

**HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE**

**(Division Bench)**

**Writ Appeal No. 310/2018**

**Indore Development Authority & Another** ..... **Appellants**  
- V/s -  
**Manorama Solanki & Another** ..... **Respondents**

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**Present:**

Ms. Mini Ravindran, Advocate for the Appellants.

Mr. A.K. Sethi, Senior Advocate with Mr. Prateek Maheshwari,  
Advocate for the respondent No.1.

Mr. Pushyamitra Bhargava, Advocate for Respondent No.2.  
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*With*

**Writ Appeal No. 334/2018**

**Shakti Timbers Traders** ..... **Appellant**  
- V/s -  
**Manorama Solanki & others** ..... **Respondents**

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**Present:**

Mr. Pushyamitra Bhargava, Advocate for the Appellant.

Mr. A.K. Sethi, Senior Advocate with Mr. Prateek Maheshwari,  
Advocate for the respondent No.1.

Ms. Mini Ravindran, Advocate for the Respondent No. 2.  
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**CORAM :**

**Hon'ble Shri Justice Hemant Gupta, Chief Justice**

**Hon'ble Shri Justice S.K. Awasthi, Judge**  
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**Whether Approved for Reporting : Yes**  
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**Law Laid Down:**

- Since the allotment of plot in question was a part of the process of rehabilitation of the squatters and not for profiteering, therefore, the allottees who were not found to be carrying on business activity on the plot so allotted, should not be allowed to have a benefit of the plot.
- The process of rehabilitation is a process to provide equivalent or near about the same land on which the activity was being carried out by the occupant. If the allotment is highly disproportionate to the land in occupation of the allottee coupled with the fact that the allottee has neither executed agreement, nor taken possession nor any business activity was undertaken, the action of the Authority to cancel the plot allotted cannot be said to be unjustified.

**Significant Paragraphs:** 9 to 15

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Heard/Reserved on: 22.03.2018  
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**ORDER**

**(Passed on 28<sup>th</sup> day of March, 2018)**

**Per : Hemant Gupta, Chief Justice:**

This order shall decide Writ Appeal No.310/2018 filed by Indore Development Authority and Writ Appeal No.334/2018 filed by auction purchaser against the judgment dated 13<sup>th</sup> December, 2017 whereby Writ Petition No.8741/2009 filed by respondent No.1 was allowed and the communication dated 08.05.2008 cancelling the allotment of Plot No. S-92, Sector "A" under Scheme No.71, Mechanic Nagar, Indore admeasuring 231.90 Square Meter was set aside. However, the facts are taken from Writ Appeal No.310/2018.

2. The Indore Development Authority (for short “the IDA”) framed a Scheme No.71 for the purposes of shifting various businessmen engaged in the business of automobile at Raj Mohalla, Indore. As a part of process of rehabilitation, Plot No.S-92 was allotted to one Nandu Singh on 23<sup>rd</sup> March, 1988 on the recommendation of West Zone Automobile Association. The total plot cost was Rs.44,989/- with lease rent of Rs.900/- per year. The deposit money was Rs.2,000/- and 25% of the premium i.e. Rs.9,247/- was payable along with advance lease rent of Rs.900/- whereas the balance payment was payable in 36 equal monthly installments of Rs.1,156/- starting from July, 1988. The allottee was called upon to furnish agreement in duplicate. The draft agreement was enclosed with the letter of allotment. However, on 5<sup>th</sup> October, 1990 vide Annexure R-2 a show cause notice was issued to Nandu Singh that he was not entitled to the plot of the size, which has been allotted and the consent was sought as to whether he would like to opt for the plot size of 55 Square Meter, 139 Square Meter or 153 Square Meter. Another notice was issued to the allottee on 23<sup>rd</sup> March, 1993 communicating that the allottee has not given his consent; therefore, the allotment will be made on 29<sup>th</sup> March, 1993. However, the allottee did not opt for any alternative plot of a lesser area.

3. The petitioner and other aggrieved persons filed a Misc. Petition No.1196/1993 (*Nandu Singh Solanki vs. Indore Development Authority*) challenging an order to dispossess the allottee. The said petition was allowed on 18<sup>th</sup> December, 1996 in the light of the order dated 24<sup>th</sup> November, 1992 passed in Writ Petition No.110/1991 giving liberty to the concerned respondents to give proper notice to the allottee and to take a

decision afresh after giving opportunity of hearing and that the *status quo* shall be maintained. The relevant extract of the order passed in *Nandu Singh Solanki* (supra) reads as under:-

“4. In the result I am not required to appreciate the merits of the matter in this case afresh. Instead I dispose of this petition with directions as under:-

- (a) Order Annexure P-16 is hereby quashed.
- (b) The concerning respondent is granted liberty to give proper notice to the petitioner and take proper decision afresh after giving reasonable opportunity of hearing to the petitioner in this regard.
- (c) The ad interim writ issued by this Court on 3-6-1993 shall remain operative till fresh decision as permitted above.
- (d) If the order turns out to be adverse to the petitioner after opportunity of hearing, the petitioner shall have freedom to resort to appropriate remedy against such order thereafter before appropriate Forum.

With the aforesaid directions this petition stands disposed with no order as to costs. Security amount, if any, may be refunded to the petitioner.

4. In terms of the order passed, an option was given to allottee, Nandu Singh that he was not entitled to the plot of the size of 231.90 Square Meter which has been allotted and the consent was sought as to whether he would like to opt for the plot size of 55 Square Meter, 139 Square Meter or 153 Square Meter on 21<sup>st</sup> September, 1999 (Annexure P-9). It was communicated that on inspection, the petitioner was found to be in possession of 53.32 Square Meter of area. The allottee submitted response on 4<sup>th</sup> October, 1999 (Annexure P-10) disputing the inspection and sought opportunity of hearing which was granted vide communication Annexure P-11 on 17<sup>th</sup> January, 2000. The allottee was informed on 1<sup>st</sup> November, 2002 (Annexure P-13) that the entitlement of the petitioner is

of 55 Square Meter, therefore, the amount of Rs.28,800/- was returned. It is, thereafter, on 1<sup>st</sup> November, 2003 (Annexure P-14), the premium was found to be Rs.4,75,390/- of 90 Square Meters of plot, of which the petitioner was found entitled to and 50% of the premium amount was to be deposited within 30 days and the balance 50% in three years in quarterly installments along with 12% interest. The said communication was again challenged by the allottee by filing a writ petition bearing Writ Petition No.168/2004 (*Nandu Singh vs. Indore Development Authority and another*). The said writ petition was disposed of on 20<sup>th</sup> February, 2006 when the Indore Development Authority was directed to issue a fresh notice to the allottee. The relevant part of the order reads, thus:-

“4. In view of this respondents are directed to issue fresh notice to the petitioner clarifying the entitlement of the petitioner and on the basis of his entitlement, if such, notice is given then the petitioner shall be at liberty to file the reply within two weeks from the date of receipt of the notice and after giving an opportunity of hearing to the petitioner, respondent shall be at liberty to raise the demand by passing a reasoned order. Till then no recovery shall be made on the basis of notice Annexure P-14.

With the aforesaid observations the petition stands disposed of.”

5. It is, thereafter, a notice was served upon the allottee on 14<sup>th</sup> July, 2006 to the effect that the plot can be allotted as per the rates fixed by the IDA and the response of the allottee was sought in respect of the plot size and the rates etc. A detailed reply was filed by the allottee on 18<sup>th</sup> August, 2006. Another notice was served upon the allottee on 8<sup>th</sup> May, 2008 that the allotment has been cancelled vide letter dated 7<sup>th</sup> March, 2008 and that the deposit money is being refunded separately.

6. In the meantime, in pursuance to an advertisement published on 24<sup>th</sup> December, 2008, the vacant plots in Scheme No.71, Sector “A”, for mechanic business, including Plot No.S-92 were put for auction. Appellant in Writ Appeal No.334/2018, namely, Shakti Timbers Traders was the successful bidder on the total price of premium of Rs.21,39,335/- and paid 50% of the premium of the plot and also the balance amount in installment. In the reply filed on behalf of Indore Development Authority to the application for ad-interim relief, the said respondent relied upon the note-sheet of the proceedings of the IDA dated 7<sup>th</sup> June, 2007 (Annexure R-5). The said proceeding shows that before an opportunity of hearing granted on 7<sup>th</sup> June, 2007, survey was conducted on 17<sup>th</sup> December, 2004 and 18<sup>th</sup> March, 2005. As per survey, the allottee Nandu Singh Ranjeet Singh was found to be not doing any business on both the dates i.e. 17<sup>th</sup> December, 2004 and 18<sup>th</sup> March, 2005 but, in fact, he was found to be running a kiosk near Khalsa School. The Committee considered the allotment of 44 allottees. It was decided to cancel the allotment of plots of the allottees, who were not doing any business, which included the present allottee Nandu Singh. It is, thereafter, the communication dated 8<sup>th</sup> May, 2008 was issued to cancel the allotment of plot in Scheme No.71, Sector “A”, Mechanic Nagar, Indore *inter alia* for the reason that no activity has been undertaken nor the allottee is entitled for allotment.

7. The challenge in the Writ Petition No.8741/2009 (*Manorama Solanki vs. Indore Development Authority and others*) filed on 25<sup>th</sup> November, 2009 was to the order of cancellation of allotment, which was allowed vide order impugned in the present writ appeal. The learned Single

Judge, *inter alia* found that there is no criteria adopted by the IDA; that after the plot was allotted as a measure of resettlement, there cannot be any declaration of ineligibility of the allotment after acceptance of premium, lease rent and full consideration. It was also held that there is no justification in calling upon the allottee to submit a revised premium and lease rent, as communicated in the communication dated 1<sup>st</sup> November, 2003 reopening the concluded contract in the year 1988. The Court also held as under:-

“21. That apart, there is also no justification as to why the petitioner/Nandu Singh was called upon to pay the revised premium and lease rent as per the Government policy that too at a distance of time of 18 years (from the year 1988 to 2006). Mere resolution of IDA in that behalf is not in consonance with the concept of principles of reasonableness in the case of Nandu Singh/petitioner. Once, he has been allotted the plot in question, agreement was executed, paid the premium and lease rent and the possession was also delivered, in the opinion of this Court, Nandu Singh could not have been called upon to pay the revised premium and lease rent for want of any authority of law applying Wednesbury principles of reasonableness. As such, IDA is held to be estopped from raising such arbitrary demand from Nandu Singh/petitioner.

22. The IDA; an authority constituted under the Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 definitely may lay down the pricing policy for allotment of plots. Nevertheless, it is expected to act fairly, reasonably and upon relevant considerations either while determining the price of the plot or revising the price subject to conditions stipulated in the instrument, be it an agreement to sell or allotment of plots. It cannot play fast and loose with its authority while subjecting the allottees to revised rates of plots. It cannot act discriminatory. It is a well recognized policy underlying the tax law that the State has a wide discretion in selecting the persons or objects and not others. It is only when within the range of its selection that law operates unequally and not qualifying the reasonable test of

classification; it may become vulnerable being violative of Article 14 of the Constitution of India (AIR 1962 SC 1733, East India Tobacco Company Vs. State of A.P., referred to). Therefore, once Nandu Singh alongwith other allottees irrespective of the size of the shops ran business in Rajmohalla area were allotted plots of different dimensions and fixed the premium and lease rent, singling out Nandu Singh to revised premium and lease rent at a distance of time of 18 years, Article 14 of the Constitution of India frowns upon such action as the same is arbitrary, unreasonable and contrary to the concept of *Wednesbury* principles of reasonableness.

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**26.** Further, this Court cannot lose sight of the fact that it is well evident from paragraph 4 of the counter-affidavit in the context of disentitlement of Nandu Singh for allotment of plot is justified on the basis of survey conducted on 17/12/2004 in purported compliance of this Court's order dated 18/12/1996 rendered in W.P.No.1196/1993 (after 08 years) alleging that the petitioner's husband was not found to be running his business in Rajmohalla area despite, the IDA having recorded a fact in its proceedings that in the preceding 2/3 years, Nandu Singh has shifted his business premises from Rajmohalla area to 6-A, Sirpur – Dhar Road (Annexure R/4 – page 101) as a result this Court finds cancellation of the allotment by the impugned communication dated 08/05/2008 (Annexure P/20) cannot be sustained in the eyes of law, subsequent action of the IDA inviting applications for allotment again of the plot in question, acceptance of bid of respondent No.3 of the plot in question are held to be of no consequence. Respondent No.3 is always free to take recourse to law against IDA for recovery of the amount paid, if any. It is considered necessary to observe that delivery of possession of the plot in question was given to Nandu Singh in the year 1988, there is no evidence on record that the possession was either handed over by Nandu Singh or the possession was taken by IDA at any point of time, till now. Under such circumstances, the assertion of IDA and respondent No.3 based on Annexures R/9 and R/10 (notice to respondent No.3 for possession and delivery of possession respectively) are mere paper formalities. They do not bear the signature of Nandu Singh as an acknowledgment of delivery of possession. Accordingly, Nandu Singh is found to be in continuous possession till his death on 30/05/2009 and thereafter, his

widow, Manorama Solanki.”

8. Learned counsel for the appellants submitted that the finding of the learned Single Judge has proceeded on the basis of erroneous assumption of fact. It is conceded by the learned counsel for the writ petitioner that the possession of the plot was not delivered to the allottee as the agreement which was required to be executed in terms of letter of allotment dated 23<sup>rd</sup> March, 1988 was not executed. Though the learned counsel for the respondents contended that the allottee has paid the equated monthly installments but equally it is the stand of the appellants that all such installments have been returned. It is also admitted that the possession of the plot was not at all delivered, which could have been delivered only after execution of the agreement. It has also come on record that Nandu Singh, allottee, died on 30<sup>th</sup> May, 2009 and that his wife is the writ petitioner.

9. In this background, learned counsel for the appellants submitted that Nandu Singh was not found carrying on any business on the plot allotted and was carrying out activities in a kiosk near Khalsa School when the inspection was done in the year 2004-05 much before the death of Nandu Singh. It is contended that the allotments of plots were made on the basis of the recommendation of the West Zone Automobile Association without framing any criteria and without keeping in view the size of the plots on which the persons were working in Raj Mohalla, who were required to be rehabilitated. An inquiry was conducted in view of the allegations levelled that the allotments have been made in arbitrary manner

and therefore, while examining the process of allotment, it was found that allottee was in possession of only 53.32 Square Meter of area in Raj Mohalla. Therefore, the allotment of an area measuring 231.90 Square Meter is highly disproportionate to the plot size allotted to him as part of rehabilitation process. The allottee was given opportunity, time and again, to choose a smaller size of plot but having failed to give option within time granted, the allottee or now after his death, his legal heirs, cannot be handed over the possession of the plot over which the allottee has not carried out any business activity for almost last 30 years. It is, thus, sought to be contended that the allotment of the plot on 23<sup>rd</sup> March, 1988 was not only arbitrary but was based upon the misrepresentation of West Zone Automobile Association, which was not a valid base of allotment. It is contended that the allotment of persons, who were carrying on business, has been protected but a person who has been allotted plot and has not carried out any business activity, has no right to continue with the allotment of the plot once made in the year 1988 on the recommendation of the West Zone Automobile Association.

**10.** On the other hand, learned counsel for the writ-petitioner/respondent No.1 i.e. the wife of deceased Nandu Singh, the original allottee, submitted that once the allotment has been made in the year 1988, the same could not have been reviewed. The allottee was not found to be carrying on business after many years of the original allotment, which obviously was because the land occupied by the mechanics have been used for widening of road in Raj Mohalla, therefore, subsequent inspection to return a finding that the allottee was not carrying on the business cannot be

made basis for revising the offer and ultimately cancelling the same. Learned counsel for the respondent relies upon an order passed by the Supreme Court reported as **(2015) 1 SCC 558 (City Industrial Development Corporation vs. Platinum Entertainment and others)**.

11. We have heard learned counsel for the parties and find that the allotment of a plot in Scheme No.71, Sector "A", Mechanic Nagar, Indore was a part of the process of rehabilitation of the squatters in Raj Mohalla. Though the allotment was made in the year 1988 but the allottee has not executed agreement, or taken possession nor carried out any business activity over the said plot till his death on 30<sup>th</sup> May, 2009 i.e. for almost 20 years. The inspection has been carried out on different dates i.e. on 21<sup>st</sup> May, 1999, 17<sup>th</sup> February, 2004 and 18<sup>th</sup> March, 2005 but the allottee was not found carrying on any business over the plot allotted. The allotment of plot was for rehabilitation and not for profiteering to sell the property at a subsequent stage.

12. The basis of allotment is the recommendation of West Zone Automobile Association, which cannot be treated to be a valid criteria for allotment of a public property. Since the allotments were made and certain allottees have started working on the allotted plots, such allotments have not been interfered with but if the allottees have not started the work on the plots allotted, such plots have been rightly cancelled as the allotment was for a purpose of rehabilitation and not for profiteering. It is not the stand of the writ petitioner or of her husband that he was in occupation of area of 231.90 Square Meter or anything over and above 53.32 Square Meter as

found by the Committee in the presence of the allottee on 21<sup>st</sup> September, 1999. The process of rehabilitation is a process to provide equivalent or near about the same land on which the activity was being carried out by the occupant. If the allottee was in possession of 53.32 Square Meter of land, the allotment of 231.90 Square Meter of land was highly disproportionate to the land in occupation of the allottee in Raj Mohalla. Since the allotment was of much bigger plot and again on such plot the allottee has neither executed agreement, nor taken possession nor any business activity was undertaken, therefore, the action of the Authority to cancel the allotment and to sell the plot cannot be said to be unjustified.

**13.** The cancellation of allotment is for valid and good reasons as the process of allotment is not based upon any reasonable criteria but on the basis of the recommendation of a West Zone Automobile Association. Therefore, the action of the IDA in cancelling the allotment of those allottees, who were not working even after number of years, cannot be said to be arbitrary, which may warrant any interference in the writ jurisdiction of this Court.

**14.** The judgment in **Platinum Entertainment (supra)** reiterates the established principles that the Government cannot act arbitrarily on a sweet will but must act in accordance with law and that the action of the Government should not give smack of arbitrariness. We do not find that the action of the IDA can be said to be arbitrary. The allotment was without any eligibility criteria but the cancellation is based upon the fact that the

allottees, who were not carrying on business activity, should not be allowed to have a benefit of plots, which is a part of the process of rehabilitation.

15. The entire process for allotment of plots to rehabilitate the mechanics has not proceeded with rational and transparent method of process of allotment. The plots were allotted at the asking of West Zone Automobile Association. Such method of allotment is not contemplated by law. However, with a view to settle equities, the IDA has cancelled the allotment of those allottees who have not taken any step for starting business in the newly allotted plots. Therefore, decision of the IDA to cancel the allotment cannot be said to illegal, which may warrant a direction to the IDA to maintain allotment of plots though the allotment of plots itself is shrouded by illegal and untenable considerations.

16. In view of the above, we find that the order passed by the learned Single Judge cannot be sustained in law. Accordingly, the same is set aside. Consequently, we **allow** the present writ appeals and dismiss the writ petition.

**(HEMANT GUPTA)**  
**CHIEF JUSTICE**

**(S.K. AWASTHI)**  
**JUDGE**

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