

ITEM NO.18

COURT NO.14

SECTION XVI

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition for Special Leave to Appeal (C) No.8011/2023

[Arising out of impugned final judgment and order dated 09-05-2022 in LPA No. 1445/2019 passed by the High Court of Judicature at Patna]

LOHIA NAGAR, MT CARMEL HIGH SCHOOL

Petitioner(s)

VERSUS

THE BIHAR STATE HOUSING BOARD & ORS.

Respondent(s)

Date : 10-12-2024 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE R. MAHADEVAN

For Petitioner(s) Mr. Navniti Pd. Singh, Sr. Adv
Mr. Amit Kumar Singh, Adv.
Ms. K. Enatoli Sema, AOR
Ms. Chubalemla Chang, Adv.
Mr. Prang Newmai, Adv.

For Respondent(s) Mr. Braj Kishore Mishra, AOR
Mr. Ajay Srivastava, Adv.
Ms. Mini Kishore, Adv.

UPON hearing the counsel the Court made the following
O R D E R

1. This petition arises from the order passed by the High Court at Patna dated 09.05.2022 in Letters Patent Appeal Number 1445 of

2019 in Civil Writ Jurisdiction Petition case number 15471 of 2016 by which the appeal filed by the petitioner herein against the judgment and order passed by the learned Single Judge rejecting the writ application came to be disposed of with some observations.

2. It appears from the materials on record that the respondent-Board herein issued an advertisement dated 10.05.2008 inviting applications for allotment of land, earmarked for educational institutions and health centres in various housing colonies situated at Lohia Nagar and Bahadurpur Housing Colony, Patna.

3. The petitioner herein is a society registered under the Societies Registration Act.

4. The petitioner applied for allotment of the plots for putting up a primary school situated in Lohiya Nagar Housing colony i.e. PS-1 Sector 1 at measuring 0.61 acres.

5. It is the case of the petitioner that he had submitted the affiliation letter issued by the I.C.S.E. Board and was fulfilling all other eligibility criteria for the purpose of allotment of the plots.

6. The fact is that the Board rejected the application filed by the petitioner and an amount of Rs.1,00,000/- deposited by the petitioner was also refunded.

7. In such circumstances referred to above, the petitioner herein preferred a writ petition in High Court being Civil Writ Jurisdiction Petition Case No.15471 of 2016.

8. The learned Single Judge rejected the writ petition, observing as under:-

"I have heard the learned senior counsel for the petitioner and learned Advocate General appearing for the Housing Board and I find that the decision of the Managing Director of the Board, as contained in letter dated 10.07.2014 is not contrary to the decision of the Board. Though the learned senior counsel for the petitioner has based his argument on the advertisement dated 10.05.2008, which according to him, does not contain the condition regarding furnishing of letter of recommendation by the Department/Education Department, however, the fact is that the said advertisement dated 10.05.2008 itself refers to the requirement of the application being filed in the appropriate format (containing the terms and conditions for allotment of the plot in question), which can be obtained from the office of the Board upon furnishing the requisite fees and to the said application form, the terms and conditions for allotment of plots reserved for educational institutions were annexed, which can be found at running page no. 88 of the brief of the present writ petition, which clearly prescribes that the institutions are required to furnish letter of recommendation issued by the Education Department, which has not been furnished by the petitioner. This Court further finds that the petitioner has not challenged the aforesaid condition regarding furnishing of letter of recommendation from the Education Department, hence at this juncture, it cannot be argued that there is no requirement of taking such approval from the Education Department after the institution has been affiliated by the Board in question i.e. I.C.S.E. Board in the present case. This Court is of the opinion that the petitioner having not complied with the terms and conditions, as stipulated in the application form i.e. regarding furnishing of letter of recommendation from the Education Department, is not eligible for allotment of the plot in question, hence this Court finds that the Managing Director of the Housing Board has rightly rejected the case of the petitioner by the impugned order contained in the letter dated 10.07.2014. In any view of the matter, the petitioner cannot claim that either the aforesaid order has been passed, only to its

prejudice or it has been discriminated with, inasmuch as on the ground of non- furnishing of letter of recommendation from the Education Department, the application forms of all the educational institutions, who had applied pursuant to advertisement dated 10.05.2008 have been rejected.

Having regard to the facts and circumstances of the case and for the reasons mentioned herein above, I do not find any merit in the present writ petition, hence the same is dismissed."

9. Being dissatisfied with judgment and order passed by the learned single judge, the petitioner herein preferred Letters Patent Appeal 1445 of 2019.

10. A Division Bench of the High Court vide its order dated 09.5.2022 disposed of the appeal in the following terms:-

"We have noticed that the advertisement in question was issued in the year 2008 and no entity which had applied for the allotment of land was found to be suitable. We do find force in the contention of Mr. Shravan Kumar, learned Senior Advocate that in the absence of any specific direction as to from which authority such recommendation had to be obtained, specially for any institution which is recognized by a Central Board, the Housing Board ought not to have taken such objection. We also find that the only reason assigned by the Managing Director in refusing the claim of the appellant is that there was no corresponding recommendation of any authority as was required in the format in which the application had to be made.

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

Be that as it may, taking clue from one of the judgements brought on record by the appellant wherein a Division Bench of this Court in C.W.J.C. No. 7885 of 2015, had disposed off on 15.09.2015, holding that the State of Bihar and the Housing Board would be well advised to rise to the occasion and take all possible measures, in accordance with law to ensure that the plots in the Housing Colonies ear. proper marked for the Schools are utilized for the said purpose by establishing Primary and High Schools with infrastructure and teaching staff in order to cater the needs or the residents of the locality, in furtherance of the constitutional scheme of the citizens, as guaranteed under Article 21 A of the Constitution of India, we direct that if the plots have still remained vacant and have not been put to any use whatsoever and there has been no change in the lay out plan as well as the master-plan of the locality, such land be re-advertised for allotment to desirous persons for opening up Schools. The advertisement which the Housing Board shall take out shall mention with clarity, the requirements to be fulfilled by the aspirants. In case, the appellant applies against such advertisement, his case shall be considered, without being prejudiced by the fact that this litigation has been fostered by him because of non-allotment of land in the previous exercise.

The appeal stands disposed off accordingly."

11. In such circumstances referred to above, the petitioner is here before this Court with the present petition.

12. We have heard Mr. Navniti Pd. Singh, the learned senior counsel appearing for the petitioner(s) and Mr. Braj Kishore Mishra, the learned counsel appearing for the respondent-board.

13. We take notice of the fact that this litigation is now almost 16 years old. It all started way back in 2008 with the issue of advertisement for the purpose of allotment of plots.

14. However for some reason or the other, the plots could not be allotted by the Board to any party including the petitioner herein.

15. It is not in dispute that the plots in question have been earmarked for primary schools in the master plan of the Housing Board.

16. The High Court while disposing of the Letters Patent Appeal observed that as the plots have remained vacant and have not been put to any use, the Housing Board should consider to re-advertise and allot them to deserving persons or societies like the petitioner here in, who may be interested to start a school.

17. The learned counsel appearing for the respondent-Board submitted that the Board shall issue a fresh advertisement for the purpose of allotment of the plots, in question, laying down appropriate terms and conditions for such allotment and once such fresh public notice or advertisement is issued, it shall be open for the petitioner herein also to apply, provided the petitioner fulfills all the eligibility criteria as may be laid in the advertisement.

18. We dispose of this petition by only saying that once the advertisement is issued for the allotment of plots, it shall be open for the petitioner to apply in accordance with the terms and conditions that may be prescribed in the advertisement.

19. Since the plots are lying vacant past almost 17 years and they have been earmarked for the purpose of educational institutions, we direct the Board to issue such advertisement within a period of eight weeks from today.

20. With the aforesaid petition is disposed of.

21. Pending application(s), if any, stand disposed of.

(CHANDRESH)
COURT MASTER (SH)

(POOJA SHARMA)
COURT MASTER (NSH)