

(2007) 09 PAT CK 0026

In the Patna High Court

Case No : CWJC No's. 12626, 12717 and 12728 of 2007

Asim Zafar and M/s Niagaree Builders and Developers Pvt.
Ltd.

APPELLANT

Vs

State of Bihar and Others
 M/s Vishal Retail Limited.
and Another Vs The Patna Municipal Corporation and Others

RESPONDENT

Date of Decision : 27-09-2007

Acts Referred:

Bihar Regional Development Authorities Act, 1981 — Section 38

Citation : (2007) 4 PLJR 689

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Judgement

Navaniti Pd. Singh, J.—These three writ applications raise similar issues in respect of a singular structure and, as such, will be heard analogous, today, on mention being made with notice to the learned Advocate General who appears to defend, this case was listed "For Orders" for consideration whether any interim order should be passed or not. The learned counsel for the three sets of petitioners in the three writ applications and the learned Advocate General are present and have been heard at length on the question of interim order. A multi-storeyed building was constructed. On 20.7.2006 (more than a year back), police notices were issued pursuant to request by the erstwhile Patna Regional Development Authority, constituted under the Bihar Regional Development Authority Act 1981, to stop all construction activities on the site. No reason except that a request had been made by the PRDA was given. Subsequently, the landlord and the developer approached this Court by two separate writ applications wherein by an interim order, this Court stayed the police notice dated 20.7.2006. Ultimately, when the said writ applications came up for final disposal at the stage of admission itself, PRDA pointed out that a proceeding in terms of Section 38 of the Act had been initiated. This Court, in view of the aforesaid fact, directed the writ petitioners to appear in those proceedings and file their respective show cause. It may be mentioned that the developer

expressed apprehension as to whether they would be permitted to participate in those proceedings. This Court removed the apprehension and directed that as they were also an affected party, they had a right to be noticed and heard in the matter. The writ applications were, thus, disposed of.

2. The first of those writ applications being CWJC No. 13516 of 2006 was first disposed of and then CWJC No 13263 of 2006 of the builder was disposed of on 17.9.2007. The apprehension of the petitioner is noted in the order dated 17.9.2007 by this Court wherein in view of this Court, the apprehension was thought to be wholly misconceived. This Court said "In my view, the apprehension is misconceived as it is hoped that we are living in a democratic society governed by rule of law and the authorities would not try and permit any such action and try and overreach statutory provisions in this regard."

3. The dust had yet to settle. On 20th of September 2007, the impugned notices have been issued in the cases wherein in the case of the second writ application (CWJC No 12717 of 2007) by the Municipal Commissioner, Patna Municipal Corporation. The said notice is Annexures 3A and 4 in the said writ application. It says that the PRDA has merged in the Patna Municipal Corporation and a proceeding has been initiated against Vishal Mega Mart. The High Court had stayed those proceedings but now have vacated the said order. It is learnt from various sources that there are serious allegations in respect of irregularity and deviations in completing construction and, as such, the Corporation is taking appropriate action. Further, as in past few days, there has been some law and order problem, it is expected that in future, there may be serious law and order problem and further there is no adequate parking space nor security arrangement and considering these things, Vishal Mega Mart, is to be closed forthwith. Prima facie, a reference to the said notice (Annexures-3A and 4 of CWJC No 12717/ 2007) does not refer to any statutory violation or to any specific proceeding which has been initiated. This notice is more than a year after initial steps were taken yet without any final finding or conclusion. Suffice to say that even one and half years have passed, nothing concrete is being said but the complex is to be shut down. The petitioner of the second writ application, in fact was never noticed earlier in any matter.

4. The challenge to the notice aforesaid is that under the Act, that is the Regional Development Authority Act or the Bihar Municipal Act 2007, there is no such power. Wherever there is power to stop construction or demolition or seal premises, it is only after due notice and hearing of the parties. Such emergent power does not vest in the authority much less as contained in the vague impugned notice. In my view, this is a triable issue. It is not in dispute that the petitioners are in possession. They would, thus, be occupier or persons interested. Learned Advocate General says that it is only persons who have purchased property or the landlord who would be a person interested and not any other person much less a licensee or a lessee. I do not propose to decide this issue at this stage though prima facie the submission is wrong.

5. So far as balance of convenience is concerned, if the complex is shut down, the loss and injury would be irreparable for if ultimately the writ petition was to succeed, the loss for the period for which the entire complex remains shut down cannot be made good. Therefore, the balance of convenience is in favour of the petitioner.

6. The apprehension of learned Advocate General that the structure is a traffic hazard needs to be considered at this interim stage because that is what affects every citizen every day. To that, the authorities have ample power to remove unauthorised parking on public road obstructing traffic but that can not lead to the closure of the building itself as building is not prima facie a traffic hazard. It is the people who wrongly park on road are causing traffic hazard.

7. In that view of the matter, as an interim measure, I direct that the notices dated 20.9.2007 issued by the Municipal Commissioner, Patna Municipal Corporation to the Vishal Mega Mart against whom there is no proceeding, as submitted by Mr. Jha, shall remain stayed. Consequently, the same shall be forthwith unlocked.

8. As the matter requires urgent consideration, put up "For Admission" on 30th of October, 2007.

9. Mr. Giri appearing in one of the writ applications reiterates his apprehension which he had expressed in the earlier writ application and noted earlier. The learned Advocate General fairly states that even in a proceeding u/s 38 of the Regional Development Authority Act or any similar proceedings if any order is adversely passed, as there is statutory remedy available which can be preferred within thirty days thereof, the State and the Municipal Corporation would not precipitate any action before the said time. In my view, this fair stand of the learned Advocate General should mitigate whatever apprehension the petitioner has. At the cost of repetition, I may mention that any observation as made in this order is restricted for the purposes of interim order and is not a finding either way on the merits of the contentions which would be decided later when the matter is heard.