

(2010) 05 PAT CK 0092
In the Patna High Court
Case No : CWJC No. 2606 of 2010

Baban Chaudhary

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 14-05-2010

Acts Referred:

Citation : (2011) 59 BLJR 1667 : (2011) 2 PLJR 180

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Advocate : Ajeet Kumar and Avinash Kumar, for the Appellant; Sanjay Kumar Sinha and Rakesh Prabhat for State, Renu Jha and Vikash Jha, for the Respondent

Final Decision : Allowed

Judgement

Navaniti Pd. Singh, J.—Petitioner has come to this Court for restraining the construction of Primary School, which was sanctioned for Chotka Manjha in Mairwa Sub-Division of District-Siwan on a land other than the land donated by the Petitioner,

2. Counter affidavit and supplementary counter affidavit have been filed by the State.

3. Mukhiya of Chotka Manjha Gram Panchayat has also appeared and filed a counter affidavit. Rejoinders have been filed.

4. The pleadings being complete with the consent of the parties the writ petition is being disposed of at this stage itself.

5. It may be noted that by earlier order dated 9.3.2010 while staying the construction, this Court had observed that if it is found that the construction was being done at a wrongful chosen site, Court would consider its demolition and construction at the fresh site at the cost of the persons for such a wrong decision. Now time has come for taking a decision in this regard.

6. It appears that in the financial year 2006-07, a primary school was sanctioned

for the Village-Chotka Manjha in Mairwa Sub-Division of District-Siwan.

7. Petitioner asserts that when ultimately people of the Village-Chotka Manjha came to know that the school was being constructed for their people and there being no adequate land, the Gram Sabha met on 15.10.2008 and persuaded the Petitioner to donate his land to the State for construction of the aforesaid primary school. The Petitioner agreed to donate his land for the said purpose. This information upon being given to the Block Development Officer, Mairwa, who also happens to be the Executive Officer of Mairwa Block Panchayat Samiti, examined the matter, examined the site and on 11.2.2009 approved the site and recommended to the Collector through the Additional Collector for grant of exemption from payment of registration fee etc. for the purposes of registration of gift in favour of the State Government. The matter then reached the Collector, who appears to have considered the matter and granted exemption from payment of registration fee and other duties as the gift was being made for construction of primary school by the Petitioner. In the meantime, Gram Sabha met once again on 29.7.2009 and unanimously approved the site selection and the donation. Consequent whereof and pursuant to exemption granted by the Collector, on 10.8.2009 deed of gift was duly registered in favour of the Government for construction of primary school at Chotka Manjha. The deed clearly stated that the donation was being made for construction of the said primary school.

8. I have noted these facts to show that all concerned including the Collector, Siwan was fully aware about the decision of the Gram Sabha/Aam Sabha with regard to situation of the school. The people, for whose benefits the primary school was to be constructed had made a choice and selected a site got land donated and all this was done with the knowledge of the Collector, Siwan but when it came to construction it is found that the school is being constructed on a Gair Mazarua land and not on the land, which has already been donated. This has brought the Petitioner to this Court.

9. At the first instance, a counter affidavit was filed by the State where it was tried to justify that the construction was commenced. The stand in the counter affidavit is that several persons of the locality had represented to the Collector that the school should be constructed at a place where it was being done. A reference to the said would show that such an application was recommended by the Chairman of PACS, which is Primary Agriculture Credit Co-operative Society. It is neither Aam Sabha nor the Gram Sabha nor the Gram Panchayat nor the Panchayat Samiti. It is further stated that on 6.2.2009 the Block Education Officer selected the site and accordingly the work was allotted and by the time, the writ petition was filed, construction up-to plinth level has been done.

10. With regard to averment of the decision of the Gram Sabha and Aam Sabha, the exemption was granted by the Collector himself, the averments in relation to registration of deed as made in the writ petition have not at all been adverted to in the counter affidavit as if claiming total ignorance to their existence. Then

came to the counter affidavit of the Mukhiya of the Gram Panchayat. She also fully endorses the stand of the Petitioner. Thus, it would be seen that the people for whom, the school was meant being part of Local Self-Government under Part-IX of the Constitution and under Bihar Panchayat Raj Act, 2006 took a conscious decision to have the primary school at a particular place for which they also donated the land but all this was brushed all aside for some unexplainable reason and ignoring all this, the Collector decided otherwise, as if he is the authority to decide what is best for the villagers. Villagers are inapt and could not take a decision themselves and a decision by them is of no consequence. Noticing the facts above, when this Court wanted further details, now a supplementary counter affidavit has been filed and a total new ground for justifying the construction at the disputed site is given. The consequence whereof would be noticed later but the facts first. In this supplementary counter affidavit it is stated that on 5.1.2006 the Gram Panchayat which functioned prior to coming into force of the Bihar Panchayat Raj Act, 2006 had resolved to get the Primary School constructed on Gair Majarua land, which decision was approved by the Zila Parishad on 21.9.2006. On 1.2.2007, orders were passed by the Anchal Adhikari to make Bandobasti of the land in favour of the Government primary school and on 6.2.2009 the Block Education Officer selected the site and as such after agreement was entered into, construction was sanctioned at the disputed site. Now the stand taken on behalf of the Collector is that though there was a decision of 5.1.2006 by the Gram Panchayat in subsequent decisions of the Gram Sabha and Aam Sabha dated 15.10.2008 and 29.7.2009 as the earlier decision has not been cancelled though the new site has been selected, the earlier decision operated and consistent therewith the Collector ordered the construction. Again the fact is that the Collector himself granted exemption from payment of registration fee in respect of gift deed to be registered in favour of the State by the Petitioner for construction of the primary school and consequence thereof has been totally ignored as if neither the Collector had granted any such permission nor any enquiry was made nor any such deed was executed.

11. The attempt of the State is to ignore the controversial issue and justify its action on any ground.

12. Having considered the matter it is apparent that though there were earlier decisions to have the school on Gair Mazarua land but those decision were taken long prior to the ultimate site selection. The ultimate site selection was done on 6.2.2009 by the Block Education Officer, who totally ignored the resolution of the Gram Panchayat dated 15.10.2008. He did not consult the local people for whom the school was to be built.

13. To the notice of the Block Development Officer, who is also the Executive Officer for the Mairwa Panchayat Samiti, on 11.2.2009 he approved the site of the Petitioner and recommended for exemption from payment of registration fee and duty to the Collector through Additional Collector. It is pursuant to this and

after considering all this that the Collector granted exemption from payment of registration fee and other duties. He cannot excuse himself on the ground of ignorance or otherwise. If he had already decided to select the site as per Gram Panchayat decision of 5.1.2006 then there was no occasion for him to grant exemption or grant permission for deed of gift to be registered for the purpose of the said primary school at a different place.

14. All informations converges at the level of the Collector. He chose to ignore some and picked up some. I say so because in the first counter affidavit filed, the stand is that the site selection was done by the Block Education Officer (6.2.2009) and accordingly the construction was sanctioned. What was the effect of the Collector granting permission and exemption for deed of gift etc. was not considered important enough to be dealt in the counter affidavit. When this Court noticed this fact, a supplementary counter affidavit is being filed giving totally a different story. They show how responsibly the Collector of the district, who is supposed to be a responsible officer, function. One excuse after another given. A pretext or excuse to justify the decision is given and changed in the same very next affidavit. Thus, found the decision to establish the school where it is now being constructed was not taken in true bona fide. The reasons apparently was something else otherwise why did the Collector grant exemption and permission for the registration of deed of gift for construction of primary school itself on the land of the Petitioner but sanctioned construction at a different site.

15. Now coming to the site selection by public, it cannot be disputed that the primary school is for the children of the villagers. Thus, it is villagers, who are more concerned and are affected by its location. When these people for whom the school is meant took a conscious decision then can the Collector ignore that? I am afraid to say not. We must not forget that way back in 1993 people of India had amended the Constitution of India. Part-IX and Part-IXA were added to the Constitution of India Part-IX dealt with Panchayat and Part-IXA dealt with Municipality. All such decisions now are to be referred to the people. It is with reference to Part-IX of the Constitution that Bihar Panchayat Raj Act, 2006 was later enacted repealing earlier enactment in that regard. Thus, constitutionally and legislatively concept of Local Self Government has been accepted. It is a Government by the people, for the people and of the people and it is they who have to decide what is good for them and where it will be done. The Collectors have ceased to be guardian in that respect. State administration have to realize this vital change in the constitutional set up and reconcile to it. The whole idea was to devolve the power of selection on the people, for their benefit. The time when the Collector had authority or was autonomous in the matter are long gone. They have to discipline themselves in the matter. Thus, found the action of the Collector appears to be far from bona fide and if so, in the larger public interest of the villagers, I have no option but to direct the demolition of work, as done and construction of the primary school on the land, as already donated by the Petitioner and already registered in the name of Governor for the purposes so the said primary school. The additional cost that would be incurred, it would

be open to the State to realize the same from the officers responsible for this decision which has put the State exchequer to loss.

16. Let writ issue accordingly.

17. With the aforesaid observations and directions, the writ petition is allowed.