

Ranjit Kumar Sinha Vs. The State of Jharkhand and Ors

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Court : Jharkhand

Decided On : Dec-17-2015

Appellant : Ranjit Kumar Sinha

Respondent : The State of Jharkhand and Ors

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(C) No. 1138 of 2015
Ranjit Kumar Sinha, Son of Jitendra Nath, Resident of Village Pandra, Amba Nagar, P.O.Hehal, P.S.Sukhdeonagar, District Ranchi (Jharkhand) Petitioner Versus
1. The State of Jharkhand 2. Jharkhand State Housing Board, through its Managing Director 3. Superintending Engineer, Jharkhand State Housing Board, Ranchi 4. Executive Engineer, Jharkhand State Housing Board, Ranchi 5. Manager (Estate), Jharkhand State Housing Board, Ranchi Respondents
CORAM: HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR For the Petitioner : Mr. A.K.Sinha, Sr. Advocate Mr. Amar Kumar Sinha, Advocate Mr. Kundan Kumar Ambastha, Advocate Mr. Sandeep Verma, Advocate Mr. Sumit Kumar, Advocate For the Housing Board : Mr. Sachin Kumar, Advocate Mr. V. N.Choudhary, Advocate CAV on: 08.12.2015 Pronounced on: 17.12.2015 Per SHREE CHANDRASHEKHAR, J.

The petitioner is aggrieved by order dated 16.03.2015 whereby, the Managing Directorrespondent no. 2 has cancelled the allotment of plot vide Letter No.448A dated 25.02.2008 to the petitioner. 2. The petitioner submitted an application for allotment of a cutplot and the Jharkhand State Housing Board in the light of the

Board's decision dated 08.11.2007, allotted a cutplot to him at Harmu Housing Colony, Ranchi. The allotment letter dated 25.02.2008 was issued in the name of the petitioner whereunder, the tentative cost of the plot was fixed at Rs. 4,45,200/, which the petitioner deposited on 13.03.2008 and the same has been acknowledged through money receipt issued by the respondent Board. Subsequently, a HirePurchase agreement was executed on 24.05.2008 and possession of the said plot was delivered to the petitioner. The petitioner constructed a house over the said plot and he is residing there with his family. The respondent Board however, did not execute the deed of conveyance, which prompted the petitioner to approach this Court in W.P.(C).No.4270/2011. The writ petition was heard on 24.01.2011 and at the instance of the counsel for the respondent Board seeking time for filing counter affidavit, the matter was adjourned. The respondent Board however, did not file counter affidavit in W.P.(C).No.4270/2011 and, in the meantime, the respondent Managing Director issued showcause notice dated 27.02.2015 for cancellation of the allotment. The petitioner challenged the showcause notice dated 27.02.2015 by filing I.A.No.1509/2015 in W.P.(C).No.4270/2011 however, the respondent Managing Director vide, order dated 16.03.2015 cancelled the allotment of the cutplot on the ground that the allotment was made in contravention of the regulations under the Jharkhand State Housing Board (Management and Disposal of Housing Estate) Regulations, 2004.

3. Heard the learned counsel for the parties.

4. Mr. Anil Kumar Sinha, the learned Senior Counsel for the petitioner contended that; (i) the Managing Director has no authority to cancel the allotment which was issued in terms of Board's decision dated 08.11.2007, (ii) the subsequent decision of the Board dated 07.04.2015 approving the decision of the Managing Director cancelling the allotment in favour of the petitioner would not sanctify order dated 16.03.2015 passed by the Managing Director which is otherwise illegal and without jurisdiction and that the Board was not constituted in terms of Section 4 r/w Section 11 of the Jharkhand State Housing Board Act, 2000, (iii) in the garb of cancellation of allotment the conditions under the HirePurchase agreement cannot be avoided and, (iv) the impugned order dated 16.03.2015 suffers from bias 3 and

malice in law besides, delay and laches on the part of the respondents and the petitioner who has become owner of the land and is residing in the house constructed over the plot allotted to him, deserves equitable relief from this Court.

5. Replying to the challenge thrown by the petitioner to the competence of the Managing Director to cancel the allotment of the plot for which a HirePurchase agreement was executed, Mr. Sachin Kumar, the learned counsel for the respondent Housing Board referred to a decision in *Adityapur Industrial Area Development Authority & Anr. Vs. M/s Sanderson Industries Ltd. & Ors.* 2013

(1) JCR 622 (Jhr.) and submitted that the Managing Director of the Housing Board has power to cancel the leased deed. It is submitted that the illegal action of the then Managing Director allotting plot to the petitioner is not binding on the Housing Board. The plot allotted to the petitioner is a regular High Income Group plot of 2400 sq. ft. (60x40). The said plot is rectangular in shape and it is fit to be used as an independent plot. The petitioner is not an existing allottee of a house or a plot in terms of Regulation 2(xxxi) and thus, a cutplot cannot be allotted to the petitioner. The learned counsel submitted that the persons responsible for making allotment in favour of the petitioner, have been proceeded departmentally. It is submitted that the width of the plot is a significant factor which would disclose that the plot allotted to the petitioner is not a cutplot.

6. Before advertng to the contentions raised on behalf of the parties, Sections 4, 11, 15 and 23 of the Jharkhand State Housing Board Act, 2000 must be noticed, first. Jharkhand State Housing Board Act, 2000 Section 4. Constitution of the Board (1) The Board shall consist of the following members, namely: (a) a Chairman appointed by the State Government 4 (b) a Managing Director appointed by the State Government, (c) a Secretary appointed by the State Government, who shall be the Member Secretary of the Board (d) Secretary to Government of Bihar, Housing Department or the representative exofficio (e) Finance Commissioner or a representative nominated by him who will not be an officer below the rank of Special Secretary or Additional Secretary exofficio, (f) Special Secretary to Government of Bihar, Planning Department exofficio, (g) Chief Engineer, Public Health Engineering Department exofficio (h) Chief Engineer,

Housing Health Engineering Department ex officio, (i) Chief Town Planner, Bihar ex officio (j) four nonofficial members, having knowledge of Housing problems in the State and special qualification in this respect, appointed by the State Government. (2) The appointment of Chairman and members specified in clauses (a) to (j) of sub section (1) shall be notified in the Jharkhand Gazette. Section 11.(1) The Board and the Executive Committee shall meet at such times and places and shall observe such rules of procedure in regard to transaction of business at its meetings as may be provided by regulations made under this Act. (2) All questions at a meeting shall be decided by a majority of votes of the members present and, in the case of equality of votes, the Chairman or in his absence, any other persons presiding, shall have a second or casting vote. 5 (3) If for any reason the Chairman of the Board or the Chairman of the Executive Committee is unable to attend any meeting of the Board or, as the case may be, of the Executive Committee (a) in the case of the meeting of the Board, a Director, not being the Managing Director, authorised by the Chairman of the Board in writing, shall preside at such meeting but if the Director so authorised is absent or if no such authorisation has been made, the Board may elect a Director to preside at that meeting and (b) in the case of the meeting of the Executive Committee a member authorised in writing by the Chairman of that Committee shall preside at the meeting but if the member so authorised is absent or if no such authorisation has been made, the Committee may elect any of its members to preside at the meeting. Section 15. Acts of the Board or Committee not to be invalidated by any infirmity, etc. No act done or proceedings taken under the Act by the Board or any Committee shall be invalidated merely on the ground (a) of any vacancy or defect in the constitution of the Board or the Committee; or (b) of any defect or irregularity in the appointment of a person acting as a member thereof; or (c) of any defect or irregularity in such act or proceeding not affecting the merits of the case. Section 23. Power to set aside resolution or order of the Board. - The Government may stay or set aside any resolution of the Board or any order of the Managing Director or the Board, if in the opinion of the Government the resolution or order is in excess of the power conferred by law, or is not in consonance with the public interest. 6 7. Section 4 provides constitution of the Board. Referring to Section 11 it has been contended on behalf of the petitioner that the Managing Director

cannot function as the Chairman of the Board and he cannot be nominated to preside the meeting of the Board, in the absence of the Chairman. I am of the opinion that provision under Section 11(3)(a) is not attracted in the present case. The conduct of business of the Board and its committees as indicated under Section 11 does not contemplate absence of the Chairman for 15 days or in the event the Chairman is unable to perform his duties or if the post of Chairman is vacant. Section 15 provides that any act done or proceeding undertaken under the Act by the Board or any committee shall not be invalidated on the ground of any vacancy or defect in the constitution of the Board or the committee. The contention that in absence of the Chairman, the Managing Director should not have convened a meeting of the Board to get postfacto approval of his own decision cancelling the allotment in favour of the petitioner, in the facts of the present case, is liable to be rejected. Section 8 of the Housing Board Act provides that if the post of Chairman is vacant, the Managing Director shall perform all the duties of the Chairman till such time the regular appointment is not made to the post of the Chairman. It is not in dispute that the post of the Chairman of the Housing Board is still vacant. In Maharashtra State Mining Corporation Vs. Sunil (2006) 5 SCC 96, the Honble Supreme has observed, the High Court was right when it held that an act by a legally incompetent authority is invalid. But it was entirely wrong in holding that such an invalid act cannot be subsequently rectified by ratification of the competent authority. Ratification by definition means the making valid of an act already done. The principle is derived from the Latin maxim *ratihabitio priori mandate aequiparatur* namely, a subsequent ratification of an act is equivalent to a prior authority to perform such act. It is thus, held that in the absence of the Chairman of the Board, subject to provisions of the Act, the Managing Director can convene the meeting of the Board. Now, it has to be seen whether the impugned order dated 16.03.2015 was passed by the respondent Managing Director in terms of Jharkhand State Housing Board Act, 2000, the rules framed thereunder and the conditions of the HirePurchase agreement or not. 8. Rule 2(xxxi) defines cutplot to mean such plot which has been left unallotted after development/allotment of residential plots in a residential project and which is not capable of being independently allotted for residential purposes. Rule 2(xxxi) restricts the allotment of cutplot in cases where, (i) it is part of a proposed road or

park, (ii) if a sewage line or water supply line is passing through such plot and, (iii) there is no other proposed project of the Housing Board over such plot. Rule 2(xxxi) of the Jharkhand State Housing Board (Management and Disposal of Housing Estate) Regulations, 2004 is extracted below:

2. xxxi) Cutplot means such plot, which after development/allotment of residential premises remained unallotted as piece/part and is not suitable for allotment for residential purpose independently. But cutplot shall not be allotted in the following conditions : If; (i) that is part of any proposed road or park. (ii) sewage line, water drainage and water supply line passes through it. (iii) any other scheme of Housing Board is proposed thereon.

9. The impugned order dated 16.03.2015 proceeds on a premise that the plot allotted to the petitioner is a regular High Income Group size plot which is fit for regular allotment. The emphasis of the respondent Housing Board is on the total area of the plot however, it is not in dispute that the plot allotted to the petitioner is situated between Plot No. H1/171 and Plot No. H1/183 and it was previously not allotted to any other person. Merely because the plot allotted to the petitioner is 2400 sq. ft. in area and rectangular in shape, would not mean that the said plot is not a cutplot. It is not the case pleaded by the respondent Housing Board that the plot allotted to the petitioner was previously advertised for allotment. The very fact that the said plot has remained unallotted, though situated in an area in which allotments have already been made, lends credence to the claim of the petitioner that he was allotted a cutplot. The respondent Housing Board has not brought on record any clinching evidence to establish that the plot allotted to the petitioner is not a cutplot. The area of a plot itself would not render a plot, a cutplot or a regular plot.

10. The learned counsel for the respondent Housing Board has contended that allotment in Harmu Housing Colony is being made even today and thus, the piece of land allotted to the petitioner cannot be considered as leftover plot and the dimension of the plot is so big that it is not covered under the definition of cutplot. The said contention is liable to be rejected. It is not in dispute that what would constitute a cutplot in terms of dimension is not prescribed under the Regulations. Rule 2(xxxi) merely provides that it should be a leftover plot after allotment in a Housing Project. It is not in dispute that the plot allotted to the petitioner is situated

between Plot No. H1/171 and Plot No. H1/183 and it is not numbered. Thus, prima facie it appears that the said plot was a leftover plot after allotment in a particular Housing Project in the Harmu Housing Colony. There may be different schemes already floated or proposed in the Harmu Housing Colony however, the said fact would not prohibit allotment of cutplot in favour of the applicant. 9 11. The respondent Housing Board has pleaded that the procedure for allotment under the 2004 Regulations was not adopted in the case of the petitioner. The learned counsel for the respondent Housing Board has contended that neither applications were invited for allotment of the plots nor the plot/house owners of the adjoining plots were invited for allotment. Rule 30 of the 2004 Regulations is extracted below: Rule 30. Allotment of cutplots by the Housing Board shall be done in the following manner: (a) After receiving application for allotment, it shall be inquired by the Executive Engineer of the concerned Division and a report shall be submitted to the Housing Board. (b) If the inquiry report confirms the conditions under Rule 2(xxxi), allotment shall be made fixing current market value on the condition of onetime payment. (c) Cutplot shall be allotted to the adjoining plot holders. (d) If cutplot is adjoining to more than one plot, the adjoining plot owners shall be afforded opportunity by notice to avail opportunity to seek allotment. If more than one allottee is ready to make onetime payment at commercial rate, allotment shall be made through lottery. (e) Cutplot situated in residential area shall not be allotted for commercial use.

12. A perusal of Rule 30 does not disclose that it mandates advertisement for inviting applications for allotment of cutplots. It merely provides that on receipt of an application for allotment an enquiry would be conducted by the Executive Engineer and a report would be submitted to the Housing Board. The purpose of enquiry under Clause (a) of Rule 30 is to find whether the plot for which application has been submitted falls 10 within Rule 2(xxxi). It further provides that allotment would be on commercial rate and entire payment should be made in one installment. It is not the case pleaded by the respondent Housing Board that a report from the Executive Engineer was taken before the impugned order dated 16.03.2015 was passed. The impugned order as well as the counter affidavit filed on behalf of the respondent Housing Board is completely silent and absolutely vague in so far as, the stand taken by the Housing Board that the plot allotted to

the petitioner is not a cutplot, is concerned. A contention has been raised on behalf of the respondent Housing Board that the petitioner submitted application on plain paper however, it has not been disclosed by the respondent Housing Board whether there is a prescribed proforma in which applications for allotment of cutplots have to be submitted. It is not in dispute that the consideration for the plot allotted to the petitioner was fixed at the commercial rate and the petitioner made entire payment in one installment. The learned counsel for the respondent Housing Board has relied on Clause (c) of Rule 30 to contend that the allotment of cutplot can be made only in favour of the adjoining plot owners. There is no dispute that none of the adjoining plot holders submitted application for allotment of the plot which has been allotted to the petitioner. It cannot be contended that the adjoining owners may not have knowledge of the allotment made in favour of the petitioner because the petitioner has constructed a house over the plot. To a pointed query from the Court whether such plots would remain unallotted for all times to come if the adjoining plot owners do not prefer to seek allotment of such plots, the learned counsel for the respondent Housing Board merely reiterated that the plot in question is not a cutplot and therefore, such a situation cannot be contemplated. The present is also not a case covered under clause (d) of Rule 30. The said clause is applicable only in a case where more than one adjoining plot owners make application for allotment of a cutplot. 13. The plea that the allotment of property by the Housing Board can only be by way of lottery is patently erroneous in so far as, allotment of cutplot is concerned. Rule 2(xxxi) does not provide allotment through lottery rather, it provides a departure from the normal procedure for allotment of plot/flat/house. Rule 2(xxxii) provides that, Disposal of estate by auction means allotment of such plot by open bid which has been earmarked as commercial/residential cum commercial plot in the lay out plan, and the provision under Rule 31 is not applicable to allotment of cutplots. The respondent Managing Director has termed the allotment in favour of the petitioner as illegal allotment however, it is not an allegation against the petitioner that at his instance the illegality if any, was committed by the Housing Board. There is no allegation of any influence or extraneous consideration for allotment in favour of the petitioner. For the first time in the counter affidavit the respondents alleged that the petitioner acted in connivance with the officials of the Housing Board. The

petitioner is eligible in terms of Rule 8, is not in dispute. The plea that the allotment in favour of the petitioner has not been approved by the Board under Section 28 of the Jharkhand State Housing Board Act, 2000 merits no acceptance. The decision taken in 20th meeting of the Board held on 08.11.2007 discloses that a decision was taken to authorise the Managing Director to make allotment of cutplots in favour of Board's employees and other persons. The said proposal was approved and in exercise of power conferred under the said Resolution, the respondent Housing Board entertained application and the Managing Director approved allotment of cutplot to the petitioner. 14. The impugned order dated 16.03.2015 notices the writ petition filed by the petitioner and the fact that the 12 showcase notice dated 27.02.2015 was challenged by the petitioner by filing an Interlocutory Application in W.P.(C) No. 4270 of 2011. The manner in which the respondent Managing Director dealt with the plea taken by the petitioner that the challenge to the showcase notice dated 27.02.2015 is pending adjudication in W.P.(C) No. 4270 of 2011, is highly unsatisfactory. Without filing a counter affidavit and having not taken steps for early disposal of W.P.(C) No. 4270 of 2011, the respondent Managing Director has brushed aside the said plea merely observing that the pendency of the writ petition alone is of no help to the petitioner. The plea that the allotment in favour of the petitioner is void ab initio and, the illegal allotment made by the Managing Director is not binding on the Housing Board, are also liable to be rejected. An action can be held void ab initio only in cases where it is found that the authority had no jurisdiction to pass an order and he was absolutely incompetent. For example, an agreement with a minor is void ab initio under the Contract Act, 1872. The Managing Director is competent to make allotment, is not in dispute. The alleged nonobservance of the rules under 2004 Regulations has not been established by the respondents and the plea that the plot allotted to the petitioner was not a cutplot rather, it is a regular size plot, is in the realm of probabilities, not supported by concrete evidence. Though, the petitioner specifically asserted that the plot allotted to him is a cutplot, the respondent Housing Board did not produce a material to establish that the said plot is not a cutplot. Merely referring to Rule 2(xxxi) and Rule 30, the learned counsel for the respondent Housing Board contended that in view of the dimension and width of the plot, the plot allotted to the petitioner is not a cutplot. The statement

that the said plot is rectangular in size is not sufficient to hold that it is not a cutplot. A rectangular plot can also be an irregular plot. Clause 22 of the HirePurchase agreement executed in favour of the petitioner provides that on 13 payment of last installment of HirePurchase and other dues by the settlee to the Board, the settlee shall cease to be a tenant and he would become the owner of the plot. Though, Clause 22 also provides that a conveyance deed effecting the transfer of property to the settlee should be executed, in my opinion, even if no conveyance deed was executed by the respondentHousing Board, in view of Clause 23 of the HirePurchase agreement, the allotment in favour of the petitioner cannot be cancelled merely stating that it was an illegal allotment. None of the conditions mentioned in Clause 23 is attracted in the present case. In *Tata Steel Limited Vs. State of Jharkhand & Ors.* 2015 (10) SCALE 35, it has been held that in case of property transferred by the State by whatever name such transfer is called, it can be dealt with by the Authority only in terms of the original documents by which the property was transferred. In the present case, the allotment in favour of the petitioner would be regulated under the conditions of HirePurchase agreement. The said agreement is a registered instrument and therefore, a greater sanctity has to be attached to the same. No doubt, the Managing Director can take steps for cancellation of an allotment and can cancel the allotment however, in the facts of the present case, I am of the opinion that the action taken by the Managing Director suffers from procedural irregularity and arbitrariness. It is apparent that the decisionmaking process itself was faulty. The Managing Director has exercised the power in an absolute and uncontrolled manner which has degenerated into arbitrariness. The power has been exercised by the Managing Director at pleasure and such exercise of power cannot be permitted in a system founded upon the rule of law. The respondentHousing Board has failed to establish that the allotment in favour of the petitioner must be cancelled in the public interest. The allotment in favour of the petitioner was neither illegal nor made in contravention of the provisions under the 2004 Regulations. 14 15. In the result, the writ petition is allowed. The impugned order dated 16.03.2015 is quashed. Consequently, the decision of the Board approving the said decision is also quashed. (Shree Chandrashekhar, J.) Jharkhand High Court, Ranchi Dated: 17th December, 2015 Manish/A.F.R.

