

(2011) 01 RAJ CK 0030
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1758 of 2001

Mansarovar Vyapar Vikas Samiti

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 31-01-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Rajasthan Housing Board Act, 1970 — Section 26, 28, 60, 65

Citation : (2011) 2 RLW 1548

Hon'ble Judges : M.N. Bhandari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.N. Bhandari, J.—The Petitioner - Mansarovar Vyapar Vikas Samiti (for short "the samiti") has preferred this writ petition to seek a direction on Respondent No. 2- Rajasthan Housing Board (for short "the Board") for handing over possession of the land to the members of the samiti and, at the same time, to issue allotment letters to left out members. A further direction has been sought to release plan for construction of shops so that members of the Petitioner samiti may raise construction on the land.

2. On filing of reply by the Respondents, an application for amendment was made, which was duly granted. With the amendment, additional prayer was made for setting aside enquiry report dated 26.5.2001 along with recommendations made therein.

3. This matter pertains to allotment of land to members of the Petitioner samiti. The samiti, vide its letter dated 2.5.2000 made a request to the Board to allot 150-200 shops to its members on commercial concessional/ reserve rate. Aforesaid request was made keeping in mind Operation Pink carried out by Municipal Corporation, Jaipur and the Jaipur Development Authority. As an outcome of Operation Pink, unauthorised possession and operation of business was stopped. The samiti accordingly made a request to create a commercial place in

Mansarovar area. The request so made by the samiti was taken into consideration by the Board, in its meeting dated 29.5.2000. It was decided that every applicant will furnish a demand draft of Rs. 10,000/- in favour of the Board. Allotment of shops was to be made at the rate of Rs. 6100/- per square metre. A further meeting took place on 3.8.2000. Therein, it was decided that within a period of 15 days, the samiti will furnish list of its members and get registration by paying Rs. 10,000/- each. It was further decided that after registration, entire amount would be deposited in the bank account of the Board by a demand draft within a month after registration. It was lastly resolved that in case samiti fails to deposit the amount in time then the Board would proceed to cancel the agreement for which, Chairman was authorised. The Respondent Board thereafter made certain allotments in the month of September and so on. The controversy arose at the stage when possession of the land was not given and later on Petitioner samiti could know about holding of enquiry at the instance of the State Government and recommendation for cancellation of the allotment. Accordingly, Petitioner amended the writ petition.

4. Learned Counsel for Petitioner submits that Petitioner samiti is a society registered under the provisions of Rajasthan Societies Registration Act, 1958. It got registration on 11.8.2000 vide Annexure-1. The society was established with objects to take care of grievances of small traders, in particular, under Housing Board scheme and to create healthy atmosphere amongst traders in the area. To promote the object, Petitioner samiti made a representation to the Board for allotment of shops for around 250 members. The Board was created pursuant to the Rajasthan Housing Board Act, 1970 (for short "the Act of 1970) and, accordingly, it is obligatory on their part to relegate its business as per provisions of the Act of 1970. Section 26 of the Act of 1970 deals with the powers and duties of the Board to undertake housing schemes. Section 28 of the Act of 1970 deals with matter to be provided by housing scheme which includes Board's powers regarding sale, letting or exchange of any property comprised in the scheme. The disposal of property by Rajasthan Housing Board is to be as per the provisions of Disposal of Property Regulations, 1970 (for short "the Regulations of 1970"). Regulation 3 provides that Regulations shall be administered by the Chairman of the Board subject to general guidance and resolution of the Board. The Chairman has been given powers to delegate its powers to any of its officer or officers. Regulation 4 of the Regulations of 1970 deals with execution of agreements whereas Regulation 5 deals with the disposal of property. Regulation 23 of the Regulations provides for constitution and functions of Property Allotment Committee.

5. It is urged that Board had taken a cautious decision for allotment of shops to the members of Petitioner samiti and it had processed the matter as per the provisions of the Act of 1970 and as per Regulations. The interference against allotment has been made at the instance of the State Government though powers of the State Government are quite limited as provided u/s 60 of the Act of 1970. The State Government initiated an enquiry into the matter and the

Committee so constituted therein not only submitted enquiry report but gave its suggestions, which includes even cancellation of allotment. The action of the State Government is malicious and otherwise suffers from official bias. It so happened that on 27.9.2000 State Government wrote a letter to the Board for allotment of a plot to one Mr Bhagwan Das Gupta. The aforesaid request of the State Government was turned down by the Board. The said Mr Gupta, being Dy Secretary of the Urban Development & Housing Department, was made Chairman of the enquiry committee. The outcome of the enquiry is nothing but annoyance of Mr Gupta, who was not bestowed favour by the Board. The allotment of land to the members of the samiti was not on throw away price, rather it was double the amount of reserve price. It is also a fact that the Board could not sale its 650 shops earlier thus it is on account of official bias that allotment of land is to be cancelled though allotment of land is at the rate of Rs. 6100/- per square metre. This is more so when sale of land to a group is permissible under Regulation 29 thus even there was no illegality in taking decision for making allotment of land to a group.

6. According to learned Counsel for Petitioner samiti, even if enquiry report is looked into, it is based on presumptions, inasmuch as the society never submitted proposal for establishment of cloth market, however, report makes a reference for establishment of cloth and readymade garment market. This itself shows that as to how the enquiry has been conducted by the Respondent State Government. The enquiry cannot be conducted at the instance of the State Government in view of its limited powers u/s 60 of the Act of 1970. The Respondent Board is an autonomous body thus free to regulate its own business and the State Government has no jurisdiction to interfere in day-to-day business of the Board, however, ignoring aforesaid, enquiry has been conducted at the instance of the State government. The committee had even ignored the fact that Housing Commissioner of the Board was part of the decision process for allotment of land to the samiti thus could not have changed his own decision. Accordingly, enquiry report and recommendations made therein are totally illegal.

7. To support contentions, learned Counsel for Petitioner cited various judgments. Referring to the judgment in case of Poonam Verma and Ors. v. DDA 2007 (13) SCC 154 , Bangalore Development Authority and Others Vs. R. Hanumaiah and Others, , K.K. Bhalla Vs. State of M.P. and Others, and U.P. Financial Corporation and Others Vs. Naini Oxygen and Acetylene Gas Ltd. and Another, , it is submitted that State Government cannot interfere in day-to-day business as held in the judgments so referred.

8. Argument regarding application of promissory estoppel in regard to 86 members has been taken. These members said to have deposited full amount and entered into tripartite agreement with many financial institutions for loan. Reference of the judgment in the case of Sunil Pannalal Banthia v. C & I D Development Corporation of Maharashtra Limited and Anr. 2007 (1) WLC (SC) 794 has been given.

9. It is submitted that even in a contractual matter, writ can be maintained. This is more so when doctrine of severability applies in this case inasmuch as even if allotment was made to the minors or more than one allotments to one family, the Respondents cannot undo the whole process even for others. Learned Counsel for Petitioner samiti lastly gave justification for entering into the agreement before registration of the samiti. It is submitted that a group can negotiate in the matter, more so when samiti got registration thereafter thus even if agreement with the society is prior to its registration, there is nothing wrong in it.

10. Learned Additional Advocate General, appearing for the State, submits that decision of the State Government to hold enquiry and even cancel allotments is not only within its powers, as exists u/s 60 of the Act of 1970 but it is based on reasoning. The action of the State Government is not at the instance of Mr BD Gupta, rather it was taken independently. The complaints were received from all concerned including Board's Karmchari Sangh. Shri BD Gupta, being the Dy Secretary, UDH Department was nominated by the State Government as the Chairman of the enquiry committee. The aforesaid is only a coincidence. Allegations of official bias will not stand if the facts of this case are looked into. Though samiti was not even registered, a decision to allot the land to the members of the samiti was taken at the stage when the samiti was not having list of its members to reckon the number. Decision of the Board to make allotment to members of unregistered society and without its definite membership, shows in what manner a decision for allotment was taken. The whole bungling was at the instance of the Chairman of the Board and few other officers. The aforesaid is coming out from the note-sheet wherein Housing Commissioner raised objections regarding allotment of plots i.e. at the stage when the samiti could not submit its list of members and registration charges within a period of fifteen days as was agreed in the agreement. Even, lately, only 86 persons could deposit the amount. On scrutiny, it was found that few of them are minor, in few cases one family has been given two plots and, that too, when person is not related to the business like a doctor by profession. Referring to para 2 and 7 of minutes of the meeting dated 3.8.2000 at Annexure-7 it is submitted that on account of failure in furnishing list of members along with the registration charges within fifteen days, the Board should have cancelled the agreement instead of allotting the plots. A specific reference of the note sheet at Annexure R/1/4 has been given to show as to how the matter has been dealt with by the Board. It was mainly to focus that though the Housing Commissioner made recommendation not to proceed in the matter for various reasons given therein, the then Chairman separately issued directions to allot the land. The enquiry was accordingly ordered to be conducted by the State Government. In the enquiry, it was found that the neighbouring lands had been auctioned at the rate of Rs. 24,000/- to Rs. 42,000/- per square meter as against the allotment in the present case at the rate of Rs. 6100/- per square meter.

11. Referring to the provisions of the Act of 1970 and the Regulations of 1970 it

is submitted that for allotment of land, Housing Board is required to ascertain as to whether allotment sought by the person has already been allotted other land or not, however, without undertaking aforesaid exercise, the action for allotment of land was taken in haste. Looking to the aforesaid, it is submitted that even if a reference of establishment of cloth and readymade garment market has come though the initial agreement is not indicating the aforesaid, enquiry does not vitiate. In the present matter, the State Government has initiated action to stop fraudulent act at the instance of some of the official of the Board.

12. Learned Additional Advocate General has given reference to Annexure-R/1/6 dated 26.11.2000. This was the factual report submitted pursuant to complaint made by Board's Karmchari Sangh. Therein, at item No. 12, the whole matter was dealt with, which is sufficient to show that allotments were made in an illegal manner and that too in favour of suspicious person(s). He has made reference to the judgment of the Hon'ble Apex Court in the case of Rajasthan Housing Board and Another Vs. G.S. Investments and Another, wherein, the Hon'ble Apex Court dealt with provisions of Section 60 of the Act of 1970 and it was held that the State Government can issue necessary direction if bungling has been done in auction of commercial plot. According to learned Counsel, the issue involved herein is covered by the judgment aforesaid.

13. Learned Counsel for the Respondent No. 2-Board submits that writ petition itself is not maintainable. If at all Petitioner samiti is aggrieved by inaction pursuant to the agreement or allotment letter, remedy to seek specific performance is available before the civil court. Jurisdiction of this Court cannot be invoked for the prayers made in the writ petition. Reference of the provisions of Specific Relief Act of 1960 has been given for the purpose. It is further submitted that the matter is otherwise essentially a contractual one and writ petition cannot be maintained even for that reason. Learned Counsel for Respondent No. 2-Board has adopted other arguments of learned Additional Advocate General.

14. I have considered submissions of learned Counsel for parties and scanned the matter carefully.

15. The Housing Board was created pursuant to the Act of 1970 and so far as disposal of property is concerned it has to be governed by the Regulations of 1970. The Board is expected to work within the frame work of the Act and Regulations made to achieve objects for which it was created. Thus, the Board is expected to take actions in the best interest of the Board apart from public to carry out development plans.

16. If the facts of this case are looked into then they are quite shocking. The first decision by the Board for making allotment of land is dated 29.5.2000. It is at the time when Petitioner samiti was not even registered. There is no record to show that samiti was having a list of its members. Original record of the Housing Board was called upon by the court to look into each and every aspect of the

matter. Minutes of the meeting dated 29.5.2000 shows a settlement between the samiti and the Board whereas a settlement can be arrived at if there exist a dispute, however, the way matter has been taken up shows no basis for settlement with an unregistered society having no material to even disclose its membership. The office of the Board had not even taken care to see as to whether society is having details of the members, yet on 3.8.2000 allowed the samiti to furnish list of its members within a period of fifteen days along with registration charges. The remaining payment was to be made within one month of registration. It was made clear that in case of failure to make payment in time, the agreement would liable to be cancelled.

17. It is seen from the record that list of 200 members was not furnished along with registration charges within fifteen days, rather for months together. Yet, the then Chairman of the Board, with the help of few officers, decided to proceed in the matter. The outcome of the aforesaid is allotment of land to the minors, that too, child at the age of 3 to 4 years. In many cases allotment of more than one plot to same person/ family in violation of provisions of the Act and the Regulations. In some cases, to the professional persons having no relation with the business. Aforesaid was ignored despite it was brought to notice by the Housing Commissioner, who then made recommendations not to proceed with the matter. Para of relevant note sheet are quoted thus -

18. Perusal of the aforesaid note sheets show that Housing Commissioner made comments that Ashok Goyal is doing his property business in the name of Jagannath Properties and he is instrument behind the process. It was noticed that to sell the plot, he had even distributed pumplets. Yet, ignoring the recommendations, the then Chairman took a decision in haste to allot the land. The way action has been taken by the Board cannot be said to be in their interest, rather perusal of the original record shows bungling at the instance of the then Chairman of the Board (since deceased) and few other employees. In the aforesaid background, I have even seen original record to find out as to who are the beneficiaries of the allotment. In few cases, it is minor not legally entitled to enter into any agreement. In other cases, more than one allotment to one and same person and in few cases professionals have been allotted shops. This is apart from the allotment of more than one plot to same family members. One lady namely Bhagwati Devi Rawat sought allotment of land for her husband and son thus, she herself was not interested to do the business. This is apart from the allegations regarding involvement of one Shri Ashok Kumar Goyal, doing the property business and, after agreement, he distributed pumplets for sale of plots. This is obviously with a view to get members at his sweet-will. It is also surprising that the samiti had not furnished list of the members before entering into agreement and it was not even registered, still, was allowed to enter into agreement without verification of the facts. The record of the case speaks volumes, the way transaction has taken place.

19. The question now comes as to whether the State Government, having

received complaints, be a silent spectator or it has jurisdiction to interfere.

20. In the case of Rajasthan Housing Board and Anr. v. GS Investments and Anr. (supra), the Hon"ble Apex Court approved cancellation of auction at the instance of the Government. It was a writ petition by the highest bidder who was denied allotment of land finding it to be much low to the market value. Para 6 and 7 of the judgment are quoted for ready reference -

6. We have given our careful consideration to the submissions made by the learned Counsel for the parties. As mentioned earlier, after getting report of the bungling done in the auction, the State Government had passed an order on 22.2.2002 staying all further proceedings in connection with the auction. On 20.3.2002 disciplinary proceedings had been initiated against the concerned officers and they were placed under suspension and a further direction was issued that in future no auction shall be held through any agency including Satish Auction House, which had conducted the auction in question. A specific order was passed on 3.4.2002 disapproving the auction held on 20.2.2002 and it was mentioned in the order that the same was being done in exercise of powers conferred by Section 60 of the Rajasthan Housing Board Act. Section 60 of the said Act reads as under: -

60. Government's power to give directions to the Board .-The State Government may give the Board such directions as in its opinion are necessary or expedient for carrying out the purposes of this Act, and it shall be the duty of the Board to comply with such directions.

7. The language of the provision is very clear and it empowers the State Government to give directions to the Housing Board as in its opinion are necessary or expedient for carrying out the purposes of the Act. The section further enjoins that it shall be the duty of the Board to comply with such directions. The section is couched in very wide language and the Housing Board has to comply with the directions issued by the State Government. Therefore, the State Government was fully empowered to issue the directions whereby it disapproved the auction held on 20.2.2002 and no exception can be taken to such a course of action. The directions have been issued in the interest of the Housing Board to generate revenue and to augment its finances, it cannot be faulted with on any ground.

21. In para 10 of the judgment, following was further held thus -

10. The other question which requires consideration is what are the contours of power which the High Court would exercise in a writ petition filed under Article 226 of the Constitution where the challenge is to cancellation of an auction held by a public body where the prime consideration is fairness and generation of public revenue. This question has been examined by a catena of decisions of this Court. In a recent decision rendered in Master Marine Services Pvt. Ltd. Vs. Metcalfe and Hodgkinson Pvt. Ltd. and Another, where after consideration of several earlier decisions, the Bench to which one of us was a party, summarized

the legal principle as under in paragraphs 11 to 15 of the said reports: -

11. The principles which have to be applied in judicial review of administrative decisions, especially those relating to acceptance of tender and award of contract, have been considered in great detail by a three Judge Bench in *Tata Cellular Vs. Union of India*, . It was observed that the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favouritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down. (See para 85 of the reports, SCC para 70)

12. After an exhaustive consideration of a large number of decisions and standard books on Administrative Law, the Court enunciated the principle that the modern trend points to judicial restraint in administrative action. The Court does not sit as a court of appeal but merely reviews the manner in which the decision was made. The Court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise, which itself may be fallible. The Government must have freedom of contract. In other words, fairplay in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi- administrative sphere. However, the decision must not only be tested by the application of Wednesbury principles of reasonableness but also must be free from arbitrariness not affected by bias or actuated by mala fides. It was also pointed out that quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure. (See para 113 of the reports, SCC para 94.)

13. In *Sterling Computers Limited and Others Vs. M and N Publications Limited and Others*, it was held as under: (SCC p. 458, paras 18-19)

18. While exercising the power of judicial review, in respect of contracts entered into on behalf of the State, the Court is concerned primarily as to whether there has been any infirmity in the "decision making process."... By way of judicial review the Court cannot examine the details of the terms of the contract which have been entered into by the public bodies or the State. Court have inherent limitations on the scope of any such enquiry. But at the same time ... the Courts can certainly examine whether "decision making process" was reasonable rational, not arbitrary and violative of Article 14 of the Constitution.

19. If the contract has been entered into without ignoring the procedure which can be said to be basic in nature and after an objective consideration of different options available taking into account the interest of the State and the public, then Court cannot act as an appellate authority by substituting its opinion in respect of selection made for entering into such contract.

14. In *Raunaq International Limited Vs. I.V.R. Construction Ltd. and Others*, it was observed that the award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision, considerations which are of paramount importance are commercial considerations, which would include, inter alia, the price at which the party is willing to work, whether the goods or services offered are of the requisite specifications and whether the person tendering is of ability to deliver the goods or services as per specifications.

15. The law relating to award of contract by State and public sector corporations was reviewed in *Air India Ltd. Vs. Cochin Int., Airport Ltd. and Others*, and it was held that the award of a contract, whether by a private party or by a State, is essentially a commercial transaction. It can choose its own method to arrive at a decision and it is free to grant any relaxation for bona fide reasons, if the tender conditions permit such a relaxation. It was further held that the State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision making process, the Court must exercise its discretionary powers under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The Court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the Court should interfere.

22. As against aforesaid judgment, learned Counsel made reference of other judgments of the Hon'ble Apex Court itself. It was urged that judgment in the case of *Rajasthan Housing Board and Anr. v. GS Investments and Anr.* be treated per in curium as it has not considered its earlier judgments where different view was taken.

23. I have considered the judgment referred by the learned Counsel for Petitioner in the case of *Poonam Verma and Ors. (supra)*. The issue therein was regarding Central Government's powers to provide reservation for allotment of flats. In reference to Section 41 of the Delhi Development Act, 1957, it was held that it cannot interfere in carrying out the plans by the authority in a particular scheme, the Central Government can take policy decision only. If the facts of the aforesaid case are looked into, therein, the Central Government issued direction for few left out registrants of the scheme. The action was tried to be justified on the ground that few flats are lying vacant. The Hon'ble Apex Court interfered therein looking to the facts of that case.

24. In the case of Bangalore Development Authority and Ors. (supra) the Government's action to re-convey part of the land was challenged, therein, the land was acquired and possession was taken. The land holder received the compensation. At that stage, Government directed Bangalore Development Authority to re-convey the part of land. The aforesaid decision was taken pursuant to direction of the Chief Minister. Looking to the provisions of Land Acquisition Act and illegality in the action for re-conveying a part of acquired land, the Hon''ble Apex Court decided the matter holding that Chief Minister was not authorised to issue directions of the nature mentioned above. Para 51 and 52 are quoted thus -

51. We do not agree with the contention raised by the counsel for the Respondent that the directions issued by the Chief Minister through his note were binding on the BDA or that the BDA was bound in law to re-convey the land in terms of the directions issued in the impugned judgment. It has not been shown that the Chief Minister was authorised to issue the directions to the BDA to re-convey the land. u/s 65 the Government can give such directions to the authority which in its opinion are necessary or expedient for carrying out the purpose of the Act. It is the duty of the BDA to comply with such directions. Contention that BDA is bound by all directions of the Government irrespective of the nature and purpose of the directions cannot be accepted. Power of the Government u/s 65 is not unrestricted. Directions have to be to carry out the objective of the Act and not contrary to the provisions of the Act. The Government can issue directions which in its opinion are necessary or expedient for "carrying out the purposes of the Act.

52. Directions issued by the Chief Minister in the present case would not be to carry out the purpose of the Act rather it would be to destroy the same. Such a direction would not have the sanctity of law. Directions to release the lands would be opposed to the statute as the purpose of the Act and object of constituting the BDA is for the development of the city and improve the lives of the persons living therein. The authority vested with the power has to act reasonably and rationally and in accordance with law to carry out the legislative intent and not to destroy it. Direction issued by the Chief Minister run counter to and are destructive of the purpose for which the BDA was created. It is opposed to the object of the Act and therefore, bad in law. Directions of the Chief Minister is to re-convey the land in terms of the decision rendered by the High Court in the impugned judgment i.e. Writ Appeal No. 727 of 1989. Since we are setting aside the impugned judgment, the BDA as per directions issued by the Chief Minister cannot reconvey the land to the Respondent in terms of the decision rendered by the High Court in the impugned judgment i.e. Writ Appeal No. 727 of 1989.

25. In para 58 of the judgment, it has further been held that the State Government cannot interfere in day-do-day functioning of the Bangalore Development Authority, however, perusal of para 51 shows that the Government

can issue directions which, in its opinion, are necessary or expedient for carrying out purpose of the Act. Since in the aforesaid case, direction was against the interest of the Authority and was not expedient for carrying out the purpose of the Act, it was held to be illegal.

26. Same is the position in the case of KK Bhalla (supra) as, therein also, a direction at the instance of the Chief Minister to allot land to Proprietor of Dainik Bhaskar news paper and others was taken against the provisions of the Act and against interest of Jabalpur Development Authority. Same is the position in the case of UP Financial Corporation (supra).

27. In view of aforesaid, it comes out that as when State Government acted contrary to the provisions of law or against interest of the Development Authority, their action was found to be illegal and beyond the powers vested in them. Whereas, in the case of Rajasthan Housing Board (supra) itself, wherein, the decision of the State Government was in the larger interest of the Board, it was upheld.

28. The Government, no doubt, cannot interfere in the day-to-day functioning of the Board, however, if bungling is reported, it may cause an enquiry with follow up directions. By doing so, interest of the Board is saved.

29. In the present matter, same is the position. In the enquiry, when it was seen the way matter has been taken up and allotments were made in an illegal manner, the direction to cancel the same cannot be held to be beyond jurisdiction of the State Government. Accordingly, I do not find it to be a case of official bias. Before appointment of Mr BD Gupta by virtue of his office, Housing Commissioner had already made detail remarks against decision for allotment of land. Even if it is assumed that Mr Gupta was annoyed with Housing Board, inquiry report does cause benefit to him or personal loss to any officer of the Board with whom Mr Gupta was said to be annoyed. Report is rather in the interest of the Board.

30. The question of treating the judgment in the case of Rajasthan Housing Board (supra) as per in-curium, does not arise as the aforesaid judgment does not go contrary to the judgment in the case of Bangalore Development Authority (supra) and other judgments rather therein also it has been held that Government can give directions, which, in its opinion, are necessary or expedient for carrying out the purpose of the Act. Hence, action of the Government is required to be seen as to whether it is necessary and expedient for the purpose of the Act. This all depend on facts of each case. Thus, every matter is required to be looked into on its facts.

31. The question of promissory estoppel has also been raised by learned Counsel for Petitioner specially in reference to 86 members of the samiti. The plea for estoppel has been taken against Housing Board, however, if present matter is looked into, enquiry and follow up action are at the instance of State Government. The aforesaid is coming out because even the Petitioner has

challenged the jurisdiction of the State Government for initiation of enquiry and for a direction for follow up action and, as I have already held that State action in the matter is within their powers u/s 60 of the Act of 1970, question of estoppel against the Board does not arise because the Board is now acting as per directions of the State Government. The doctrine of estoppel does not apply if action is against provisions of law or based on fraud and misrepresentation. In the present matter, the allotment of plots is to the minors, in many cases two plots to one and the same person and other similar illegality. Thus, question of promissory estoppel does not arise in this case.

32. The question further remains as to whether jurisdiction of this Court under Article 226 of the Constitution of India can be invoked for seeking possession of the plots.

33. In my opinion, such a prayer cannot be sought by filing a writ petition. If, at all, there was an agreement and allotment, Petitioner could have availed the remedy of seeking performance. The arguments so raised by the Respondents are not elaborated much because on merit itself I am not inclined to accept the writ petition.

34. In view of aforesaid, I am not even discussing the issue regarding maintainability of the writ petition being a contractual matter.

35. Looking to the discussion made above, I do not find any merit in the writ petition. Accordingly, same is dismissed. Cost is made easy.

36. It is made clear that amount so deposited by members of the samiti towards allotment is directed to be refunded to them with interest at the rate of 10% per annum within one month from today, if not refunded as yet.