28.07.2011 and 03.08.2011. W.P.(C) No. 5544 of 2011 23. The petitioner submitted its Expression of Interest for allotment of plot no. 17 at Harmu Housing Colony, Ranchi. Vide letter date 04.12.2007, the petitioner was informed that in view of decision of Board taken on 08.11.2007 and vide office order dated

28.11.2007 respondent Board decided to allot plot No. 17 in Harmu Housing Colony, Ranchi to the petitioner for development under Joint Venture. A development agreement was executed on 05.12.2007 and it is stated in the agreement that the possession of the plot admeasuring area of 0.217 acres free from all encumbrances, was handed over. 24. The petitioner requested the Housing Board to take action for removing the encroachment and though, the encroachment was not removed on 24.12.2010, a showcause notice was issued to the petitioner directing the petitioner to showcause as to why and under what circumstances the construction work on the plot in question was not started. The petitioner submitted its reply on 27.01.2011 and the petitioner submitted the map/drawing for approval of Board and RRDA on 02.02.2011. 25. Before the possession was handed over to the petitionercompany, the Secretary, Housing Department, Government 21 of Jharkhand vide letter dated 28.07.2011 directed the Managing Director, Housing Board to take steps for cancellation of development agreement executed with the petitioner and other developers. Consequently, vide letter dated 03.08.2011 the Housing Board cancelled the agreement dated 05.12.2007. Aggrieved, the petitioner has filed the present writ petition challenging the order dated 28.07.2011 and 03.08.2011. W.P.(C) No. 5787 of 2011 26. The petitioner submitted its Expression of Interest for allotment of plot no. 9 at Hirapur, Dhanbad. Vide letter date 05.06.2007, the petitioner was informed that its financial bid which was opened on 29.06.2006, has been found highest. A development agreement was executed on 30.07.2007 and it is stated in the agreement that the possession of the plot admeasuring area of 0.711 acres free from all encumbrances, was handed over. 27. The petitioner made several requests to the respondentBoard for removing the encroachment and handing over the possession. The Executive Engineer, Housing Board requested the Deputy Collection, Dhanbad on 08.09.2007 to deputy Magistrate and provide sufficient policy force for removing encroachment. The Housing Board issued showcause notice dated 24.12.2010 directing the petitioner to showcause as to why and under that circumstances the construction work was not started. The petitioner vide letter 22 dated 27.01.2011 informed the Housing Board that the plot in question was under encroachment. 28. The Executive Engineer, Housing Board informed the petitioner that the Special Leave Petition being S.L.P.(C) No. 23216

of 2009 has been allowed in favour of the Housing Board and accordingly, the petitioner was directed to submit the map of the proposed construction. The petitioner informed the Housing Board that since the land in question is under illegal occupation of other persons without measurement of the plot, map cannot be prepared. 29. The Secretary, Housing Department, Government of Jharkhand vide letter dated 28.07.2011 directed the Managing Director, Housing Board to take steps for cancellation of development agreement executed with the petitioner and other developers. Consequently, vide letter dated 03.08.2011 the Housing Board cancelled the agreement dated 05.12.2007. Aggrieved, the petitioner has filed the present writ petition challenging the order dated 28.07.2011 and 03.08.2011. W.P.(C) No. 5789 of 2011 30. The petitioner submitted its Expression of Interest for allotment of plot no. 5 at Hirapur, Dhanbad. Vide letter date 05.06.2007, the petitioner was informed that its financial bid which was opened on 29.06.2009, has been found highest. A development agreement was executed on 30.07.2007 and it is stated in the 23 agreement that the possession of the plot admeasuring area of 0.157 acres free from all encumbrances, was handed over. 31. The Housing Board issued showcause notice dated 24.12.2010 directing the petitioner to showcause as to why and under that circumstances the construction work was not started. The petitioner vide letter dated 27.01.2011 informed the Housing Board that the plot in question was under encroachment. The respondent Housing Board vide letter dated 31.03.2011 requested the Deputy Commissioner, Ranchi to depute a Magistrate with sufficient police force for removing the encroachment. However, the encroachment was not removed and therefore, the petitioner again requested the Housing Board vide letter dated 24.06.2011 to hand over physical possession of the land. Since the possession of the land in question was not given, the petitioner made several representation including letter dated 25.03.2010 for removing the encroachment and handing over the possession. The petitioner vide letter dated 24.06.2011 again informed the Housing Board that the plot no. 5 at Hirapur, Dhanbad is still under encroachment and therefore, the encroachment should be immediately removed and the possession of the land should be handed over to the petitioner immediately. 32. Before the possession was handed over to the petitioner company, the Secretary, Housing Department, Government of Jharkhand

vide letter dated 28.07.2011 directed the Managing 24 Director, Housing Board to take steps for cancellation of development agreement executed with the petitioner and other developers. Consequently, vide letter dated 03.08.2011 the Housing Board cancelled the agreement dated 05.12.2007. Aggrieved, the petitioner has filed the present writ petition challenging the order dated 28.07.2011 and 03.08.2011. W.P.(C) No. 5790 of 2011 33. The petitioner submitted its Expression of Interest for allotment of plot no. 2A at Adityapur, Jamshedpur. The petitioner was informed that its financial bid which was opened on 29.06.2006, has been found highest. A development agreement was executed on 07.03.2011 and it is stated in the agreement that the possession of the plot admeasuring area of 0.574 acres free from all encumbrances, was handed over. 34. The petitioner submitted the proposed map/drawing on 25.06.2011 before the Board which was forwarded to Adityapur Industrial Area Development Authority for approval on 23.07.2011.

35. The Secretary, Housing Department, Government of Jharkhand vide letter dated 28.07.2011 directed the Managing Director, Housing Board to take steps for cancellation of development agreement executed with the petitioner and other developers. Consequently, vide letter dated 03.08.2011 the Housing Board cancelled the agreement dated 05.12.2007. Aggrieved, the petitioner 25 has filed the present writ petition challenging order dated 28.07.2011 and 03.08.2011. W.P.(C) No. 5791 of 2011 36. The petitioner was informed that its financial bid which was opened on 29.06.2006, has been found highest. A development agreement was executed on 30.07.2007 and it is stated in the agreement that the possession of the plot admeasuring area of 0.223 acres free from all encumbrances, was handed over. 37. The petitioner on 25.03.2010 requested the respondent Housing Board to remove encroachment from the land. However, the Housing Board issued showcause notice dated 24.12.2010 directing the petitioner to showcause as to why and under that circumstances the construction work was not started. The petitioner vide letter dated 27.01.2011 informed the Housing Board that the plot in question was under encroachment. 38. Before the possession was handed over to the petitioner company, the Secretary, Housing Department, Government of Jharkhand vide letter dated 28.07.2011 directed the Managing Director, Housing Board to take steps for cancellation of development agreement executed with the petitioner and other developers. Consequently, vide

letter dated 03.08.2011 the Housing Board cancelled the agreement dated 05.12.2007. Aggrieved, the petitioner has filed the present writ petition challenging the order dated 26 28.07.2011 and 03.08.2011. NAV NIRMAN BUILDERS W.P. (C) No. 4736 of 2011 39. Challenging orders dated 28.07.2011 and 03.08.2011, the petitioner has approached this Court. A further prayer for declaring the action of the respondent State and the respondent Board as grossly illegal, arbitrary and wholly without jurisdiction, as the provisions of Section 24(3)(b) and Section 27 of the Jharkhand State Housing Board Act, 2000 are not attracted in the present case, has also been made. By filing an amendment application which was allowed, the petitioner has impugned, order contained in letter dated 19.10.2012 and order dated 12.12.2012 also.

40. The National Housing and Habitat Policy, 1998 noticed that there will be a huge shortage of housing in the country and investment of about 1.51 lac crores would be required, for which forging strong partnership between the private, public and cooperative sectors, is required. The National Housing and Habitat Policy, 2007 replaced the 1998 policy with the objective to provide affordable housing to all. Considering the National Housing and Habitat Policy, 2007, the Government of Jharkhand gave direction to the Housing Board for construction of multistoried apartment over vacant land of the Housing Board for providing mass shelter for public private partnership. 27 41. On 05.10.2005, a meeting was again held in presence of the then Chief Minister Housing Minister for evaluation of the work of the Housing Board. In the said meeting also the Development Commissioner, Finance Secretary, Housing Secretary, Managing Director of the Jharkhand State Housing Board and others were present. In the said meeting a decision was taken to develop the vacant land of the Housing Board and construct multistoried buildings/commercial complexes through Joint Venture. The Minutes of Meeting dated 05.10.2005 was sent to the Housing Board vide letter dated 27.12.2005. 42. After the decision taken in the meeting dated 05.10.2005, an advertisement was issued inviting Expressions of Interest for construction of residential complex over 13 acres of vacant land at Adityapur, Jamshedpur and finally, the finance bid of the petitioner Firm for construction over Plot No.3, at Adityapur was accepted by the Housing Board. An agreement dated 11.07.2007 was entered into by the Housing Board with the petitioner Firm for construction of multistoried residential

complex at Plot no.3, at Adityapur, Jamshedpur in which, 32% share was allocated to the Housing Board. The petitioner has completed the project by making huge investment of fund and possession of the flats has been given to the buyers. A power of attorney was also executed on 11.08.2007, in favour of the petitioner. The plan and map was sanctioned by 28 AIADA on 19.12.2007, in the name of Jharkhand Housing Board. On the verbal instruction of the then Chief Minister namely, Shri Madhu Koda, the Housing Board issued letter dated 29.03.2008 directing the petitioner to stop construction work. The petitioner has already constructed 170 flats in five blocks over Plot No. 3, Adityapur and the petitioner's share of 68% has been sold by the petitioner. The petitioner has incurred about 18 crores in completion of the project. NAV NIRMAN BUILDERS W.P. (C) No. 5074 of 2011 43. An agreement dated 11.07.2007 was entered into by the Housing Board with the petitioner Firm for construction of multistoried residential complex at Plot no.1 at Adityapur, Jamshedpur admeasuring 0.433 acres in which 35.25% share was allocated the Housing Board. The petitioner deposited a sum of Rs. 30 Lacs with the Jharkhand State Housing Board, for conversion from residential to commercial. When the petitioner started construction work after the approval of the sanctioned plan by AIADA, a part of the land was claimed by a private individual, who raised serious objections and therefore, the matter was reported to the Housing Board vide letter dated 30.05.2011. However, the Housing Board did not take any step for resolving the issue.

44. A power of attorney was also executed on 11.08.2007 in favour of the petitioner. The plan and map was sanctioned by AIADA 29 on 19.12.2007 in the name of Jharkhand Housing Board.

45. Challenging orders dated 28.07.2011 and 03.08.2011, the petitioner has approached this Court. A further prayer for declaring the action of the respondent State and the respondent Board as grossly illegal, arbitrary and wholly without jurisdiction, as the provisions of Section 24(3)(b) and Section 27 of the Jharkhand State Housing Board Act, 2000 are not attracted in the present case, has also been made. By filing an amendment application which was allowed, the petitioner has impugned, order contained in letter dated 19.10.2012 and order dated 12.12.2012 also. SIMPLEX INFRASTRUCTURES LIMITED W.P. (C) No. 4766 of

2011 46. The petitioner has approached this Court challenging orders dated 03.08.2011 and 08.08.2011.

47. An agreement dated 04.07.2007 was entered into by the Housing Board with the petitioner Company for construction of residentialcumcommercial complex of Plot no.11 at Harmu, Ranchi in which, 35% share was allocated to the Housing Board. 48. After the decision taken in the meeting dated 05.10.2005, an advertisement was issued inviting Expressions of Interest from reputed private companies, central and state public sector undertakings. On 22.03.2007, Managing Director of the Board informed the petitioner that it has been selected for construction of 30 residential/commercial complex at Plot No. 11 at Harmu, Ranchi. An agreement dated 04.07.2007 was executed by the Housing Board and thereafter, a power of attorney was also executed on 24.09.2007 in favour of the petitioner. On 03.12.2007 the petitioner with the aid and assistance of architects and consultants prepared conceptual plans, building and structural layouts and the same were submitted to Board. On 10.01.2008 the plans were approved by Board and forwarded the same to the ViceChairman, RRDA with a copy to the petitioner. On 29.03.2008 the Board directed stoppage of work under the oral directions given by the then Hon'ble Chief Minister.

49. Challenging orders dated 28.07.2011 and 03.08.2011, the petitioner has approached this Court. A further prayer for declaring the action of the respondent State and the respondentBoard as grossly illegal, arbitrary and wholly without jurisdiction, as the provisions of Section 24(3)(b) and Section 27 of the Jharkhand State Housing Board Act, 2000 are not attracted in the present case, has also been made. By filing an amendment application which was allowed, the petitioner has impugned, order contained in letter dated 19.10.2012 and order dated 12.12.2012 also. W.P. (C) No. 4443 of 2011 50. Claiming payment of a sum of Rs. 24 lacs (approx.) to M/s. Excel Ventures Construction Pvt. Ltd. in lieu of Flat No. A401 on Plot No. 9 at Harmu, Ranchi, the petitioner namely, Neeraj Kumar 31 Bhattacharya has filed this writ petition. It is stated that the petitioner occupied the said flat vide Occupation Letter dated 26.07.2011. The flat has been constructed strictly as per the norms and the sanction plan. The government cannot issue a blanket order for the demolition of the building. Substantial civil rights have

accrued in favour of the petitioner and the order passed by the State Government without affording an opportunity of hearing to the petitioner, is violative of principles of natural justice. For the procedural lapse, if any, the petitioner cannot be punished. An agreement for sale has been executed on 01.07.2009 between the petitioners and M/s. Excel Venture Construction Pvt. Ltd. W.P. (C) No. 4444 of 2011 51. Claiming payment of a sum of Rs. 24 lacs (approx.) to M/s. Excel Ventures Construction Pvt. Ltd. in lieu of Flat No. A703 on Plot No. 9 at Harmu, Ranchi, the petitioner namely, Kunal Anand has filed this writ petition. It is stated that the petitioner occupied the said flat vide Occupation Letter dated 24.07.2011. The flat has been constructed strictly as per the norms and the sanction plan. Substantial civil rights have accrued in favour of the petitioner and the order passed by the State Government without affording an opportunity of hearing to the petitioner, is violative of principles of natural justice. For the procedural lapse, if any, the petitioner cannot be punished. An agreement for sale has been executed on 32 26.08.2009 between the petitioners and M/s. Excel Venture Construction Pvt. Ltd. COUNTERAFFIDAVIT:

52. The respondent State of Jharkhand has filed a counteraffidavit stating that the provisions under Sections 24 and 27 of the Jharkhand State Housing Board Act, 2000 were not followed by the Jharkhand State Housing Board while floating tenders and allotting vacant land for joint venture. It is true that the Board has not incurred any expenditure but, the provisions of Section 24 (3) (b) is very clear. It provides that "Administrative Approval" for schemes involving expenditure exceeding Rs. 200 lakhs shall not be accorded without prior approval of the State Government. The control of the Government as envisaged under the Act includes restraint, check etc. by the Government and if prior approval of the State Government was not taken by the Board for executing schemes and entering into development agreement, the entire exercise would be contrary to the provisions of the Act. No change in the land use as indicated in the plan is permissible without prior permission of the Government. The Jharkhand State Housing Board has been established with an object to provide house to the needy persons. The Board undertakes work on "no profit no loss". The Board is not justified to enter into joint venture with the private builders with a motive to earn profit. The entire exercise was against the spirit of the Jharkhand State Housing 33 Board Act, 2000. The

development agreement entered into between the Board and the private builders is in gross violation of Regulation 9, 10(ii), 21, 23 and 25 of the Jharkhand State Housing Board (Management and Disposal of Housing Estate) Regulation, 2004 which provides the manner in which the allotment has to be made by the Board. The development agreement in the present case gives unqualified right to the builders to allot the units to any person of their choice and the choice of person/persons selected by the builder for sale of unit falling in the builder allocation shall be binding on the Housing Board and thus, the Housing Board cannot even enforce the reservation policy including the allotment for handicapped persons. The development agreement for constructing plots/flats and commercial complex are against the public policy and also against the provisions of the Act and the Rules made thereunder and therefore, void abinitio. The resolution, order and agreement of the housing Board were passed/executed in excess of the power conferred in law. A vigilance enquiry has been instituted for examining the irregularities committed by the Jharkhand State Housing Board. The purpose for which the land was acquired was to construct the houses/flats for middle and lower income group housing scheme. The Government has therefore, not given its consent for implementation of the joint venture scheme and it has issued direction to the Housing Board vide letter dated 28.07.2011 for taking steps for cancellation of 34 the Joint Venture scheme. The plea that the Housing Board does not have to make any investment is misconceived and misleading because, the vacant plots belonging to the Housing Board are valuable property. No right under the Power of Attorney has accrued in favour of the allottees as the Power of Attorney executed by the Housing Board has not been registered. The builders have no authority to allot the flats without joining the Housing Board. It has been denied that the construction is already complete. The Government is competent to issue necessary direction to the Housing Board and the Board is bound by the direction of the Government issued from time to time. It is denied that any third party right has been created in accordance with law. The principles of natural justice is not required to be followed in purely contractual dispute. The parties to the agreement are at liberty to cancel the agreement. The agreement entered into between the allottees and the Board has not been approved by the Government. The question of loss and damage cannot be raised in a writ proceeding. 53. Though, in its

counteraffidavit, the Housing Board has tried to justify its action, it is contended that the writ petitions are liable to be dismissed. SUBMISSIONS :

54. Mr. Rajiv Ranjan, the learned counsel appearing for the petitioners submitted that, the reason for cancellation disclosed in the 35 impugned letters are apparently unsustainable. There is no violation of Sections 24 (3) (b) and 27 of the Bihar State Housing Board Act, 1982 (as adopted by the State of Jharkhand). The decision for cancellation has been taken without even affording an opportunity of hearing and without issuing showcause notice to the petitioners. The order of cancellation of allotment of land for construction of residential/commercial projects would follow serious civil consequences and therefore, an opportunity of hearing was required to be given to the allottees. Under the Jharkhand State Housing Board Act, 2000, the Government has no power to interfere with the day to day functioning of the Housing Board. The Government has no power to order cancellation. Pursuant to the decision taken on 05.10.2005 in the meeting of the Minister in charge, the Housing Board adopted a Resolution for allotment and development of vacant land through Joint Venture in its 17th Meeting dated 27.02.2007 and four years thereafter, a decision has been taken to terminate the agreement which is not justified. A concluded contract cannot be terminated in the manner it has been ordered for cancellation. The decision taken in meeting held on 05.10.2005 was the decision of the Government, pursuant to which, advertisement was issued and bids were invited. The highest bidders were awarded the contract. The entire tender process was conducted in a fair and transparent manner. Several years after the right of the parties concretized, the 36 State Government took a different stand and ordered cancellation of the agreement.

55. Mr. Anoop Kumar Mehta, the learned counsel appearing for the petitioner in W.P.(C) No. 5074 of 2011 submitted that the State Government took a policy decision in line with the National Housing Policy and there is no illegality in the action of the Housing Board in entering a Joint Venture with the private parties for construction of residential/commercial complexes. If the grant is open and transparent and it fulfills all the legal requirements, the scope of judicial review is minimal. The Constitution of India enjoins upon a public authority/statutory authority to act fairly and reasonably. The action which is unfair and unreasonable cannot be sustained. The State is bound by its promise held out to the allottees.

Acting upon the solemn promise made by the State and the Housing Board, the allottees altered their position and now, the State cannot be permitted to retract/recall its own decision. 56. Mr. Indrajit Sinha, the learned counsel appearing for the petitioner in W.P.(C) No. 4766 of 2011 contended that no public revenue was involved in the decision taken by the Housing Board and therefore, the matter was not required to be placed before the Cabinet. Referring to decision in "G.B.Mahajan and others vs. Jalgaon Municipal Council and Others", reported in (1991) 3 SCC 91, it is submitted that the Joint Venture entered into between Jharkhand 37 State Housing Board and the private builders for construction of residential/commercial complex in which the Housing Board has not infused any money, is perfectly valid and legal. The impugned order of cancellation travels beyond the showcause notice issued to the petitioner. 57. Mr. A.K. Sahani, the learned counsel appearing for the petitionerM/s Kamla Aditya Construction Pvt. Limited adopted the submission of other counsels for the petitioners. Mr. Delip Jerath, the learned counsel appearing for the petitionerNav Nirman Builders [W.P.(C) No. 4736 of 2011] submitted that the petitioner has not provided flats rather, it has provided Home to the homeless. They have also reiterated the stand taken by the other writ petitioners. 58. Per contra, Mr. Ajit Kumar, the learned Additional AdvocateGeneral submitted that the proceeding dated 05.10.2005 does not reflect the decision of the Government. No policy was framed by the Government or by the Housing Board and modalities were never decided. The allotment of lands to the petitioners is contrary to the object of the Jharkhand State Housing Board Act and thus, the allotments were illegal. No right is conferred upon the petitioners on the basis of the illegal allotments. As a matter of fact, the process of allotment itself has been found neither transparent nor fair. The constructions made on the illegal allotments cannot be regularised and the occupants/purchasers of the illegally constructed 38 flats also cannot claim any right in law or equity. Since the allotment itself has been found illegal, the principle of promissory estoppel is not applicable. The power of the State Government is well defined in the Housing Board Act itself and the State Government has power to cancel the allotments. The petitioners were issued notices and they were aware of the proceeding pending against them and therefore, the petitioners cannot raise a plea of violation of rules of natural justice. 59. Mr. Sachin Kumar, the learned

counsel appearing for the Jharkhand State Housing Board, finding himself in a difficult situation, fairly submitted that though the Housing Board is bound to sail along the State of Jharkhand, it is the specific stand of the Housing Board that it acted in the matter pursuant to the decision taken in the meeting held on 05.10.2005 and subsequently, the Board in its 17th Meeting adopted a resolution for construction of residential houses/commercial complexes through Joint Venture. It is submitted that simply because the Board functions on no profit no loss basis, it does not mean that the Board cannot earn profit. The recent trend all over the country is to construct houses in Joint Venture. The procedure adopted by the Housing Board was fair and transparent. In the present Batch of cases, there are two categories of allottees. One category is of the allottees who were issued showcase notices prior to the order of cancellation and the other category of allottees are 39 those whose allotments have been cancelled pursuant to direction of the State Government. In the first category of cases, sufficient opportunity was granted to the allottees and therefore, they cannot complain of violation of rules of natural justice. It is further submitted that the requirement under Article 166 of the Constitution is not applicable in case of the Board. The Housing Board is under a duty to provide a host of facilities to people. Section 29 of the Jharkhand State Housing Board Act, 2000 enjoins upon the Housing Board to provide streets, back lane, bridges, culverts and causeways, the drainage, water supply and lighting of the streets included in the scheme. It also provides for the provision of open parks, playing fields and open spaces for the benefit of any area comprised in the scheme or any adjoining area and the enlargement of existing parks, playing fields, open spaces and approaches. The land in question was acquired in the year, 1964 and subsequently, it was transferred to the Board and thus, the title vests in the Housing Board. It is however, submitted that the present writ petitions are liable to be dismissed. The petitioners have based their case on the development agreements but, the present proceeding is not a proceeding in a suit for specific performance and thus, the writ petition is not the remedy. 60. In reply, Mr. Rajiv Ranjan has submitted that the State Government had knowledge of the Joint Venture executed by the Housing Board and this is not a case in which the alleged irregularity 40 has been detected subsequently. In so far as, the share of the builders is concerned, the regulation of the Housing Board

would not apply. In the Development Agreement, there is no restriction on the Housing Board in following its own regulations in so far as, the allocation of the Housing Board in the joint venture is concerned. The builders have invested huge amounts for construction of the buildings and they cannot be compelled to sale the flats/commercial spaces at a lower rate. There is no cancellation Clause in the agreement and therefore, the Housing Board cannot cancel the agreement executed with the allottees. The builders faced obstructions at every stage and with great difficulties some of the projects could be completed. Time was not the essence of the contract. Even if the resolution of the Housing Board is not approved in its meeting, the State Government has no power to order cancellation of the development agreement. The vigilance enquiry cannot decide the rights of the parties. The letter of cancellation contains grounds other than the ground taken by the Housing Board in its showcause notices to some of the allottees.

DISCUSSION : 61. The facts emerging from the pleadings in the writ petitions can be summerised thus ; 62. On 05.10.2005, a meeting was held at the residence of the then Chief Minister in which, the Housing Secretary, the Finance 41 Secretary, the Managing Director of the Jharkhand State Housing Board and other senior officials of the Government were present. A decision was taken to launch a scheme for construction of multistoried buildings on the vacant land of the Housing Board. It was also decided that in future, the multistoried residential flats and commercial complexes would be constructed through Joint Venture. The proceeding of the meeting dated 05.10.2005 was communicated to the Managing Director, the Jharkhand State Housing Board vide letter dated 27.12.2005. Expressions of interest were invited through advertisement issued on 12.11.2005 and 27.11.2005 and the last date for submission of bids was 12.12.2005. The technical bid was opened and bidders, who qualified, were identified. They were asked to submit their finance bids alongwith plan and, the highest bidders were directed to execute development agreement, which was entered into between the petitioners and the Jharkhand State Housing Board on different dates. A power of attorney was also executed by the Jharkhand State Housing Board in favour of the allottees. Only few months thereafter, vide letter dated 29.03.2008, the Secretary, Jharkhand State Housing Board communicated M/s. Excel Venture Construction Pvt. Ltd., M/s. Modi Construction Project Ltd., M/s. Symfox Infrastructure Ltd. and

M/s. Kamla Construction Company that the Managing Director, Jharkhand State Housing Board has ordered immediate stoppage of construction of multistoried 42 buildings through Joint Venture. A Writ Petition being, W.P.(C). No. 2173 of 2008 and batch cases filed in the High Court, which were disposed of vide order dated 19.05.2008 permitting the petitioners to approach the Chairman, Jharkhand State Housing Board for settlement of dispute in terms of Article X, Clause 10.01 of the Agreement. The Chairman of the Housing Board after hearing both the parties, quashed order no. 667 dated 29.03.2008. The order dated 01.09.2008 of the Chairman was communicated to the petitioners vide Memo dated 19.12.2008. In several cases, the Housing Board issued showcause notices to the allottees for not commencing the construction work within the stipulated period. In few cases at the request of the allottees, the Housing Board had written letter to the Deputy Commissioner for removing the encroachments so that the construction work can proceed. About four years after the development agreement was executed by the Housing Board, the Secretary, Housing Department communicated the Managing Director, Jharkhand State Housing Board that the development agreements were executed in contravention of Section 24(3)(b) and 27(1), (2) & (3) of the Jharkhand State Housing Board Act, 2000 and therefore, the State Government has taken a decision not to accord sanction to the decision of the Housing Board. A direction was issued for taking steps for cancellation of the development agreements. 43 63. Challenging communications dated 28.07.2011 and 03.08.2011, batch of writ petitions were filed in the High Court and vide order dated 08.08.2011, an order of status quo was passed by the High Court. Thereafter, other writ petitions were filed and vide order dated 24.08.2011, the interim order dated 08.08.2011 was extended to all the writ petitions. It was directed that the allottees would not make further constructions and no further allotment in favour of any party shall be made by the builders. In the proceeding before the High Court, the Housing Board submitted that it would move proposal before the State Government seeking postfacto approval. A proposal dated 19.10.2012 seeking postfacto approval of the decision for construction of multistoried residential/ commercial complexes through Joint Venture, was prepared by the Housing Board and vide letter dated 19.10.2012, the said proposal was forwarded to the Government for its sanction however, on 12.12.2012, the proposal of the Housing Board seeking postfacto

approval was turned down by the Secretary, Housing Department, Government of Jharkhand. The necessary details in all the writ petitions are detailed below: Case no. Residential/ Stage of Construction Investment Shares of parties Commercial 4513 of Plot No. 9 Harmu, Out of Three Block A & 1400 lacs 34.54% for Housing 2011 Ranchi A1 are complete and in Board (Area 1.357 Acres) B only finishing is due. 80% flat has been 65.46% to the (Residential) allotted. petitioner. 4683 of Plot No. 2 Harmu, Plan approved by RRDA 260 lacs 56.80% for the 2011 Ranchi & Excavation of petitioner (Area 2.46 Acres) foundation complete 44 Commercial 43.20% for Housing Board 4720 of Plot No. 8 Harmu, Building plan submitted 59.14% for the 2011 Ranchi for approval before petitioner (Area 2.687 Acres) RRDA Commercial 40.86% for the Housing Board 618 of Plot No. 3 Harmu, Boundary wall erected, 200 lacs 36.31% (in 2011 Ranchi survey done, map residential) & 41.25% (Area 5.415 Acres) submitted to H.B., (in commercial) for RRDA for approval Housing Board 50% Commercial & 50% Residential 63.69% (in residential) & 58.75% (in commercial) for petitioner 4660 of Plot No. 7 Harmu, Survey done, plan 250 lacs 58.99% for the 2011 Ranchi submitted to H.B. on petitioner (Area 1.693 Acres) 11.12.2007 & approved Commercial by RRDA & other 41.01% for the statutory bodies Housing Board 4682 of Plot No. 10 Harmu, Survey done, , plan 150 lacs 70% for the petitioner 2011 Ranchi submitted to H.B on Area 2.6437 Acres 26.07.2011 30% for the Housing Residential & Send to Board RRDA for approval 5516 of Plot No. 5, Harmu, On 07.08.2009 Earnest money 2,04,920/ 64% for the petitioner 2011 Ranchi Map/drawing of the Expenditure 1,63,869/ (Area - 0.3756 proposed construction Cost of survey 50,000/ 36% for the Housing Acres) of the plot has been Total investment Board Commercial submitted. 4,18,789/ 5517 of Plot No. 1, Bariyatu, No progress Earnest money 3,96,215/ 65% for the petitioner 2011 Ranchi Expenditure 1,79,750/ (Area - 0.412 Acres) Cost of survey 55,000/ 35% for the Housing Commercial Total investment Board 6,30,965/ 5543 of Plot No. 4, Harmu, Earnest money 5,25,280/ 65% for the petitioner 2011 Ranchi Expenditure 4,42,830/ (Area - 1.015 Acres) Cost of survey 80,000/ 35% for the Housing Commercial Total investment Board 10,48,110/ 5544 of Plot No. 17, Harmu, On 02.02.2011, Earnest money 1,18,265/ 70% for the petitioner 2011 Ranchi petitioner submitted Expenditure 94,674/ (Area - 0.217 Acres) map/drawing to Cost of survey 30,000/ 30% for the Housing

Residential Housing Board for Total investment Board approval of the RRDA. 2,42,939/ 5787 of Plot No. 9, Hirapur, No progress Earnest money 3,87,350/ 70% for the petitioner 2011 Dhanbad Expenditure 2,69,103/ (Area - 0.711 Acre) Cost of survey 75,000/ 30% for the Housing Commercial Total investment Board 7,31,453/ 5789 of Plot No. 5, Hirapur, No progress Earnest money 98,438/ 75% for the petitioner 2011 Dhanbad Expenditure 54,798/ (Area - 0.157 Acres) Cost of survey 20,000/ 25% for the Housing Residential Total investment Board 1,73,236/ 5790 of Plot No. 2A, Submitted for approval Earnest money 70% for the petitioner 2011 Adityapur, of map/drawing before 5,08,488/ 45 Jamshedpur AIADA on 23.07.2011. Expenditure 2,00,344/ 30% for the Housing (Area - 0.574 Acres) Cost of survey 55,000/ Board Residential Total investment 7,63,832/ 5791 of Plot No. 6, Hirapur, Earnest money 1,21,500/ 75% for the petitioner 2011 Dhanbad Expenditure 77,834/ (Area - 0.223 Acres) Cost of survey 25,000/ 25% for the Housing Residential Total investment Board 2,24,334/ 4736 of Plot No. 3 Adityapur, (i) 19.12.2007 plan & 18 crores on account of 68% (in residential) 2011 Jamshedpur maps sanctioned by survey, preparation of & 67% (in (Area - 1.614 Acres) AIADA drawing & development of commercial) for the (ii) A total of 170 flats Plot. petitioner Residential & have been constructed Commercial in 5 blocks over plot no. 32% (in residential) 3, i.e. A1, A2, A3, B1 & & 33% (in B2 commercial) for the (iii) petitioner's share Housing Board 68% sold and Possession delivered 4766 of Plot No. 11 (i) 03.12.2007 Plan No progress 65% in residential 2011 Harmu, Ranchi submitted to cum commercial for Area 1.405 Acres H.B. the petitioner (ii) 10.01.2008 Plan forwarded to RRDA35 in residential residential cum (iii) 03.08.2010 RRDA cum commercial for commercial sanctioned the Plan the Housing Board (iv) Boundary work Started & Commenced excavation for the foundation work 5074 of Plot No. 1 Mouza 03.07.2010 Plan 30 Lacs deposited with 64.75% in residential 2011 Dindli, Adityapur, approved by AIADA Housing Board cumcommercial for Jamshedpur (Ann.10) the petitioner Area 0.433 Acres & Excavation of foundation has been 35.25% in residential residential cum completed cumcommercial for commercial the Housing Board W.P.(C) No. 4443 of 2011 - Petitioner purchased flat no. A 401 from M/s Excel Venture Construction Pvt. Ltd. by paying consideration amount of Rs. 24 lacs. W.P.(C) No. 4444 of 2011 - Petitioner purchased flat no. A 703 from M/s Excel Venture Construction Pvt. Ltd.

by paying consideration amount of Rs. 24 lacs. Article 166 of the Constitution of India:

64. Much argument has been advanced on the interpretation of the proceeding dated 05.10.2005. The petitioners have contended that the decision taken in the meeting held on 05.10.2005 was a policy decision taken by the Minister in charge, Housing, in 46 consultation with other higher officials of the Government including, the Finance Secretary and the Housing Secretary, pursuant to which the Jharkhand State Housing Board invited tenders and finally the successful bidders were allotted vacant plots for construction of multistoried residential/commercial complexes. It is further contended that the Minister in charge, Housing was competent to take such decision because no revenue expenditure by the Housing Board is involved in the Joint Venture.

65. Per contra, Mr. Ajit Kumar, learned Additional Advocate General submitted that meeting held on 05.10.2005 was merely a review meeting in which an idea was floated for construction of multistoried residential/commercial complexes through Joint Venture. In the meeting held on 05.10.2005, neither the modalities were discussed nor any scheme was framed rather, a decision was taken that the Housing Board would frame a scheme. The decision taken in the meeting held on 05.10.2005, the proceeding of which was forwarded to the Managing Director, Jharkhand State Housing Board on 27.12.2005, cannot be said to be a policy decision of the Government of Jharkhand. Referring to Rules X, XII and XV of the Rules of Executive Business, 1979, the learned Additional Advocate General has submitted that the decision taken in the meeting dated 05.10.2005 would fall under Item Nos. 13, 16 and 19 of the 3rd Schedule and therefore, a government decision was sine qua non before issuing advertisements inviting bids for Joint Venture.

66. A perusal of the proceeding of meeting held on 05.10.2005 indicates that a decision was taken for construction of multistoried residential/commercial complexes on vacant plots of the Housing Board through Joint Venture however, it also unerringly indicates that a decision was taken to frame a scheme. Though, no exception can be taken to the decision taken on 05.10.2005 and no one has challenged the bonafide of the decision taken by the Minister in charge, Housing,

the issue is whether any scheme was framed or not and whether the public at large were made aware of the intention of the Housing Board by giving wide publicity of the alleged proposed scheme. It is clear that the Housing Board was required to frame a scheme for construction of multistoried residential buildings on vacant plots and the Housing Board was also required to ensure wide publication of the scheme through advertisements. Mr. Rajiv Ranjan, the learned counsel for the petitioners has contended that the Chief Minister cum Minister in charge, Housing was competent to take a policy decision and since there was no financial implication, the matter was not required to be placed before the Cabinet for a decision of the Government. The learned counsel has relied on a decision in *Bangalore Development Authority and Others vs. R. Hanumaiah and Others* (2005) 12 SCC 508 to contend that the State Government ordinarily cannot interfere in the day to day functioning of a statutory authority. I find that the Hon'ble Supreme Court has held in the said case that the State can exercise its power where a policy matter is involved and the Bangalore Development Authority which has been constituted for specific purpose, cannot take a decision which would defeat such purpose. The direction of the Chief Minister in the said case has been held, not confirming to the provision of Article 166 of the Constitution. In *"Jaipur Development Authority and Others vs. Vijay Kumar Data and Another"* (2011) 12 SCC 94, the recommendation of the Committee of Ministers has not been treated as the decision of the State Government culminating in issuance of a policy circular. The Hon'ble Supreme Court has observed that, the letter merely speaks of the discussion made by the Committee and the decision by it. By no stretch of imagination, the same can be treated as the policy decision of the Government within the manner of Article 166 of the Constitution. I am of the opinion that the discussion held on 05.10.2005 was not a policy decision and the Housing Board was required to frame a scheme and to seek approval of the government, before inviting tenders.

67. The petitioners have relied on Section 109 of the Jharkhand State Housing Board Act, 2000 to contend that the decision taken in the meeting held on 05.10.2005 was a direction under Section 109. Though, I have held that the decision taken on 49 05.10.2005 was not a decision of the Government as contemplated under Article 166 of the Constitution, even if it is assumed that it was

a direction by the Government to the Board to develop the vacant land through Joint Venture, it is an admitted fact that no term and condition was approved by the Board in its 17 th meeting and the Board's allocation in the Joint Ventures was decided by the Housing Board, arbitrarily. The Housing Board acted in the matter, in a manner unknown to its own rules and procedure. Scheme of the Jharkhand State Housing Board Act, 2000:

68. The learned counsel for the petitioners submitted that letter dated 12.12.2012 indicates that the State Government declined to accord sanction on the ground that the development agreements were executed in contravention of Sections 24(3)(b) and Section 27 of the Jharkhand State Housing Board, 2000 however, Section 24(3)(b) is attracted only when the scheme involves expenditure exceeding Rs. 2 crores whereas, in the Joint Venture the Housing Board has not infused any fund and thus, the decision of the Housing Board cannot be held contrary to Section 24(3)(b). The learned counsel has further submitted that Section 27(2) specifically provides that the Government may entrust to the Housing Board the framing and execution of any Housing scheme whether provided by the Act or not. It is a matter of record that pursuant to decision taken in the meeting dated 05.10.2005, the Housing Board issued advertisement 50 and selected highest bidders in a fair and transparent manner. Even the Board in its 15th and 17th meeting approved the proposal for constructing multistoried residential buildings through Joint Venture and thus, the Housing Board acted in consonance with the provision under Section 27(2) and not contrary to the said provision.

69. The learned Additional AdvocateGeneral has submitted that the Jharkhand State Housing Board being a statutory body is under a duty to act in accordance with law and follow its own regulations. The narration of events which followed the decision taken in meeting held on 05.10.2005 indicates that the Housing Board acted with some oblique motive, in a haste. The first advertisement was issued on 12.11.2005 and the last date of submission of bids was 12.12.2005 whereas, the proceeding of meeting held on 05.10.2005 was forwarded to the Managing Director, Housing Board on 27.12.2005 and thus, by the time, letter dated 27.12.2005 was communicated to the Managing Director of Housing Board, one

part of the transaction was over. Referring to Section 53A of the Transfer of Property Act and Section 17 of the Registration Act, the learned Additional Advocate General has submitted that after 2001, all agreements whereby an immovable property is transferred, is required to be registered compulsorily however, the development agreements executed between the allottees and the Jharkhand State Housing Board are unregistered, 51 which indicates the hasty action of the Board. Mr. Ajit Kumar, the learned A.A.G. has referred to decision in *Srinivasa Cooperative House Building Society Ltd. vs. Madam Gurumurthy Sastry and Others* reported in (1994) 4 SCC 675 to make a distinction between a private company and Government company. The learned AAG relied on decision in "*Esha Ekta Apartments Coop. Housing Society Ltd. vs. Municipal Corpn. Of Mumbai*" (2013) 5 SCC 357, wherein the Hon'ble Supreme Court has observed thus, 56.We would like to reiterate that no authority administering municipal laws and other similar laws can encourage violation of the sanctioned plan. The courts are also expected to refrain from exercising equitable jurisdiction for regularisation of illegal and unauthorised constructions else it would encourage violators of the planning laws and destroy the very idea and concept of planned development of urban as well as rural areas.

70. Section 2 (13) of the Jharkhand State Housing Board Act, 2000 defines housing or improvement scheme to mean a scheme framed under this Act and includes, any one of the types of schemes referred to in Section 28. Section 3 provides that it would be the duty of the Housing Board to carry out the provisions of the Act, subject to the restrictions, conditions and limitations contained therein.

71. Section 23 confers supervisory jurisdiction upon the Government. It provides that the Government may stay or set aside 52 any resolution of the Board or any order of the Managing Director or of the Board, if the Government is of the opinion that the resolution or order of the Housing Board or the Managing Director is in excess of the power conferred by law or is not in consonance with the public interest. Thus, it is apparent that Section 23 clothes the State Government with the power to nullify any resolution or order of the Housing Board or the Managing Director. The power conferred upon the State Government can be exercised in public interest and thus, if the Government finds that any order or resolution of the Housing Board is not in consonance with the Public interest, the Government in

exercise of power under Section 23 would cancel such order/resolution.

72. Section 24 empowers the Board to enter into contracts for carrying out any of the purposes of the Act. Section 24 (3) puts limitation on the power of the Board and provides that approval for any scheme involving expenditure of Rs. 200 Lacs cannot be granted without prior approval of the State Government. The Board's power in granting administrative approval for schemes is restricted to the schemes involving expenditure less than Rs. 200 Lacs. Section 24(3)(b) thus, presupposes existence of a scheme involving expenditure over Rs. 200 Lacs.

73. It has been contended on behalf of the Housing Board that after the land acquired by the Government was transferred to the 53 Housing Board, the Housing Board became absolute owner of the land and it was free to take a decision with respect to utilisation/disposal of the land so vested in the Housing Board. The petitioners have contended that under the agreement, it has been specifically provided that the Housing Board is not required to infuse any fund and thus, the approval of the State Government was not required. I am unable to accept the contention raised by the petitioners and the Housing Board. Though no material has been placed on record in support of the contention that the land vested absolutely in the Housing Board, even if it is assumed that after the transfer the land vested in the Housing Board, the Housing Board is under a duty to utilise the land for carrying out any of the purposes of the Act and not otherwise. Technically, the Housing Board is not required to invest money in the Joint Venture, however, it cannot be denied that the land itself is a valuable consideration and if sold, it is capable of fetching price. I find no substance in the contention that provision of Section 24(3)(b) is not attracted in the present case.

74. Section 26 provides that every contract by the Managing Director shall be entered into in such manner and form as may be prescribed and the contract not executed in terms of the provisions of the Act and the Rules made thereunder, shall not be binding on the Housing Board. A perusal of the development agreement reveals startling facts. Under the contract, the allottees have been given 54 absolute right of ownership. There is no provision for cancellation of contract/development agreement in case of breach of the terms of the agreement. Besides this, a Power of Attorney has also been executed in favour of the

allottees. Apparently, glaring irregularity has been committed in formulation of the development agreement and execution of the same. 75. Section 27 provides powers and duties of the Board to undertake the Housing Improvement Schemes. Section 27 (1) puts a limitation on the power of the Housing Board. The powers and duties of the Housing Board to undertake Housing Improvement Schemes and their expenditure have been made subject to the provisions of the Act and also the control of the Government. Thus, the expenditure incurred and the work undertaken by the Housing Board are always subject to the control of the Government.

76. Section 27 (2) provides that the Government would fix the terms and conditions and entrust to the Board the framing and execution of any Housing or Improvement Scheme whether provided under the Act or not. The framing of a scheme by the Housing Board is thus, subject to the condition that the Government entrusts the responsibility of framing of a scheme on the Housing Board and the scheme would be framed by the Housing Board on terms and conditions determined by the State Government.

77. I find that Sl. No.9 in the proceeding of the 15 th meeting 55 of the Board does not refer to Joint Venture and the proceeding of the 17th Meeting held on 27.02.2007 indicates that in the supplementary agenda, the proposal for Joint Venture was approved and thus, it is apparent that the Board itself has accorded postfacto approval when everything was already done. On physical verification, as a matter of fact, several infirmities were detected in the process of finalization of the bids. The financial bids were not received in sealed cover and those were not accompanied by the original documents. In the proceeding for finalizing the financial bid, one of the important members namely, the Chief Engineer has not put his signature. The allotments were made arbitrarily, is evident from the fact that, Housing Board's allocation differs in each allotment. No intelligible criteria was fixed by the Housing Board. The development agreement provides the lease period of 99 years which in my view could not have been done by the Housing Board as the said stipulation clearly converts the period of lease into a perpetual lease. I do not find any specific order of the Government directing the Housing Board to frame a scheme. The terms and conditions of the Joint Venture were not

determined by the State Government. I have perused the original file produced by the Housing Board and I do not find even a reference of a proposal containing the terms and conditions for the scheme or any communication to the Government in this regard. Approval of even the Minister in charge, Housing was also not taken 56 by the Housing Board. The decision taken in meeting held on 05.10.2005 was definitely not a government decision. PRINCIPLES OF NATURAL JUSTICE:

78. In so far as, the plea of violation of rules of natural justice is concerned, I am of the opinion that in the aforesaid facts, no hearing was required to have been given to the allottees. The legality of allotment by the Housing Board was the issue before the government and as seen above, the allotments were definitely illegal. If on a technical plea of violation of the rules of natural justice the decision of the government is interfered with, it would perpetuate illegality. In *Raj Kumar Soni and Another vs. State of U.P. And Another* (2007) 10 SCC 635, in a case where the allotment was held illegal, the Hon'ble Supreme Court observed that, even if there was any technical violation of the rules of Natural Justice, this is not a fit case for interference as such interference would result in incarceration of illegal, nay void order. 79. In *Gadde Venkateswara Rao vs. Government of Andhra Pradesh and Others* reported in AIR 1966 SC 828 it has been held thus, 17.If the High Court had quashed the said order, it would have restored an illegal order it would have given the Health Centre to a village contrary to the valid resolutions passed by the Panchayat Samithi..... 80. In *M. C. Mehta vs. Union of India and Others* reported in 57 (1999) 6 SCC 237, the Hon'ble Supreme Court has observed thus, 17. The Court can under Article 32 or Article 226 refuse to exercise its discretion of striking down the order if such striking down will result in restoration of another order passed earlier in favour of the petitioner and against the opposite party, in violation of the principles of natural justice or is otherwise not in accordance with law. PROMISSORY ESTOPPEL :

81. The nature, scope and extent of the doctrine of promissory estoppel came up for consideration before the Hon'ble Supreme Court time and again. The doctrine of promissory estoppel was evolved in equity, in order to prevent injustice. It is by now settled that the doctrine of promissory estoppel can be applied against the government also, where the interest of justice, morality and fairness clearly

directed such a course. However, the promissory estoppel cannot be invoked to compel the government or even a private party to do an act prohibited by law. In *M/s. Motilal Padampat Sugar Mills Co. Ltd. vs. State of Uttar Pradesh and Ors.*, reported in (1979) 2 SCC 409, while examining the plea that, if on a categorical assurance of the State Government that the industry would be exempted from payment of sales tax, Motilal Padampat Sugar Mills established a hydrogenic plant for manufacturing of vanaspati, whether the State Government was bound to honour the assurance and exempt the industry from sales tax for a period of three years, the Hon'ble Supreme Court observed as under:

58. 8.....The true principle of promissory estoppel, therefore, seems to be that where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties, and this would be so irrespective of whether there is any pre existing relationship between the parties or not.

82. In *Kasinka Trading and Anr. vs. Union of India and Anr.*, reported in (1995) 1 SCC 274, it has been held that, the doctrine of promissory estoppel cannot be invoked in the abstract and the Courts are bound to consider all aspects including the result sought to be achieved and the public good at large. In *Amrit Banaspati Co. Ltd. and Anr. vs. State of Punjab and Anr.*, reported in (1992) 2 SCC 411, it has been held that unless the representation made by an official on behalf of the government is established to be beyond the scope of authority, it should be held binding on the government. The Hon'ble Supreme Court has held thus:

10. But promissory estoppel being an extension of principle of equity, the basic purpose of which is to promote justice founded on fairness and relieve a promisee of any injustice perpetrated due to promisors going back on its promise, is incapable of being enforced in a court of law if the promise which 59 furnishes the

cause of action or the agreement, express or implied, giving rise to binding contract is statutorily prohibited or is against public policy.....Was such promise contrary to law and against public policy? Could it be enforced in a court of law?..... Taxes like sales tax are paid even by a poor man irrespective of his savings with a sense of participation in growth of national economy and development of the State. Its utilization by way of refund not to the payer but to a private person, a manufacturer, as an inducement to set up its unit in the State would be breach of trust of the people amounting to deception under law.

83. In the present case, the government was definitely not bound by the action of the Housing Board. The decision of the Housing Board to invite applications for construction of residential/ commercial complexes through Joint Venture was not a decision taken in public interest. The decision taken in the meeting dated 05.10.2005 was not a licence to the Housing Board to flout all canons of rule of law. I further find that the proceeding of the meeting dated 05.10.2005 specifically refers to a direction to the Housing Board to prepare a scheme and to publicise the scheme through newspapers. In the garb of the alleged direction given by the Minister in charge on 05.10.2005, the Housing Board has adopted a course which cannot be sanctioned in law. The fallacy in the contention raised on behalf of the petitioners lies in the fact that the government never held out any promise to the allottees. The government never publicised any intention to sanction construction of residential 60 flats/commercial complex by the Housing Board through Joint Venture and therefore, the government cannot be compelled to accord sanction to the illegal actions of the Housing Board. 84. In *Monnet Ispat and Energy Limited vs. Union of India and Ors.*, reported in (2012) 11 SCC 1, the Hon'ble Supreme Court has held thus:

182. 5. In no case, the doctrine of promissory estoppel can be pressed into aid to compel the Government or a public authority to carry out a representation or promise which is contrary to law or which was outside the authority or power of the officer of the Government or of the public authority to make. No promise can be enforced which is statutorily prohibited or is against public policy. 85. To summarize, the decision of the Housing Board to make allotment of vacant land to

private developers was illegal and arbitrary. The said decision was contrary to the object for which the Housing Board has been constituted and the decision was taken in breach of provisions of Section 24 (3) (b) and Section 27 of the Jharkhand State Housing Board Act, 2000. There was neither any plan, nor any study conducted by the Housing Board. There was also no proposal or a feasibility report prepared by the Housing Board. The Housing board did not frame a scheme or sought approval for allotment to private builders from the Government. The criteria by which the share of the Housing Board has been fixed, is completely arbitrary. The process of allotment to private builders was not fair and transparent. The decision taken in the meeting held on 05.10.2005 was not a policy decision of the Government. The allottees cannot claim estoppel against the Government and the principle of Promissory Estoppel is not applicable in their case as the Government had never made any promise to the allottees. The vigilance enquiry was an eye wash, instituted only to overcome the latches on the part of the Government authorities. 86. In *Rajasthan Housing Board and Anr. vs. G.S. Investments and Anr.* reported in (2007) 1 SCC 477, a case in which price fetched for the plots was much below the market rate and consequently, the State Government disapproved the auction, it was found that the decision of the Government was taken in larger public interest. It was further held that, even if, some defect was found in the ultimate decision resulting in cancellation of the auction the matter did not require interference of the Court. The Honble Supreme Court has held thus: The sale of plots by the Rajasthan Housing Board by means of an auction is essentially a commercial transaction. Even if some defect was found in the ultimate decision resulting in cancellation of the auction, the court should exercise its discretionary power under Article 226 of the Constitution with great care and caution and should exercise it only in furtherance of public interest. The court should always keep the larger public interest in mind in order to decide whether it should interfere with the decision of the authority.....

6. 87. In *M.I. Builders Private Limited vs. Radhey Shyam Sahu and Ors.* (1999) 6 SCC 464, when it was found that there was no proposal, no document, no plan, no study, no project report or feasibility report, on the basis of which Mahapalika could have given permission for construction of shopping complex, the Hon'ble Supreme Court held that, Mahapalika had violated Section 114 of Uttar Pradesh

Municipal Corporation Adhiniyam, 1959 and thus, decision of Mahapalika to permit a private builder to construct under ground shopping complex was illegal, arbitrary and unconstitutional. 88. In *Padma vs. Hiralal Motilal Desarda and others* (2002) 7 SCC 564, though SIDCO was setup to carry out its activity on no profit no loss basis however, SIDCO resorted to bulk sale of surplus land with a view to make substantial profits. The Hon'ble Supreme Court held that the decision for bulk land sale could not be said to have been taken in public interest.

89. Several decisions were cited by the counsel for the petitioners. I have gone through those judgments and I find that in none of cases relied upon by the petitioners, the Hon'ble Supreme Court has upheld the illegal allotments to the builders. Much reliance has been placed on the decision in *ITC Ltd. v. State of U.P.* reported in (2011) 7 SCC 493. I am of the opinion that the facts in the present case are entirely different from the facts in ITC case. Any benefit of the decision in ITC case, if at all can be extended, it can only be 63 extended for the purpose of taking a decision whether the allotment of the plots on which the residential buildings have been constructed, can be granted postfacto approval by the government or not. 90. Though, it is permissible in law to cancel the entire allotment, apparently the Government has not applied its mind on the effect of cancellation in cases where the constructions are complete. In many cases transaction with the buyers is complete and they have taken possession of the flats. No fault can be attributed to them. Thus, those cases should have been segregated. In *Benny T.D. and Ors. vs. Registrar of Cooperative Societies and Anr.* reported in (1998) 5 SCC 269, in view of the findings of the Capital Public Enquiry Commission that there has been tampering of marks in respect of several candidates, the decision was taken to cancel the entire selection. The Hon'ble Supreme Court held that same could not be done as the same would tantamount to gross violation of principle of natural justice. In *Omkar Lal Bajaj & Ors. vs. Union of India & Anr.*, reported in (2003) 2 SCC 673, the Hon'ble Supreme Court observed as under : 45. The solution by resorting to cancellation of all was worse than the problem. Cure was worse than the disease. Equal treatment to unequals is nothing but inequality. To put both the categories - tainted and the rest - on a par is wholly unjustified, arbitrary, unconstitutional being violative of Article 14 of the Constitution.

6. 91. In *Amey Coop. Housing Society Ltd. vs. Public Concern for Governance Trust and Ors.* (2007) 4 SCC 635, in a public interest litigation, the High Court found that undue favour has been shown to the cooperative societies and therefore, the High Court took recourse to drastic measure such as, forfeiture along with cancellation of allotment. The Hon'ble Supreme Court observed that a more pragmatic approach should have been taken by the High Court and it would have taken recourse to have the plots revalued by an independent Government valuer and to compensate SIDCO, in respect of any loss that might have been caused to it on account of under valuation of the said plot and, necessary order should have been passed. The State Government was directed to cause fresh valuation through an independent Government valuer and difference in value was to be paid by the society to SIDCO.

92. In *Bangalore City Cooperative Housing Society Ltd. vs. State of Karnataka and Ors.* reported in (2012) 3 SCC 727, no housing scheme was framed by Bangalore City Cooperative Housing Society Limited nor it was shown that it had framed a housing scheme which was approved by the State Government. The High Court held acquisition of land not in public purpose. Keeping in view the fact that some of the members may have build their houses on the site allotted to them, the Hon'ble Supreme Court gave liberty to the appellant society to negotiate with the respondents for purchase of 65 their land at the prevailing market price. 93. In view of the fact that in W.P.(C) No. 4513 of 2011 and W.P.(C) No. 4736 of 2011, the construction of residential building is almost complete and the builders have sold most of the flats, though the findings recorded in the foregoing paragraphs are equally applicable in all the cases, a pragmatic view needs to be taken by the Court, in so far as, W.P.(C) No. 4513 of 2011 and W.P.(C) No. 4736 of 2011, W.P.(C) No. 4443 of 2011 and W.P.(C) No. 4444 of 2011 are concerned. It is nobody's case that the construction on the above two plots was in violation of the Building Byelaws. At least, the flat owners/buyers are not responsible for the decision taken by the Housing Board. In view of the aforesaid discussions all the writ petitions except, W.P.(C) No. 4513 of 2011, W.P.(C) No. 4736 of 2011, W.P.(C) No. 4443 of 2011 and W.P.(C) No. 4444 of 2011 are, dismissed. However, in the peculiar facts and circumstances of the case, W.P.(C) No. 4513 of 2011 and W.P.(C) No. 4736 of 2011, W.P.(C) No. 4443 of 2011 and W.P.(C) No.

4444 of 2011 are disposed of with the following directions; (i) The respondent State of Jharkhand is directed to constitute a Committee consisting of the Chief Secretary, the Finance Secretary and the Secretary, Department of Housing. The Committee would examine the possibility of granting postfacto approval for the allotment of Plot No. 9, Harmu, Ranchi and Plot No. 3, Adityapur, 66 Jamshedpur. (ii) The allottees of the above two plots would furnish documents establishing construction of the residential buildings, as claimed by them in the present proceeding. (iii) The Committee would examine the genuineness of the claim that most of the flats have been sold by the builders. (iv) The Committee would also ascertain whether the builders continued construction inspite of the restraint order of the Housing Board/State/Court. (v) In case of doubt, the Committee would summon the representative of the builders and may direct them to produce evidence. (vi) If the Committee decides that it would be in the public interest to approve the allotments in W.P.(C) No. 4513 of 2011 and W.P.(C) No. 4736 of 2011, the Committee would recommend appropriate terms including, payment of market rate, penal charges and any other charges for which the builders may be liable to pay. (vii) The current market rate of the above two plots would be ascertained by two Government valuers. (viii) The Committee would take a decision within four months. (ix) The recommendation of the Committee would be placed before the Government and it is expected that the Government would accord due weightage to the recommendation of the Committee. 67 94. All the Interlocutory Applications are dismissed. Interim orders are vacated. (Shree Chandrashekhar, J.) Jharkhand High Court, Ranchi Dated: 21 /11/2014 Tanuj/R.K./Amit/.A.F.R. Later on: The original file of the Housing Board is returned to Mr. Sachin Kumar, Advocate appearing on behalf of the Housing Board. (Shree Chandrashekhar, J.) Manish