(2006) 12 PAT CK 0055

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 9085 of 2006

Prem Chandra Mishra APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 08-12-2006

Acts Referred:
Bihar Industrial Area Development Authority Act, 1974 — Section 2, 3, 6

Citation : (2007) 1 BLJR 556

Hon'ble Judges : Rekha Kumari, J;Aftab Alam, J

Bench : Division Bench

Advocate : Mahendra P.D. Gupta, for the Appellant; P.K. Shahi, General, Vikas Kumar and Vikash Kumar, Tarakant Jha Ranjeet Kumar Das and Tuhin Shankar, for the Respondent

Judgement

Aftab Alam, J.—This writ petition questions the action of the State Government in granting to respondent No. 5 (M/s Holi Cow Pictures Pvt. Limited through its Director Prakash Jha) lands in the industrial areas in Patna Hajipur, Muzaffarpur, Sitamarhi and Buxar. The petitioner alleges that respondent No. 5 was given lands in return of services rendered by the aforesaid Prakash Jha to help the Chief Minister win the last Assembly elections. The action of the Government amounted to doling out valuable State property as largess at throwaway prices for political considerations.

2. The writ petition is filed, claiming it to be, in public interest. The petitioner describes himself as the Chief Spokesperson of the Indian National Congress, a recognized political party. The petitioner''s party contested the previous election in alliance with the party that was in power at that time. The alliance got worsted in the election and Congress party was returned as a poor fourth. Respondent No. 5 is a private limited company; it is represented through a person who is well-known as a film-maker but who also takes part in electoral politics. In the supplementary affidavit filed by the petitioner, it is stated that Prakash Jha had fought the 2004 Lok Sabha Election from the Bettiah Lok Sabha Constituency. It

is further stated that in the last assembly election held in October-November, 2005 though not a candidate himself, he addressed public meetings jointly with the present Chief Minister in various parts of the State. As both the petitioner and respondent No. 5 are political persons, it is not surprising that the pleadings are heavy with political invectives.

3. In the writ petition, it is stated that the Bihar Industrial Area Development Authority (hereinafter referred to as "the Authority") has given large areas of land at Patna, Hajipur, Sitamarhi and Muzaffarpur to respondent No. 5 at throwaway prices. It is further stated that allotment of lands was made to respondent No. 5 without issuing any notice, inviting competitive bids. It is alleged that the lands were granted to respondent No. 5 at very cheap rates without following the established norms and procedure. According to the petitioner, the market value of the lands was much higher. For instance, in Patliputra Industrial Area, Patna one acre land was given to respondent No. 5 for Rs. 14,65,000.00. This piece of land should have fetched to the State about Rs. five Crores if allotment was made on the basis of competitive bidding. It is also stated that in a blatant show of favour, respondent No. 5 was also given the Authority''s Office building along with the land in Patliputra Industrial Area. The favour was crowned by putting a very low value for the building. It is also alleged that the action of the State Government/Authority in granting to respondent No. 5 lands at different places was an act of malafide and called for institution of criminal cases against the concerned people and an investigation by the Central Bureau of Investigation.

4. The writ petition, in brief, makes three allegations. (i) lands were given to respondent No. 5 at different places in the State without issuing any notice, inviting bids and at value far below the market price of those lands, (ii) the allotment was made without following any norms or procedure and (iii) the action of the State Government caused heavy loss to the State; the action was based on political considerations and it was, therefore, malafide.

5. The Advocate General, appearing for respondent 1 to 4 met the petitioner''s challenge quite aggressively. He disputed the maintainability of the writ petition as PIL and submitted that it was filed as a ploy to derive political mileage. He further submitted that the allegations made in the writ petition were an expression of malice and arose from complete ignorance of facts and the correct legal position. The advocate General submitted that lands were given on lease to respondent No. 5 not with the intent to make any profit from the transfer of lands per se but in the much larger interest of promoting industrial growth of the State. He stated that the State Government made industrial policies for the industrial growth and development of the State. The industrial policies contained incentive packages, e.g., tax concessions, providing land, electricity etc. at concessional rates and similar other facilities to the entrepreneurs. The Advocate General also referred to the Bihar Industrial Area Development Authority Act, 1974. Section 2(f) of the Act defines Industrial Area to mean an area for which

an Authority is constituted u/s 3 of the Act. Section 3 empowers the State Government to constitute an Authority for any area or areas for development and promotion of industry. Section 6 deals with the powers and duties of the Authority and makes it responsible for planning, development and maintenance of the industrial area and the amenities thereto and allotment of land, execution of lease and cancellation of such allotment or lease etc. The Advocate General submitted that respondent No. 5 made applications before the Authority for lands for setting up multiplexes and shopping malls. The respondent''s offer to make private investment that would promote industrial growth of the State was first considered by the Project Clearance Committee and the Committee''s recommendations were approved by the Authority''s Board of Directors. It was only after the proposals were cleared by the PCC and approved by the Board that the respondent was allotted lands in industrial areas at different places. The Advocate General also submitted that the applications of respondent No. 5 were considered by the PCC along with a large number of applications from other entrepreneurs for setting up different kinds of industrial units. He further submitted, in the present dismal condition with regard to private investments for the industrialization of the State there were no seekers of land in the industrial areas and the Authority had more land at its disposal than there were requests for allotment for land. In such circumstances, it was meaningless to invite any bids for allotment of land and the petitioner''s objection on that score was completely unfounded. Coming next to the consideration charged from respondent No. 5 the Advocate General submitted that the value/cost of land in industrial areas was fixed on the basis of letter No. 12178, dated 17.07.1982 issued by the Commissioner and Secretary, Department of Industries, Government of Bihar. The letter provided that the value of land should be fixed, taking into consideration the cost of acquisition of the land and the cost of its development under different heads. It also provided for enhancement of the value so fixed @ 10% annually. The considerations for the lands allotted to the respondent were fixed strictly on that basis. In this connection, the Advocate General further submitted that the land allotted to the respondent in Patliputra Industrial Area was allotted earlier in the year 1996 to one M/s Dynax Digital Studio (Ind) Pvt. Ltd. for a consideration of Rs. 5.5 lakhs. At that time, no objection was raised from any quarter regarding the value of the land because no political advantage was possible by raising any controversy about that allotment. The allotment made in favour of M/s Dynax was cancelled for breach of the terms of allotment and the same piece of land was given to the respondent. The consideration for the allotment made in this year was fixed by raising the land''s value (fixed in 1996) @ 10% annually, as provided in the Government''s letter dated 17.07.1982. The Advocate General submitted that the respondent was charged proper considerations for the lands allotted to it. Clarifying the issue further, the Advocate General submitted that initially allotments were made to the respondent at commercial rates, as recommended by the PCC. But the respondent made a representation pointing out that in the State Government''s Industrial Policy, 2003, Cinema was given the status of Industry and Cinema hall was deemed an industrial unit. Hence, all benefits, facilities and concessions accorded to industries should also be extended to multiplexes. The Authority found substance in the respondent''s representation and allowed its request for allotment of lands at the much lower industrial rates. In reply to the petitioner''s allegation that the Authority gave even its Office building in the Patliputra Industrial Estate to the respondent, Mr. Advocate General said that it was true that the Office of the Authority stood on a portion of the piece of land allotted to the respondent, but the respondent had agreed that in the constructions made by it, it would provide office space/hall with modern facilities for the Authority. The bargain would thus provide a larger and better Office space/hall to the Authority.

6. Mr. Tarakant Jha, Senior Advocate appearing for respondent No. 5 similarly argued that this writ petition was an abuse of Public Interest Litigation and deserved to be rejected outright.

7. The reply given by the Advocate General to the petitioner''s allegations is direct and simple. Mr. Jha submitted that those allegations were politically inspired. We might have been inclined to accept the submissions made by the Advocate General and Mr. Jha but for the fact that there were some glaring inconsistencies in the counter affidavits filed on behalf of the State and respondent No. 5 that we found impossible to overlook. Besides, the submission made by the Advocate General, raised some questions of its own.

8. The first question that arises is whether cinema can be said to be an Industry and whether the State Government was justified in giving lands to respondent No. 5 for setting up multiplexes and shopping malls at the very low industrial rates. The Advocate General''s reply to this question too was equally forthright and terse. Learned Counsel submitted that whether or not Cinema was an industry was a matter to be judged by the State Government and if the policy document of the Government describes Cinema as an industry that should be the end of the matter and the Court should not substitute its own idea of industry for those defined in the Industrial Policy, 2003.

9. To a large extent, the submission of the Advocate General is unexceptionable. It is indeed for the State Government, to decide what may fall within its definition of industries. But the question is whether the provisions of the Industrial Policy, 2003 are being properly construed and whether Cinema can be said to be an Industry even under Industrial Policy, 2003.

10. Before proceeding to examine the submission of the Advocate General on the point, it would be proper to set out certain facts clearly. Respondent No. 5, according to its case, made six applications for grant of lands at different places between January 27, 2006 to February 22, 2006. Its representative was called for an interview before the PCC on March 01, 2006. The allotment letter for the land in Patliputra Industrial Area was issued by the Authority in its favour on 25.3.2006. Before that, on a representation made by the respondent, its claim

for allotment of lands to it at industrial rates was allowed. It may further be noted here that at the time the respondent''s applications for lands were under consideration the State Government had already framed a new Industrial Policy called the Industrial Incentive Policy, Bihar, 2006, that came into effect from 1.4.2006. In the Industrial Incentive Policy, 2006 as it was initially framed, there was no mention of Entertainment sector or the Cinema being part of Industry and the provisions of the Industrial Policy, 2003, on which reliance is placed by the Advocate General, found no place in the new policy of the year 2006. It may be stated here that after the hearing of the case was concluded on 20.11.2006 an affidavit was filed on 22.11.2006 bringing on record a notification issued by the Industrial Development Commissioner, Government of Bihar under his memo No. 1406, dated 12.08.2006. It is for making some clarification in the Industrial Incentive Policy, 2006 and it states that Tea processing and Entertainment sector had the status of industry; hence, the two sectors would be entitled to all the benefits as Industries.

11. In the aforesaid facts and circumstances, it is clear that all concerned had every reason to believe that the respondent''s claim for lands for setting up multiplexes and shopping malls in industrial areas and at industrial rates might not be tenable with the coming into force of the new Industrial Incentive Policy, 2006. As a matter of fact, one of the main arguments advanced by the petitioner in support of the plea of malafide was that the Authority proceeded to give lands to the respondent at the most unusual and unprecedented speed with the view to beat the coming into operation of the new Industrial Incentive Policy, 2006. But leaving the issue of malafide for the present, I revert back to the question about cinema being industry.

12. To the Advocate General, it was really no issue. According to him, Clause 10 of the Industrial Policy, 2003 was quite clear and it did not allow any room for controversy on this score. Clause 10 of the Industrial Policy, 2003 reads as follows:

10. Entertainment industry: This sector would also enjoy the status of industry, and arrangements would be made to provide all such benefits as are available to industry. To promote entertainment industry, the following steps would be undertaken:

(i) Development of different entertainment centres and to promote private investment therein such as cinema halls, amusement parks, auditoriums, mini theatres, family entertainment centres etc.

(ii) Privatisation of centres of nature-tourism.

(iii) Site selection and allotment of commercial locations based on master plan for entertainment centres.

(iv) Institutional finance and financial incentives as for other industries.

13. At the first sight, the Advocate General appears to be absolutely right. But on

closer scrutiny it seems possible to argue that the true import of the policy document was quite different from what is sought to be represented by him.

14. It may first be noted that ''industry'' is not an undefined expression in the policy document. The expression ''Industrial Unit/Industrial Concern'' is defined in Clause 2 of Annexure 1 at the end of the document. The definition has a long list of Industrial Units/Industrial Concerns, sub-divided into four categories, but cinema in particular or even Entertainment Industry generically speaking do not find place in the definition. Examined in light of the definition of Industrial Unit/ Industrial Concern, it would appear that the main body of the policy document begins with a preamble, followed by Proposal at Clause 1 and Objectives and Strategy at Clauses 2 and 3 respectively. It goes on to declare the intention of the State Government to undertake steps and accord facilities and concessions with a view to encourage and promote industrial growth. Clause 4 of the document deals with Infrastructure Facilities, Clause 5 with Lands, Clause 6 with Transport, Clause 7 with Telecommunications, Clause 8 with Energy, Clause 9 with Tourism Industry and Clause 10 with Entertainment Industry. The rest of the body of the document sets out the various incentives, facilities and benefits to a new industrial unit or to an existing unit, undertaking extension/modernization/ diversification etc. Seen thus, it is possible to argue that the development of entertainment industry is one of the steps aimed at attracting the kinds of Industrial Units/Industrial Concerns that are to be recognized as Industry within the meaning of Annexure 1 of the Industrial Policy. In this regard, it may also be added that all the facilities and benefits promised to the Entertainment Industry are enumerated in Sub-clauses (i) to (iv) of Clause 10 and are confined only to those Sub-clauses which are as follows:

(i) Development of different entertainment centres and to promote private investment therein such as cinema halls, amusement parks, auditoriums, mini theatres, family entertainment centres etc.

(ii) Privatisation of centres of nature-tourism.

(iii) Site selection and allotment of commercial locations based on master plan for entertainment centres.

(iv) Institutional finance and financial incentives as for other industries.

15. The matter may be seen from yet another angle. The industrial area where industrial units are set up and a large number of people are working may require, as supporting and ancillary facilities, a number of establishments, such as a provision store, a drug store, may be a school for children or in the Indian context, even a place for worship. All or any of these establishments may be essential for an industrial area but none of these can be, said to be an Industrial Unit/Industrial Concern in itself. Further, in case of a retail drug store, it can not be allowed the benefits and the incentive package simply by calling it an extension of the drug industry.

16. For the reasons stated above, I find it difficult to unquestionably accept the submission that Cinema is an Industry within the meaning of the Industrial Policy, 2003 and it must, therefore, be accorded all facilities and benefits available to industry, including allotments of land in industrial area at the much concessional industrial rates. In this case, however, I see no need to make a definite pronouncement as to whether or not Cinema is an industry under the Industrial Policy, 2003 for the purpose of allotment of land at concessional rates for other reasons to which I now advert.

17. In Course of hearing, it was noticed that there were some material and irreconcilable differences in the statements made in the counter affidavits filed on behalf of the State and respondent No. 5 respectively. For instance, in paragraph 18 of the counter affidavit filed on behalf of respondents 1 and 2 (the State), it was stated that M/s Holi Cow Pictures Pvt. Limited submitted its proposal for allotment of lands at different industrial areas to the Authority. The Project Clearance Committee of the Authority made its recommendations after considering those Proposals along with a number of other applications in its meetings held on 8.2.2006 and 1.3.06. The PCC''s recommendations were approved by the Authority''s Board in its meeting held on 8.3.2006 along with 95 other cases ''in the same manner as laid down''. ''Accordingly, the land was allotted to M/s Holi Cow Pictures Pvt. Limited on lease basis on commercial rates at following places.

1. Patliputra Industrial Area 1.0 acre

2. Patliputra Industrial Area 10400 sq.ft

3. Buxar Industrial Area 1.00 acre

4. Aurangabad Growth Centre 3.00 acre

5. Hajipur Industrial Area 1.18 acre

6. Muzaffarpur Industrial Area 1.50 acre

7. Sitamarhi Industrial Area 2.00 acre

18. On the other hand, respondent No. 5 filed a supplementary affidavit for correcting and clarifying certain statements made on its behalf in its counter affidavit. In paragraph 3 of the supplementary affidavit, a list was given of the applications with dates made on its behalf for allotment of lands in the different industrial areas. This list is as follows:

(a) For Patliputra Industrial Area On 27.1.06

(b) For Hajipur Industrial Area On 27.1.06

(c) For Sitamarhi Industrial Area On 6.2.06

(d) For Muzaffarpur Industrial Area On 6.2.06

(e) For Buxar Industrial Area On 21.2.06

(f) For Additional land at On 21.2.06

Patliputra Industrial Area

19. In paragraph 5 of the supplementary affidavit, it was stated that application for allotment of land at Patliputra Industrial Area was made on 27.1.2006. In that regard, a call letter, dated 25.02.2006 was issued by the Authority asking the respondent to appear for an interview on 1.3.2006. The allotment of land was made after clearance and screening by the PCC and the Authority''s Board vide letter, dated 25.3.2006. Similarly, for some additional land in Patliputra Industrial Area, respondent No. 5 made application on 21.02.2006. It received the interview letter, dated 23.02.2006 and the additional land was allotted after clearance and screening by the PCC and the Authority''s Board vide letter, dated 25.03.2006.

20. The first anomaly that appears from the respective statements made on behalf of the State and respondent No. 5 is that three acres land was given to M/s Holi Cow Pictures Pvt. Limited at Aurangabad Growth Centre even though it did not ask for any land there. It further appears that for the first time it received call letters dated 23.02.2006 and 25.02.2006 asking it to appear for an interview before the PCC on 1.3.2006 and yet in the State''s affidavit, it. was stated that allotment of lands at some places was cleared by the PCC on 8.2.2006.

21. In view of the aforesaid (and some other) inconsistencies, respondent No. 5 was directed to produce copies of all its applications along with Project Reports submitted to the Authority. The Advocate General was similarly asked to produce the Authorities'' records relating to allotment of lands to respondent No. 5.

22. Respondent No. 5 filed copies of six applications submitted on its behalf to the Authority and the J.C. to the Advocate General produced two files from the Authority. One contains the minutes of the P.C.C.''s meetings; it has the file No. BIADA/PCC/Sittings -2/2006 (Part) and its subject is stated as ''PCC Proceeding, Patna 8.2.2006/1.3.2006''. The other file has the nothings and the papers relating to allotment of land to respondent No. 5 at Patna. It has the file No. 1-DO/BIADA/2006 and its subject is stated as ''Holi Cow Pictures, Patna relating to allotment of land''. The more we looked into the records, the more we felt shocked at the way the Authority conducts its business and keeps its records. But before adverting to the Authority''s records, it would be appropriate to take a look at the applications submitted to it on behalf of respondent No. 5.

23. There are six applications in all. Five of them are for lands at Patliputra, Patna (dated 27.01.2006), Hajipur (dated 27.01.2006), Muzaffarpur (dated 6.2.2006), Sitamarhi (dated 6.2.2006) and Buxar (dated 21.2.2006). The sixth folder is labelle as ''Patliputra Additional Land''. It only contains a forwarding letter dated 21.2.2006 without any application for any additional land. The other five applications are made in the prescribed form which are filled up in a rather

casual way and are supported by a highly perfunctory Project Report on the basis of which a banker would not give a five rupee loan to anyone. Column 3.2 of the application asking whether the unit was registered with the Authority is replied as N.A. (not applicable). Column 3.2.3 asking about the source(s) of finance is vaguely answered as ''self and associates'' without any indication as to who the ''associates'' might be. The application, however, discloses that Holi Cow Pictures Pvt. Limited is a private limited company in which Prakash Jha holds share to the extent of 99.7%. His annual personal income is stated as Rs. 15 lakhs. The applications for lands at Patna, Hajipur and Buxar are for setting up multiplexes-cum-malls. The applications for Muzaffarpur and Sitamarhi are for setting up malls-cum-multiplexes (the dominant activity not being cinema but a shopping mall). This is presumably due to the fact that the lands allotted in those places were earmarked for commercial purpose. The applications enclose a highly perfunctory Project Report which is all of three pages, besides some architectural designs and drawings. The Project Report states what a wonderful thing is the idea of multiplexes and how advantageous it is to the modern cinema goer. It then refers to the policies of the different State Governments giving tax holidays/ exemptions to cinema, theatres and other forms of entertainment. It makes some comments about the advantages of multiplexes over single screen theatres, puts forward certain assumptions for entertainment tax and entertainment tax exemption and finally coming to the context of Bihar stresses the need to promote Bhojpuri films which in turn would promote Bihari Sub-Nationalism. It points out that Bhojpuri films had of late seen a boom and there was a more positive response from the investors to regional films. There is no cost analysis, market survey or any assessment of the return on investments. As a matter of fact, there is absolutely no indication of the amount of money required for setting up multiplexes and shopping malls and the source of the required finance. There is nothing to indicate the employment opportunities the proposed unit would generate or the revenue it is likely to bring to the State. In fact, the Project Report only seems to seek concessions and privileges rather then offering anything concrete to the State in return. As the Project Report has no reference to market survey or return on investments etc., the same report is enclosed to applications for lands for setting up multiplexes and shopping malls at such different places as Patna, Sitamarhi, Buxar etc.

24. As noted, the application for land at Patna was submitted on 27.01.2006 and for lands at Muzaffarpur and Sitamarhi on 6.2.2006. Though, the industrial areas at Muzaffarpur and Sitamarhi fall under the jurisdiction of the Regional Industrial Area Development Authority, Muzaffarpur, all applications were submitted at Patna in the Office of the Bihar Industrial Area Development Authority. Two days'' later, on 8.2.2006, meetings of the Regional Industrial Area Development Authorities, Patna and Muzaffarpur were held at Patna in which the respondents'' proposals, along with many other applications that lay pending for the past 2-3 years were taken up for consideration. The PCC for the areas falling within the jurisdiction of Regional Office, Muzaffarpur considered the applications for lands

at Hajipur, Sitamarhi and Muzaffarpur. In respect of Hajipur, the PCC observed that the land proposed for allotment to respondent No. 5 was earmarked for commercial purpose from before and the Authority''s Board had taken the decision to take steps for allotment of that piece of land by auction. However, there was no multiplex in Bihar and the proposal for setting up multiplexes and malls deserved encouragement. Hence, the State Government should be moved to cancel the Board''s decision for auction and to allot the land to respondent No. 5 on commercial rates. The Committee finally approved allotment of 1.18 acre of land to respondent No. 5, subject to receipt of approval by the State Government. A similar resolution was taken with regard to allotment of 1.64 acre of land at Muzaffarpur. With regard to the land at Sitamarhi, the Committee recommended for allotment of 2 acres of land subject to first obtaining permission from the State Government. It was also resolved that the determination of price for allotment of lands for construction of multiplexes should also be made at the level of the Government because the land was meant for industrial units (!)

25. On the same date, the meeting of the PCC of Patna Regional Office was also held. This PCC considered applications for lands at Aurangabad Industrial Area and the single proposal of respondent No. 5 for Patliputra Industrial Area. In the minutes of the meeting, it is stated that the (Incharge) Development Officer informed that the proposed unit was viable. The PCC made the recommendation for allotment of one acre of land at commercial rate for construction of multiplex to respondent No. 5 subject to the condition that the allottee should pay the full value of the house standing on the piece of land in one instalment and should further make available office space for the Regional Office of the Authority in the construction(s) made by it. It was also suggested that approval in this regard should also be obtained from the Industries Department.

26. I fail to understand on what basis the Development Officer found the unit viable. In the Project Report submitted along with application, there was absolutely no material to judge its viability.

27. Respondent No. 5 submitted its second lot of applications for land at Buxar and for additional land in Patliputra Industrial Area, Patna on 21.02.2006. The Authority issued to it letter No. 125/R/D, dated 25.02.2006 with reference to the application submitted earlier on 27.1.2006 and letter No. 115/R/D, dated 25.2.2006 with reference to the second application, dated 21.02.2006. Both the letters asked the respondent to appear for an interview on 1.3.2006 when the Committee would consider its applications. It may be recalled here that the applications submitted by respondent No. 5 on 27.01.2006 were already considered in the two meetings held on 8.2.2006 in which it was allotted one acre of land at Patliputra Industrial Area, Patna. The meeting of the PCC of the Patna Regional Office was held on 1.3.2006. In that meeting, decisions were taken for allotment of three acres land to respondent No. 5 at Aurangabad, one acre land at Buxar and 10400 sq.ft. land at Patna. The allotment of land at Patna

was made by cancelling its earlier allotment in favour of M/s. Dynax and subject to its coming in possession of the Authority. The allotment of land at Buxar was at commercial rate and subject to the condition that the allottee would provide office space for the Regional Office of the Authority in the construction (s) made by it. The allotment of land at Aurangabad was made in light of the finding by the Development Officer that the proposal was viable. The allotment at Aurangabad was also at commercial rate.

28. One week later, all the recommendations of the PCCs, dated 8.2.2006 and 1.3.2006 were approved by the Authority''s Board in its meeting held on 8.3.2006.

29. Going through the records of the Authority, one comes across many curious things. It is strange and surprising to find that the respondent was allotted three acres of land at Aurangabad even though it does not even claim to have made an application for land there. Further, from the minutes of meeting held on 1.3.2006, it appears that the respondent was also considered for land at Munger, but no suitable land was found there. It thus appears that the Authority was trying to find out lands for the respondent even at places where it had not asked for any land. From the records it further appears that at the time of making recommendations the PCC was not even aware about the extent of lands available at different centres. In the meeting of 1.3.2006 the respondent was allotted three acres at Aurangabad and one acre at Buxar. It was later found that that much lands were not available at the two centres and consequently the areas were reduced to 1.5 acres at Aurangabad and 12,600 sq. ft. at Buxar.

30. The records also belie one of the statements of the Advocate General. He had stated that there was no question of allotment of land on the basis of competitive bidding inasmuch as the Authority had more land available to it than there were seekers for it. From the records, it appears that the lands allotted to respondent No. 5 at Hajipur and Muzaffarpur were actually earmarked for commercial purpose. In regard to the land at Hajipur, there was already a decision of the Authority''s Board to make its allotment by auction. In view of the earlier decision, the PCC recommended that the State Government should be moved to cancel that decision and the land should be allotted to respondent No. 5 at commercial rates. It was later, on the application of respondent No. 5 that the Managing Director allowed its claim for allotment of lands to it, including those at Hajipur and Muzaffarpur, at industrial rates. It may further be noted that since the lands at Hajipur and Muzaffarpur were already earmarked for commercial purpose, in the applications of respondent No. 5 for those places the purpose of the land was reversed from ''multiplex-cum-shopping mall'' to ''shopping mall-cum-multiplex''. This raises two questions: whether the venture in which shopping mall was the dominant activity should also qualify as an industrial unit and whether lands already earmarked for commercial purpose could be allotted to it on the much lower industrial rates.

31. The submission made by the Advocate General also appears to be incorrect

in case of Patna. In the meeting of the PCC held on 1.3.2006, there were 18 applications for land in Patliputra Industrial Area. Nine applicants did not turn up. Out of those who were present for the interview, six were turned down on the sole ground that land was not available in Patliputra Industrial Area. It may here be noted that even respondent No. 5 was allotted the additional piece of land measuring to 10400 sq.ft. subject to its coming in the possession of the Authority. It is, therefore, incorrect to say that there was more land than seekers and hence, there was no question of any competitive bidding for allotment of lands.

32. From the records, it further appears that the PCC was somewhat guarded in its resolutions. It recommended for allotment of lands at commercial rates and only after obtaining approval from the State Government on different issues. Once the recommendations of the PCCs were approved by the Board, all restraint seems to have been thrown to the winds and the matter proceeded with utmost speed and in complete disregard of the legal requirements.

33. I have so far examined the matter of allotment of lands to respondent No. 5 generally. Coming now to the lands given to it at Patna, one finds the entire process full of irregularities and anomalies. Respondent No. 5 claims to have made two applications for lands in Patliputra Industrial Area, the first on 27.1.2006 and the second, for some additional land, on 21.2.2006. On the Authority''s records, however, there is only one application along with the letter, dated 27.1.2006. There is no application for any additional land (s), in Patliputra Industrial Area. The records further show that lands in Patliputra Industrial Area were allotted to the respondent in three stages. Letter No. 544/D dated 25.03.2006 issued by the Authority allotted it one acre of land on 90-years lease at the rate of Rs. 14,65,000/- per acre. This allotment letter refers to the respondent''s application dated 30.01.2006 (presumably the first and the main application which is referred to by the respondent as dated 27.01.2006). At the bottom of the allotment letter it is indicated that the respondent''s proposal was cleared by the PCC in the meeting dated 8.2.2006 and by the Authority''s Board in the meeting of 8.3.2006. The next allotment was made by letter No. 543/D, dated 25.03.2006. This again refers to application dated 30.01.2006 and allots to the respondent a piece of land, measuring 10400 sq.ft., at the same rate. According to this allotment letter, the respondent''s proposal was cleared by the PCC in the meeting dated 1.3.2006 and was approved by the Authority''s Board on 8.3.2006. There is yet another allotment letter bearing No. 919/D, dated 16.05.2006. This refers to the respondent''s letter/application, dated 4.5.2006. The application is not on the records nor the respondent claims to have filed any such application in any of its affidavits nor there is any mention of this application in the counter affidavit filed by the State. By this allotment letter, the respondent was given 4106 sq.ft. of land in Patliputra Industrial Area. From this letter, it appears that the allotment was made following the Chairman''s order, dated 9.5.2006. Apparently, the proposal never went before the PCC or the Authority''s Board as the relevant columns in the allotment order are marked as

''X''. Ironically, after issuance of the allotment letter dated 16.05.2006, another letter No. 950/D, dated 23.05.2006 was sent to the respondent asking it to come for an interview on 25.05.2006 for consideration of its application for land.

34. The records further show that even before the two allotment letters were issued on 25.3.2006, the respondent made a representation before the Managing Director of the Authority on 11.3.2006 claiming industrial rate for the lands on the plea that the Government''s Industrial Policy, 2003 recognised cinema hall as industry and stating that the allotment of land at commercial rates would adversely affect the viability of its proposal. On the representation the Managing Director put up a note on 23.3.2006 justifying the respondent''s claim. The note was endorsed, "as proposed" on 24.3.2006 and the following day two letters of allotment were issued to it.

35. It is seen above that the office building of the Authority had also gone along with the land allotted to the respondent. There was, therefore, the need for making a proper valuation of the building. As per the normal practice the Executive Engineer (Patna West), Building Division, Danapur was requested by the Authority to make the valuation of the building vide letter No. 562/D, dated 28.3.2006. A reminder was sent to him on 7.4.2006. It appears that there was some delay on his part in submitting the valuation report. Then there appears a note made by the Incharge Director on 10.4.2006. It is stated in the note that telephonic direction was received from the Managing Director for having the valuation of the building made by the valuer of the BICICO with a further direction that the work should be completed by 11.4.2006 and a note should be put up for approval by the Government. The direction was complied with and a valuation report by the valuer of the BICICO was received on 13.4.2006 fixing the value of the house at Rs. 23,79,000/-. The respondent deposited the amount on 25/26.4.2006.

36. As soon as payment was made for the house standing on the land the possession of the land was handed over to the respondent even without the execution of the lease deed or the bond as required under the rules. The records show that possession of one acre land on the basis of the allotment letter No. 544/D dated 25.3.2006 was handed over to Prakash Jha on behalf of respondent No. 5 on 29.04.2006. From the notings in the file it appears that on 12.06.2006 the Office raised the objection that possession of the land was given to the allottee even without execution of the bond or the lease deed. The respondent then executed the bond on 18.08.2006. At this stage I may also refer to the note, dated 12.9.2006 which makes interest reading. It states that the allottee had not made payment for pillars and the boundary walls and further that the allottee had taken possession over an area in excess of one acre allotted to it. Disregarding the points made in the note an office order was issued on 13.9.2006 asking the respondent to take over possession of the two pieces of lands measuring 10,400 sq. ft. and 4,106 sq. ft. respectively on 15.9.2006 and also to execute the lease deed(s). The first part of the office order materialised

on the following day and Prakash Jha took possession of the lands on 16.9.2006. The second part of the office order with regard to execution of lease deed(s), for all one knows, remains yet to be complied with. The issue of lease is yet another anomaly. In the office note dated 12.06.2006, it is stated that instead of the standard lease form of the Authority, respondent No. 5 had submitted a different deed of lease. The standard lease proforma and the (draft) deed submitted by respondent No. 5 are both on record. The deed of lease submitted by respondent No. 5 is very brief and is heavily loaded in favour of the lessee. On the objection raised by the Office, the matter was referred to the Authority''s lawyer on 20.07.206. The lawyer gave his opinion as follows:

The lease deed produced before me for vetting was not in proper form nor it included the relevant stipulations which are integral part of the deed of Lease.

I have drafted the Lease deed and I am sending it for your approval as to whether it incorporates all reasonable conditions or not. If anything more is to be added as a condition to the Lease deed it may be done.

37. At this stage, the matter seems to have been abruptly dropped. From the records, it is not clear as to what happened thereafter, which deed of lease was executed or whether any lease has at all been executed so far. At any rate there is no executed lease deed on the records produced before the court. It is also significant to note that neither in the standed lease deed nor in the deed of lease submitted by respondent No. 5, there was any whisper of the condition that the allottee would make available office space to the Authority in the constructions made by it.

38. Though there is no lease deed on the record, the request for permission for mortgage and creating sub-lease of the land seems to have started coming.

39. On going through the records, I am convinced that allotment of lands to respondent No. 5 was made in a thoroughly irregular way and the allotments are completely untenable. The circumstances and the manner in which the allotments were made bring to the fore the issue of malafide. The learned Advocate General, however, reacted to the charge quite indignantly. He submitted that the mere fact that Prakash Jha and the present Chief Minister had addressed some election meetings jointly can never justify the allegation that allotment of lands to the respondent was made at the behest of the Chief Minister for personal/political considerations. He submitted that the State was severely starved of any private investment for a very long time in the past and when the concerned officers in the Government and the Authority found a prospect of significant private investment, they hurriedly tried to clinch it and in the process some official norms might have been overlooked.

40. So far as the charge of malafide is concerned, I may accept the submission of the Advocate General and give to the Government the benefit of doubt. But to say that the concerned authorities were in a hurry not to let go the offer of private investment and that might have led to the non-observance of some of the

official norms appears to me to be completely unacceptable. In the first place there is hardly a tangible offer of any private investment. It is seen that the applications and the Project Reports submitted by the respondent do not even indicate the amount of money it is willing to spend for setting up multiplex or shopping mall nor does it indicate the source(s) of finance. Secondly, what is described by the Advocate General as minor lapses/irregularities actually amounts to a complete abdication of its statutory duties and responsibilities by the Authority. As things appear to be taking shape, the lands might end up tied up in a tangle of sub-leases and further sub-leases and eventually used for setting up some private commercial enterprise(s) for which those lands were not intended in the first place.

41. In the facts and circumstances discussed above, I reject the allegation of malafide. But at the same time, I am unable to accept the submission that the Court should not interfere in the matter because the writ petition may not qualify as Public Interest Litigation. In view of the facts coming to its notice, the only proper course for the Court is to intervene and to set things right. I, therefore, feel constrained to interfere with the allotments made by the Authority in favour of respondent No. 5. All the allotments of lands made in favour of respondent No. 5 are accordingly quashed. The Authority is directed to resume possession of the lands. It will be open to respondent No. 5 to make fresh applications with proper Project Reports and supporting documents for allotment of lands to it at different centres. In case such applications are made, the Authority shall consider them in accordance with law and take a decision on those applications within three months of the date of their receipt in its office. It will be open to respondent No. 5 either to get back all its money deposited with the Authority or in case it makes fresh applications, to wait till the final decision on those applications is taken by the Authority.

42. This writ petition is disposed of with the aforesaid observation and directions. There will be no order as to costs.

Rekha Kumari, J.

43. I agree

