

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Reportable

CIVIL APPEAL NOS.4036-4040 OF 2007

Bhubaneswar Development Authority & Anr. Appellants

Versus

Adikanda Biswal & Ors. Respondents

O R D E R

1. The question that arises for reconsideration in these Appeals is whether the methodology adopted by Bhubaneswar Development Authority (hereinafter shall be referred to as 'BDA') in allotment of 45 plots situated within the city of Bhubaneswar to the citizens of Orissa on "First Come First Served" basis on out-right purchase, can be said to be just, proper and legally tenable method.

2. Advertisements were issued by the Appellants on 07.01.2000 in daily local newspapers published in Orissa namely, 'The Samay', 'The Samvad' and 'The Dharithri', having wide circulation, for allotment of plots, on the terms and conditions mentioned in it, which we shall deal with later.

3. The advertisement shows that 45 plots were available for allotment on "First Come First Served" basis under the Scheme framed by BDA, having a plot size of 2400 sq.ft.

(60' X 40') in Chandrasekharapur residential area at a cost of Rs.2.40 lakhs only that is at the rate of Rs.100/- per sq.ft. The advertisement further contemplates that the persons interested in out-right purchase would get priority in allotment of plot and they had to submit a bank draft drawn on Oriental Bank of Commerce, BDA Branch, Akash Sova Building, Bhubaneswar. It further contemplates that the Applications could be submitted on plain paper with the original Challan but general terms and conditions of allotment of plots, applicable to other schemes would be applicable to the present Scheme launched by BDA.

4. Pursuant to the aforesaid advertisement, having been issued in the three daily local newspapers of Orissa as mentioned hereinabove, on 07.01.2000, 58 applicants deposited full amount together with application and other prescribed details on out-right purchase. Three applicants submitted their applications on 08.01.2000 and one each on 10.01.2000 and 11.1.2000 along with a sum of Rs.2.40 lakhs each.

5. The 'Prajatantra' newspaper had published a news-item under the heading 'BDA's Millennium Deceit'. The said publication indicates that it has criticised the manner and methodology under which the 45 plots were sought to be allotted to the applicants. It alleged that it was with an

intention to benefit the pre-determined and pre-decided close persons of BDA's officials. It further suggests that such an action of the BDA calls for high level inquiry into the matter.

6. On account of the aforesaid news-item having been published in the 'Prajatantra' newspaper, a letter was addressed by the Secretary to the Lokpal of Orissa on 15.01.2000 to the Vice Chairman, Bhubaneswar Development Authority. He wanted to have a copy of the original advertisement in respect of the plotted development scheme mentioned therein. He also wanted a copy of the earlier advertisement in respect of the core housing scheme at Jayadev Vihar square for the kind perusal of the Hon'ble Lokpal. This letter was issued after the initial discussions were held between the Secretary and Lokpal on earlier occasion. But nothing happened thereafter for a long time.

7. On 16.05.2000, Secretary of the Department of Urban Development, Government of Orissa, gave a proposal to BDA to cancel the process of allotment of plots. The matter was placed before the BDA in its 76th Authority Meeting held on 16.05.2000. It was taken up as Item No.23/76. Various pros and cons of the same were discussed by the BDA on the said date. Thereafter, a conscious decision was

taken by the BDA on the same day which reads as under :

"Item No.23/76 : Allotment of left over plots in Niladri Vihar, Chandrasekharapur.

The Committee decided that under the above circumstances it is better to cancel the total process and return the deposited money to all the applicants with interest @4.5%. Fresh applications be called for by re-advertising these plots @ Rs.100/- per sq.ft. The applicants shall deposit EMD & balance within 15 days of allotment. One month time shall be given for receipt of application after which on lottery basis allotment shall made."

8. This was also published in the newspaper 'The Samad' on 25.06.2000 so as to bring it to the notice of those applicants who had deposited their amount between 07.01.2000 till 11.01.2000.

9. Pursuant to the aforesaid Resolution, amounts received by BDA were returned to the applicants together with interest accrued thereon. We have been given to understand that some of them have accepted the amounts under protest, some of them have not accepted it and some of them have accepted it without any protest.

10. On account of the cancellation of the total process of allotment of plots by BDA, it gave rise to filing of spate of Writ Petitions by the Applicants, who had applied under the Advertisement issued by BDA, in the High Court of Orissa.

11. The said Writ Petitions came up for hearing before the Division Bench of the High Court. The same were disposed off by a common order on 31.1.2005. The Division Bench has allowed the Writ Petitions filed by the Respondents and directed the BDA to proceed further with regard to process of allotment of developed plots to those applicants who may fulfill other criteria as envisaged under the general conditions fixed by the BDA under its Scheme. It is against this judgment and order of the Division Bench of the High Court, BDA is in appeal before us.

12. We have accordingly heard Mr. R. S. Jena, learned counsel along with other learned counsel appearing for Appellants and Mr. P.S. Narasimha, learned senior counsel and Mr. Arvind Verma, learned senior counsel with other learned counsel appearing for Respondents at length and perused the record.

13. Shri R. S. Jena submitted that the High Court under Article 226 of the Constitution of India was not justified in interfering with the decision taken by the BDA to call for fresh applications for allotment of plots on lottery basis rather than proceeding with the allotment on the basis of "First Come First Served" basis. Learned counsel submitted that there were sufficient reasons for taking

such a decision which cannot be said to be arbitrary, illegal or vitiated by extraneous reasons. Learned counsel pointed out that the newspaper Prajatantra was highlighting the public perception that there was some foul play and favouritism in the proposed allotment of plots by way of "First Come First Served" basis. The Commissioner-cum-Secretary of H & UD Department had also suggested that the whole process be cancelled and the housing plots be auctioned. Learned counsel also pointed out that the Lokpal had also proposed to initiate proceedings against BDA on the basis of news item appeared in Prajatantra. Learned counsel submitted that taking into consideration all those aspects, the authority took a conscious decision to cancel the process of allotment by way of "First Come First Served" basis and to follow the system of allotment of plots by way of lots. Learned counsel also submitted that there is no indefeasible right on the applicants to get allotment of plots and that authority has the right to adopt a system which is transparent and complaint free. Learned counsel also made reference to a judgment of this Court in *Shrijee Sales Corporation and Another v. Union of India* - (1997) 3 SCC 398 and submitted that the supervening public equity or public interest would override individual equity and in such a case a Court sitting under Article 226 of the Constitution of India is not justified in interfering with

the decision of the authority, as if, it is sitting in appeal.

14. Mr. P. S. Narasimha, learned senior counsel, submitted that the High Court was justified in quashing the decision taken by the authority in the absence of any material to show that the decision taken for allotment of plots following the "First Come First Served" basis was vitiated by any extraneous or irrelevant considerations. No material has been produced before the Court to show that the applicants had come to know about the advertisement prior to 7.1.2000 or that any of the BDA officials was involved in not keeping the secrecy of such advertisement. Learned senior counsel, on the other hand, submitted that there were sufficient reasons to adopt the "First Come First Served" basis since the allotment was for left over plots. Learned senior counsel also submitted that the "First Come First Served" basis for allotment of housing plots is not inherently bad and that BDA itself had adopted such a method in previous schemes. Learned senior counsel also submitted that the Lokpal had also not conducted any inquiry in respect of the news items appeared in the News Daily and, therefore, the decision of the authority dated 16.5.2000 cancelling the entire process of allotment was bad in law and the High Court was justified in setting aside that order. Learned senior counsel also made reference to a judgment of this

Court in *Omkar Lal Bajaj v Union of India* - (2003) 2 SCC 673, in support of his contentions.

15. We are of the view that the process of allotment of housing plots on "First Come First Served" basis by a statutory authority has inherent dangerous implications and unless properly guarded, may lead to favouritism, partiality, arbitrariness etc. So far as this case is concerned, the advertisement informing the public that the housing plots would be allotted on "First Come First Served" basis appeared in three news papers on 7.1.2000 and on the very same day 58 applicants had deposited the entire purchase price of Rs.2,40,000/- in the Oriental Bank of Commerce, BDA, Bhubaneswar and few others on subsequent days. Later, a News Daily "Prajatantra" on 12.1.2000 published a news item, the relevant portion of the same reads as follows:

"BDA'S MILLENNIUM DECEIT

.....Surprisingly this advertisement has not been published in other widely circulated newspapers and on the same 7th day after opening of the office for a while acceptance of application form was closed. Is this millennium scheme not made to make available residential plots to pre-determined and pre-decided close persons of BDA officials? There is a public demand for a high level inquiry into this."

16. The Secretary of the Office of the Lokpal, Orissa, taking note of the abovementioned news item as directed by

the Lokpal called for the copy of the advertisement from the BDA, evidently to examine whether such a course was adopted to make available the plots to pre-determined and pre-decided close persons of the officials of BDA.

17. BDA taking note of the various complaints raised by the public through the newspaper as well as the initiation of proceedings by the Lokpal, placed the entire matter before the Authority as Item No.23/76 in the 76th Meeting held on 16.5.2000 in the Conference Hall of BDA, Bhubaneswar. The Commissioner-cum-Secretary, H & UD Department, had also suggested that the whole process should be cancelled and the housing plots be auctioned. Taking into consideration all those aspects, the Committee on 16.5.2000 passed a resolution to invite fresh applications, and to follow the process of allotment, by way of lots. The Division Bench of the High Court, however, interfered with the decision taken by BDA and directed BDA to proceed with the advertisement dated 7.1.2000 and to follow the method of "First Come First Served" basis.

18. We are of the view that the High Court was not justified in sitting in appeal over the decision taken by

the statutory authority under Article 226 of the Constitution of India. It is trite law that the power of judicial review under Article 226 of the Constitution of India is not directed against the decision but is confined to the decision making process. The judicial review is not an appeal from a decision, but a review of the manner in which the decision is made and the Court sits in judgment only on the correctness of the decision making process and not on the correctness of the decision itself. The Court confines itself to the question of legality and is concerned only with, whether the decision making authority exceeded its power, committed an error of law, committed a breach of the rules of natural justice, reached an unreasonable decision or abused its powers.

19. We are of the view that there are sufficient materials before the statutory authority in cancelling the allotment of housing plots adopting the process of "First Come First Served" basis and to go in for allotment by way of lots. Naturally, at least some of the officials of the BDA, were aware prior to 7.1.2000 that BDA was intending to follow the method of "First Come First Served" basis. Further the advertisement dated 7.1.2000 indicated that BDA had only nominated one bank i.e. the Oriental Bank of Commerce, BDA, Bhubaneswar for depositing the money, evidently, at least some of the bank officials would also be aware prior to 7.1.2000, that the basis of allotment

would be "First Come First Served". Further, the advertisement was published in three newspapers on 7.1.2000 and the publishers, the staff of those newspapers would also be aware that the BDA would be following the "First Come First Served" basis for the allotment of plots. BDA, therefore had not maintained secrecy which they were expected to maintain. It is under the above mentioned circumstances the BDA took a conscious decision on 16.5.2000 to cancel the earlier advertisement and to go in for allotment of housing plots by way of lots, which cannot be said to be arbitrary or illegal warranting interference by a court sitting under Article 226 of the Constitution.

20. The method of "First Come First Served" basis, as we have already indicated, has many inherent defects and if not properly taken care of, may lead to undesired results.

21. In our considered opinion, there appears to be a fundamental flaw in adopting the principle of 'first come first served' inasmuch as it cannot be said to be free of arbitrariness and does not reflect transparency. It may be proved beneficial to those, who may be aware of such a procedure to be followed by B.D.A. in allotment of plots and may cause loss to those who may genuinely be interested in having a plot. We cannot put a seal of approval for such a method as the same is surrounded by

many extraneous considerations. We have to keep in mind the larger public interest and institutional integrity cannot be allowed to be compromised.

22. We are not taking the extreme stand that, in all situations the method of "First Come First Served" be not followed, but sufficient safeguards have to be taken. For instance, the Haryana Urban Development Authority (HUDA), in the matter of allotment of industrial plots stated that the allotment of plots would be on ongoing "First Come First Served" basis with the following rider:

"As per provisions made in the Industrial Policy, the industrial plots are to be allotted on "first come first served basis on the analogy that all applications received within a block of one month shall be treated at par. However, submission of application will not entitle an applicant for allotment of industrial plot. The allotment shall be made after due assessment of the project report and the financial viability and usefulness of the project and other merits of the applicant as decided by the Committee constituted for the purpose."

23. The policy of allotment of plots on "First Come First Served" basis was, therefore, on the analogy that applications received within a block of one month shall be treated at par. This may make the process transparent and give little chance for favouritism.

24. We are of the view that BDA can adopt several methods for allotment of plots like, by way of lots, "First Come

First Served", auction etc., but the process should be transparent.

25. We, are, however, of the view that so far as the instant case is concerned, the decision taken by the authority to cancel the process of allotment by way of "First Come First Served" basis cannot be said to be illegal, arbitrary or vitiated by extraneous reasons warranting interference under Article 226 of the Constitution of India.

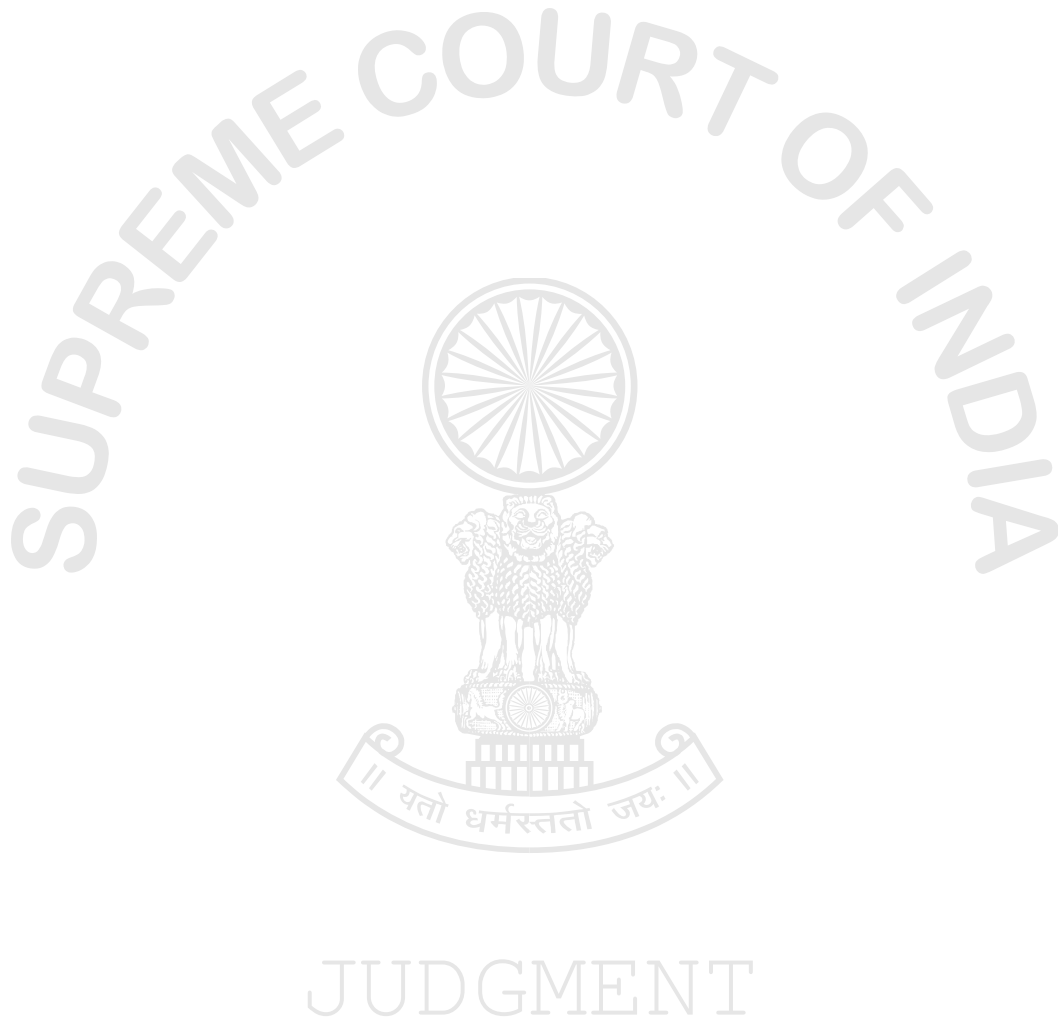
26. Learned counsel appearing on behalf of BDA submitted that though they had taken a decision on 16.5.2000 to call for fresh applications by re-advertising those plots at the rate of Rs.100 per sqft., they are free to allot the housing plots at the rate of Rs.1,378 per sq ft., as assessed by the Cost Assessment Committee considering the bench mark value furnished by the Sub-Registrar, Bhubaneswar, by way of lots. We express no opinion on this aspect and leave it to the authority of BDA to act in accordance with law.

27. Appeals are allowed and the impugned judgment of the High Court is set aside but there will be no orders as to costs.

.....J
[Deepak Verma]

.....J
[K. S. Radhakrishnan)

New Delhi;
February 01, 2012.



ITEM NO.101
[Revised]

COURT NO.9

SECTION XIA

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

RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 4036-4040 OF 2007

BHUBANESWAR DEVELOPMENT AUTHORITY & ANR.

Appellant (s)

VERSUS

ADIKANDA BISWAL & ORS.

Respondent(s)

(With appln(s) for vacating stay and Intervention/Impleadment)

Date: 01/02/2012 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DEEPAK VERMA

HON'BLE MR. JUSTICE K.S. RADHAKRISHNAN

For Appellant(s)

Mr. Radha Shyam Jena, Adv.
Mr. Siddharth Panda, Adv.

For Respondent(s)

Mr. P. S. Narasimha, Sr. Adv.
Mr. Arvind Verma, Sr. Adv.
Mr. S. Ghosh, Adv.
Mr. Vishnu Shankar Jain, Adv.
Mr. Shriram Parakkar, Adv.
Mr. Suresh Tripathy, Adv.
Mr. Merusagar Samantaray, Adv.
Ms. Aditi Mohan, Adv.
Mr. Abhijit Sengupta, Adv.
Ms. Kumud Lata Das, Adv.
Mr. Dipak Kumar Jena, Adv.
Ms. Minakshi Ghosh Jena, Adv.
Mr. Sridhar Nayak, Adv.
Mr. Suvidutt Sundaram, Adv.
Mr. Rajesh Singh, Adv.

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

Application for impleadment is allowed.

These Appeals are allowed in terms of the signed reportable order but there will be no orders as to costs.

(Sanjay Kumar-II)

Court Master

(Veena Khara)

Court Master

[Signed Reportable Order is placed on the file]