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THE
BIHAR STATE HOUSING BOARD ACT, 1982

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**The
Bihar State Housing Board Act, 1982**

(Bihar Act 57 of 1982)

An Act to provide for housing for the establishment of A State Housing Board and for certain other matters connected therewith.

Be it enacted by the Legislature of the State of Bihar in the Thirty-third year of the Republic of India as follows:-

Comments and case-law

(Unless it is expressly provided for, statutes' are not to interpreted so as to exclude the general remedy available to the citizens under the law of the land. [Ram Narain Singh vs. State of Bihar, 1973 PLJR 81.]

A law dealing with procedure in the absence of anything to the contrary is, retrospective in operation. On the hand, statutes taking away, impairing or imperilling substantive rights are ordinarily prospective, and it will be construed to be retrospective only if it is so made either expressly or by necessary implication. [Girdhar Das Anandji vs. J.M. Patel, 1971 PLJR 66].

If the State's official language is Hindi, the Hindi Text of a notification will prevail where there is inconsistency or affecting the substance if the matter in case of conflict between the Hindi and English text of notification published in the official gazette. Where there is no conflict or even if it is there but it does not affect the substance of the matter, the English version will prevail over the Hindi version of the notification. [Shyamlal Sah vs. State of Bihar, 1987 PLJR 482.]

Housing Board's power is akin to the executive power conferred on State Government under Article 162 of the Constitution of India to take decision in respect of appointment, promotion etc. in accordance with its own resolutions until regulation framed by it and approved by the State Government are published in the Official Gazette. V Balasubramaniam vs. Tamil Nadu Housing Board, (1987) 4 SCC 738.

Court should make efforts to reconcile the two laws in case of repugnancy between state and Central Laws, rather than declare on ultravires merely on the ground of repugnancy. [Raptakos, Brett & Company Ltd. vs. Bihar State Agricultural Marketing Board, 1988, PLJR 830]

Preliminary: Purposive interpretation in social amelioration legislation is an imperative, irrespective of anything else. [Atma Ram vs. Ishwar Singh AIR 1988 SC 2031.]

The position of a person proceeded against for encroaching on public land is that of defendant. The State must establish, even prima facie, that the land in question was public land before the alleged encroacher can be asked to discharge the burden of proof that the land was not public land or had ceased to be public land. [Hafiza Khatoon vs. State of Bihar 1991(1) PLJR 384]

Statute: In construing statute equity cannot be resorted to grant relief against a public statute of general policy where case squarely falls within the ambit of the statute. Courts must be effect to the legislative intent by a harmonious construction so that no part of the statute is rendered surplus or otiose. [Gaun Shankar Kaur vs. State of U.P. (1994)1 SCC 92: AIR 1994 SC 169.]

It is cardinal principal of interpretation of statutes to give effect to the plain fair and ordinary meaning to words if such interpretation is not opposed to the intention of the legislature, [Ravi Shankar Sharma vs. State of Rajasthan, 1993 Cr.L.J. 1458.]

Chapter I

PRELIMINARY

1. Short title, extent and commencement. --- (1) This Act may be called the Bihar State Housing Board Act, 1982.

(2) It extends to the whole of the state of Bihar:

Provided that house-building activities of the Coal Mines Labour Housing Board under the Coal Mines Labour Welfare Funds Act, 1947 (Act 32 of 1947) and similar house-building activities of the Mica Mines and Iron Ore Mines Welfare Funds will remain outside the scope of the Housing Board.

(3) It shall come into force at once.

2. Definitions. - In this Act unless there is anything repugnant it the subject or context.-

(1) "adjoining area" means such area as may be specified to be and adjoining area under section 29:

(2) "appointed day" in relation to any area. Means the day on which this Act comes into force in that area:

(3) "Board" the Bihar State Housing Board constituted under section 3;

(4) "Board premises" means any premises belonging to or vesting in, the Board or taken on lease by the Board or any premises which is entrusted to the Board under this Act for management and use for the purposes of this Act;

(5) "building" means house, outhouse, stable ,shed, hut (other than a hut made of mud appurtenant to or situated in a cultivated field in any area outside the limit of a city municipality, town area or notified area) or other enclosure or structure, whether or masonry, bricks, wood, mud, metal or any other material whatsoever, and whether used as a human dwelling or other wise and includes any veranda, platform plinth, staircase, doorstep or wall including compound wall other than a boundary wall of a garden or of agricultural land not appurtenant to a house but does not include a tent or other such portable temporary shelter;

- (6) "building materials" means such commodities or articles as are specified to be building materials for the purposes of this Act by the State Government by notification in the official Gazette;
- (7) "bye-laws" means bye-laws made under Section 116;
- (8) "Chairman" Means the Chairman of the Board"
- (9) "Managing Director "Means the Managing Director of the Board:
- (10) "Committee" means any committee appointed under section 13;
- (11) "competent authority" means any person or authority authorised by the Government by notification to perform the functions of the competent authority under Chapter IX for such area as may be specified in the notification;
- (12) "Government" means the State Government;
- (13) "housing or improvement scheme "means a scheme framed under this Act and includes any one of the types of schemes referred to in section 28;
- (14) "land" includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth"
- (15) "member" means the member of the Board, and includes the Chairman of the Board;
- (16) "municipality" means any area to which the Bihar and Orissa Municipal Act, 1922(B. &O. Act VII of 1922) applied and includes any area comprised within the limits of a municipal corporation established and constituted under any law for the time being in force and a notified area constituted under XIV of the Bihar and Orissa Municipal Act, 1922 (B.& O. Act VII of 1922)

Explanation.----- A municipality includes a notified area constituted under chapter XIV of The Bihar and Orissa Municipal Act, 1922 (B. & O. Act VII of 1922).

Comments and case –law

[Section 2 – Explanation – An "explanation" to a section is not a substantive provision by itself. The meaning to be given to such an "explanation" must depend upon its terms. Sometimes, it would be added to include something within it or to exclude from the ambit of the main provision or condition or some words occurring in it. therefore an "explanation" occurring in a statute should normally be so read as to harmonise with and to clear up any ambiguity in some "section" [Sulochna Amma vs. Naryanan Nair, AIR 1994 SC 152]

- (17) "owner" includes the person for the time being receiving or entitled to receive, whether on his own account or as agent trustee, guardian, manager or receiver for another person or for any religious or charitable purpose the rents or profits of the property in connection with which the word is used;
- (18) "premises" means any land or building or part of a building and includes- (1) the garden, grounds and outhouses, if any appurtenant to such building or part of a building

1. The garden, grounds and outhouses, if any appertaining to such building or part of building.
 2. any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof ; and
 3. roadside land adjoining park, garden, roads, drains, water lines, sewer lines or area or vacant plot adjoining thereto;
- (19) "prescribed" means prescribed by rules made under this Act;
- (20) "regulations" means the regulations made under this Act;
- (21) "rules" means the rules made under this Act;
- (22) "secretary" means the person for the time being appointed by the state Government to discharge the function of the secretary to the Board;
- (23) "state" means the State of Bihar
- (24) "tribunal" means the tribunal constituted under section 52;
- (25) "unit" means a Housing unit established under section 21;
- (26) "year" means the financial year; and
- (27) Excepting clauses (6) and (17) references to a "city" or "municipality" shall be construed as including references to areas lying within a distance of five kilometres beyond the limits of such city or municipality.

CHAPTER II

ESTABLISHMENT OF THE BOARD

3. **Creation and incorporation of the board.**- (1) the duty of carrying out the provisions of this Act shall subject to the restrictions, conditions and limitations therein contained, be vested in a board to be called "The Bihar state housing board" , and such board shall be a body corporate and have perpetual succession and common seal, and shall by the said name sue and be sued.
 - (2) For the purposes of the land Acquisition Act, 1894 (Act I of 1894), the Local Authorities Loans Act, 1914(Act 9 of 1914), any other law for the time being in force the Board shall be deemed to be a local authority.
 - (3) The Board shall have its head office at a place to be specified by the State Government and also an office at the headquarters of each unit and may have offices at such other places as it may consider necessary or be directed by the State Government.
4. **Constitution of the Board.** - (1) The Board shall consist of the following members. Namely:-
 - (a) A Chairman appointed by the State Government.
 - (b) A Managing Director appointed by the State Government,
 - (c) A Secretary appointed by the State Government, who shall be the Member Secretary of the Board,

(d) Secretary to Government of Bihar, housing Department or the representative --
--- ex – officio.

(e) Finance Commissioner or a representative nominated by him who will not be an officer below the rank of Special Secretary or Additional Secretary –ex officio,

(f) Special Secretary to Government of Bihar, Planning Department – ex-officio,

(g) Chief Engineer, Public Health Engineering Department –Ex-officio

(h) Chief Engineer, Housing Board- ex-officio

(j) Four non –official member, having knowledge of Housing Problems in the State and Special qualification in this respect, appointed by the State Government

(2) The appointment of Chairman and members specified in clauses (a) to (j) of sub-section (1) shall be notified in the Bihar Gazette.

4A. Constitution of an Executive Committee.- - There shall be an Executive Committee consisting of five members including the Managing Director who shall be the Chairman of the Committee. Other four members shall be the following:-

(i) One non-official member nominated by the State Government ort of the non – official members of the Board.

(ii) Chief Engineer of the Housing Board; and

(iii) Two members nominated by the State Government out of the remaining ex-officio members of the Board.

5. Disqualification for appointment as member of the Board – (1) A person shall be disqualified for being appointed as, and for being a member of the Board if he-

(a) Has been convicted by a criminal court for an offence involving moral turpitude, unless, such conviction has been set aside,

(b) is an applicant to be adjudicated a bankrupt or insolvent or is an uncertificated bankrupt or undischarged insolvent,

(c) holds any office or place of profit under the Board,

(d) Has directly or indirectly, by himself or by any partner, employer or employee any share or interest in contract or employment with, by or on behalf of, the Board.

(e) is a director or a secretary manager or other salaried officer or any incorporated company which has any share or interest in contract or employment with by or on behalf of the Board, or

(f) Is of unsound mind :

Provided that nothing contained in clause (c) shall apply to the Chairman.

(2) A person shall not however, be disqualified under clause (d) or clause (e) of sub-section (1) or be deemed to have any share or interest in any contract or employment within the meaning of those clause, by reason only of his or the incorporated company of which he is a director, secretary, manager or other officer, having a share or interest in

(i) Any sale, purchase, lease or exchange of immovable property or any Agreement for the same

- (ii) Any agreement for the loan of money or any security for the payment of money only,
 - (iii) Any newspaper in which any advertisement relating to the affairs of The Board of inserted, and
 - (iv) The occasional sale to the Board to a value not exceeding two thousand rupees in any one year, of any article in which he or the incorporated company regularly trades.
- (3) A person shall not also be disqualified under clause (d) or clause (e) of sub section (1) or be deemed to have any share or interest in incorporated company which has any share or interest in any contract or employment will, by on behalf of the Board, the board by reason only of his being a share holder of such company:

Provided that such person discloses to the Government the nature and extent of the Shares held by him.

- 6. Term of office of Chairman and non-official members.**-(1) Subject to the provisions of section 10 the term of office of members including the Chairman but not including the ex-officio members shall be three years commencing on the date on which their appointment is notified:

Provided in case of an official Chairman he shall be deemed to have vacated his office on transfer, resignation or retirement:

Provided further that the State Government may by notification extend the said period by an period not exceeding six months.

- (2) A member shall, if not disqualified for any of the reasons mentioned in section 5, be eligible for re-appointment at the end of his terms of office.

- (3) Any non- official member may resign his office by giving notice in writing to the Government but he shall continue in office until his resignation is accepted by the Government,

7. Terms of pay and allowances of the Chairman and the Managing Director- (1) Chairman and the Managing Director shall be paid such salary and allowances as may be fixed by the Government;

Provided in the event of non-official person being appointed as Chairman, he shall be part time officer and his chief function shall be to preside over meeting of the Board.

8. Leave of absence of the Chairman and Managing Director and appointment of acting Chairman- (1) The Government may, from time to time, grant to the Chairman and Managing Director such leave as may be admissible under the rules.

(2) whenever the Chairman is out of the state and the period of his absence exceeds 15 days or the Chairman for some reasons, is unable to perform his duties or for some reasons the post of Chairman is vacant, or the Chairman has resigned from his post, the Managing Director shall perform all the duties of the Chairman till such time that regular appointment is not made to the post of the Chairman under the provisions of this Act.

- (3) The Chairman and Managing Director shall draw their tour programme with the approval of the State Government.

9. Removal of the Chairman and other non-official members. - (1) If at any time it appears to the Government that the Chairman has shown himself to be unsuitable for his office or has been guilty of any misconduct or neglect which renders his removal expedient, they may notification, remove the Chairman from office.

(2) The Government may, by notification, remove any non-official members from office-

(a) If he has, without the permission of the Board, been absent for more than three consecutive meeting of the Board, or

(b) if he has been absent from the of the Board for any period exceeding that permitted under section 10, or

(c) if he being a legal practitioner, acts or appears on behalf of any person other than the Board in any civil criminal or other legal proceedings in which the Board is interested, either as a party or otherwise, or

(d) if he, in the opinion of the Government contravened the provisions of section 14, or

(e) if he has , in the opinion of the Government, is unsuitable or has become incapable of acting as a member, or has so abused his position as a member as to render his continuance as such member detrimental to the public interest.

(3) A non-official member removed under any of the provisions of clauses (a) to (c) of sub-section (2) shall be disqualified for appointment as a member for a Period of three years from the date of his removal unless otherwise ordered by the Government.

(4) A non-official member removed under clause (e) of sub- section (2) shall not be eligible for reappointment until he is declared by an order of the Governed to be no longer eligible,

(10) Filling of casual vacancies in certain case.- if any member other than the ex-officio member is permitted by the Board to absent himself from its meeting for a period exceeding six months, or if any such member dies, resigns his office, or is removed from office under section 9, the vacancy shall be filled within two months by a fresh appointment and any person appointed to fill such vacancy shall enter upon office forthwith but shall hold office only so long as the vacancy lasts in case of absence, and for the unexpired portion of the term of office in other cases:

Provided that the person so appointed is eligible for being appointed as a member to the provisions of section 4 of the Act and is not disqualified under: - section 5.

CHAPTER III

CONDUCT OF BUSINESS OF THE BOARD AND ITS COMMITTEES.

11. (1) The Board and the Executive Committee shall meet at such times and places and shall observe such rules of procedure in regard to transaction to business at its meetings as may be provided by reregulation made under this Act.

(2) All questions at a meeting shall be decided by a majority of votes of the members presents, and in the case of equality of votes, the Chairman or in his absence, any other person presiding, shall have a second or casting vote.

(3) If any reason the Chairman of the Board or the Chairman of the Executive Committee is unable to attend any meeting of the Board or, as the case may be, of the Executive Committee - -

(a) in the case of the meeting of the Board, a Director, not being the Managing Director, authorised by the Chairman of the Board in writing, shall preside at such meeting but if the Director so authorised is absent or if no such authorisation has been made, the Board may elect a Director to preside at that meeting, and

(b) in the case of the meeting of the Executive Committee a member authorised in writing by the Chairman of the t Committee shall president at the meeting but if the member so authorised is absent or if no such authorisation has been made , the Committee may elect any of its members to president at that meeting.

11A. (i) Subject to such general or special directions as the Board may from time to time give, the Executive Committee may deal with any matter within the competence of the Board.

(ii) The minutes of every meeting of the Executive shall be laid before the Board at the next following meeting of the Board.

12. Temporary association of persons with the Board for particular purposes. – (1)

The board may associate with itself in such manner and for such purpose as may be prescribed by regulations, any person whose assistance or advice it may desire for the purpose of carrying into effect any of the provisions of the Act.

Provided that number of persons so associated shall not be more than five.

(2) A person associated with the Board under sub-section (1) for any purpose shall have the right to take part in the deliberation of the Board relevant to that purpose but shall not have the right to vote.

(3) The Government may by order depute one or more of its officers to attend any meeting of the Board and to take part in the deliberations of the Board but such officer or officers shall not have the right to vote.

13. Appointment and functions of the Committee. (1) Subject to any rules made under this Act. The board may from time to time and for any particular local area appoint one or more committees for the purpose of discharging such duties or performing such function as it may delegate to them and any such Committee may discharge such duties or perform such function with due regard to the circumstances and requirements of that particular areas.

Provided that no Committee shall consist of less than three and more than seven members.

(2) The Managing Director or such other person, as he may nominate in this behalf, shall be the President of He Committee and the Committee shall observe such rule of procedure in regard to transaction of business at its meetings as may be prescribed by regulations.

(3) Every Committee shall carry out any instructions given to it by the Board and every final decision of such committee shall subject to any rule to the Contrary be laid before the board for confirmation.

(4) The Board may at any time, for reasons to be recorded in writing, dissolve or subject to the provisions of sub-section (1) after the constitution of any such committee to modify or set aside the decision of the Committee.

(5) No business shall be transacted at any meeting of the Committee unless there be present at least one half of the number of the members constituting the Committee.

Comments and case-law

[The Bihar State Housing Board (Managing and Disposal of Housing Estates) Regulations 1983 provide the manner in which allotment of houses/land are to be made by the Housing Board. Where allotment is to be made by draw of lots, the allotment must be made by following the procedures laid down in the Regulations alone and no interference by either the Housing Board or the State Government is warranted. If any irregularity is committed in the draw of lots by the "Committee" that may be brought to the notice of the Housing Board for appropriate Action under section 13(4) of the Act Beyond the stipulated "Special Quota" available for a allotment on compassionate grounds, neither the state Government nor the Housing Board have any discretion to make allotments. Both must expressly the State Government with exercise of power, by the Housing Board is unwarranted and illegal. Notice issued by the Housing Board must mention the number of housing units available and the number of units under each category. [Surya Kant Choudhury .vs. State of Bihar, 1993 (1) PLJR 598]

14. Member of the Board or Committee or persons associated with the Board not to take part in proceedings in which they are personally interested. –

(1) A member or a person associated with the Board under section 12 or a member of any Committee who –

(a) has, directly or indirectly by himself or by any partner, employee or employed any such share or interest as is described in sub-section (2) of section 5 in respect of any matter, or

(b) has, acted professionally, in relation to any matter, on behalf on any person having therein any such share or interest as aforesaid, shall not vote or take part in any proceedings of the Board or any Committee relating to such matter.

(2) If any member or any person associated with the Board under section 12 or any member of a Committee appointed under section 13 has, directly or indirectly, any beneficial interest in any land situated in an area comprised in any housing or improvement scheme framed under this Act or in an area in which it is proposed to acquire land for any of the purpose of this Act –

(i) He shall at a meeting relating to such area of the Board or any Committee inform the person presiding of the nature of such interest, and

(ii) Nothing in sub-section (2) shall prevent any member or any person associated with the board under section 12 or any member of a Committee appointed under section 13 from voting on or taking part in, the discussion of any resolution or question relating to any subject other than a subject referred to in that sub-section.

15. Act of the Board or Committee no to be invalidated by any infirmity, etc. - No Act done or proceedings taken under the Act by the Board or any Committee shall be invalidated merely on the ground.

(a) Of any vacancy or defect in the constitution of the Board or the Committee; or

(b) Of any defect or irregularity in the appointed of a person acting as a member thereof; or

(c) Of any defect or irregularity in such act (c) proceeding not affecting the merits of the case.

CHAPTER IV

OFFICERS AND EMPLOYEES

16. Appointment of officers and employees. ----- (1) The Board shall have a Chairman, a Managing Director, a Secretary, a Housing Chief Engineer, a Chief Accounts Officers and such other officers and employees, as it considers necessary for the efficient performance of its functions.

(2) (a) The appointment of the Chairman, Managing Director, Secretary, the Housing Chief Engineer and Chief Account and employees of the Board shall be made by the Board,

(b) The Secretary to the Board shall perform the following functions:-

(i) Submission of matters for consideration or orders of the Board,

(ii) Communication of orders and resolutions of the Board,

(iii) Control over the general administration of the Board, and

(iv) Functions prescribed by the State Government from time to time,

(3) Subject to the provision of sub-section (1) ---

(i) The Board may, with the previous approval of the State Government sanction the creation of any post the maximum scale of which exceeds rupees one thousand five hundred and eighty per month provided appointment to such a post will be made in consultation with the Public service Commission of the State, and prior approval of the Government.

(ii) The Board shall have power to create posts in its establishment the maximum pay- scale which does not exceed rupees one thousand five hundred and eighty per month provided the appointment to a post above the monthly income of rupees eight hundred and forty will be made in consolation with the Public Service Commission of the State.

(iii) (a) The Managing Director may appoint temporarily for a period not exceeding three months, such officers or employees, as may, in his opinion, be required for the purposes of this Act, and the employment of whom for any particular work has not been prohibited by any resolution of the Board. The Managing Director shall not appoint or extend the services of any such officer beyond three months without the prior approval of the Board and the prior sanction of the Government.

(b) Every appointment made under clause (a) shall be reported by the Managing Director to the Board at its next meeting.

17. Conditions of service of officers and employees of the Board.- The remuneration and other conditions of service of the Managing Director, Secretary, Housing Chief Engineer, Chief Accounts Officer other Officers and employees of the Board shall be such as may be prescribed by regulations approved by the Government.

Comments and case-law

[Section 17 and 19- In the absence of any rules/regulation governing the service condition of the employees who transferred from Housing Department to Housing Board, they enjoy the same service condition (except deputation allowance) as are admissible under the State Government, [Giridhar Prasad Singh vs. State of Bihar, 2000 (1) PLJR942.]

18. Promotion and punishment of the officers and employees of Board.

(1) subject to any regulation made under section 19 the power of making promotions to posts in the service of the Board, fining ,withholding promotions from reducing, suspending, emoting or dismissing such officers and employees for any breach of departmental rules or discipline or for carelessness, unfitness neglect of duty or misconduct, and of discharging such officers and employees from the service of the Board for any other sufficient reasons shall be exercised by the following authorities, namely:-

(a) by Managing director in the case of posts, the maximum monthly pay-scale of which does not exceed [eight hundred and forty rupees and the employees holding such posts;

(b) by the Board after consultation with the public service commission of the

State, in the case of post, the maximum monthly pay-scale of which exceeds eight hundred and forty rupees but does not exceed [one thousand five hundred and eighty rupees and officers and employees holding such posts;

(c) by the Board after consultation with the public service commission of the state and with the previous sanction of the government in the case of posts ,the maximum salary of which exceeds [one thousand five hundred eighty rupees and officers and employees holding such posts:

Provided that any officer employees of the central or state Government or local authority, whose services have been lent to the Board, shall not be so punished except by an authority which would have been competent to do so, if his service, had not been so lent ,but the managing director of the Board as the case may be shall entitled to make an enquiry and to report with a recommendation in that behalf against such employees to such authority:

Provided further that in consultation with the Public Service Commission under clause (b) or (c) shall not be necessary in the case of appointment of technical personnel made for a period not exceeding six-months:

Provided further also that it shall not be necessary to consult State Public Service commission in case of censuring, fining or suspending and further that the provision of this section shall not apply in case of reverting back to original post from officiating promotions and termination of service from after completion of term of temporary appointment.

(2) Any officer or employee of Board who is aggrieved by an order passed under sub-section (1) may, within two months from the date of receipt by him of such order, appeal-

(a) To the Board, if the order was passed by the Managing Director, and

(b) to the Government, if the order was passed by the Board: provided that in all cases the order of the Government shall be final

(3) For the purposes of this section, an order of suspension only shall not be deemed to be an order of punishment.

Comments and case-law

[A “Diploma-holder” appointed as “Trainee” on a temporary basis on stipend by the Bihar State Housing Board in terms of a “Special Employment Programme” cannot be entitled to parity in matter of consideration for promotion to higher posts along with persons appointed on posts of “Overseers” in regular cadre of “overseer”. Rajesh war Prasad Roy v. Bihar State Housing Board, 1990 (1) PLJR 357]

19. Service regulations. - Subject to the provisions of this Act, the Board shall with the previous approval of the Government, make regulations-

(a) fixing the salary and allowances of the Chairman, Managing director, Secretary, chief Engineer, chief Accounts Officer and other officers and employees of the Board;

(b) Fixing the amount and nature of the security to be furnished by an officer or employee of the Board from whom it may be deemed expedient to require security;

(c) For regulating the grant of leave of absence, leave allowances and acting allowances to the officers and employees of the Board;

Provided that employee of the Central or State Government employed as an officer or employee of the Board shall not be entitled to leave allowances, otherwise than as laid down in the conditions of his service under the Central or State Government relating to transfer to foreign service;

(d) for establishing and maintaining a provident and annuity fund, for compelling all or any of the officers or employees of the board other than any employee of the Central or State Government in respect of whom a contribution is paid under section 105 to subscribe to such fund at such rates and subject to such conditions as may be prescribed, and for supplementing out of the funds of the Board; and

(e) For determining the conditions under which the officer and employees of the Boards or any of them shall on retirement receive gratuities or compassionate allowances and the amount of such gratuities and compassionate allowances:

Provided that it shall be at the discretion of the Board to determine whether all such officers and employees or any of them and if so which of them shall become entitled on retirement to any such gratuities or compassionate allowances as aforesaid.

Comments and case-law

[Section 19 provides for making Regulations by the Housing Board with the previous approval of the state Government in respect of service conditions of its employees. [Rajeshwar Prasad Roy vs. Bihar State Housing Board, 1990(1) PLJR 357]

20. Statement of strength and remuneration of staff:-On the first day of May every year the Board shall prepare and maintain a schedule of establishment as on the first day of April of the year showing-

(a) the number ,designation and grades of the officers and employees other than employees who are paid by the day or whose pay is charged to temporary work, home it considers necessary and proper to employ for the purposes of the Act,

(b) The amount and nature of the salary, fees and allowances to be paid to each such officer and employee, and

(c) The contributions payable under section 105 in respect of each such officer and employee.

21. Housing Units.- (1) The board may with the previous approval Government establish by resolution a Housing Unit for any city or for any other area for the efficient performance of its function in that area:

(2) Every Housing Unit shall form part of the establishment of the Board and shall consist of such officers and servants as may be admissible according to standards prescribed by the government.

(3) Every Housing Unit shall be under the charge of an officer who shall exercise such power and perform such duties and functions which may be assigned to him by the Managing Director under section 22 of the Act. Such officer shall be under administrative control of the Managing Director

22. Control and delegation by Managing Director- (1) The Managing director shall exercise supervision and control over the acts and proceeding of all officers and employees of the Board, and , subject to the

foregoing sections and Subject also to such control and revision as may be prescribed , shall decide all questions relating to the services of the said officers and employees and their salaries , allowances, benefits and privileges.

(2) The Managing Director may, by general or special order in writing delegate to any officer of the Board, any of this powers, duties or functions under this Act, or any rules or regulations made hereunder, except those under sections under sections 11, 90 and 93:

Provided that –

(a) The Managing Director shall not delegate his powers under sections 24 and 65 to incur expenditure and to approve estimates for any single work or scheme, the value of which exceeds fifty thousand rupees;

(b) The Managing Director shall not delegate his power under section 16 to make appointments on posts the maximum monthly pay-scale of which exceeds three 1[hundred seventy –five rupees; and

(c) The Managing Director with the prior approval of the Board may delegate any of his powers, duties and functions under section 18.

(3) The exercise of discharge by any officer of any powers, duties or functions delegated to him under sub-sections(2) shall be subject to such restrictions and limitations as may be imposed by the Managing Director and shall also be subject to his control and revision.

(4) Against any order of the nature, referred to in sub-section (2) of section 18 passed by officer to whom the Managing Director's powers in that behalf has been delegated , an appeal shall lie to the Board, and if the Managing Director has himself revised the order of such officer, an appeal shall lie to the Board against the order of the Managing Director.

23. Power to set aside resolution or order of the Board.- The Government may stay or set aside any resolution of the Board or any order of the Managing Director or the Board , if in the opinion of the resolution or order is in excess of the power conferred by law, or is not in consonance with the public interest.

Comments and case –law

[Where notification has been issued by the State Government in exercise of power under section 23 cancelling earlier allotments made by the Housing Board, the allottee cannot claim any right on the basis of that allotment if the validity of the notification issued by Government has not been specifically challenged in the writ application by the allottee. [Rajendra Sharma v. State of Bihar, 1985, PLJR (NOC) 70.]

A Government or statutory authority cannot be bound by illegal action of its officers. Ibid.

Where notification has been issued by the state Government in exercise of power under section 23 cancelling earlier allotments made by the housing Board, the allottee cannot claim any right on the basis of that allotment if the validity of the notification issued by Government has not been specifically challenged in the writ application by the allottee. [Rejendra Sharma vs. State of Bihar, 1985PLJR (NOC) 70.]

A Government or statutory authority cannot be bound by Illegal action of its officers. ibid.

Under the provisions of section 23, the State Government is clearly empowered to nullify and Resolution of the Housing Board in respect of allotment of land/flat to a person. However it cannot be said that the State Government's power extends to passing an order of allotment in favour of a person who has been consulted by the High Court on merits. It is patently impermissible for the State Government to decide a proceeding under section 23 by going behind the order of the High Court passed in exercise of its writ jurisdiction deciding the merits of an order of allotment of land/house by the Housing Board. [Sardar Mohan Singh vs. State of Bihar, 1993 (2) PLJR 406.]

The passing of a Resolution by the Housing Board is sine qua non for making a valid allotment of house/ land to an allottee. Ibid.

It is mandatory to give an opportunity of hearing to affected allottees before the State Government may pass any order nullifying the earlier allotment to the prejudice of the affected allottee. [Smt. Meena Singh vs. State of Bihar, C. W. J. C. 413 of 1982 decided on 11.4.1988.]

Section 23 clothes the State Government with the power to nullify any Resolution of the Housing Board or any act of its Managing Director , [Rejeshwar Prasad Roy vs. Bihar State Housing Board, 1990 (1) PLJR 357.]

The power conferred on the state Government under section 23 to set aside any Resolution or Order of the Housing Board has to be exercised quasi-judicially and every person affected by the proposed order of the State Government must be given a opportunity of hearing before the State Government passes a speaking order. Even though a right of hearing is not statutorily provided in section 23 or any other provision of the Act, such requirement of natural justice has to be read in respect of exercise of power under section 23 by the State Government. The cancellation of earlier allotment or a further direction to reallot by auction of lands/flats by the Housing Board involves infringement of Civil rights of allottees. [Ram Prit Singh vs. State of Bihar , 1992(2) PLJR 528.]

A purchaser through open auction bid house from the Housing Board cannot be equated with allottees under hire purchases scheme. Housing Board may adopt different modes for payment of instalments and different conditions for the two types of agreements. However, the Housing Board cannot charge interest over amount due from allottees with respect to those houses, possession of which has not yet been given to the auction purchasers. [Rajendra Prasad Singh vs. State of Bihar, 1993(1) PLJR 361.]

Sections 23, 59 (1) (b), 83A (3) and 109- The Housing Board executed a hire –purchase agreement with the allottee-allottee making all the desired payments and fulfilling all the requisite criteria allotted house as another person being a trespasser has forcibly entered into the allotted house and was in unauthorised occupation of the same- pursuant to a recommendation of the State Government Housing Board cancelling its earlier valid and concluded allotment and reallotted the said house to the unauthorised occupant – The Provisions contained in sections 23 and 109 do not give any power to the State Government to direct the Board to allot any particular house to a particular person- at best the Government can issue a general direction concerning policy matters but not specific directions- cancellation and reallotment wholly illegal and unsustainable and liable to be quashed – the unauthorised occupant directed to vacate the house and in case of his failure Housing Board to take the assistance of the Collector of the district who will provide him optimum use of force to evict such person- the Board after obtaining vacant possession shall had over the said house to the substituted heirs of the original allottee – the direction for eviction also applies to some tenants who were inducted by unauthorised occupant illegally- writ application allowed with costs .[Anil kumar Sinha vs. Bihar State Housing Board, 1998 (3) PLJR 437.]

CHAPTER V

EXECUTION OF CONTRACTS

24. Execution of Contracts and approval of estimates.- (1) The Board may enter into and perform such contracts as it may consider necessary or expedient for carrying out any of the purposes of this Act.

(2) Every contract shall be accepted and executed on behalf of the Board by the Managing Director or if so, authorised by the Board, by the Chief Engineer, Superintending Engineer or Executive Engineer provided that the Board shall determine the maximum value of contracts to be executed and sanctioned by such authorised officers.

(3) Administrative approval for execution of schemes or for the expenditure for carrying out any of the purposes of this Act, shall be accorded-

(a) by the Managing Director amount not exceeding rupees fifty thousand,

(b) by the Board, amount exceeding rupees fifty thousand but administrative approval for schemes as per expenditure exceeding rupees two hundred lakhs shall not be accorded without the prior approval of the State Government.

(4) Sub-sections (2) and (3) shall apply to every variation or abandonment of a contract or estimate, as well as to original contract or estimate.

25. Delegation of Board's power to sanction contracts.-(1) Subject to any rules that may be made in that behalf, the Board may, by order delegate any of its powers under section 24 to the Managing Director or to any other officer of the Board.

(2) The exercise of any powers delegated under this section shall be subject to such restrictions, limitations and conditions and to such control by the Board as may be specified in the order.

26. Further Provisions as the execution of contracts.-(1) every contract by the managing Director on behalf of the Board shall subject to the provisions of this section be entered into in such manner and form as may be prescribed.

(2) A contract not executed as provided in this section and rules made thereunder shall not be binding on the Board.

CHAPTER VI

FUNCTIONS AND POWERS OF THE BOARD

27. Power and duties of the Board to undertake housing improvement schemes and their expenditure.-(1) Subject to the provisions of this Act and Subject to the control of the Government the Board may from time to time incur expenditure and undertake work, in any area in which this Act is in force for the framing and execution of such housing schemes as it may consider necessary.

(2) Government may, on such terms and conditions as he may think fit to impose, entrust to the Board the framing and execution of any housing or improvement scheme whether provided for by this Act or not, and the Board shall thereupon undertake the framing and execution of such scheme as it had been provided for by this Act.

(3) The Board may, on such terms and conditions as may be agreed upon and with the previous approval of the State Government, take over for execution any housing or improvement scheme on behalf of a local authority or co-operative society on behalf of an employer when the houses are to be built mainly for the residence of the employees of the concerned local authority, members of the co-operative society or employess of the employers and the Board shall execute such scheme as it had been provided for by this Act.

28. Types of schemes.-(1) The Board shall undertake the following types of housing and improvement scheme:-

(a) The integrated Subsidised Housing Scheme for industrial worker and the economically weaker sections of the community;

(b) The Low Income Group Housing Scheme;

(c) The Middle Income Group Housing Scheme;

(d) The Rental Housing Scheme;

(e) The Land Acquisition and Development Scheme;

(f) The Slum Clearance and Improvement Scheme;

(g) The Rural Housing; and

(h) A general town improvement and such other schemes as may be entrusted to it by the State or Central Government.

(2) The schemes specified in clauses (a) to (d), clauses (f) to (g) of sub-section(1) provided for the construction of houses so constructed.

(3) The Board may provide for renting out , leasing out , outright sale or sale on hire purchase of houses or house-sites, constructed under the schemes specified in sub-section(1). However, the Board shall prepare regulations for the allotment of houses/flats/sites with the approval of the Government and allotments are not in accordance with such regulations the allotment shall be considered to be illegal.

(4) The Board may provide in the area where the scheme mentioned in sub-section(1) is in force, roads , streets, drainage water-supply, street lighting and other amenities as necessary.

Comments and case –law

[section 28 (3) read with chapter IX of Bihar state Housing Board (Management and Disposal of Housing Estates,) Regulations, 1983- allottee cannot be held responsible for the failure on part of Board to discharge its statutory duty and deliver vacant possession of the house to its lawful allottee- case attained finality In [Anil kumar sinha vs. BSHB- allottee lawfully entitled to possession since 1978-79 which was denied –Board fined Rs. 500/- for unnecessary dragging the case and directed to handover possession within two months as directed. [Mrs. Neena Girish v. B. S. H. B. 1999 (3) PLJR 980]

Section 28 and 29 read with section 6, 33, 34, and 35 of Bihar State Housing board (Management and disposal of housing Estates) Regulation, 1983- board cannot change and substitute the mode of computation of the price of flat vis-a-vis the allottee long after the transaction between the board and the allottee has been completed (execution for execution of transfer deed) and charge extra amount based on the changed mode- moreover, there has been no real increase in price on account of any of the factors indicated in the allotment order-demand for extra amount set aside. Smt swam lata kanth vs. Sate of Bihar, 2000(2) PLJR268.

Section 28(3) read with regulation 26 of Bihar state housing board(management and disposal of housing estates) regulation,1983- cancellation of allotment after a long period alleging illegality in allotment—plot acquired and house constructed thereon in due compliance of necessary formalities— subsequent cancellation of allotment and its reallocation grossly unjust—board cannot penalize the allottee for its own lacshes and lapses—act of negligence on part of the Chairman as well as the board cannot be used as a weapon to destroy the right of allottee—award given by state commission upheld .Bihar state housing board v. State of bihar,2000(2)PLJR611.}

29. Matters to be provided by housing or improvement schemes –Not –withstanding anything contained in any other law for the time being in force the aforesaid housing or improvement scheme may provide for all or any of the following matters; namely:--

- (a) the acquisition by purchase ,exchange ,of otherwise of any property necessary for the affected by the execution of the scheme;
- (b) the laying or re-laying out of any land comprised in the scheme;
- (c) the distribution or re-distribution of sites belonging to owners of the property comprised in the scheme;
- (d) the closure of demolition of dwellings or portions of dwelling unfit for human habitation,
- (e) the demolition of obstructive buildings or portion of buildings;
- (f) the construction and re-construction of building;
- (g) the sale ,lase or exchange of any property comprised in the scheme;
- (h) the construction and alteration of roads ,streets, back lane ,bridges, culverts, and causeways;
- (i) the draining ,water-supply and lighting of the streets included in the scheme;

- (j) the provision of open parks, playing fields and open spaces for the benefit of any area comprised in the scheme or any adjoining area and the enlargement of existing parks, playing fields open spaces and approaches;
- (k) the provision of sanitary area arrangements required of the area comprised in the scheme ,including the conservation of and prevention of injury or contamination to rivers or other sources and means of water-supply;
- (l) the provision of accommodation for any class of inhabitants;
- (m) the advance of money for the purposes of scheme;
- (n) the provision of facilities for communication and transport;
- (o) the collection of such information and statistics as may be necessary for the purposes of this Act;
- (p) the reclamation or reservation of land for markets ,gardens, playing ,fields and afforestations;
- (q) the provision of schools, parks, swimming pools ,restaurants, shops, markets, fuel depots ,laundries, hair dressing saloons and other amenities in the scheme; and
- (r) any other matter for which in the opinion of the government is expedient to make provision with a view to provide house accommodation and to the improvement of any area comprised in the scheme, or of any adjoining area or the general efficiency of the scheme.

Explanation --- For the purposes of this section, the government may , on the recommendation of the Board, by notification ,specify such area surrounding or adjoining the area included in a housing or improvement schemes to be the adjoining area,

Comments and case-law

[section29(b)and 46 read with Bye law 33 of the planning standards and Building Bye-laws,1981 (framed by 'PRDA under BRDA Act,1981)—LPA by unsuccessful writ petitioners who had filed writ application for setting aside the order of the Chairman ,Bihar state housing Board and consequential settlement of a piece of land extending over portion of public road in patna—Housing Board is entitled to relay out its plan under section 29(b) and even if a wider road was in contemplation at any time in the past ,it was within its jurisdiction to reduce the same in the public interest- where there was no resolution of housing board in the matter of any “relay out” of roads over land of the housing Board ,the Chairman of the housing Board cannot validly make settlement of land extending over “road” or other land of public utility in purportedly in the name of re-laying our of plan , can be made only in the public interest and not in any individuals' interest- housing board cannot fix width of its service road below 20ft. As required under the Bye –laws framed under the BRDA Act – order of single judge is liable to be set aside- housing Board directed to cancel impugned settlement of land extending over area shown as read in Master plan and any construction over the land ordered to be demolished to the extent of encroachment over the road portion in the Master plan [Rajendra Prasad sinha vs .State of Bihar ,1996 PLJR 550.]

30.No housing or improvement scheme to be inconsistent with the Master Plan –(a)No housing or improvement scheme made under this Act ,shall contain anything which is inconsistent with any of the matters included in a master plan sanctioned by government under the Bihar Town planning and improvement Trust Act,(Bihar act xxxv of 1951).

(b) If any dispute arises whether a housing or improvement scheme made under this Act contains anything inconsistent with any matter included in a master plan sanctioned under the .Town planning and improvement trust Act,1951(Bihar Act xxxv of 1951).the decision of the government shall be final.

Comments and case-law

[Section 30 indicates that the decision of the state government would be final in regard to any dispute relating to the master plan. Where allotment of land has already been held to be in order by High Court it cannot be assailed by a fresh application. [Smt Krishna Sing vs .State of Bihar, 1985 PLJR(NOC)37.]

The country very vitally and urgently requires a National Housing Policy if we want to prevent a major break down of law and order and gradual disillusionment of people. Such new housing policy must comprehend the present anticipate the future, [prabhakaran Nair v .State of Tamil Nadu ,(1987)4SCC 238.]

The supreme court remanded the matter to the patna High court for ascertaining as to whether there had been any contravention of the master plan for patna as amended from time to time in accordance with law. [Smt Krishna Singh v State of Bihar , PLJR(SC)58.]

The supreme court remanded the matter to the patna High Court for ascertaining as to whether there had been any contravention of the master plan for patna as amended from time to time in accordance with law [Smt Krishna singh vs.State of Bihar, PLJR(SC)58.]

This section indicates that the decision of the state government would be final in regard to any dispute relating to the master plan –where allotment of land has already been held to be in order by High Court it cannot be assailed by a fresh application. [Smt Krishna Singh v.State of Bihar, 1985 PLJR(NOC)37.]

31.Preparation and submission of annual programme, budget and establishment schedule,---

(1) Before the first day of December in each year ,the Board shall prepare and forward---

(1) a programme;

(ii) a budget for the next year; and

(iii) a schedule of the staff already employed and to be employed during the next year to the government in such form as may be prescribed;

(2) The programme shall contain—

(a) the prescribed particulars in respect of housing schemes which the board proposes to execute whether in part or whole during the next year;

(b) the particulars of any undertaking of work which the Board proposes to organise or execute , as the case may be ,during the next year for the purposes of production of building materials; and

(c) such other particulars as may be prescribed.

(3) The budget shall contain a statement showing the estimate receipts and expenditure on capital and revenue accounts for the next year and such other particulars as may be prescribed and shall make provision for the due efficient administration of this Act.

(4) The schedule of the staff and establishment shall contain the information as mentioned in section 20.

32. Sanction of programme and establishment schedule.—After receipt of the programme and budget ,the State Government may ,if it so desires give direction for its modification.

33. publication of programme.—The state Government shall publish the programme of Housing Board in the official Gazette for information.

Comments and case law

[Where a law ,whether parliamentary or subordinate ,demands compliance those that are governed must be notified directly and reliably of the law and all changes and additions made to it by various processes. It is necessary ,that subordinate legislation in order to take effect ,must be published or promulgated in some suitable manner, Whether such publication or promulgation is prescribed by the parent statute or not [B.K. Srinivasan vs.State of Karnataka,(1987) 1 SCC 658]

Areas shown in the existing master plan as “ Green Belt” area cannot ,be permitted to be used for any other purpose by the authorities [.Doman paswan vs.State of Bihar,1988 PLJR 968.]

Acquisition of land shown in existing master plan as “Green Belt” area, for purpose of construction of residential houses cannot be said to acquisition of land for public purpose. *ibid.*]

34.supplementary programme and budget- The Board may at any time ,during the year ,submit a supplementary programme and budget and an additional schedule of the staff, if any , and the provisions of sections 31 to 33 shall apply to such supplementary programme ,budget and schedule.

35.Variation in programme and budget.—The Board may ,at any time vary any programme of any part thereof:

Provided that if the variation of any housing scheme /schemes involves any expenditure in excess of ten per cent of the amount as originally sanctioned for the execution of the scheme/schemes or if it effects its /their scope or purpose ,such variation shall be done by following provisions under section 31 to 33.

36. Sanctioned housing scheme to be executed:- The Board shall subject to the provisions of sections 32 and 35, proceed to execute the housing scheme included in the programmes made under sections 31 and 34.

37.Transfer to Board for purposes of housing or improvement scheme of land vested in local authority- (1) Whenever any building or land or any street of any part thereof , which is situated within the jurisdiction of a local authority and is vested in such local authority is included within the area of any housing or improvement scheme the board shall issue notice accordingly to such local authority after obtaining the approval of the Government.

(2) Where such local authority concurs, such building or land or any street or any part thereof ,shall vest in the Board.

(3) Where there is any dispute between the Board and such local authority the matter shall be referred to the Government and the Government shall after ‘hearing the board and the local authority concerned, decide the matter and decision of the Government shall be final.

38. Compensation in respect of land vested in the board-(1) where any land situated within the jurisdiction of local authority vests in the Board under the provisions of section 37 and the Board makes a declaration that such land will be retained by the Board only until it reverts in the local authority as part of a street or an open space under section 43, no compensation shall be payable by the Board to the local authority in respect of that land.

(2) Where any land or building vests in the Board under the provisions of section 37 and no declaration is made under-section (1) in respect of the land, the Board shall pay the local authority as compensation a sum equal to the value of such land or building.

(3) If, in any case, where the Board has made a declaration in respect of any land under sub-section (1) and the Board retains or disposes of the land contrary to the terms of the declaration and the land does not revert in the local authority, the Board shall pay to the local authority, compensation in respect of such land in accordance with the provisions of sub-section (2).

39. Power of Board to divert or close Public Street vested in It.-(1) The Board may divert, discontinue the public use of, or permanently close any public street vested in it or any part thereof.

(2) Whenever the Board discontinues the public use of, or permanently closes, any public street vested in it or any part thereof, it shall, as far as practicable, provide some other reasonable means of access in lieu thereof for the use but those entitled to the use of such street or part thereof any pay, reasonable compensation to every person who is entitled, otherwise than as a mere member of the public, to use such street or part as a means of access and has suffered damage from such discontinuance or closure.

(3) In determining the compensation payable to any person under subsection (2) the Board shall make allowance for any benefit accruing to him from the construction, provision or improvement of any other public street at or about the same time the public street or part thereof, on account of which the compensation is paid, is discontinued or closed.

(4) When any public street vested in the Board is permanently closed under sub-section (2) the Board may sell or lease out so much of the same as is no longer required.

40. Reference to Tribunal in case of dispute.- If there is any dispute as to where any compensation is payable or as to the amount of compensation payable under section 38 or section 39 the matter shall be referred to the Tribunal, whose decision shall be final.

41. Bar to application of certain laws of a local authority regarding closure.- (1) Such of the provisions of the Bihar and Orissa Municipal Act, 1922 (B & O.Act VIII of 1922), the Patna Municipal Corporation Act, 1951 (Bihar Act 13 of 1952) and Bihar Panchayat Raj Act, 1947. (Bihar Act 4 of 1947 as relate to maintenance or repairs of public streets, closure of public street or parts thereof, diverting or turning public street or parts thereof, and to disposal of the land which is no longer required when any public street is permanently closed shall not apply to any street which is vested in the Board.

(2). Such of the provision of the enactments, specified in sub-section (1) as relate to temporary closure of streets, precautions during repairs of streets and prosecution against removal of bars and lights shall not apply to the board when any drain or premises vested in the local authority is opened or broken up the Board or any public street is under construction by the Board.

42.Repair of streets vested in the Board:- Whenever the Board allows any street vested in it to be used for public traffic it shall keep the street in good repair and do all things necessary for the safety and convenience of persons using it.

43. Transferring streets laid out or altered and open space provided by the Board under a housing or an improvement scheme.- (1) The Board may hand over any road or street to the local authority concerned after giving a month's notice, when-

(a) any such road or street laid out altered by the Board has been duly levelled, metalled, flagged channelled, sewered, and drained in the manner provided in the scheme sanctioned by the Board or the Government;

(b) Water and other sanitary conveniences have duly been provided in such streets.

(2) The local authority concerned may after receiving the notice from the Board under sub-section (1) declare the street to be a public street, and the street shall thereupon vest in the local authority, and shall henceforth be maintained, kept in repair, lighted and cleansed by the local authority.

(3) When any open space for the purposes of ventilation or recreation has been provided by the Board in executing a housing or improvement scheme, it shall, on completion, be transferred to the local

authority concerned by a resolution of the Board and it shall thereupon vest in the local authority concerned and thereafter be maintained by that local authority at its expense;

Provided that the local authority may require the Board before and such open space is so transferred to enclose, level, turf, drain and lay out such space and provide footpath therein and, if necessary to provide lamps and other apparatus for lighting it.

(4) If any difference of opinion arises between the Board and the local authority in respect of any matter referred to in the foregoing provisions of this section, the matter shall be referred to the Government whose decision shall be final.

44. Prevention or restriction of traffic in street vested in the Board during progress of work.- (1) When any work which may lawfully be done, is being executed by the any street vested in it the Board may direct that such street shall during the progress of such work, be either wholly or partially closed to traffic of any specified description.

(2) When any such direction has been given the Board shall set up in a conspicuous position in or near the street an order prohibiting traffic to the extent so directed, and fix such bars, chains, or posts across or in the street as it may think proper for preventing or restricting traffic therein.

45. Other duties of the Board.- It shall also be the duty of the Board to take measures with a view-

(1) To plan and co-ordinate all housing activities in the State and to ensure expeditious and efficient implementation of housing or improvement schemes in the State;

(2) To provide technical advice and scrutinise all projects under housing or improvement schemes sponsored or assisted by the central or State Government;

(3) to maintain, allot, lease and otherwise use plots, buildings, and other properties of the Board or the Government, and to collect rents from the properties under the control and management of the Board, and repay loans to the State and central Government;

(4) To set up a research section for the purpose of expediting the construction of and cheapening the cost of buildings;

(5) to organise and run workshops and stores for manufacture, sale, stock piling and supply of building materials, required for housing or improvement schemes;

(6) to undertake comprehensive survey of problems of housing, and

(7) to do all things for-

(a) Unification, simplification and standardisation of building materials;

(b) encouraging pre-fabrication and mass production of house components;

(C) organising or undertaking the production of building materials for residential or non-residential housing, and

(d) securing a steady and sufficient supply of work mentioned in the work of construction of building.

Comments and case-law

[Only the Statutory Authority or Board itself or a committee appointed by it in that behalf is competent to allow Conversion of "Hire Purchase Scheme" into "Self financing Scheme" [Rajendra Singh Yadav. Allahabad Development Authority, 1987 All L.J. 842.]

Blacklisting of a contractor cannot be done without affording an opportunity of hearing to the affected party. Even if cancellation of contract is found to be valid, the portion of order relating to blacklisting must be set aside if it has been passed without complying with principles of natural justice. [Raghunath thakur v. State of Bihar, (1989) 1 SCC 229.]

Section 45 read with Article 136 of the Constitution of India-Allotment of flat made by Housing Board to applicant – High Court directing Housing Board to deliver vacant possession of flat to allottee on balance amount of price of flat in terms of agreement between allottee and Housing Board-Housing Board not entitled to claim enhanced cost of construction as it is responsible for delay in completion of construction-Housing Board cannot insist on execution of document without completion of construction-appeal by Housing Board dismissed. [Bihar State Housing Board vs. Lalit Ram, 1998 (1) PLJR (SC) 72.]

46. Reconstitution of Plots.- A housing scheme may provide-

- (a) For the formation of a reconstituted plot by the alteration of the boundaries of an original plot;
- (b) with the consent of the owners, that two or more original plots each of which is held in ownership separately or jointly shall, with or without alteration of boundaries be held in ownership in common as a reconstituted plot;
- (c) For the allotment of plot to any owner dispossessed of land in furtherance of the housing scheme; and
- (d) For transfer of ownership of a plot from one person to another with the consent of such persons.

47. Supervision and centage charge.- The Board may include in the cost of any housing or improvement scheme framed by it or any other work undertaken by it, supervision and centage charge at such rates as may be fixed by it:

Provided that the rate so fixed shall not be more than twelve and a half percent of the cost of the scheme or work.

48. Power to exempt.- The Government may, by notification, exempt, subject to such conditions and restrictions as may be specified in such notification, any housing or improvement scheme, or class of housing or improvement scheme from all or any of the provisions of this Chapter.

CHAPTER VII

ACQUISITION AND DISPOSAL OF LAND

49. Power to acquire land- Any land or any interest there in required by the Board for any of the purposes of this Act may be acquired under the provisions of the Land Acquisition Act. 1894 (Act of 1894) as amended in its application to the State which for this purpose shall be subject to the modification specified in the Schedule to this Act, and the acquisition of any land or interest therein for the purpose of this Act, shall deemed to be acquisition for a public purpose within the meaning of the Land Acquisition Act.

Comments and case-law

[Reservation for person, whose land was acquired by the Authorities, appears to be based on sound principles and is therefore, valid.[I. L. Dhingra v.State of U.P, (1987) 2 SCC 533: AIR 1987 SC 1262]

Section 49 and 78 (5)- acquisition and demolition-petitioner residing in the house in question constructed over the plot without any objection of the respondents for more than 20 year- respondent has even exempted similarly situated persons- respondent directed not to demolish the house standing over the land in question which is to be acquired pursuant to gazette notification dt. 1.11.197, without taking recourse of a court of law of competent jurisdiction.[Sheo Kumar Lal vs. B.S.H.B 1999 (3) PHJR 610.]

50. Power to purchase or lease by agreement.- The Board may enter into agreement with any person for the acquisition from him by purchase, lease or exchange, or any land or any interest therein which may be acquired under Section 49:

Provided that if the value of such land interest exceeds fifty thousand rupees, the Board shall not enter into such agreement without the previous approval of the Government.

Comments and case-law

[Only the statutory Authority or board itself or a Committee appointed by it in that behalf is competent to allow conversion of "Hire purchase Scheme" into "Self Financing Scheme".[Rajendra Singh Yadav v. Allahabad Development Authority. 1987 All L.J 842.]

Where agreement of sale of houses by Development Authority contains an escalation clause, and the Authority has also reserved its right to alter terms and conditions, the subsequent alterations by the Authority at the time of allotment of the house/flats cannot be challenged by the allottees on ground of arbitrariness. Bareilly Development authority v. Ajai Pal Singh, (1989) 2 SCC 116.

Where office-bearers of a Housing Society allot portions of land earmarked for "park" to them the grant of land to the Housing Society may be validly cancelled by development authority. No sympathetic consideration need be given by courts to persons who had meanwhile gone ahead with illegal construction during the pendency of proceedings. Encroachment made on land earmarked for public "park" must be ordered to be removed, if necessary, by use of force, [Shaikh Mohammad Ali v. Bihar State Housing Board, 1989 PLJR 477.]

Housing Board cannot legally refuse to execute lease for transfer of plot of land despite the allotment. High Court giving directions to Housing Board to complete the formalities and execute permanent lease in favour of the allottee subject to the allottee fulfilling all the terms and conditions of the agreement entered in earlier between the parties. [Sri Krishana Nagar Vikas Samiti vs. Bihar State Housing Board, 1994 (2) PLJR 548.]

Sections 50, 51 and 114 read with rule 19 of the 'Rules for Settlement of Land acquired and developed by the State at Patna'- Refusal of Housing Board to exercise lease in respect of plot of land in S.K Nagar (Patna) despite the allottee having fulfilled all the terms and conditions stipulated at time of allotment- Housing Board directed to complete the formalities and execute permanent lease in favour of petitioner, if the petitioner, if the petitioner fulfils all the terms and conditions in terms of agreement entered into earlier by authorities and petitioner. [Krishna Nagar Vikas Samiti vs. Bihar State Housing Board, 1994 (2) PLJR 548]

51. Power to dispose of land.- Subject to any rules made by the government under this Act, the Board may retain, or may lease, sell exchange or otherwise dispose of any land, building or other property vesting in it and situated in the area comprised in Housing Scheme.

Comments and case-law

[Public interest is the paramount consideration in matter of allotment of public land to private citizens. The normal rule of public auction or inviting tenders for disposal of public property is not an invariable rule. However, reasons for departure from normal practice by Authority must be rational and should not be suggestive of discrimination. Appearance of public justice is as important as doing justice. [Shri Sachidanand Pandey vs. State of W. B. AIR 1987 SC 1109: (1987)2 SCC 295.]

Any reservation in allotment of plots or houses in a Housing Scheme by concerned Authority in favour of special group like Political suffers and/or employees of Government or Public undertakings is bad in law. However reservation in favour of persons whose lands have been acquired for the Housing Scheme can be said to be proper and justifiable.[I.L. Dhingra vs. State of U.P AIT 1987 SC 1262: (1987) 2 SCC 533.]

Housing Board's power is akin to the executive power conferred on State Government under Article 162 of the constitution of India to take decision in respect of appointment, promotion etc. In accordance with its own resolutions until regulations framed by it and approved by the State Government are published in the Official Gazette. [V. Balasubramaniam vs. Tamil Nadu Housing Board, (1987) 4 SCC 738.]

Even after receiving the cost of land along with interest and the penal interest thereof, Housing Board failed to effect the delivery of possession of land in question since a long time-since the Housing Board is not in position to make delivery of possession, it is directed to return the entire amount deposited by the petitioner with interest, along with the cost incurred by the authority concerned within two months-Housing Board also to pay compensation of Rs. 25,000/ for undue harassment. Sudha Sharma v. Bihar State Housing Board, 2000 (2) PLJR 12.

Petitioner's right to get deliver of possession of the land purchased become absolute with the deposit of the entire sale price of the said land with the Board Petitioner also acquires an enforceable right thereof. Ibid.

Even after receiving the entire amount, Board failed to deliver the flat to the petitioner for a long period-petitioner sought for the refund out of Sheer frustration and the Board refunded the amount after deducting 20% from the total deposit-Conduct not fair and it perilously touches the boundaries of dishonestly-it would be too much to say that a person if out of sheer frustration says that he/she does not want a flat then to the respondents would be entitled to a cut-a reasonable delay does not mean notorious delay-a public authority has to act fairly and in favour of the public and not to act like Shylock-direction issued to refund the deducted amount with interest. Sita Devi v. Bihar State Housing Board, 2005 (1) PLJR 603]

CHAPTER VIII

CONSTITUTION OF TRIBUNAL AND ITS FUNCTIONS

52. Constitution of a Tribunal for certain purposes.- (1) Notwithstanding anything contained in the Land Acquisition Act 1894 (Act of 1894) the Government may constitute tribunal for the purpose of performing the functions of the court with reference to the acquisition of land for the Board under the said Act to and for deciding such other matters as may be prescribed.

(2) The Tribunal shall consist of one member only who shall be a judicial officer not below the rank of a District Judge appointed by the government in this behalf.

(3) The Tribunal shall have the same powers as are vested in a civil court under the code of civil procedure, 1908 (Act 5 of 1908).

(4) The proceeding before the tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 228 of the India Penal Code (Act 45 of 1839).

53. Officers and servants of the Tribunal.- The Tribunal may, with the previous sanction of the Government, appoint such officers and servants as it considers necessary for carrying on its business, and the remuneration and other conditions of service of such officers and servants shall be such as may be prescribed.

54. Payments by Board on account of Tribunal.- The amount necessary for the payment of remuneration, salaries, allowances and other contributions payable to the judicial officer appointed as the tribunal and of the officers and servants of the Tribunal shall be paid out of the funds of the Board.

55. Power to make rules for Tribunal.- (1) the Tribunal may, from time to time, with the previous sanction of the State Government, make rules not repugnant to the Code of Civil Procedure, 1908 (Act 5 of 1908) for the conduct of business by the Tribunal.

(2) All such rules shall be published in the official Gazette.

56. Appeals from award of Tribunal.- (1) Notwithstanding anything to the contrary in the Land Acquisition Act, 1894 (Act 1 of 1894), the award of the Tribunal in relation to the acquisition of land shall be deemed to be the award of the court under the said Act.

(2) Any person who does not agree to the amount of the compensation awarded by the Tribunal for the land acquired for the Board under the Land Acquisition Act 1894 (Act. 1 of 1894) or to the persons to whom it is payable or to the apportionment of the compensation among these persons may, within sixty days from the date of the award of the tribunal, prefer and appeal to the High Court:

Provided that the High Court may entertain the appeal after the expiry of the said period of sixty days, if it is satisfied that the appellant was prevented by sufficient cause from filling the appeal in time.

(3) Any award of the Tribunal referred to in sub-section (1) sub-section (2) and any decision of the tribunal on any matter referred to it under this Act shall be final and shall not be liable to be questioned in any court of law.

Comments and case-law

[A court of law cannot give effect to the spirit ignoring the letter of the judgment. Sheikh Mohammad Ali V. Bihar State Housing Board, 1989 PLJR 477.]

57. Enforcement of the award or order of the Tribunal.- every award of the Tribunal and every order made by the Tribunal for the payment of money, for the delivery of possession or removal of any structures shall be enforced by the District Court in the jurisdiction of which the land comprised in the scheme is situated as if it were a decree of the Court.

CHAPTER IX

EVICTION FROM AND RECOVERY OF RENT AND DAMAGES RELATING TO BOARD PREMISES

58. Exclusion of the Bihar Building (Lease, Rent and Eviction) Control Act 1947 III 1947]- The provision of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 (Bihar Act III of 1947), or any law corresponding therein for the time being in force in any area to which this Act extends-

(a) Shall not apply nor shall be deemed to have ever applied to any land or building belonging to or vesting in the Board under or for the purposes of this Act;

(b) Shall not apply nor shall be deemed to have ever applied as against the Board to any tenancies or other like relationship created by the Board in respect of such land or buildings:

(c) but shall apply to any land to or building based to the Board: Provided that nothing in this section shall permit the eviction of a person in occupation of any accommodation from before the date of its acquisition by the Board save in accordance with the provisions of that Act or of Section 59.

59. Summary procedure for eviction and recovery of rents.- (1) Notwithstanding anything contained in the transfer of Property Act, 1882 (Act 1 of 1882), the Code of civil Procedure, 1908 (Act 5 of 1908) or any other law for the time being in force, if competent authority is of opinion-

(a) That the person authorised to occupy and Board premises has-

(i) Not paid rent lawfully due from him in respect of such premises for a period of not less than three months; or

(II) Sub-let, without the permission in writing of the Board, the whole or any part of such premises, or

(III) Committed, or is committing any act contrary to the provisions of clause (O) of section 108 of the Transfer of Property Act, 1882 (Act 4 of 1882): or

(IV) Made or is making material alteration to, alteration to alteration in such premises without the previous written permission of the Board, or

(V) Otherwise acted in contravention of any of the terms, expressed or implied, under which he is authorised to occupy such premises, or

(b) That any person is in unauthorised occupation of any Board premises.

The competent authority may issue in the manner hereafter provided a notice in writing calling upon the person, if any, authorised to occupy as well as any other person who may be in occupation of the whole or any part of the premises to show cause why order of eviction and recovery of arrears of rent and damages, if any should not be made.

(2) The notice under sub-section (1) shall specify-

(a) The ground on which the order of eviction or of recovery of arrears of rent or damages is proposed to be made; and

(b) the date by which cause against the proposed order may be shown, such date being not earlier than fifteen days from the date of issue of the notice provided that the competent authority may on application allow further time on such terms as to payment of the amount claimed in the notice otherwise, as it deems fit.

(3) The competent authority shall cause the notice under sub-section (1) to be served by having it affixed on outer door from the salary or wages payable to him, such amount as may be some other conspicuous part of the Board premises and in such other manner as may be prescribed ,whereupon the notice shall be deemed to have been duly given to all persons concerned.

(4) Where the competent authority known or has reason to believe that any person is in occupation of the Board premises, then, without prejudice to the provisions of sub-section (3) it shall cause copy of the notice to be served on him by registered post or delivery or tender to him or in such other manner as may be prescribed.

(5) If , after considering the cause ,if any ,show by any person in pursuance of the notice under sub-section(1) and any evidence he may produce in support of the same and after giving him a reasonable opportunity of being heard ,the competent authority is satisfied that any of the circumstances mentioned in sub-section(1) exist, or existed on the date of the issue of the notice, it may on a date to be fixed for the purpose make and order that any person shall pay such amount of arrears of rent or damages as may be specified in the order.

(6) If a person who has been asked to show cause under sub-clause(i) or sub-clause (iii) of clause(a) of sub-section (1) pays to the Board within the time allowed the rent in arrears together with interest thereon

as fixed by the Board and such costs as may be prescribed ,or ,as the case may remedies to the satisfaction of the competent authority the breach of the term violated by him ,the competent authority shall in lieu of evicting such person under sub- section (5) discharge the notice ,and whereupon such person shall continue to hold the premises on the same term on which he held them immediately before such notice was served on him.

(7) The competent authority shall for the purpose of holding any inquiry under this chapter ,have the same powers as are vested in a civil court under the code of civil procedure, 1908(Act 5 of 1908),when trying a suit ,in respect of following matter, namely:-

(a) Summoning and enforcing the attendance of any person and examining him on oath:

(b) Requiring the discover and production of documents; and

(c) any other matter which may be prescribed,be deemed to be a civil court within the meaning of section 345 and 346 of the code of criminal procedure,1973(Act 2 of 1974),and any proceeding in such inquiry shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian penal code(Act45 of 1860).

(8) If any person refuses or fails to comply with an order of eviction under sub-section (5) within thirty days from the date of the order or such longer time as the competent authority may allow, the competent authority or any other officer duly authorised by it in this behalf ,may for that purpose use such force as may be necessary .

(9) Any arrears of rent or damages ordered to be paid under sub-section (5) may be recovered as arrears of land revenue.

Explanation:--For the purposes of this section, a person continuing in occupation of any Board premises after the authority under which or the capacity in Which he was allowed to occupy the premises has been duly determined or as the case may be, has ceased shall also be deemed to be an “unauthorised occupation”, and a person shall not merely by reason of the fact that he had paid any amount as rent be deemed to be in authorised occupation.

(भवन –निर्माण एवं आवास विभाग अधिसूचना सं021 विविध –अपिल 1189–2165)

26 अक्टूबर 1989— बिहार राज्य आवास बोर्ड अधिनियम 1982 की धारा 59 के अधिन बोर्ड के परिसर से बेदखली और लगान वसूली आदि सम्बन्धी प्रवाधानों के अनुसार संगत तथा आव यक कार्रवाई करने के निमित्त सक्षम पदाधिकारी को भाक्तियां प्रदत्त है। बिहार राज्य आवास बोर्ड अधिनियम 1982 की धारा 60 के अन्तर्गत धारा 59 के अधीन सक्षम पदाधिकारी के किसी आदे ा से व्यथित किसी व्यक्ति की ओर से अपील किये जान पर ऐसे अपील –वादो की सूनवाई हेतू अधिसूचना संख्या 21 विविध–अपील 1189–798 के द्वारा श्री राम प्रसाद साह उप–सचिव भवन–निर्माण एवं आवास विभाग को अधिकृत किया गया था। अब सम्यक विचारोपरान्त उक्त अधिसूचना को अवक्रमित करते हुए बिहार राज्य आवास अधिनियम, 1982 की धारा 60(1) के तहत प्रदत्त भाक्तियों का प्रयोग करते हुए राज्य सरकार श्री राम इकबाल राय .संयुक्त सचिव भवन –निर्माण एवं आवास विभाग को अधिनियम की धारा 60 के अनुसार सक्षम पदाधिकारी के किसी आदे ा से व्यथित किसी व्यक्ति की ओर से अपील किये जाने पर ऐसे अपील वादो को सुनवाई करने हेतु अगले आदे ा तक प्राधिकृत करती है।)

Comments and case-law

[Eviction can be ordered by competent Authority after notice to the persons found in unauthorised occupation of Housing Board’s land. Demolition can also be ordered under section 59(8) if no appeal is filed against eviction order passed earlier. Any action taken under section 78 is independent of action taken under section59(8),[Baba Bhoot Nath Charitable Trust vs.State of Bihar,1984 BBCJ83.]

Where persons are in unauthorised occupation of housing Board land ,their eviction can be ordered after giving notice to them by competent authority .Action under section 59(8)is independent of that under section 78(4) .ibid.

Holder of stalls and kiosks in unauthorised occupation of state or municipal property or carrying on business by encroaching on public land have no right to seek court's orders directing Authority to provide them alternative stalls for their rehabilitation .Municipal Corporation of Delhi v .Gurman Kaur ,(1989)|SCC 101.

A lessee cannot be dispossessed after termination of the lease extra judicially by use of force .[State of u.p. vs. Maharaja Dharmender Prasad Singh,(1989) 2 SCC 505.]

Section 59A read with section 23 of Indian contract Act 1872 and chapter 11 of the Bihar State Housing Board (Management and disposal of Housing Estates).Regulation, 1983- Auction-purchasers of MIG house executing deed of agreement with Housing Board-prayer for quashing direction to auction purchasers to deposit balance amount with the time fixed ,failing which action u/s 59 A of 1982 .Act was to be taken for recovery of amount due –a purchaser through open auction bid cannot be equated with allottees under hire purchases scheme –Housing Board may adopt different modes for payment of instalments and fix different conditions for two types of agreements –such classification cannot be termed to be termed to be unreasonable and arbitrary –no discrimination within the meaning of Article 14 of the constitution is involved- auction purchaser cannot be allowed at this belated stage to challenge the terms and conditions of the agreements and mode for payment- however, housing Board cannot charge interest with respect to those houses ,possession of which has not been given [Rajendra Prasad singh vs. state of Bihar,1993(1) PLJR 361.]

A mere trespasser in occupation of a dwelling unit given to an allottee on lease by the housing Board has no right to invoke the writ jurisdiction of the High court for challenging the authority of the housing board to file a case for evection under the provisions of section-59 for alleged violation of terms of lease by which the dwelling unit has been transferred to the allottee by the housing Board [*Ganesh Prasad agrawal vsstate of Bihar* ,1994(1)PLJR391.]

Section 59 does not vest the competent Authority with the power to increase the rate at which land of dwelling unit is to be transferred by the housing Board .section59 merely empowers the competent authority to evict and recover rent lawfully due to the housing board which has not been paid by the person in authorised occupation. Service housing co-operative society vs. Competent authority,BSHB,1995(1) All PLR 324.

Where some land had been acquired for development purposes by the housing board and a proceeding for eviction under section59 vitiated against a person who had allegedly encroached over land belonging to the housing board the exparte order passed by the competent authority was later set aside in appeal before housing minister of the state government. High court may quash both the orders on the ground that these order suffered from the vice of vagueness in respect of description of area allegedly encroached upon, [Bihar State Housing Board, patna vs. State of bihar.1995(1) All PLR 210.]

Section 59 provides the summary procedure for eviction and recovery of rent from persons in occupation of the dwelling units leased out to allottees. A person proceeded against has the right to adduce evidence in support of his stand and to be given a reasonable opportunity of hearing. The authority holding enquiry under sub-section(5) of section 59 does not merely exercise quasi judicial power but also function as an authority with the trappings of a regular “court” .Therefore ,an enquiry in terms of section 59 must include an oral hearing in which the person proceeded against is provided an opportunity of hearing. [Shakti Shankar verma vs. Chairman ,Bihar state housing Board ,1995(1) PLJR 786.]

An order for cancellation of earlier allotment of dwelling unit prejudicially affects the allottee and imposes civil consequences. Therefore, such an order of cancellation in exercise of power under section 59 can be validly passed only after the concerned allottee has been given an opportunity of hearing. Ibid.

Where a person occupying a MIG house as tenant had been inducted as a tenant on interim basis, but had neither been paying rent nor applied for allotment of that dwelling unit in conformity with the Resolution of the Housing Board must earlier in 1974, the Housing Board will be competent to terminate the tenancy and allot dwelling unit to another applicant. The long possession of such a person will be deemed to be illegal possession and the occupant must abide by the terms of the tenancy which stipulated that he will vacate the house on its being allotted to another person by the [Housing Board. Radha Mohan Prasad Sinha vs. State of Bihar, 1995(1) PLJR 513.]

Section 59 and constitution of India, Article 226- Allottee of quarter by appellant Housing Board complained to sub-divisional Magistrate, Saraikela, a competent authority under the Act about unauthorised occupation of building by respondent- sub-divisional Magistrate issued notice to respondent for eviction notice and eviction proceeding quashed by High court in writ application filed by respondent occupier-unjustified in invoking extraordinary jurisdiction of High court committed a grave error in entertaining and allowing petition without first showing cause of notice-High court committed a grave error in entertaining and allowing petition without proper and fair investigation of basic facts. [Ex Engineer, Bihar State Housing Board vs. Rames Kumar Singh, 1996(2) PLJR(SC)69.]

Encroachment over a portion of plot of Housing Board by an allottee who was himself earlier deprived of some area of his plot but was compensated by allotment of another plot-his continuing encroachment, held illegal in view of the having already been compensated adequately-direction given to D.M. and Sr.S.P. Patna to get the encroachment removed on his refusal to vacate the encroached portion himself despite High Court's advice. [Indradeo Singh vs. Bihar State Housing Board, 1996(1) PLJR 886.]

Housing Board pursuant to an acquisition proceeding getting the order of possession in respect of the disputed plot-as the person in occupation did not vacate, Board initiated an eviction proceeding- competent authority observing that since the title of the person in occupation was continuing for a long time before the acquisition proceeding nor was his application of allotment of the said plot disposed by the Board the provisions of section 59(5) did not apply to such person- appellate authority also upholding the findings of the competent authority and directing the Board to allot the land in favour of such persons-both the order being quasi-judicial in nature the matter was not properly perused by the Board-It is not the case that due to such alleged occupation of the said plot the development scheme has been frustrated-if the said building is demolished and the person is ousted from the house the exercise of discretion will not be equitable-the discretion exercised by two authorities are not perverse and high court in writ jurisdiction will not interfere with the same. [Bihar State Housing Board vs. State of Bihar, 1998(3) PLJR927.]

The housing Board is entitled to claim the increase in the cost of construction and further interest on that amount- in a case when all the instalments together with interest fixed by the Board have been paid within the stipulated time and the possession of the house was also handed over then it is not justified for the Board to demand compound interest after two years from the date of handing over possession on the escalated amount which ought to have been settled at the time of handing over the possession, [Kamta Prasad Mishra vs. B.S.H.B., 1993(3) PLJR 207.]

Cancellation of plot allotted to the petitioner by manager Estate of the Bihar Housing Board's section 59 deals with summary procedure of eviction from the Board premises wherein the occupation is either authorised or unauthorised and provides for issuance of notice, manner of service of notice adducing of evidences reasonable opportunity of being heard and passing of the order of eviction after due consideration of the materials on record by the competent authority-since the Manager Estate is not a competent authority to pass an order of eviction nor was it passed in a proceeding u/s section 59 of Act as such the case is not sustainable in the eyes of law- however, the Board is at liberty either to

institute a suit or initiate a proceeding u/s 59 of the Act for eviction against the petitioner, [Smt. Chanda Devi Vs. State , 1999 (2) PLJR 888.]

Person in unauthorised occupation of a tenement- however, his case for allotment of tenement/house recommended for consideration by the authorities- such person even though eligible for allotment of tenement/house, cannot claim the tenement in his unauthorised occupation and rightly evicted by authorities from the portion unauthorisedly occupied by him. [Kapil Ram vs. State of Bihar, 1999 (1) PLJR 155].

It is not open to the Executive Magistrate to go behind the land acquisition proceeding and to make a declaration rendering the proceedings of the Land Acquisition case to be null and void on grounds of non-service of notice or non-payment of compensation to the land-holder – land holder can challenge the proceedings in accordance with law before an appropriate forum – however, in view of non-filing of counter affidavit by the Board controverting the statement of the petitioner that its house is not part of land acquisition proceeding, the order of eviction passed in appeal by the Housing Minister has to be quashed . [Kamta Prasad vs. State of Bihar, 2000 (1) PLJR 802.]

Housing Board have sufficient statutory means to have its lands freed from unauthorised occupation of any one under the act –Board cannot apply the general directions given in **Arun Kumar Mukherjee's** case for removing encroachments- those directions are for removal encroachments which where constructed on road flanks are the cause of obstruction in the free flow traffic and not otherwise - enforcement in a different context lead to hardships and violations of individual rights – no documentary proof with the Board as to encroachment-Board cannot carry out demolition in violation of principle of natural justice-Board's action illegal.[Srikrishna Nagar Niwasi Sangh v. State of Bihar, 2001 (1) PLJR 206.]

Sections 59 and 2(ii) read with notifications dated 22.11.1973, 3.2.1981 and 31.7.1987- After 3.2.1981 Sub-Divisional Officer , Patna sadar, was not a competent authority u/s 59 of the Act and was superseded by Special Land Acquisition Officer of the Board and after 31.7.1987, estate Officer and Revenue Officer of the Board also became the competent authority u/s 59 of Act to conduct summary procedure for eviction of unauthorised occupants' and recovery of rents-therefore, in the present case which was filled in 1990 Sub-Divisional Officer has no jurisdiction to act as competent authority u/s 59 of Act and accordingly his order of eviction is quashed .[Rama Shankar Dubey v. Bihar State Houding Board, 2000(2) PLJR 335.]

It is well settled that interest over the due amount can be charged only after demand- when allotment in 1976, possession delivered in 1980 and all payments made by 1987 and thereafter no demand was made, demand with respect to interest by the Housing Board in 1998 cannot be held to be legal.[Smt. Nawlakha Devi & Anr. V. State of Bihar, 2005 (2) PLJR 184.]

59 A. Recovery of rent , premium or any kind of dues , or damages- any amount due to the Board by way of rent , premium, instalment, recovery of damages, or any other dues be recoverable under the Bihar and Orissa Public Demands Recovery Act, 1914(Act 4 of 1914).

59B. Prior to the enforcement of this section cases filed under Bihar Governmnet Premises (Rent, Recovery and Eviction) Act, 1956 (Bihar Act 20 of 1956) will be deemed to have been filed under the provisions of this section.

60. Appeal.- (1) Any person aggrieved by an order of the competent Authority under section 59 may , within one month from the date of service of the notice of such order, prefer an appeal to the Government or any officer duly authorised by the Government:

Provided that the Government or any officer dully authorised by the Government may entertain the appeal after the expiry of the said period of one month it they are satisfied that the appellants was prevented by sufficient cause from filing the appeal in time.

(2) On receipt of an appeal under sub-section(1), the Government or any officer duly authorised by the Government may, after calling for a report from the competent Authority and after making such further inquiry, it any as may be necessary pass such orders as they think fit and such orders shall be final.

(3) On such appeal being preferred, the Government or any officer duly authorised by the Government may stay the execution of the Competent Authority, for such period and on such conditions as they think fit.

Comments and case-law

[Grant of leases of open space inside a public park to various organisations by the State Government violates every concept of Urban Planning and discipline of law which requires parks to be preserved as parks . Court may or order building constructed inside park to be dismantled.[Arun Kumar vs. Nagar Mahapalika, 1987 All L.T. 1038.]

The effect of non-performance of a duty imposed by a statute in the manner prescribed by the statute is not discovered by a simple answer to the question whether the provision is mandatory or dirctory [B.K. Srinivasan vs. State of Karnataka, (1987) 1 SCC 658.]

For purposes of interpretation, the purpose of the Legislation and Current capabilities of technology and life-style of the community should be taken into account. S.P. Jain Krishna Mohan Gupta, (1987) 1 SCC 191.

The word "shall" can be construed as "may" in a particular situation. Ammal Chandra Dutt v. lind Additional District Judge, (1989) 1 SCC 1.

A court of law cannot give effect to the spirit ignoring the letter of the judgment. Shaikh Mohammad Ali v. Bihar State Housing Board, 1989 PLJR 477.

Order for revocation of lease and resumption of government land by the State Government be passed only if a public purpose exists. The State Government must follow the rule of law. Order of resumption of Government land will be vitiated if the procedure laid down under law has not been complied with . [Jaleshwar Mistry vs. State of Bihar, 1989 PLJR 404.]

61. Recovery of rent through deduction from salary or wages.- (1) if any Board premises are let out to a person who is employed by the Government or a local authority or in a factory or industrial establishment, he may execute an agreement in such form as may be prescribed in favour of the Board Providing that the Government or the local authority or other employer as the case may be, by whom he is employed , shall be competent to deduct from the salary or wages payable to him such amount as may be specified in the agreement and to pay the amount so deducted to the Board in satisfaction of the rent due to him in respect of such premises.

(2) On the execution of such agreement, the Government or Local authority or other employer, as the case may be, shall, if so required by the Board in writing, make the deduction from the salary or wages of the employee in accordance with the agreement and pay the amount so deducted to the Board, notwithstanding anything contained in the payment of Wages Act, 1936 (Act 4 of 1936).

(3) The deduction of any amount under sub-section (2) shall operate as a complete discharge of the liability of the employee to the Board in respect of the amount so deducted.

Explanation.- The terms "factory" and "industrial establishment" shall have the meaning respectively assigned to them by the Payment of Wages Act, 1936 (Act 4 of 1936).

62. Bar of jurisdiction of Courts.- No order made by the Government or the Competent Authority in the exercise of any power conferred by or under this Chapter shall be called in question in any Court and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Chapter.

Comments and case-law

[If a statute imposes a liability and creates an effective machinery for deciding question of law of fact arising in regard to that liability, it may , by necessary implication, bar the maintainability of a Civil suit in respect of that liability. A statute may also confer exclusive jurisdiction on the authorities constituting the said machinery to decide finally a jurisdictional fact, thereby excluding by necessary implication the jurisdiction of Civil Court in that regard. K.S. Venkataraman & Co. (P) Ltd. V. State of Madras, AIR 1966 SC 1089.(See also Raleigh Investment Co. Ltd. v. G.G. in Council , AIR 1947 P.C. 78).

A statute providing remedy of appeal only against some decisions of the Town Planning Officer, cannot be held to be discriminative for that reason. [Prakash Amichand Shah vs. State of Gujrat, AIR 1986 SC 468: (1986) 1 SCC 581.]

The scope and authority of a precedent should never be expanded unnecessarily beyond the needs of given situation. *ibid.*

The jurisdiction of the Civil court may be excluded expressly or by clear implication arising from the scheme of the Act. [State of Kerala v. M/s N.R. Iyer, AIR 1966 SC 1738. (See also Kamla Mills Ltd. v. State of Bombay, AIR 1965 SC 1952)].

Requirement of prior notice affords protection to the authority concerned. It is in the nature of the provision of Section 80, C. P.C. It affords protection to no one else[Bishwanath Prasad Verma vs. Bhagwat Pandey, AIR 1982 Pat 219.]

CHAPTER X

FINANCE

63. Debts and expenditure, etc., till the Board is established .- (1) All debts and expenditures incurred, all contracts entered into all matters and things engaged to be done by , with or for the

Government for the purpose of Department of Housing, Government of Bihar, created by Appointment Department Government Resolution no. Camp.- 243/55A- 135, dated Ranchi, the 27th July 1955, before and up to the date of the establishment of the Board Under this Act shall be deemed to have been incurred, entered into or engaged to be done by, with be instituted by or against the Government shall be continued or instituted by or against the Board, as the case may be.

(2) All expenditure which the Government shall, not later than six months from the date of the establishment of the Board, declared to have been incurred on capital account in connection with the purposes of this Act shall be deemed to be a loan advanced to the Board on the date of such declaration:

Provided that Government may extend the said period six months to a period not exceeding two years by a notification in the official Gazette.

(3) All the properties, right, assets and liabilities of the Department of Housing, Government of Bihar, referred to in sub-section (1) for the purposes referred to in the Government Resolution specified in the said sub-section and all assets acquired by expenditure referred to in sub-section(2) shall upon the declaration made by the Government under sub-section(2) shall stand transferred to the Board for the purposes of this Act.

(4) All proceedings under the Land Acquisition Act, 1894, (Act 1 of 1894) pending on the date of the coming into force of this Act in any area for the acquisition of Land situated in the said area for the purposes of the Department of Housing, Government of Bihar, referred to in sub-section (1) shall be deemed to be proceedings for acquisition of such land for the purposes of Board Under this Act.

Explanation.- For the papooses of this "legal proceeding" includes any proceeding under the Land Acquisition Act, 1894 (Act 1 of 1894).

64. Board's fund .- (1) the Board shall have a fund called the "Housing Board Fund" .

(2) The Board may accept grants, subventions, donations and gifts from the Central or State Government or a local authority or individual or body, whether incorporated or not, for all or any of the purposes of this Act.

(3) The Government may every year make a grant to the Board to enable it to meet the deficit in its administrative expense:

Provided that the grant so made, as may be specified by the notification by the Government, shall not exceed to amount incurred by the Government on the administrative set-up of the Housing Department immediately preceding the year of the constitution of the Board.

(4) All moneys received by or on behalf of the Board by virtue of this Act, all proceeds of land or any other kind of property sold by the Board, all rents, and all interests, profits and other moneys accruing to the Board, shall constitute the Housing Board- Fund.

(5) Except as otherwise directed by the Government , all moneys forming part of the fund of the Board shall be deposited in the Reserve Bank of India constituted under the Reserve bank of India Act, 1934(Act 2 of 1934) or the state Bank of India constituted under the State Bank of India Act, 1955(Act no. 23 of 1955) or a Bank specified in column 2 of the First schedule to the Banking Companies (Acquisition and Transfer undertaking) Act, 1970(Act 5 of 1970) as amended from time to time or invested in such securities as may be approved by the Government.

(6) Such account shall be operated upon by such officers as may be authorised by the Board.

65. Application of the Fund.- (1) All property , the Housing Board Fund, and all other assess vesting in the Board shall be held and applied by it, and repayment of loans, payment of interest on the

market borrowing of the Board and Government and other loan shall be the first charge on the Board Funds.

(2) Subject to the budget provision and availability of funds, expenditure shall be incurred out of Board's fund by the Board or by any authority empowered by the Board for execution of schemes or carrying out any purpose of this act which has been duly sanctioned under the provision of this Act.

66. Expenditure in case of urgency. – (1) where in the opinion of the Board circumstances of extreme urgency have arisen, it shall be lawful for the Board to make, for purposes of this Act in any year expenditure not exceeding five thousand rupees notwithstanding the fact that such expenditure has not been included in its annual programme or supplementary programme mentioned by the Government.

(2) Where any sum is spent under circumstances of extreme urgency as provided in sub-section(1), report thereof indicating the source from which it is proposed to meet the expenditure shall be made by the Board as soon as practicable to the Government.

67. Appropriation from one head to another .- The Board may within the Budget sanctioned by the Government approved appropriations not exceeding five thousand rupees from on sub-head to another and from one minor head to another under the same major head and submit a statement of such re-appropriations the Government.

68. Subventions and loans to the Board.-(1)The Government may , from time to time , make subventions to the Board for the purposes of this Act on such terms and conditions as the Government may determine.

(2) The Government may from time to time advance loans to the Board on such terms and conditions and conditions not inconsistent with the provisions of the this Act as the Government may determine

69. Powers of the Board to borrow and lend .-(1) The Board may, from time to time , with the previous sanction of the Government and subject to the provisions of this Act and to such conditions as may be prescribed on this behalf may borrow any sum required for the purposes of this Act on guarantee of the state Government or on Bank guarantee or mortgaging its properties.

(2) The rules made by the Government for the purposes of this section may empower the Board to borrow by the issue of debenture and to make arrangements with bankers.

(3) All debentures issued by the Board shall be in such form as the Board, with the sanction of the sanction of the Government may from time to time determine.

(4)Every debenture shall be signed by the managing Director and one other, member of the Board.

(5)Loans borrowed and debentures issued under this section shall be guaranteed by the Government as to the repayment of principal and the payment of interest as such rate as may be fixed by the Government.

(6)Subject to the provisions of this Act, and to such conditions and limitations as may be prescribed, the Board may out of its funds grants loans and advances on such terms and conditions as it may determine, to any Co-operative society registered or deemed to be registered under the law relating to Co-operative societies for the time being in force in the state or to any other Person for for the constructions of houses.

70. Establishment and maintenance of sinking funds.-(1) whenever a loan has to be repaid from a sinking fund, the Board shall establish such a fund and shall pay into it every year until the loan is repaid, a sum so calculated that if regularly paid throughout the period agreed upon by the Board, it

would, with accumulations in the way of compound interest be sufficient after payment of all expenses, to pay of the loan at the end of that period.

(2)The rate of interest on the basis of which the sum referred to in sub- section(1) shall be calculated shall be such as may be prescribed.

71. Power to discontinue payments into sinking fund.- Notwithstanding anything contained in section 70, if at any time , the sum standing at credit of sinking fund established from repayment of any loan is of such amount that if allowed to accumulate at the rate of interest prescribed under sub-section(2) of that section, it will be sufficient to repay the loan at the end of period agreed upon by the Board, then the Board may, with the permission of the Government, discontinue further annual payment into such fund.

72. Investment of sinking Fund.-All moneys paid into any sinking fund shall as soon as possible , be invested by the Board in-

(a) Government securities, or

(b)Securities guaranteed by the Central or State Government, or

(c)debentures issued by any local authority, or

(d)debentures issued by the Board; or

(e)fixed deposit in the State Bank of India or any Bank specified in column 2 of the first schedule to the Banking companies(Aquisition and Transfer of undertaking)Act, 1970(Act V of 1970) as amended from time to time in the name of the Housing Board to be held by it in trust for the repayment of the loan for which the sinking fund was established.

(2) All dividends and other sum received in respect of any such investment shall as soon as section(1).

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(3) Any investment made under this section may , from time to time, subjects to the provision of sub-section(1) be varied or transposed.

73. Payment by cheque.-(1) No payment shall be made by the Bank, out of account of the " Housing Board Fund" referred to in section 64 except upon cheque signed-

(a)by the Managing Director and Secretary to the Board or

(b) in the event of the illness or occasional absence by reason or leave of the managing Director by any member or any authority empowered by Managing Director in his place and in the event of illness, or occasional absence or leave of the secretary , by Chief Accounts Officer appointed by the State Government .

(2) Payment of any sum due by the Board exceeding one hundred rupees in amount shall be made by means of a cheque, and not in any other form.

74. Duty of Managing Director and others before signing cheque.- Before the managing Director or any member or the secretary to the Board signs a cheque under section 73 he must satisfy himself that the sum for which such cheque is drawn is required for a purpose or work specifically sanctioned by the Board.

75. Keeping of capital account and revenue account-(1) The Board shall keep a capital account and a revenue account.

(2)The capital account shall show separately all expenditure incurred by the Board on each housing or improvement scheme.

76. Accounts and audit. (1)The Board shall cause to be maintained proper books of accounts and such other books as the rule may require and shall prepare in accordance with the rule and annual statement of account.

(2)The Board shall cause its accounts to be audited annually by such person as the Government may direct , and that person shall have the right to demands the production of books, accounts and connected vouchers, documents and papers and to inspect any of the offices of the Board.

(3) As soon as the accounts of the Board have been audited, the Board shall send a copy thereof together with a copy of the report of the auditor thereon to the Government and shall cause the accounts to be published in the prescribed manner and place copies thereof on sale at a reasonable price.

(4) The Board shall comply with such directions as the Government may after perusal of the report of the auditor think fit of issue.

77. Concurrent and special audit of accounts .-(1) Notwithstanding anything contained in section 76 the Government may order that there shall be a concurrent audit of the account of the Board by such person as it thinks fit.

(2) The Government may also direct a special audit to be made by such person as it thinks fit of the accounts of the Board relating to any particular transaction or a class of transactions of to a particular period .

(3) When an order is made under sub-section (1) or (2) the Board shall present or cause to be presented for audit such accounts and shall furnish to the Person appointed under sub-section(1) or (2) such, information as the said person may require for the purpose of audit and remedy or cause to be remedied the defects pointed out by such person, unless they are condoned by the Government.

CHAPTER XI

PENAL TIES AND PROCEDURES

78. Penalty for unauthorised construction without approval or construction in violation of provision of rule/regulations.-(1) No person shall in the area in which the Board undertakes a housing scheme or execution of any of the schemes under section 28, erect, re-erect, construct, add to or alter any building or wall or commence to do so either on land or building owned by him or allotted to him by the Board without prior sanction of the Managing Director by submitting a plan showing the propose construction and provided that proposed construction is in conformity with rules, regulations and bye-laws framed under the provision of this Act.

(2) The Managing Director may raise objections if any under the provisions of rules, regulations or bye-laws constituted under the Act on any plan showing the proposed construction received for his approval under the provisions of sub-section(1) within 3 months from the date of receipt of such plan and approve after the objections are met:

Provided that the minimum time limit for approval of plan shall not exceed period of six months from the date of its receipt.

should the Managing Director neglect or omit for six months after the objections under sub-section (2) , if any , are met to approve such plan, the Managing Director shall be deemed to have sanctioned the proposed plan absolutely.

(3) Any person, who either himself or for any other person, or institution, erects, re-erects, adds to or alters any wall or building without obtaining the sanction under sub-section (1) or in contravention to the terms , and conditions attached to the sanction or in violations to the rules and regulations or bye-laws made in this connection, or if the construction project into the street alignment or beyond the building line prescribed under any of the schemes mentioned in this Act, or prescribed for different regions areas in the regulations bye-laws shall be punishable with a fine of Rs. 2000 and it the said unauthorised erection, re-erection, addition and alteration projection into the street alignment or beyond the building line made

without or construction without sanction or contrary to the prescribed rules, regulations and by laws continue shall be punishable by an additional fine of rupees two hundred for each day till it continues.

(4) Where such building or construction work is not discontinued even after enforcement of sub-section(3) of this section, the Managing Director may require any police officer to remove the person by whom the construction is being done, and all his assistants and workmen from place of building or construction work, and such police officer shall comply with the requisition, within the time specified in the requisition.

(5) If any building or construction work is done without obtaining sanction under sub-section(1) of this section or in contravention of the terms and conditions of the sanction it contra vents the provisions of this Act or rules, regulations and bye-laws framed under the provision the Act the Managing Director may in addition to the prosecution that may be instituted under this Act, make an order, directing that such building or construction work shall be removed by demolition, filling or otherwise by the owner thereof or by person or persons at whose instance the building or construction work was commenced or is being carried out or has been completed within a prescribed period which shall not be less than thirty days from the date of notice and in the event of failure of compliance in the order within the specified period the Board may, through its officers, remove or cause to be cause to be removed shall be recovered from the person by whom or at whose instance the unauthorised building or construction work and the expenses of such removal shall be recovered from the person by whom or at whom instance the unauthorised building or construction work was commenced or was being carried out or was completed as arrears of land revenue:

Provided that no such order shall be made unless the owner or the person concerned has been given reasonable opportunity to show cause why the orders should not be made.

(6) Any person aggrieved by the order passed under section 78 (5) may within 30 days from the date notice of such order prefer an appeal to the tribunal constituted under section 52 and the tribunal may, after hearing the parties to the appeal, dispose of the appeal and the decision of the tribunal shall be final and conclusive.

(7) If any person obstructs or molests any officer or employee of the Board or any other person authorised under the Act in the performance or execution by such person of his duty or of anything which he is empowered or required to do by virtue of or in consequence of this Act, or any rule or regulation made there under, he shall on being proved guilty, be punished with imprisonments which may extend up to six month, or with fine, which may extend up to rupees two thousand or with both.

Comments and case-law

[Eviction can be ordered by competent Authority after notice to the persons found in unauthorised occupation of Housing Board's land. Demolition can also be ordered under section 59 (8) if no appeal is filed against eviction order passed earlier. Any action taken under section 78 is independent of action taken under section 59(8). [Baba Bhoot Nath Charitable Trust v. State of Bihar, 1984 BBCJ 83.]

Where persons are in unauthorised occupation of Housing Board's land, their eviction can be ordered be ordered after giving notice to them by Competent authority. Action under section, 59(8) is independent of that under section 78(4). *ibid*.

Section 78- Construction made over the Board's land without being owner/title holder/ allottee of the said land- construction unauthorised- section 78, would be of no help as it does not relate to an application for allotment but it relates to unauthorised construction without approval or construction in violation of provisions of rules/regulations- order issued to remove the encroachment by demolishing the construction up held. [Ganga Devi v. state of Bihar, 2004 (4) PLJR 690]

79. Penalty for failure to comply with requisition made auditor.-If any person fails to comply with any requisition made by the auditor under section 76, he shall be punishable-

(a) with fine which may extend to one hundred rupees, and

(b) in case of a continuing failure, with fine which may extend to fifty rupees for each day after the first day, during which the failure continues.

80. Penalty for obstructing contractor or removing mark.- If any person-

(a) Obstructs or molests any person with whom managing Director has entered into a contract on behalf of the Board, in the performance or execution by such person of his duty or of anything which he is empowered or required to do by virtue of or in consequence of this Act or any rule or regulation made there under, or

(b) removes, any mark set up for the purpose of indicating any level or direction necessary to the execution or works authorised by this Act or any rule or regulation made or scheme sanctioned there under, he shall on conviction be punished with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.

81. Penalty for breach of the provisions of this Act.- whoever contravenes any of the provisions of this Act or any rule, regulation or by-laws made or scheme sanctioned there under shall if no other penalty is provided for such contravention, be punishable-

(a) with fine which may extend to two hundred rupees, and

(b) in case of a continuing contravention, with fine which may extend to one hundred rupees for each day after the first day during which the contravention continues.

82. Compensation to be paid by offenders for damage caused by them.-

(1) when any person is convicted of any offences under this Act or any rule or regulation made there under the magistrate convicting such person may, on application, made in this behalf, by the Board or by its officer or employee authorised by it in this behalf call upon person forthwith to show cause as to why he should not pay compensation to the Board for the damage caused by his act or omission in respect of which he is convicted.

(2) The magistrate shall record and consider any cause which such person may show and if the magistrate, after making such inquiry as he may think fit is satisfied that such person is liable to pay compensation, may direct that compensation to such amount not exceeding three thousand rupees as he may determine, be paid by such person to the Board.

(3) The amount of compensation directed to be paid under sub-section (2), shall, if it be not paid forthwith be recovered as if it were as fine imposed by the magistrate on such person.

83. Penalty for contravention of bye-laws.- whoever contravenes a bye-law made under section 116 shall, on conviction, be punished with imprisonment for a term, which may extend to six months or with fine which may extend to one thousand rupees or with both.

83 A. in addition to and without prejudice to the right available to the Board under the provisions of this Act or any other law or rules in force the Board shall be entitled to be following by way damages.-

(1) Any person who without any right or written permission of the Board continues in possession of a building belonging to the Board after termination of his tenancy in respect to it shall be liable to pay damages equal to three times of rent payable immediately before the termination of the tenancy.

(2) Any person who without any right or written permission of the Board continues in possession of any land of the Board after termination of his tenancy in respect of it, shall be liable to pay damages at the rate of rupees twenty per hundred square metre of the area of land per day until delivery of possession of the vacant land to the Board.

(3) Any person who takes possession of any land or building of the Board without any right or written permission of the Board and/or continues with such possession shall be liable to pay damages at the rate of rupees twenty per day for each one hundred square metre of land area, in case of land and at

the rate of rupees fifty per day for each hundred square metres of build up area of each floor of the building, in case of building.

(4) Where the tenant sublets the building or any part thereof belonging to the Board in contravention of the terms of tenancy his tenancy shall stand terminated with effect from the date of subletting and both the tenant and sub-tenant shall be liable to pay damages jointly and severally to the Board at a rate equal to three times the rate of rent payable for building immediately before the termination.

84. Penalty for obstructing exercise of powers.- Any person who obstructs the lawful exercise of any power conferred by or under Chapter IX shall, on conviction, be punished with imprisonment of six months or a fine extending to rupees two thousand or with both.

85. Punishment for acquiring share or interest in contract, etc, with the Board.- If any member, or any officer or employees of the Board acquires, directly or indirectly, by himself or by any partner, employer, or employee, otherwise than as such member, officer or employee any share or interest in any contract on employment by or on behalf of, the Board not being a share or interest which under section 5 is permissible for a member to have without being, thereby disqualified for being appointed as a member be deemed to have committed the offence made punishable by rule 168 of the Indian Penal Code (Act 45 of 1860).

86. Offence by Companies . – (1) If the person committing an offence punishable under this Act is company, every person, who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1) where any such offence has been committed by a company and it is proved that the offence has been committed with the consent or connivance of or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary and other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation .- For the purposes of the section-

- (a) "Company" means a body corporate and includes a firm or other association of individual, and
- (b) "Director" in relation to a firm, means a partner in the firm.

87. Procedure. –(1) No court shall take cognizance of any offence punishable under this Act or any rule or regulation made thereunder unless complaint of such offence is made within twelve months next after the commission thereof:

Provided that the court may take cognizance even after expiry of twelve months if it is satisfied that the complainant was, due to sufficient reasons, prevented from filing the complaint in time.

(2) No court inferior to that of a judicial magistrate of the First Class shall try any offence punishable under this Act.

88. Duties of police officers.- It shall be the duty of every police officer- the provisions of this Act or any rule made there under.

(a) to co-operate with Managing director for carrying into effect and enforcing the provisions of this Act or any rule made there under.

(b) to communicate without delay to the proper officer or servant of the Board any information which he receives of a design to commit or of the commission of any offence against the Act or any rule made thereunder, and

(c) to assist the Managing Director or any officer or servant of the Board reasonably demanding of his aid for the lawful exercise of any power vesting in the Managing Director or in such officer or servant under this Act or any rule made thereunder.

89. Arrest of Offenders –(1) Every police officer shall arrest any person who commits in this view any offence against this Act or any rule made thereunder if the name and address of such person be unknown to him or if such person on demand declines to give his name and address or gives a name or address which such officer has reason to believe to be false.

(2)The person so arrested shall without unavoidable delay, be produced before the Magistrate authorised to try the offence for which the arrest has been made, then no person so arrested shall be detained in custody for a period exceeding twenty-four hours without an order from the aforementioned Magistrate.

90. Power of the Managing Director as to institution, composition etc. Of legal proceedings and obtaining legal advice.- The Managing Director may, subject to the control of the Board-

(a)institute, defend or withdraw from legal proceeding under this Act or any rules or regulations made thereunder;

(b) Compound any offence against this Act or any rules or regulations made thereunder which under any law for the time being in force or the rule prescribed by the Government, may lawfully be compounded;

(c) admit, compromise or withdraw any claim made under this Act or any rules or regulations made thereunder;

(d) Obtain such legal advice and assistance as he may, from time to time think it necessary or expedient to obtain or as may be desired by the Board to obtain for Any of the purposes referred to in the foregoing clauses of this section, or for securing the lawful exercise or discharge of any power or duty vested in or imposed upon the Board or any officer or servant of the Board.

91. Protection of action taken in good faith- No suit, prosecution or other legal proceeding shall lie against the Government, the Board or any committee thereof or any officer or servant of the government or the Board for anything, which is in good faith done or intended to be done in pursuance of Act or any rule or regulation made there under.

92. Notice of suit against Board, etc- No suit shall be instituted against the Board, or any member, or any officer or employee of the Board or any person acting under the direction of the Board or of the Managing Director or of any officer or employee of the Board in respect of any act done or intended to be done under this Act or any rule or regulation made there under until the expiration of sixty days next after written notice has been delivered left at the Board's office or the place of abode of such officer, servant or person stating the cause of action, the name and place of abode of the intending plaintiff, and the relief which he claims, and the plaint must contain a statement that such notice has been so delivered or left.

93. Proof of consent, etc. Of Board or Managing Director, officers or employees of the Board.- Whenever, under this Act or any rule or regulation made there under, the doing or the omission to do anything or the validity of anything depends upon the approval, sanction, consent, concurrence, declaration, opinion, or satisfaction of-

(a) The Board or the Managing Director, or

(b) any officer or servant of the Board, a written document signed in case (a) by the Managing Director, and in case (b) by the said officer or servant, conveying or setting forth such approval, sanction,

consent, concurrence, declaration, opinion or satisfaction shall be sufficient evidence of such approval, sanction, consent, concurrence, declaration, opinion, or satisfaction.

94. Mode of proof of documents of the Board- (1) A copy of an entry in any register, or of any receipt, application, plan notice, order, or other document in the possession of the Board shall, if duly certified by an officer authorised in this behalf received as prima facie evidence of the entry or document and be admitted as evidence of the matter of transaction therein recorded in every case where, and to the same extent as the original entry of document would, if produced, have been admissible to prove such matters.

95. Copies from assessment books to be furnished by local authorities to Board.- The chief executive officer of a local authority shall, at the request of the Managing director, furnish him with a copy of or an extract from any assessment list of the local authority.

96. Power of Managing director to direct removal of unauthorised erection etc within street alignment, etc- (1) The Managing Director may by a written notice require the owner for the time being of the wall or building referred to in section 78 to stop further work on such wall or building and to alter or demolish the same in such manner and within such time as may be specified in the notice.

(2) Where the alteration or demolition directed by any such notice is not carried out as directed therein, the Managing Director may cause the wall or building or portion thereof to be altered or demolished, as the case may be, and he may recover the expenses incurred in so doing from the owner for the time being in such manner as may be prescribed.

97. General power of the Board to pay compensation.- in any case not otherwise expressly provided for in this Act the Board may pay reasonable compensation to any person who sustains damages by reasons of the exercise of any of the powers vested by or under this Act in the Board or the Managing Director or any officer or servant of the Board.

Comments and case-law

[Matter relating to digha land-when sovereign powers are exercised to acquire land, it vests with the state free from all encumbrance-on this track of land now have been settled with tacit consent of state of Bihar persons with clout and power- any complications or lack of will not to possess or keep such lands is collusion with the land mafia by the State-Bihar State Housing Board has now two choices, either to give a plot to the persons to whom it was allotted or return their money with interest which is equitable-writ court committed no error in the order impugned. Bihar state housing board v. Shrawan Kumar Roy Choudhary, 2004(3) PLJR 206]

98. Public notices how to be made known- Even public given under this Act or any rule or regulation made hereunder shall be in writing over the signature of the Managing director and shall be widely made known in the locality to be affected thereby affixing copies thereof in conspicuous public places within the said locality to be affected thereby affixing copies thereof in conspicuous public places within the said locality, or by publishing the same by beat of drum or any advertisement in leading daily newspapers or by any two or more of these means and also by affixture in the notice board of the Board's office or sub-office and by any other means that the Managing Director may think fit.

99. Newspapers in which advertisements or notice are to be published- Whenever it is provided by this Act or any rule or regulation made there under that notice shall be given by advertisement in leading daily newspaper, or that a notification of an information shall be published in leading daily newspapers such notice, notification or information shall be inserted if practicable in at least two English daily newspapers and one daily newspaper published in Hindi.

100. Stamping signature on notices or bills- Every notice or bill which is required by this Act or by any rule or regulation made there under to bear the signature of the Managing Director or any other member or of any officer or servant of the Board shall be deemed to be properly signed if it bears facsimile of the

signature of the managing director or such other member or of such officer or servant, as the case may be, stamped there under.

101. Service how to be effected.- When any notice, bill or other documents is required by the Act or any rule or regulation made there under to be served upon or issued or presented to any person, such service, issue or presentation shall be effected-

(a) By giving or tendering such document to such person, or

(b) if such person is not found, by leaving such document at his last known place of abode or by giving or tendering the same to some adult member or servant of his family, or

(c) if his address elsewhere is known, by forwarding such document to him by registered post under cover veering the said address; or

(d) if none of the means aforesaid be available, by causing a copy of such document to be affixed on some conspicuous part of the building or land, if any, to which the document relates; or

(e) such person may be informed through advertisement in one important Hindi or English dailies of Bihar.

102. Power to make surveys, or contribute towards their cost- The Board may-

(a) cause the survey of any land to be made, whenever it considers that a survey is necessary or expedient for carrying out any of the purposes of this Act, or

(b) Contribute towards the cost of any survey made by any other local authority,

103. Power of entry- (1) the Managing Director or any person either generally or specially authorised by the Managing Director in this behalf may with or without or assistants or workmen, enter into or upon any land, in order-

(a) To make any inspection, survey, measurement valuation or enquiry

(b) To take levels.

(c) To dig or, bore into the sub-soil.

(d) To set out boundaries and intended lines or work.

(e) to mark such levels, boundaries and lines by placing marks and cutting trenches, or

(f) To do any other thing, whenever it is necessary to do so for any of the purposes of this Act or any rule or regulation made or scheme sanctioned there under or any scheme which the Board intends to frame thereunder:

Provided as follows:-

(a) No such entry shall be made between sunset and sunrise,

(b) No dwelling house, and no public building or hut which is used as a dwelling place, shall be so entered, except with the consent of the occupier thereof, without giving the said occupier at least twenty-four hours previous written notice of the intention to make such entry,

(c) Sufficient notice shall in every instance, be given even when any premises may otherwise be entered without notice to enable the inmates of any apartment appropriated to women to remove themselves to some part of the premises where their privacy will not be disturbed,

(d) Due regard shall always be had so far as may be compatible with the exigencies of the purpose for which the entry is made to the social and religious usages of the occupants of the premises entered,

(2) Whenever the Managing director or a person authorised under subsection (1) enters into or upon any land in pursuance of that sub-section he shall, at the time of such entry, pay or tender payment of all necessary damage to be done as aforesaid, and, in case of dispute as to the sufficiency or the amount so paid or tendered, he shall at once refer the dispute to the Board, whose decision shall be final.

CHAPTER XII MISCELLANEOUS

104. Members, officers and employees of the Board, committees and Tribunals deemed to be public servants- All members, officers and employees of the Board, the members of committees, the Tribunal and all other persons entrusted with the execution of any function under this Act shall be deemed when acting or purporting to act in pursuance of the provisions of this Act to be public servants within the meaning of section 21 of the Indian Penal code (Act 45 of 1860).

105. Contributions by the Board towards leave, allowances and pension of servants of the Central or State Government employed under this Act- the Board shall be liable to pay such contributions for the leave salary, pension or provident fund of any officer or servant of the central or state government employed as managing director or as an officer or servant of the Board, or as the Tribunal or as an officer or servant of the Tribunal, as the case may be as may be required by the conditions of service under the central or State government to be paid by him or on his behalf.

106. The Board and Managing Director to exercise powers and functions under the Bihar and Orissa Municipal act, 1922- In any area in respect of which a housing or an improvement scheme is in force the government may, by notification, declare that for the period during which such scheme remains in force and subject to such restrictions and notification, if any, as may be specified in the notification-

(i) The powers and functions of the Municipal Commissioners under the Bihar and Orissa Municipal Act 1922 (B. & O. Act 7 of 1922) shall be exercised and discharged, by the Board, and

(ii) The powers and functions of the Chairman of Municipality under the said Act shall be exercised and discharged by the Managing Director.

(2) The Board or the Managing Director may delegate any of the function exercisable by it or him under sub-section (1) to any officer or employee of the Board.

(3) The exercise or discharge of any of the powers or functions delegated under sub-section (2) shall be subject to such limitations, conditions and control as may be laid down by the Board or the Managing Director, as the case may be.

107. Supply of documents and information to the government- The Managing Director, shall if so directed by the government, forward to them a copy of all the papers which were laid before the Board for consideration at any meeting and furnish any return, statement, estimate statistics, or other information regarding any matter under the control of the Board, a report of any such matter and copy of any document in charge of the Managing Director.

108. Submission of administration report to Government-

(1) As soon as may be after the first day of April in every year and not later than such date as may be fixed by the Government the Board shall submit to the Government a detailed report of the administration during the preceding year in such form as the government may direct.

(2) The Government may give any local authority such directions as in their opinion are necessary or expedient for carrying out the purposes of this act after giving an opportunity to the local authority to state its objections, and it shall thereupon be the duty of the local authority to comply with such directions.

109. Powers of Government to give directions to Board and local authorities- (1) The government may give the Board such directions as in their opinion are necessary or expedient for carrying out the purposes of the Act, and thereupon it shall be the duty of the Board to comply with such directions.

(2) the Government may give any local authority such directions as in their opinion are necessary or expedient for carrying out the purposes of this Act after giving an opportunity to the local authority concerned to state its objections, if any to such directions and after considering the said objections, and it shall thereupon be the duty of the local authority to comply with such directions.

Comments and case-law

[Housing Board is vested with power, akin to the executive power conferred on State Government under Article 162 of the Constitution, to take decisions in respect of appointment promotion, etc. In accordance with its own resolutions, until regulations framed by it and approved by the State government are published in the official Gazette. The Housing Board, after having once set a norm by its resolution, cannot depart from the same[V. Balasubramaniam v. Tamil Nadu Housing Board, (1987) 4SCC 738.]

Authority has power of cancellation or revocation of permission granted for development of land to a private party. However, the discretion must be exercised uninfluenced by and without surrendering to the dictation of and extraneous body, authority or power.[State of U.P v. Maharaja Dharmendra Prasad Singh, (1989) 2 SCC 505.]

Grant of leases of open space inside a public park to various organisations by the State Government violates every concept of Urban planning and discipline of law which requires parks to be preserved a parks. Court may order building constructed inside park to be dismantled.[Arun Kumar v. Nagar Mahapalika, 1987 All L.T. 1038]

Reservation for persons whose land was acquired by the authorities for construction of the houses, being allotted to applicants by the Authority, appears to be based on sound principles. [I.L dhingra v. State of U.P (1987) 2 SCC 533: AIR 1987 SC 1262].

Water supply charges should be based on actual supply of water made. Fixing of minimum water charges and charging citizens on that basis even though water is not actually supplied up to that limit is bad in law[. Municipal Corporation of Greater Bombay v. Nagpal Printing Mills, (1988) 2 SCC 466.]

A statute providing remedy of appeal only against some decisions of the Town planning officer, cannot be held to be discriminative for that reason. [Prakash Amichand Shah v. State of Gujrat, AIR 1986 SC 468: (1986) 1 SCC 581].

The scope and authority of a precedent should never be expended unnecessarily beyond the needs of a given situation, *ibid*.

Where notification has been issued by the State government in exercise of power under section 23 cancelling earlier allotments made by the Housing Board, the allottee an not claim any right on the basis of that allotment if the validity of the notification issued by government has not been specifically challenged in the writ application by the allottee. [Rajendra Sharma v. State of Bihar 1985 PLJR (NOC)]

A government or statutory authority cannot be bound by illegal action of its officers. *Ibid*.

Section 30 indicates that the decision of the State government would be final in regard to any dispute relating to the Master Plan. Where allotment of land has already been held to be in order by High court it cannot be assailed by a fresh application. *Smt. Krishna Singh v. State of Bihar*, 1968 5 PLJR (NOC) 37. The country very vitally and urgently requires a National Housing Policy if we want to prevent a major break down of law and order and gradual disillusionment of people. Such new Housing policy must comprehend the present and anticipate the future. [*Prabhakaran Nair v. State of Tamil Nadu*, (1987 SCC 238).]

Statutory rules have binding effect. The government is itself bound to comply with statutory rules framed under an Act. *K.V. Subba Rao v. Government of A.P* (1988) 2 SCC 201.]

The strict standards applied to authorities exercising judicial powers are being increasingly applied to administrative bodies for it is vital to the maintenance of the rule of law in a welfare State. The jurisdiction of administrative bodies is increasing at a rapid pace. Therefore, the instrumentalities of the state should discharge their functions in a fair and just manner. Justice must not only be done but must appear to be done. Mere likelihood of bias affecting the decision of authority or court is objectionable. [*Manmohan Lal Bhagat v. State of Bihar*, 1988 PLJR 12.]

The grant of permission to private party to build a structure on a given piece of land is part of or incidental to the statutory power to regulate orderly development of the "Development Area" under the regulatory laws. The power to regulate with the obligations and functions that go with and are incidental to it, are not spent or exhausted with the grant or permission. The power of regulation which stretches beyond the mere grant or permission, takes within its sweep the power, in appropriate case to revoke or cancel the permission as incidental or supplemental to the power to grant permission. Otherwise the plenitude of the power to regulate would be whittled down or even frustrated. *State of U.P v. Maharaja Dharmender Prasad Singh*, (1989) 2 SC 505.

The provisions of section 109 empower the State Government to give such directions as are necessary and expedient in the opinion of the State government for carrying out the purposes of the Act to the Housing Board. The Housing Board is bound to act in terms of directions given by the State government. Therefore, it cannot be contended that in complying with such direction the Housing Board has abdicated its statutory functions. [*Rajeshwar Prasad Roy v. Bihar State Housing Board*, 1990 (1) PLJR 357.]

110. Supersession of the Board.-

(1) If the government are of opinion that the Board is unable to perform, or has persistently made default in performance of the duty imposed on it by or under this Act or has exceeded or abused its powers, they may, by notification supersede the Board for such period as may be specified in the notification:

Provided that before issuing a notification under this sub-section, the government shall by notice require the Board to show cause within such period as may be specified in the notice why it should not be superseded and shall consider the explanations and objections, if any, of the Board.

(2) Upon the publication of a notification under sub-section (1) dissolving the Board-

(a) The Chairman, and all the members of the Board shall, as from the date of supersession vacate their offices as such,

(b) all the powers and duties which may, by or under the provisions of this Act, be exercised or performed by or on behalf of the Board and the Chairman shall during the period of supersession, be exercised and performed by such authority or person as the government may direct,

(c) All funds and other property vested in the Board shall during the period of supersession vest in the authority or person referred to in clause (b), and

(d) All liabilities legally subsisting and enforceable against the Board shall be enforceable against the authority or person referred to in clause (b) to the extent the funds and properties vested in it or him.

(3) On the expiration of the period of supersession specified in the notification issued under sub-section (1), the government may-

(a) Extend the period of supersession for such further period as they may consider necessary; or

(b) Reconstitute the Board in the manner provided in section 4.

111. Dissolution of the Board- (1) If the government are of opinion that the Board has failed to carry out its functions under this Act or that for any other reason it is not necessary to continue the Board, they may, by notification, dissolve the Board from such date as may be specified in the notification.

(2) Upon the publication of a notification under sub-section (1) dissolving the Board-

(a) The Chairman all the members of the Board shall from the date of dissolution, vacate their offices as such;

(b) all the powers and duties which may, by or under the provisions of this Act, be exercise and performed by or on behalf of the Board and the Chairman shall from the date of dissolution be exercised and performed by the government or such authority or person as they may appoint in this behalf;

(c) All funds and other property vested in the Board shall vest in the government; and

(d) All liabilities, legally subsisting and enforceable against the Board shall be enforceable against the government to the extent of the funds and properties vested in them.

112. The Board to be local authority under Act 1 of 1894 and Act 9 of 1914- the Board shall be deemed to be a local authority for the purposes of the Land Acquisition Act. 1894 (Act 1 of 1894) and the Local Authorities Loans Act, 1914 (Act 9 of 1914).

113. Execution and registration of contracts, etc- (1) every contract or assurance or property on behalf of the Board shall be in writing and executed by such authority and in such manner as may be prescribed.

(2) Notwithstanding anything contained in the Indian Registration Act, 1908 (Act 16 of 1908), it shall not be necessary for the Managing Director or any officer of the Board authorised to execute on behalf of the Board any agreement or other instrument to appear in person or by agent at any registration office in any proceedings connected with the registration of any such agreement or instrument or to sign as provided in section 58 of that Act:

Provided that the registering officer to whom such instrument is presented may, if he thinks fit refer to the Managing Director or such officer for information respecting the same and shall, on being satisfied of the execution thereof, register the instrument.

CHAPTER XIII RULES AND REGULATIONS

114. Power to make rules- (1) the government may, by notification in the official Gazette and subject to the condition of previous publication, make rules for carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing powers, such rule may provide for-

(a) The salary, allowances and conditions of service of the Chairman and Managing Director under section 7;

- (b) The manner and form in which contracts shall be entered into under section 26;
- (c) The form of the annual budget to be laid before the Board under section 31 and the other particulars to be contained therein;
- (d) the manner of publication of housing schemes included in the budget under section 33;
- (e) the other matters to be decided by the tribunal under section 52;
- (f) The procedure to be followed by the tribunal under section 55;
- (g) The form of notices under sections 59 and 60 and any other manner in which they may be served;
- (h) The manner in which damages under section 59 may be assessed;
- (i) the conditions subject to which the Board may borrow any sum under section 69;
- (j) all matters relating to sinking fund established and maintained under section 70;
- (k) all matters relating to capital and revenue accounts maintained under section 75;
- (l) the manner of preparation, maintenance and publication of accounts under section 76;
- (m) the manner in which the Board shall be superseded and reconstituted under section 110;and
- (n) other matter which is or may be prescribed under this Act

115.power to make regulation:-(1) The Board may be notification make regulations not inconsistent with this Act and the rules made thereunder for the purpose of giving effect to the provisions of this Act.

(2) In particular and without prejudice to the generality to the foregoing power such regulations may provide for

- (a) all matte expressly required or allowed by this Act to be prescribed by regulation ;
- (b) the association of persons with the Board under section 12
- (c) the appointment of persons to be members of committee under section 13;
- (d) the delegation of powers or duties of the Board to committees or to the managing Director;
- (e) the duties ,and conduct of officers and employees of the Board and of other persons employed by the Board under this Act for carrying out any of the purposes of this Act;
- (f) the welfare and recreation of the staff of the Board and the contribution to be made therefore;
- (g) the fees payable for the copies of documents, estimate and plans furnished by any of its officers and employees under this Act;
- (h) the management ,use and regulation of dwelling constructed under any housing or improvement scheme; and;
- (i) the efficient conduct of the affairs of the Board.

(3) No regulation or its cancellation or modification shall have effect until the same shall have been approved and confirmed by the Government.

116.power to make bye –laws. – The Board may make bye-laws ,not inconsistent with this Act and the rules and regulation ,which may be necessary or expedient for the purpose of carrying out its duties and functions under this Act.

(2) A bye –law made under this section may provide that a contravention thereof shall be an offence.

(3) No bye –law made by the Board shall come into force until it has been confirmed by the Government with or without modification.

(4) All bye-laws made under this section shall be published in the official Gazette.

117. power of government to cancel rules ,regulations and bye –law made under section 114, 115 and 116.-

The government may ,after previous publication of their intention, rescind any rule ,regulation or bye –law made by them under section 114 made to the Board under section 115 and 116 and thereupon such rule regulation or bye- law as the case may be shall cease to have effect.

118.power to remove difficulties:-if any difficulty arises in giving effect to the provisions of this Act the Government may ,as occasion may require ,by order do anything not inconsistent with the provisions of this Act which appear to them necessary for the purpose of removing the difficulty.

119. Repeal and saving(1) The Bihar State Housing Board Ordinance 1982(Bihar Ordinance no 31 of 1982) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken in exercise of any power conferred by or under the said Ordinance shall be deemed to have been done or taken in the exercise of powers conferred by or under this Act as if this Act were in force on the day on which such thing or action was done or taken.

THE SCHEDULE

Further modification in the Land Acquisition Act,1894(Act 1 to 1894) in its application to the State.

1. Amendment of section 3 of the said Act:- After clause (ee) of section 3 of the Land Acquisition Act, 1894(1 to 1894) (hereinafter in this schedule referred to as “the said Act”) in its application to the state ,the following shall be deemed to be inserted ,namely:-

“(eee)the expression ‘local authority’ includes the Bihar state Housing Board established under section 3 of the Bihar state housing board third ordinance, 1974”.

2. In section 15 of the said Act ,for the word and figures “and 24” the figures word and letter “24 and 24-A” shall be deemed to be substituted.

3. Amendment of section 17 of the said Act- in section 17 of the said Act –

For the existing sub –section (1) the following sub-section shall be deemed to be substituted ,namely:-

“(1) Whenever the Government so direct in the interest of the expeditious execution of a housing or improvement scheme under the Bihar state housing board made ,may on the expiration of fifteen days from the publication of the notice mentioned in sub-section (1) of section 3 take possession of any land needed for this purpose of the said Act and such land shall thereupon vest absolutely in the Government free from all encumbrances,”

(i) In sub-section(3) after the word and figures “section 24 “ the words figures and letter “ or section 24-A” shall be deemed to be inserted;

(ii) Sub- section (4) shall be deemed to be omitted.

4 .After section 17 of the said Act ,the following section shall be deemed to be inserted namely:-

17-A. transfer of land to board .- in every case referred to section 16 or section 17 the collector shall , upon payment of the cost acquisition, make overcharge of the land to the board and the land shall thereupon vest in the board subject to the liability of the board to pay any further costs which may be incurred on account of its acquisition".

5. in section 23 of the said act , to sub-section (2) , the following proviso shall be deemed to be added , namely
"provided that this sub-section shall not apply where the land acquired as situated in area which is declared by the government to be a congested or slum area and the land is not in the actual possession of the owner".
6. for clause seventhly of section 24 of the said act the following clause shall be deemed to be substituted , namely :-
"seventhly any outlay on additions or improvements to land acquired which was incurred after the date with reference to which the market value is to be determined unless such additions or improvements were necessary for the maintenance of any building in a proper state of repair."
7. After section 24 of the said act, the following section shall be deemed to be inserted namely
24A. Further provision for determining compensations –in determining the amount to be awarded for any land , acquired for the board under this act ,regard shall also be had to the following provision namely –
 - (1) When any interest land acquired under this act has been acquired after the date with reference to which the market value is to be determined, no separate estimate if the value of interest shall be made so as to increase the amount of compensation to be paid for such land .
 - (2) if , in the opinion of the court, any building is in a defective state from a sanitary point of view or is not in a reasonably good state of repair, the amount of compensation shall not exceed the sum which the court considers the building would be worth if it were put into a sanitary condition the or into a reasonably good state of repair , as case may be, minus the estimated cost of putting it into such condition or state
 - (3) if , in the opinion of the court, any building which is used or is intended or is likely to be used for human habitation, is not reasonably capable of being made fit for human habitation the amount of compensation shall not exceed the value of the materials of the building, minus the cost of demolishing the building."

8. Amendment of section 49 of the said Act- After sub-section (1) of section 49 of the said Act, the following sub-section shall be deemed to be added, namely:-

"(1-a) For the purposes of sub-section (1) , land which is held with and attached to a house and is reasonably required for the enjoyment and use of the house shall be deemed to be part of the house."

Bihar State Housing Board (Management and Disposal of Housing Estates,)

Regulation, 1983.

(Housing Board Regulation No. 1/1983)

1. (i) These regulations may be called the Bihar State Housing Board (Management and Disposal of Housing Estates) Regulation, 1982
(ii) these regulations shall apply to those schemes in which built up properties or housing sites are to be disposed of by sale or hire purchase.
(iii) These regulations shall come into force from the date of notification in the Official Gazette.
2. In these regulations, unless there is anything inconsistent with the context or meaning,-
 - (i) "Allotment letter" means a letter in such form as may be prescribed by the Board from time to time making allotment of a particular property to an applicant.
 - (ii) "Applicant" means a person who has sent an application in which a property has been allotted by way of sale.
 - (iii) " Application" means a person who has sent an application putting his signature or affixing his thumb impression thereon along with the prescribed papers.
 - (iv) "Application" means an application made in such form and manner as may be prescribed by the Board from time to time.
 - (v) " Application Register" means a register in which application in response to public notice are entered in the order in which they have been received.
 - (vi) "Application Register" means a register in which application in response to public notice are entered in the order in which they have been received.
 - (vii) " common Portions" means those portions of the plot or premises which are in common use and include the land, gateway, enclosure compound walls, park, open ground, passages, corridors, staircases fitting, fixture, lift if any installation where for water-supply or drainage or lighting or any other purpose and all such facilities which are used or intended to be used in common.
 - (viii) "common services" in relation to common portions means the services which are rendered for maintenance, running, keeping in good condition and control those common portions, use whereof shall be regulated by the Housing Board or such agency set up by the Board on such terms as they may specify with the prior approval of Government.
 - (ix) " conveyance Deed" means an agreement in the prescribed form between the Board and the allottee or hirer or the housing estate agency as the case may be, by which the title in the property is transferred to the allottee or hirer or the Housing Estate Agency or the terms and conditions specified in the said agreement.
 - (x) "Deposit" means the Initial amount payable by an applicant for securing a property which shall be non-interest bearing.
 - (xi) "Disposal price" or "Hire-purchase price" in relation to a property means such price as may be fixed by the Board for such property or as may be determined by auction.
 - (xii) "documentation charges" in relation to document or documents made in pursuance of those regulation means all charges such as stamps charges, Registration charges, writing charges and plan charges and such other charges as may be prescribed by the Board.
 - (xiii) "Dwelling unit" means a building or a part thereof which is used or is intended to be used by a family for habitation.
 - (xiv) "eligible person" means a person who is entitled to the purchase of a property in accordance with the

provisions of the scheme and these regulations

(xv) "flat" means a portion of building which can be delineated with definite outline on plan and which can be definitely market on site, and which is a dwelling unit.

(xvi) "Ground rent" in relation to a plot of land means the payment to be made by the lessee of the plot to the board as lessor

(xvii) "hire-purchases person" means such period as may be specified for continuance of a tenancy .

(xviii) "Hirer" means a person who has participated in the hire-purchase system and who has signed the hire-purchase tenancy agreement.

(xix) "hire-purchase" or "Hire-purchase System means a system in which a participant takes step to severe rights in a property under a scheme by payment of deposit and also a specified number of monthly instalments sprees over a specified number of years, during which he remains a tenant on the term and conditions set for the purpose and on the expiry of the said year ceases to be tenant and becomes owner after payment of all dues.

(xx) " Hire-purchase Tenancy Agreement" means an agreement between the Board and participant in the form prescribed in this regulation for disposal of property under the hire- purchase system.

(xxi) " Housing Estate " means a group of houses build by the Board for dwelling purposes and may comprise all or any of the following namely:

- (a) Dwelling units,
- (b) Land under and appurtenant to such dwelling units,
- (c) Roads and paths , sewers, storm water drains, water supply and sanitary installation, street lighting and other similar amenities,
- (d) Open spaces intended for recreation and ventilation,
- (e) Shopping, school, community hall or other amenity for common use.

(xxii) "Managing Director" means Managing Director of the Board.

(xxiii) "Nominee" means a person who has been nominated by the hirer to be the hirer and to be the person to whom rights and liabilities in the property shall be passed on in the event of his demise or similar contingencies.

(xxiv) "Property" means a plot of land a dwelling unit a flat or other structure whether grouped under the scheme of the Board or otherwise and includes common portions and common services.

(xxvi) " Allotment committee" means a committee constituted under these regulations.

(xxvii) Property circumstances" includes the nature and conditions of the building and premises the type and the nature of construction specification adopted therefore, material used and the workmanship, stability or durability of the structure, the type of accommodation, pattern of installation, fittings, fixtures and other amenities in all such other things that constituted the property as they exit in the building for premises concerned.

(xxviii) " Scheme" means a scheme prepared by the Board for one or more Housing States.

(xxix) "Service charges" means the amount which the allottee or hirer has to pay as a monthly charge for the maintenance of common portion and common services.

(xxx) " Tenancy Stipulations" in relations to a hirer means the stipulations for the tenancy prescribed under these regulations,

CHAPTER II
PRINCIPLES OF ALLOTMENT

3. These regulations shall be administered by the Managing Director subject to the general guidance and resolutions of the Board. The Managing Director may delegate his power to any officer of the Board subject to the approval of the Board.
4. All agreements made under these regulations shall be executed on behalf of the Managing Director or such officer as may be authorised by him in this behalf.

Comments and case-law

[Regulation 4,5 and 34 handing over of unfinished construction to allottees under the shield of government resolution-respondents who are required to hand over the possession at their earliest did not do anything for long many years add all of a sudden started calculating the interest on the amount agreed between the parties and propose to charge the same-unconstructed house handed over to petitioner showing it to be a complete house-respondent coming out with Straight pleadings even after getting reprimanded by court earlier – conduct of officers of the Housing Board including its Managing Director right from the beginning appearing to be criminal and sinful – if the lapses are on the part of respondents then they would not entitled to any interest even if there is Govt. Direction – similarly, respondents must be held liable for damages if because of their lapses the petitioner could not get house - senior S.P. Patna directed to register a FIR against each and every M.D. /Board Member and enquire into the matter. [Chandra Bhushan Thakur v. State of Bihar 2005 (1) PLJR 537.]]

5. The Board shall execute housing schemes for the provision of dwelling units or sites for eligible individuals or different income groups.

6. The disposal of a property shall be effected by either sale or hire- purchase or in such other manner and subject to such terms and conditions as may be decided by the Board from time to time.

Comments and case-law

[Regulations 6 and 7 – Hire purchase agreement entered between the parties for transfer of MIG Houses – agreement entered into by the parties are binding on them and hence, though the price fixed was tentative, it could be redetermined by the Board only per the agreement – and not otherwise- no reasons given for increase in cost on redetermination and therefore enhancement/demand notices are illegal- respondents to execute registered deed in favour of petitioners, but are at liberty to redetermine the cost if any, as per agreement and law by a reasoned order within seven months. [Ravindra Nath Srivastava v. State of Bihar 2002 (2) PLJR 7.]

Regulation 6- exorbitant increase in the price of the house after allotment and delivery of possession long ago after full payment in terms of agreement – no justification assigned for such exorbitant increase in the price belatedly and interest or penal interest on account of delay- agreement clause that the tentative price could be revised and allottee has no say on it- an unfair and unreasonable clause and can not be allowed to stand when the allottee is not equal in bargaining power- impugned demand quashed with cost.[Manju Singh vs. Bihar State Housing Board 2001(1) PLJR 144.]

Regulation 6- Refund of money – Board not prepared to take a stand consistent on record that allotment was residential –cum-commercial- Board seems to be changing its stand- petitioner rightly sought refund of money-no error in order of writ court direction refund money to petitioner [Bihar State Housing Board & Ors. V. Sri Amrendra Kumar & Ors. 2004 PLJR 103]

7. The hire-purchase price or sale lease hold or the disposal price, as the case may be shall be such price as may be determined by the Board or as arrived at by auction in cases prescribed hereinafter.

8. A dwelling unit or flat or house site shall be allotted only to such persons-

(a) Who must be a citizen of India.

(b) Who must be domiciled in Bihar.

(c) Who shall have attained the age of maturity at present 18 years and not insolvent under law on the date of filing application, and

(d) Who or his wife /her husband or his /her dependant minor children do. Not own any land or house fully or partly either on free hold or lease-hold basis in the town within 8 Km. Of the area of the Municipal Corporation, Municipality or notified Area of the Housing Estate of the Board , Improvement Trust or any other Government undertakings for which application is made.

Note.- If an applicant has house side or dwelling unit on lease-hold or free-hold basis , in any town of the State, either in his own name, or in the name of his wife/husband or minor children , he shall not be eligible for allotment of dwelling units/sites.

9. The applicant must belong to the particular income group in which category the dwelling unit or flat or site applied for is available. The various income groups are indicated below:-

(a) Economically weaker sections- Up to 6000 P.a.

(b) Low Income – Rs. 6001 to Rs. 12000.

(c) Middle Income – Rs. 12001 to 24000.

(d) High Income – Rs. 24001.

Note.- (1) The Board may modify the income range from time to time on all India or regional or state or Basis subject to the approval of the Government.

(2) If there are no applicants for house site/or house /flats in particular income group, the Board may offer them for allotment to applicants belonging to other income groups in the higher category subject to the approval of the Government.

Preference will be given to those applicants of High Income Group, in allotment of plots, who willing to pay the premium in Foreign Exchange.

Comments and case – law

[Regulation 9 – Regulation 9 of the B.S.H.B (Management and Disposal of Housing Estate) Regulation, 1983 provides four types of " Income Group" for allotment of housing unit only from the category of dwelling houses made available for allotment to persons belonging to that "income group" category the provisions of Regulation 9 can be relaxed only if there is no applicant in that particular "income group" subject to the approval of the state Government . Any allotment made arbitrarily in violation of the Provisions of Regulations 9 of the 1983 Regulations is liable to be struck down by Courts as being incompetent and illegal.[Baidya Nath Prasad Mairh vs.State of Bihar , 1994 (1) PLJR 323.]

Regulation 9 of the Bihar State Housing Board (Management and Disposal of Housing Estates) Regulations , 1983, provides four types of " Income Group " for allotment of dwelling houses on categorising the allottees on basis of thier annual income . The applicant for allotment must belong to the particular "Income Group " to which the dwelling unit applied belongs. The provisions of the Regulations in respect of categories of " income groups " can be relaxed only when there is derth of applicants for

allotment in in a particular category. Any allotment made by the Housing Board in violation of the procedure laid down under the 1983 Regulation is liable to be struck –down as being illegal and incompetent . High Court also directed restoration of possession to previous allottee whose allotment had been illegally cancelled. ibid.

10. (1) आवासीय इकाई या फ्लैट या गृह स्थल के आवंटने में प्राथमिकता निर्धारित करते समय जैसे आवेदनों को जिनका मकान/जमीन आवास बोर्ड द्वारा सामाजिक आवासीय योजनाओं अथवा सामान्य नगर सुधार योजना के कार्यान्वयन के लिये अर्जित की जाती है, उनके आवेदन-पत्र प्राप्त होने पर उनके आय वर्ग के अनुसार सर्वप्रथम आवास स्थल/भवन/फ्लैट आवंटित किया जायेगा, यदि वे अन्यथा आवंटने के पत्र हैं। इस आधार पर आवंटन हेतु आवेदन-पत्र देनेवालों को अपने आवेदन-पत्र के साथ अर्जित भूमि/मकान का पूर्ण ब्योरा अर्थात् अर्जित भूमि/मकान की सही स्थिति, सर्वे प्लॉट एवं खाता संख्या, अर्जन की तिथि, भू- अर्जन एवार्ड की अभिप्रमाणित प्रतिलिपि देनी होगी। तत्प चात गृह के आवंटने में उच्च आय वर्ग के उन आवेदकों को प्राथमिकता दी जायेगी जो विदे ि मुद्रा में प्रीमियम (premium) भुगतान करने के लिए तैयार होंगे।

(2) उप-विनियम (1) के अन्तर्गत आवेदकों के बीच आवंटन से बची भोश आवासीय इकाइयों (मकान/फ्लैट/भू-खण्ड) का आवंटन निम्नांकित कोटा के आधार पर किया जायेगा:-

(क) सामान्य	51 प्रति ात।
(ख) अनुसूचित जन जाति	14 प्रति ात।
(ग) अनुसूचित जन जाति	10 प्रति ात।
(घ) सेवा निवृत्त सरकारी सेवक तथा जैसे सरकारी सेवक जो आवेदन-पत्र देने की तिथि से तीन वर्षों के अन्दर सेवा निवृत्त होनेवाले हों	6 प्रति ात।
(ङ.) सैन सेवा के सदस्य एवं अवका ा प्राप्त सैन्य सेवक	10 प्रति ात।
(च) विधान मण्डल एवं संसद के सदस्य सीधे सरकार के आदे ा से	2 प्रति ात।
(छ) वि ोश परिस्थिति में अर्थात् अनुकम्पा के आधार पर सीधे सरकार के आदे ा से।	5 प्रति ात।
(ज) बोर्ड द्वारा अनुकम्पा के आधार पर बेसहारा विधवाओं एवं विकलांगों को।	2 प्रति ात।

टिप्पणियाँ-

(1) प्राथमिकता निर्धारित करते समय उन आवेदकों को प्राथमिकता (weight) दी जायेगी जिन्हें गृह स्थल या फ्लैट का आवंटन सुधार न्यास या विकास प्राधिकार या बोर्ड में बहुत पहले से आवेदक होते हुए भी नहीं किया गया हो, ब ार्त उक्त आवेदन-पत्र वापस नहीं लिये गये हों एवं लंबित हों।

(2) उपर्युक्त वर्गों में किसी वर्ग के आवेदकों की संख्या आवंटन हेतु निर्धारित आवासीय इकाइयों की संख्या से कम होगी तो भोश इकाइयों सामान्य कोटि में चली जायेगी,परन्त यदि उपर्युक्त (ख) तथा

(ग) कोटि के आवेदकों की संख्या आवंटन हेतु निर्धारित संख्या से कम होगी तो इन दोनों कोटियों के व्यक्तियों से समाचार पत्रों के माध्यम से आम सूचना निर्गत कर सूचना के प्रका ान की तिथि से 180 दिनों के अन्दर आवंटन हेतु अवेदन-पत्र आमंत्रित किये जायेगे और इसके बाद भी यदि उपर्युक्त कोटि के आवेदकों की संख्या आवंअन हेतु निर्धारित संख्या से कम होगी तो भोश आवासीय इकाइयों (भवन/फ्लैट/भू-खण्ड) सामान्य कोटि में चली जायेंगी।

(3) उपर्युक्त (च), (छ) और (ज) कोटि के आवेदकों के संबंध में बोर्ड में पूर्व से आवेदक होना आव ये नहीं होगा, परन्तु सरकार या बोर्ड के आदे ा की तिथि से 60 (साठ) दिनों के अन्दर ऐसे व्यक्तियों को आवेदक बनना होगा तथा अपेक्षित अग्रधन जमा करना होगा।

(3) निम्नांकित बिन्दुओं के आधार पर जांच कर नीचे अंकित प्रक्रिया के अनुसार आवासीय सहकारी समितियों के भू-खण्ड आवंटन हेतु आवेदनों पर बोर्ड विचार करेगी:-

(1) प्रत्येक आवासीय भु-सम्पदा के अनुमोदित ले-प्लान मं प्रत्येक आवासीय कोलोनी के अन्तर्गत उपलब्ध कुल भुमि तथा उसमें उपबन्धित उद्देश्यवार उपयोग।

(2) उपर्युक्त खण्ड (प) में किए गए वि लेशन के आलोक में प्रथम प्राथमिकता स्वयं बोर्ड द्वारा आवसीय मकान/प्लेट/स्थल के निर्माण/विकास के लिये तथा प्रस्तावित आवासीय भू-सम्पदा के लिए अनिवार्य सार्वजनिक सुविधाओं के प्रावधान के लिये दी जायेगी। तदुपरान्त किसी आवासीय भू-सम्पदा के अन्तर्गत उपलब्ध अधि ष भूमि की जानकारी होगी।

(3) भू-खण्ड के आवंटन हेतु आवासीय सहकारी समितियों से प्राप्त आवेदन पत्रों पर उपर्युक्त खण्ड (1) तथा (2) के वि लेशन के आलोक मं पात्रता के अनुसार विचार किया जायेगा।”

Comments and case-law

[Regulation 10-petitioner's name not put into lottery for allotment of a house even though name of those junior to him into account on ground that the affidavit filed by the petitioner was not in prescribed preformed-petitioner filing writ subsequently in which a direction was given to Board to submit names of persons considered, the affidavit to petitioner to ascertain the defect alleged and four houses remaining to be allotted stayed—writ taken p after 9 years- Board showing allotment of a house to petitioner (other four houses whose allotment was stayed)- amount directed to be deposited contained interest component thereby enhancing substantially the price of the house than what was payable when houses were allotted to other people excluding petitioner-while the interest can be justifiably charged by the Board but it cannot do so where the folly is on the part of Board-direction given to allot the house at original price.[Umesh Pandey vs. State of Bihar, 1996 (2) PLJR 244].

Regulation 10 (2) (ch) –It provides for allotment of house in special circumstances and on compassionate ground-allotment of house to respondent no. 5 after cancelling that of petitioner hardly comes under the said provision of special category and is illegal and unsustainable in the eyes of law as achieved by misuse of position—petitioner made the payment of entire amount raised by the Board and entitled to allotment in terms of Board decisions-moreover it is unfair to cancel the allotment of the house in petitioner's favour in which petitioner has been in occupation for a very long time, on ground of non-deposit of earnest money within time-in fact allotment made earlier in petitioner's favour was cancelled to allot the same to respondent no. 5 directions to allot the house to petitioners. Suresh Kumar Sinha v. Chairman, B.S.H.B., 1999 (3) PLJR 696.]

11. जब तक बोर्ड द्वारा अन्यथा विनिर्दिष्ट नहीं किया गया हो, भाड़ा सह क्रय की अवधि 15 वर्षों से अधिक न होगी।”

12 विनियम 11 के प्रावधानों के अध्वधीन सम्पत्ति की भोश भाड़ा-सह क्रय कीमत की देय राशि, उस पर ब्याज सहित,जिसकी दर बोर्ड द्वारा निर्धारित होगी, अधिकतम 180 मासिक किस्तों में वसुल की जायेगी।

ब तर्त किरायादार से आवेदन-पत्र प्राप्त होने पर आवेदन-पत्र देने की तिथि तक भाड़ा-सह-क्रय कीमत की देय राशि, उस पर भुगतान की तिथि तक दे ब्याज एवं अन्य राशि के साथ, यदि कोई हो, एक मु त में जमा करने की अनुमति बोर्ड दे सकेगी।

पुनः ब तर्त जिस किरायादार को भाड़ा-सह-क्रय कीमत एक मु त जमा करने की अनुमति प्रदान की गई हो षे उस परिसर को भाड़ा-सह-क्रय की अवधि की परिसमाप्ति तक, बगैर बोर्ड की पूर्व अनुमति के न तो बंधक कर सकते हैं, न हस्तान्तरित कर सकते हैं और न छोड़ सकते हैं।

13. the property thus allotted shall be used for such purpose only as may be specified in the conveyance deed/hire purchase tenancy agreement .

14.all documentation charges shall be borne by the allottee or hire.

COMMENTS AND CASE-LAW

[Regulation 14.- demand for payment of stamp duty amount on the interest accruable and by allottee on the apportioned amount of allotment i.e. remaining dues after necessary payments converting into loans payable in 282monthly instalments –demand not valid –section 24 of stamp act is clear about it –stamp duty is payable on the value of the flat allottee. [Bihar State Housing board vs.Atma Ram shah, 1999 (1) PLJR (sc) 130]

Regulation 14- it is the actual price of the property which should be basis for the purposes of stamp duty – consequently where the price of the flat allotted by the Board is Rs.34,500/- it is this price on which stamp

duly is payable and the amount of interest which would be payable because of payment of outstanding amount in 282 instalments cannot be added for the purpose of stamp duty.[Atma Ram Shah v. Bihar State Housing Board ,1997(1) PLJR 863.]

15 .All rates, fees, taxes, charges, Municipal assessments or otherwise and levies of whatsoever nature shall be borne by the allottee or hirer, as the case may be, and shall be payable by the allottee, or hirer, within the period prescribed in this behalf;

Provided that in every case of failure on the part of the allottee or the hirer, the Board shall have the power to recover the dues as arrears of land revenue.

16. The allottee or hirer shall be liable to pay such charges ,if any incurred by the Board on the maintenance of roads , water supply, drainage ,street lighting and other services or amenities with a Housing Estate.

17. The Board shall offer property on lease or hire purchase or sale on the basis of property circumstances that exist at the time. The allottee or hirer shall fully make himself conversant with the property circumstances and he shall be precluded from making complaint or raising objections or setting up claims regarding the property circumstances at any subsequent stage.

18. The Board or such agency as it may decide shall be responsible for maintenances, running, control and regulations for use of common portions and common services of each block in a Housing Estate and it shall be the duty of such agency to administer these common portions and common services. The allottee or the hirer shall be liable to pay to the Board or the special Agency of the charges for the purpose as decided by the Board or the Special Agency of the charges for the purpose as decided by the Board. In case of failure on the part of the allottee or hirer to make such payment the Board shall have the power to recover such amount as arrears of land revenues.

19. The Board shall inform Government of all the allotments, town wise and scheme wise ,made during a financial year in respect of each income group.

CHAPTER III

PROCEDURE OF ALLOTMENT

20. The Managing Director or the officer authorised by him in this behalf shall cause a public notice to be issued indicating general features of the housing Scheme , number of dwelling units or flats or sites to be allotted and inviting applications for allotment.

21. The applications shall be sent with prescribed affidavit documents and the application fee as may be determined by the Board.

22. All application as received shall be entered serially in the application register. The serial number of each application shall be determined by the time and sate mentioned on the Bank scroll through which the necessary fee shall be paid.

23.Any Managing Director or any official authorised by him shall acknowledge receipt of each application.

24. Any application which is incomplete in any respect is liable to be rejected as invalid.

25(1) The Board shall allot property in Patna.

(2) For the purpose of allotment of property in other r areas the Board shall constitute a committee at the Divisional level to be called the Divisional Allotment Committee consisting of the following:-

(i) Commissioner of the Division ---Chairman

(ii) Managing Director or his nominee --Member

- (iii) Concerned District Magistrate --Member
- (iv) One non-official member of the Board
To be nominated by the Government --Member
- (v) Concerned Executive Engineer of the
Board --Convenor (Member –secretary)

26. Subject to the approval of Government, the Board/Divisional Allotment Committee shall determine which of the applicants are eligible for allotment and the decision thus arrived at (of the committee in this regard) shall be final:-----

(i) in every category (except discretionary quota) the allotment of property to eligible applicants shall be made by draw of lots by the Board. The procedure of draw of lots will be decided by the Managing Director.

(ii) The particular plot/house /Flat to be applicant in accordance with sub-section(i) above shall be determined by drawing of lots after due notice to such applicants of the date, time and venue of the draw.

27. The Divisional Allotment Committee shall forward its decisions to the Board for onward transmission to the Government.

28. Formal allotment orders and letters shall be issued by the office of the Board.

Provided decision on allotment on compassionate ground referred to in Regulation 10(h) shall be taken by the Board.

29. The Board/Divisional Allotment committee shall thereafter prepare a final list of allottee/hirers and shall place them in such group or groups as may be deemed expedient by the Board.

30. On the basis of final list of allottees /hirers drawn up by the Board/Divisional Allotment committee an allotment Register shall be prepared in which names and other particulars of allottees /hires shall be entered serially as per list.

31. Information about allotment shall be sent to all persons selected for allotment whose names have been entered in the allotment register.

32. In the event of a person or persons not accepting offer of allotment and failing to comply with the prescribed formalities within two months of issue of the allotment letter, the property shall be allotted to the person or persons next falling on the waiting list in the serial order or the Application Register provided the eligibility criteria is satisfied.

CHAPTER IV

TERMS AND CONDITIONS OF DISPOSAL OF PROPERTY

33." (1) Immediately after decision on allotment of dwelling units/flats/site has been taken, the applicant under High income Group and Middle Income Group shall be required to pay/deposit equal to 30 per cent of the disposal price, but the applicants under Low Income Group and Economically Weaker section, shall be required to pay deposit equal to 20 per cent of the disposal price .Such deposit shall be non- interest deposit ."

(2) An applicant to whom a dwelling unit or flat/site has been allotted have to pay the balance amount of the disposal price(i.e., after adjusting the deposit) within such period as may be determined by the Board and specified in the allotment order/letter.

(3) If the applicant fails to pay the amount within the said specified period, the allotment shall be cancelled and a sum of money equal to 20 percent of the deposit shall be forfeited and the balance refunded.

(4) In the case of such applicants as have not been finally allotted any dwelling unit/flat/site the deposit specified in sub-regulation (1) shall be refunded.

(5) The Board shall have the sole and exclusive right over the deposit till it is adjusted or refunded with or without deduction as provided in these regulations.

Comments and case –law

[Regulation 33(3) – An allottee cannot claim to have the allotment of housing unit at the price which was prevalent at the time of issuing advertisement calling for applications as the price mentioned in the advertisement was only the estimated price-Housing Board is entitled to demand the price which was prevalent at the time when final allotment was made –according to Regulation 33(3) if the applicant for allotment fails to pay the price demanded by the Board within the specified period the allotment is cancelled automatically and 20% of the initial deposit is forfeited and the balance only is to be refunded-however, in view of the fact that the Housing Board made the final allotment only after about ten years, during which costs escalated the High court directed the Housing Board to refund the entire amount deposited, but claim for compensation or interest not allowed, *Bageshwari Prasad Sinha v. Bihar State Housing Board*, 1996(2)PLJR 562.

Regulation 33 plot not delivered to allottee even after 30 long years of allotment –due to inaction of Board local resident making encroachment over the concerned plot-when Board acquires a plot, it is expected to take preventive measures on the very first complaint that somebody was trying to encroach upon the acquired land-it is not open to the Board to plead that in view of prevailing law and other situation, it is not possible for the Board to deliver the possession of the plot to the petitioner –they being the dream merchant, it propose to sell the dreams and after realising consideration cannot supply nightmares –in a case where the Board commits lapses and is unable to deliver the property as assured by them, then it must come out with a straight case and at least make offer before the court that they would refund the full amount with reasonable interest and would try to compensate the petitioner as honest authority. [*Mohan Lal vs. State of Bihar* 2002(1)PLJR188].

Regulation 33(2) and 33(3) – for feature of deposits- forfeiture is to be made only from the amount deposit” in forfeiture is to be found under Regulation 33(1) and under Regulation 33(2) as the words used in Regulation 33(2) is ‘disposal price and not the deposit the deduction of 20% from the total amount deposited towards earnest money, the first deposit and to words the disposal price appears to be patently illegal and bad and rest contrary to their own Regulation- the benefits drawn from the contract /agreement cannot be retained by the beneficiaries in the case of frustration of contract and is duly bound to return the benefits i.e. The amount so received and the interest on it- deposits made from time to time directed to be refunded with 12% interest with a quarterly rest. [*Ram Keshwat Choudhary Vs. State of Bihar*, 2003(3) PLJR 45]

34. When the dwelling unit/flat is disposed of by sale the possession of the dwelling unit/flat shall be handed over to the allottee, after such allottees has made required payment and fulfilled other formalities prescribed by the Board.

35. When the dwelling unit/flat is disposed of by sale the allottee shall become the owner only after the full disposal price and other dues have been paid by him to the Board and the transfer of absolute ownership or otherwise of the dwelling unit/ flat/ plot has been affected through a conveyance deed executed in such form as may be prescribed by the Board.

36(1) the hire –purchase deposit which shall be a sum as to be decided by the Board from time to time shall be paid by an applicant within two months after decision has been taken to allot him a dwelling

unit/flat. Such deposits shall be adjusted after the expiry of the hire –purchase period at the time of execution of the conveyance Deed.

(2) In the case of such applicants as have not finally been allotted any dwelling unit/flat the said deposit shall be refunded.

(3) In the case of such applicants to whom allotment letters have been issued and who have failed to fulfil the requirements as specified in the allotment letter such equal to 20 per cent of the deposit shall be forfeited and the balance refunded.

(4) The board shall have the sole and exclusive right over the hire purchase deposit till such time it is adjusted on the execution of the conveyance deed or refunded with or with our deduction as provided in these regulations and the agreement made there under.

(5) Subject to provisions or Regulation 11 the balance hire- purchase price of the property including interest thereon at such rates as may be prescribed by the Board shall be recovered in monthly instalments the amount whereof shall be fixed in each case.

Provided further that except where a hirer permitted to pay dire purchase price as aforesaid in lump sum, he shall not mortgage, transfer or part with the possession of the property till the expiry of hire –purchase period otherwise than with prior permission of the Board.

37. The possession of the dwelling unit/flat shall be handed over to the hirer after the hirer has paid the prescribed number of instalments and such other dues as shall have been demanded by the Board.

38. During the hire –purchase period a heir shall remain the tenant of the Board and shall have no other right except that of tenancy as per agreement executed.

39. During such period as a hirer remains a tenant he shall abide by the tenancy stipulations as specified in the hire- purchase agreement.

40. If the hirer fails to do a thing or refrains from doing a thing as required by the agreement executed under these regulations, the Board shall have the power to get such things done or prevent such things being done at the risk and cost of the hirer.

41. The hirer shall cease to be a tenant and shall be the owner of the flat dwelling unit only after the last instalment of hire purchase and all other dues have effected through a conveyance deed in such from as may be prescribed by the board.

42.(i) The land under and appurtenant to a property shall be allotted on perpetual leasehold basis to the owners of dwelling unit on such terms and conditions as may be determined by the Board.

(ii) A lease deed for the land specified in sub-regulation (i) shall be drawn up and executed in such form as may be prescribed by the Board.

43. The payment for dwelling sites shall be made in the following order:

[(i) The applicant under the High income Group and the Middle income Group shall pay/deposit 30 per cent of the disposal price immediately after it has been decided to allot a dwelling site to him, but the applicant under low income Group and the Economically Weaker Section, shall pay/ deposit 20 per cent of the disposal price immediately after it has been decided to allot a dwelling site to him.”]

(ii)The balance amount of the disposal price shall be paid within such period as may be determined by the Board and specified in the allotment order.

44. When a housing Estate has been developed by the Board the Board may require the local authority within whose limits such Housing Estate is situated to assume responsibility for the maintenance of all or any of the following amenities. Namely:-

(a) Roads and paths, storm water drains, water supply and ancillary installations, street lighting and other services.

(b) Parks and open areas intended for recreation.

(c) Market, shopping centre, schools community hall or any other amenity for common use on such terms and conditions as may be agreed between the Board and that local authority.

45. Simple interest at the rate of 5 per cent will be payable on the amount of earnest money deposited by the applicants, after the date of enforcement of this regulation. No interest will be payable on deposits made hereinbefore.

Comment and case-law

[Regulation 45- refund of earnest money –deposit in the form of earnest money under Regulation 45 is a deposit and not a charity –earnest money creates a right in favour of the depositor and the same when remains with the housing Board ,the Board earns the interest upon it- the Board cannot make a Regulation in its own favour by saying that no interest would be paid if the money is deposited prior to enforcement of the regulation-instantly petitioner deposited the earnest money of Rs,2000/- prior to enforcement of Regulation 45 but thereafter deposited the money to wares the price of the plot- if the price of the plot- if the price of the plot not covered under Regulation 45 then the bar and the capping of 5% interest would not apply to such a deposit –amount of earnest money directed to be refunded with 5% simple interest- writ allowed with cost .Ram Keshwar Choudhary Vs. State of Bihar(2003)3PLJR 45.]

