
(2010) 05 PAT CK 0080
In the Patna High Court
Case No : CWJC No. 12774 of 2002

Ajit Sinha, Advocate

APPELLANT

Vs

Patna Regional Development Authority and Others

RESPONDENT

Date of Decision : 10-05-2010

Acts Referred:

Citation : (2010) 05 PAT CK 0080

Judgement

Ramesh Kr. Datta, J.—Heard learned Counsel for the parties.

2. The Petitioner seeks quashing of the letter No. 1054 dated 5.4.2002 issued by the Assistant Engineer, Patna Regional Development Authority, by which he has demanded an amount of Rs. 73,768.00 as development fee in Plan Case No. 1068/-2001 and further for a direction upon the authorities to handover the sanctioned map to the Petitioner.

3. The brief facts of this case are that the Petitioner purchased 7.5 kathas of land of Patliputra Co-operative House Construction Society Limited from one Rabindra Gangadhar Lele. One of the conditions of the purchase was that the Petitioner will obey the bye-laws of the Society and Building Regulations and further that he will pay Rs. 5,000/- per katha as development cost to the Society which provided for the municipal services including the development, unit repair and construction of roads in the area of the Society. Accordingly, the Petitioner paid an amount of Rs. 37,800/- to the Society towards development cost and also the other charges. Thereafter the Petitioner submitted an application alongwith a copy of the proposed map of the building and the requisite fee as per Section 36 of the Bihar Regional Development Authority Act, 1981 in the office of the PRDA for its sanction. By the impugned letter No. 1054 dated 5.4.2002, the Petitioner was informed that the Vice-Chairman, PRDA has approved the Plan Case No. 1068/2001 on 3.4.2001 and a demand of Rs. 73,768/- towards development fee was also made. Aggrieved by the said demand the Petitioner has approached this Court.

4. Learned Counsel for the Petitioner submits that u/s 36(3) of the Bihar Regional

Development Authority Act, 1981, every application under the said Section for erection of buildings etc. has to be accompanied by such fee as may be prescribed by regulation made in that behalf. It is further submitted that u/s 80 the State Government has been empowered to make rules to carry out the purposes of the Act by notification in the Official Gazette. Sub-section (2)(f) further provides that such rule may provide for the fee to be paid under Sub-section (3) of Section 36 and the facts and considerations to be taken into consideration in determining such fee. It is further submitted that under the Patna Regional Development Authority (Miscellaneous Fee to be paid on the application for permission) Rules, 1978, by Rule 3 provision has been made for the fee which shall accompany every application submitted under Sub-section (1) of Section 36 of the Act for building operations and for development. It is urged that the Petitioner had filed his application u/s 36(1) and had already paid the requisite fees under the said provisions and nothing more is payable. It is urged that the demand of development fee by the PRDA is not based upon any provision of law and it has no authority to levy such development fee.

5. Learned Counsel for the Patna Regional Development Authority (since merged in the Patna Municipal Corporation after the repeal of the Bihar Regional Development Authority Act, 1981 by the Bihar Municipal Act, 2007) submits that the charge of development fee is justified and the same has been raised in terms of Resolution No. 34/01, SI. No. 2/2001 dated 19.5.2001 Office Order No. 95/2001 dated 11.6.2001 of the PRDA under which it was provided that to facilitate the owner of the plot of the co-operative society whose plan had not been sanctioned and if they want to get their building plan sanctioned from PRDA u/s 37 of the bye-laws, they have to submit development fee at the rate of Rs. 10,000/- per katha. It is stated in the counter affidavit that the said scheme ceased to be effective from 8.11.2001 but since the Petitioner had submitted his plan for sanction at the time when this scheme was effective, it was sanctioned on 3.4.2002 with the condition that he would have to pay the development fee before the plan is sanctioned.

6. It is further urged by learned Counsel that after providing for development fee by the aforesaid resolution the PRDA had sent information to the State Government and the State Government has not disapproved the same and thus the PRDA was well within its rights to demand the said development fee.

7. Learned Counsel also submits that the Petitioner has given undertaking to pay the development fee at the time when he submitted the plan and thus he would be bound by the same.

8. On a consideration of the submissions of learned Counsel for the parties, this Court does not find any force in the submission of learned Counsel for the PRDA. It is evident from the relevant provisions that the only fee that can be levied with respect to an application u/s 36(1) is what has been prescribed u/s 36(3)

9. Learned Counsel for the PRDA (now PMC) was unable to show any provision of

law under which the said development fee could be levied by the PRDA except to reiterate that the same has been levied on the basis of the highest policy making body of the PRDA. In the opinion of this Court the said submission has no legs to stand as the PRDA is a creature of statute under which it could not have levied such a fee, such power having been conferred exclusively by the Act upon the State Government. The State Government having determined what fee was payable on an application u/s 36(1) of the Act, the PRDA was obliged to charge only the said fee and nothing more.

10. This Court also does not find any force in the submission that the Petitioner at the time of filing his application having agreed to pay development fee, he would be bound by the same. No statutory authority can claim to levy any statutory fee in the exercise of its statutory functions on the basis of any agreement with any party as such statutory powers are to be exercised in terms of the provisions of the Statute and the Rules and Regulations and not on the basis of any unilateral action of the statutory authority which the other person would be in no position to oppose.

11. The further submission that the State Government had not disapproved the levy of such development fee despite information sent cannot justify or regularize the said fee as in such cases it is for the State Government to have exercised its rule making power and make provision for the levy of the development fee. There can be no question of approval or non-approval of the resolution of the PRDA in this regard.

12. Learned Counsel for the PRDA has sought to rely upon a decision of the Supreme Court in the case of Municipal Board, Hapur etc. Vs. Jassa Singh and others, in which it was held by the Apex Court that from the relevant provisions of the U.P. Municipalities Act, it was clear that the Board was empowered statutorily to prescribe the fee for use of the public property vesting in or belong to the municipality. The premises in which the said decision has been rendered clearly goes against the case of the Respondent as no statutory provision can be shown by learned Counsel in support of the power of the PRDA to prescribe and levy any such fee when the power to prescribe has been clearly vested in the State Government alone by Section 80(2)(f) of the Act.

13. In the light of the aforesaid discussions, the impugned letter No. 1054 dated 5.4.2002 is quashed to the extent that it has made a demand of Rs. 73,768/- from the Petitioner. The authorities of the PRDA are directed to give effect to the sanction accorded to Plan Case No. 1068/2001 by the Vice-Chairman by his order dated 3.4.2001 and handover the sanctioned map to the Petitioner within a period of six weeks from the date of receipt/production of a copy of this order.

14. The writ application is accordingly allowed with aforesaid directions.