
(2011) 07 JH CK 0171

In the Jharkhand High Court

Case No : Writ Petition (PIL) No. 5388 of 2009

Baban Choubey

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 04-07-2011

Acts Referred:

Bihar Regional Development Authorities Act, 1981 — Section 16, 17, 18, 19, 2

Citation : (2011) 3 JCR 442

Hon'ble Judges : Prakash Tatia, Acting C.J.; P.P. Bhatt, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. By Court Heard learned Counsel for the parties.

2. This writ petition has been filed as Public Interest Litigation before this Court on 20.11.2009 alleging that Petitioner is a respected persons and is not even a primary member of a political party but in the name and style of Rashtriya Hind Sena raises the grievances of citizen facing social atrocities. The Petitioner's contention in the writ petition is that the Respondent M/s. Patliputra Heritage Homes Pvt. Ltd. has started raising construction over a land of Khata No. 63 Plot No. 623 at Mauza Tupudana P.S. Dhurwa, Ranchi without approval of map of said building obtained from Ranchi Regional Development Authority (in short R.R.D.A.). It is submitted that the said plot is situated in the area surrounded by about 200 houses and the residents of those houses will suffer a great loss because of this construction sought to be raised without approval of map from the R.R.D.A. This writ petition was filed before this Court, as stated above, on 20.11.2009 and it remained pending as the defects were not removed and it was listed in the Court on 21.06.2010 obviously for admission after removal of the defects but it was got adjourned then again it was got adjourned on 15.09.2010 and on 30.09.2010 it was brought to the notice of this Court that R.R.D.A. has granted post facto sanction of the building plan obviously of Respondent No. 4. This Court then directed the R.R.D.A. to explain their stand as to under what

circumstances they have first rejected the application of the plan seeking permission to raise construction and, subsequently, they took the stand that this plan can be sanctioned. On 16.12.2010 this Court found that R.R.D.A. and Ranchi Municipal Corporation (in short R.M.C.) are at logger head in deciding their area of operation and in relation to the case in hand, R.M.C. had already rejected permission to raise construction and that too on the plea that the land in question is agricultural land and no such sanction can be granted whereas R.R.D.A. has granted sanction. This Court observed that it is not the solitary plan and huge unplanned constructions are coming up in the city. Therefore, the State Government was directed to intervene in the matter and decide the areas of operation of both the agencies, i.e. R.R.D.A. and R.M.C. Then on 07.01.2011 this Court observed that stand taken by the R.R.D.A. is in conflict with the direction of the State Government as stated in the affidavit of the State Government and again directed the State Government to look into the matter and see that the stand taken by the R.R.D.A. in Court is in contradiction with the stand of the State Government and such stand may not be taken in future. Then on 14.03.2011 it was noticed that the State Government has filed the clarification and then on 18.03.2011 it was submitted that State is perusing the Government records regarding earlier notifications and they will clarify it from the State of Bihar also because the earlier orders were passed by the State of Bihar.

3. In the background of these facts and orders referred above, this matter has come up for hearing today before us.

4. Learned Counsel for the Petitioner vehemently submitted that the R.R.D.A. deliberately committed wrong in sanctioning the construction plan of Respondent No. 4 and that has been done in spite of the fact that R.M.C. already refused permission for construction of the building over this very plot and that too on the ground that land is an agricultural land and R.R.D.A. not only granted the construction permission to the Respondent No. 4 but also granted such permission during pendency of this writ petition and furthermore, that permission is post facto permission which is clear from the facts which have been disclosed by the R.R.D.A. It is also submitted that the R.R.D.A. in its first affidavit dated 06.09.2010 shown its ignorance about the sanction of any plan for the building in question over the disputed plot and in affidavit dated 05.10.2010 it was disclosed that the building plan was sanctioned and that fact came to the knowledge of the R.R.D.A. when R.R.D.A. initiated proceeding on complaint received about the illegal construction by the Respondent No. 4 in Case No. 50/2009 as the Respondent No. 4 submitted building plan in that proceeding. That clearly demonstrates that the R.R.D.A. tried to mislead this Court, by submitting that they have not sanctioned the plan or atleast they have shown their ignorance about the sanction of plan in affidavit dated 06.10.2010 and then on 05.10.2010 they sanctioned the plan during pendency of the writ petition and even after having the knowledge of the pendency of this writ petition. It is also submitted that the land in question is agricultural land over which no permission could have been granted by the R.R.D.A.

5. Several counter affidavits have been filed by the R.R.D.A. and detail replies have been filed by the private Respondent No. 4 and learned Counsel for the R.R.D.A. submitted that in view of the fact that the objection was raised not by Petitioner but by one Rajesh Kumar Sahu who has personal grievance and also has filed suit against the Respondent No. 4, a case was registered against the Respondent No. 4 being Case No. 50/2009 for allegation of raising construction without seeking permission from the R.R.D.A. In said case Respondent No. 4 produced the construction permission order to the Respondent No. 4 which was granted on 20.04.2010 in the name of Navleen Kumar Singh and the R.R.D.A. had no knowledge at that time that Navleen Kumar Singh is a partner or having some share in the Respondent No. 4 i.e. Patliputra Heritage Homes Pvt. Ltd.

6. Be it as it may, according to R.R.D.A., in fact, in the year 1979 a notification was issued by the erstwhile State of Bihar i.e., before creation of the State of Jharkhand, separating certain areas from the operation of the R.M.C. and in that notification some mistakes cropped up resulting into division of certain villages including the village Tupudana in which the land in dispute is situated which is apparent from the copy of the notification placed on record. It is also submitted that when this controversy arose then a high level committee was constituted and that committee also noticed this mistake, the matter has been forwarded to the State Government for passing appropriate order so that the lands may be properly demarcated for the purpose of exercise of jurisdiction by the R.M.C. and R.R.D.A. within their area. According to the learned Counsel for the R.R.D.A. because of mistake in this notification of the year 1979, it appears that R.R.D.A. granted permission to construct and confusion is bound to create disputes again as half of the portion of villages are falling within the municipal area and rest within jurisdiction of the R.R.D.A. It is submitted that there cannot be straight line to divide area of villages ignoring the ground realities of the situation of the plots and if any straight line will be drawn to separate area for allocation to R.R.D.A. and R.M.C. then even half plot may come in jurisdiction of R.R.D.A. and half in jurisdiction of R.M.C.

7. Be it as it may, the R.R.D.A. by taking help of and because of confusion created by Appendix M appended to By Laws framed under Bihar Regional Development Authority Act, 1974, passed a resolution on 8th March, 2008 and in view of the resolution taken by the R.R.D.A. on 8th March, 2008, R.R.D.A. decided to consider the cases where permission has been sought to raise construction over the agricultural land and prescribed a procedure for grant of permission to raise construction over such land. It is submitted that in view of above reason, the R.R.D.A. has jurisdiction to sanction the construction plan of the Respondent No. 4 even if the land is agricultural land.

8. Learned Counsel for the Respondent No. 4 seriously questioned the bona fide of the writ Petitioner and submitted that this is not a public interest litigation but in the garb of public interest litigation, the Petitioner who is residing in the house of the rival party Rajesh Kumar Sahu has preferred this writ petition and in

alternate it has been pointed out that according to the Petitioner himself he is not the resident of the said locality and area and he is living about 6 7 kms. away from the plot in dispute. In fact he has no connection whatsoever with the entire area. It is also submitted that the mala fide of the Petitioner is writ large as he, in writ petition, submitted that he lodged complaint before the R.R.D.A. before approaching this Court whereas the complaint was lodged by the rival of Respondent No. 4, Rajesh Kumar Sahu, who is Plaintiff in the civil suit filed against Respondent No. 4 for this very land which is the subject matter in this writ petition. Said Rajesh Kumar Sahu failed to obtain any injunction and, thereafter, this petition has been filed and since the Petitioner claimed that he himself filed the complaint before the R.R.D.A., therefore, the Petitioner is henchman of said Rajesh Kumar Sahu and, therefore, on this ground alone the writ petition of this Petitioner is liable to be dismissed without entering into the merit of the case.

9. Learned Counsel for the Respondent No. 4 vehemently submitted that the State authorities as well as the local bodies miserably failed to implement the law with respect to the planned development of the city and that failure continued for decades and neither the growth of population could have been stopped nor the public could have been stopped from having roof over their heads. Learned Counsel for the Respondent No. 4 drew our attention to the various provisions of the Bihar Regional Development Authority Act, 1974 which is adopted by the State of Jharkhand, to show that it is mandatory requirement of the Act that the Master plan must be prepared and it shall be revised within a period of five years necessarily and periodically but in decades it has not been done. And so far as merit is concerned, it is true that one application for construction of the building was rejected by the R.M.C. but according to the learned Counsel for the Respondent No. 4, R.R.D.A. had jurisdiction and today also has jurisdiction and, therefore, in view of the grant of permission to raise construction, there is no illegality as well as it has been submitted that Petitioner has deliberately took up only one construction of the Respondent No. 4 out of hundreds of such constructions permitted by local bodies within the Ranchi City itself. Learned Counsel for the Respondent No. 4 also drew our attention to the facts stated in the affidavit submitted by the Respondents pointing out towards several constructions raised over the agricultural land and grant of permission by the R.R.D.A. including huge construction of Khelgaon which is admittedly situated over the agricultural land. Learned Counsel for the Respondent No. 4 further submitted that assuming for the sake of argument now, it is alleged that R.R.D.A. had no jurisdiction to grant permission then also, there is a provision in the Act itself to grant post facto permission regarding the construction and when there was a bona fide dispute with respect to the jurisdiction of the two local bodies then the permission for construction can be obtained from the Ranchi Municipal Corporation also, may it be on payment of any penalty, if levyable under law. It is also submitted that even the State Government itself has noticed the mistake in the notification and, therefore, it cannot be attributed to the

Respondent No. 4.

10. Learned Counsel for the State submitted that the State was directed to explain the contradictory stands for which he only submitted that the State constituted high level committee which also found some mistakes in the notification of the year 1979 and which is sought to be corrected and the decision is pending before the State Government.

11. We are of the considered opinion that the writ petition preferred by the Petitioner on the face of it is an abuse of the process of the Court inasmuch as the Petitioner in the writ petition stated that the Respondent No. 4 is raising construction without obtaining permission from the R.R.D.A. and then he took a total "U" turn and submitted before this Court, by taking help of some procedural lacuna in obtaining construction permission by the Respondent No. 4, and challenged the construction permission given by the R.R.D.A. and submitted that R.R.D.A. had no jurisdiction to grant permission to raise construction contradicting his own pleading supported by affidavit that Respondent No. 4 should have taken construction permission from R.R.D.A. The R.R.D.A. has no jurisdiction to grant construction permission over plot in dispute was never the plea of the writ Petitioner in the writ petition and he, it appears, has filed the writ petition and took a chance to serve some other purpose and got the enquiry from the Court in the matter and since this Court found some contradiction in the stand taken by the Municipal Corporation, R.R.D.A. and the State, therefore, the above referred orders were passed but those orders were not to give benefit to such Petitioner, who admittedly has no reason to question the construction raised about 6 7 kms away from his residence and to become the spokesman of those residents who are living near this plot without there being any express or implied authority of those residents and who have not raised any objection as Petitioner could not to file any affidavit of any of the residents of that area. Nor it is the case of the Petitioner that the 200 residents of that area are not in position to fight for their rights. Further more, the writ petition was filed on 20.11.2009 and was kept in defect side even after removal of defect in the month of February, 2010, it was got adjourned on 21.6.2010 and on 15.9.2010 and on 30.6.2010, that is after the construction plan of Respondent No. 4 was sanctioned by the R.R.D.A. it was submitted before court that post facto sanction has been granted and now it has been rejected that building plan was granted by R.R.D.A. during pendency of this writ petition. This act of the Petitioner is only to mislead the court.

12. Mere solitary instance of illegality cannot give rise to a cause of action for filing a Public Interest Litigation to anybody and according to learned Counsel for the Petitioner as he, repeatedly on questioning by the Court, stated that according to him this is the only permission granted by the R.R.D.A. permitting the construction over the agricultural land (which we found to be factually wrong) and also giving permission for raising construction of building after rejection of the application by the Municipal Corporation. If this is so, then mere

one mistake committed in several decades (which we cannot believe) by the officers of R.R.D.A. also cannot be a ground to challenge the action of these authorities in the form of Public Interest Litigation and can be challenged as private cause case against private party in appeal if provided in the Act or in civil suit. In fact the Petitioner tried to encash the situation when he came to know about the serious inactions, omissions of the authorities and flaws in the procedural law governing the planned development of the cities. Therefore, so far as relief against the Respondent No. 4 is concerned, the Petitioner is not entitled for any relief which appears to be and may be relief for anybody else" benefits as we found that none of the residents have raised any objection with respect to the proposed construction as well as the petition has been filed absolutely malafidely and is abuse of the process of the Court.

13. Though we are dismissing the writ petition of the Petitioner for the relief prayed for on above grounds but at the same time we are of the view that there is serious dispute with respect to exercise of jurisdiction by these two authorities and further, rightly or wrongly the R.R.D.A. took a decision that they shall consider the application for grant of permission to raise construction over the agricultural land by resolution dated 8th March, 2008 which appears to be because of framing of By Laws without care. We cannot ignore the facts which have come on record as it is apparent from the affidavits filed by the authorities and also clear from the law governing the planned development of the cities and towns in the State of Jharkhand.

14. We perused the Bihar Regional Development Authority Act, 1974 as adopted by the State of Jharkhand and found that in Section 2(b) of the Act, "urban area" has been defined and that means the standard urban area as defined in the Act of 1948. The "Master Plan" has been defined in Clause (j) of Section 2 which says that Master Plan means the plan prepared by the authorities under Sections 17 and 18. It also defines "Regional Plan" in Clause (r) u/s 2 and that says that "Regional Plan" means the plan prepared by the authorities u/s 16 of the Act of 1974. Section 17 provides procedure for preparation of the plan and Section 18 provides contents of the Master Plan. Section 19 provides for preparation of "Zonal Development Plan" and thereafter as per Section 20, the plan is required to be submitted to the State Government for approval and thereafter, procedure of preparing and approval of plan is given in Section 21 and such plan is required to be published as per Section 22 of the Act of 1974. Section 23 is important which is a provision for putting restriction on charge of use of land or development thereof. We quote Section 23 which is as under:

23. Restriction on charge (change) of use of land or development thereof (1) No person shall on or after the publication of a draft Plan institute, or charge(change) the use of any land covered by the Plan for any purpose other than agriculture, or carry out any development in respect of any such land without the previous permission in writing of the authority.

(2) Notwithstanding anything contained in any law for the time being in force,

the permission referred to in Sub-section (1) shall not be granted otherwise than in conformity with the provisions of the Plan.

15. It appears from Sub-Section 1 of Section 23, the language is not happily worded when it refers to agricultural land. However, an inference can be drawn that intention u/s 23(1) was to exclude the change of use of agricultural land from the purview of Act of 1974 and the restriction provided by the Act of 1974, applies to all urban land, if we read in context with the urban area defined in Section 2(v) of the Act of 1974 and operation of the Act of 1974, therefore, appears to have been excluded over the agricultural land as Sub-Section 1 of Section 23 says that no person shall institute(?) the use of any land covered by the Plan for any purpose other than agriculture, or carry out any development in respect of any such land without the previous permission in writing of the authority.

16. We have referred this provision because of the reason that learned Counsel for the R.R.D.A. and Respondent No. 4 both have drew our attention towards Appendix "M" appended to the Act of 1974 prescribed under By Laws No. 18.4 covering the field of construction permission by providing different land uses, zones categorized as:

- (A) residential
- (B) Commercial (Retail)
- (C) Commercial (Wholesale)
- (D) Industrial
- (E) Public and Semi public uses
- (F) Agricultural and horticulture.

17. In column 2 of Appendix "M", the permitted uses have been described whereas in column 3 the permissible uses have been described which can be allowed on Special Appeal. However, not properly described as upon "Special Appeal" as it says land use can be permitted "After Special Appeal" whereas in fact this column is not a column providing for order to be passed upon any appeal against an original order but column No. 3 itself empowers authority to pass the original order on special request, therefore, it should not have been on "special appeal" but it should have been on "special request" or on "special petition".

18. Be it as it may, the Clause (F) in Appendix "M" empowers the authorities under the Act of, 1974, to grant permission upon agriculture land to use it for horticulture, dairy and poultry farming, farm houses and for accessory buildings or of appropriate specification, brick kilns and for parking area requirement for brick kilns. And "on special appeal" permission can be granted for use of such land as places of worship, special education and cultural building, parks and noncommercial and semipublic, recreational uses, storage and processing & sale

of farm product, service and repair of farm implements, public utility and buildings. Therefore, it is for the consideration of the State Government to look into the matter whether by Act of 1974 it was intended that the local bodies who are responsible for planned development of urban areas/municipal area can be given authority to grant permission referred in column 2 and 3 against Agricultural land zone given under Clause (F) of Appendix "M". This we are observing so because of plain and simple reason that the agricultural lands are governed by the Land and Revenue Laws and as has been pointed out by the learned Counsel for the parties that the agricultural lands in the erstwhile State of Bihar and now in the State of Jharkhand are governed by the Bihar Land Reforms Act, 1950 as well as Chhota Nagpur Tenancy Act, 1908 and like other enactments which were in force in the State of Bihar and which may have been adopted by the State of Jharkhand. These laws provide some peculiar restrictions for agricultural land and also provides restrictions against the sale of the agricultural land by members of Schedule Caste and Schedule Tribes to members of other category and if Clause (F) in Appendix M permits local bodies to allow the change in land uses as given in column 2 and 3 of Appendix M then whether, that restriction against the transfer of the land of weaker sections shall ipso facto stand taken away because of the order passed by the authorities who normally are not having jurisdiction to deal with the agricultural land. It is also for the State to look into the aspect whether land use from agriculture to nonagriculture can be allowed by local bodies or it shall by the State itself.

19. We are further constrained to observe that in column 2 and 3 against the land zone Agriculture and Horticulture, it is not provided that how much of area can be utilized for the purpose mentioned in Column 2 and 3 from the agriculture land and whether, it permits the land owner of small piece of land, may he be a member of Schedule Caste and Schedule Tribe or not, to convert its entire land into nonagricultural land simply because authority has granted permission to raise construction over entire agricultural land. These issues are required to be looked into by the State Government and to take a policy decision for which Court is not expert in framing the policy for the State in the public interest. But since these facts and laws have come before this Court, therefore, this Court feels proper to bring it to the notice of the State Government these issues which can be examined by the State Government. There are so many other issues which can be looked into and in our considered opinion, these laws, not only the Bihar Regional Development Authority Act, 1974 but corresponding laws and rules and regulations are required to be reexamined by the State Government to avoid controversies as there are wide scope for corruption in the matter of obtaining construction permission. There is urgent need to form Master Plan and Regional Plan.

20. The State Government is also required to take remedial measures as early as possible by considering all the provisions of the Act of 1974 as well as By Laws framed under the Act of 1974 provided in Appendix M. We may again point out that the State Government may also examine whether prescribing of Appendix M

by By Laws 18.4 under the Act of 1974 in totality requires reconsideration as Appendix M allows the rampant changes in the zone of land earmarked for particular purposes and if, that can be done to the extent mentioned in column 2 and 3 against each of the land zone then we do not find that there can be any justification for preparation of the Master Plan or Regional Plan at all and everything can be left to the discretion of the authorities working in the R.R.D.A. or the Municipal Corporation, as the case may be.

21. A copy of this order be sent to the Chief Secretary to Government of Jharkhand as well as to the Law Secretary in hope that the Government will look into the matter and may take appropriate decision without any delay and particularly so has been ordered as they failed to act according to Sub-Section 2 of Section 24 of the Act of 1974 for more than two and half decades by now.

22. The writ petition of the Petitioner qua the Respondent No. 4 is dismissed with the direction to the State.

23. The interim order passed by this Court stands vacated in view of the dismissal of the writ petition.