

(2023) 07 PAT CK 0087

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 22009 Of 2018???

Bhola Nath @ Bhola Nath Gupta

APPELLANT

Vs

Biharsharif Municipal Corporation

RESPONDENT

Date of Decision : 18-07-2023

Acts Referred:

Citation : (2023) 07 PAT CK 0087

Hon'ble Judges : Rajiv Roy, J

Bench : Single Bench

Advocate : S.B.K. Manglam, Amar Nath Singh, Gyan Prakash Ojha

Final Decision : Dismissed

Judgement

1. Heard S.B.K. Mangalam, learned counsel for the petitioner and Mr. Gyan Prakash Ojha who represents the Biharsharif Municipal Corporation.

2. The present petition has been preferred for the following reliefs :-

(i) for quashing of the decision dated 09/01/18 (Annexure-9) whereby and whereunder the committee has come to the conclusion that the land in question can not be transferred to the petitioner considering the public utility and interest as well as representation of the revenue officer dt 20/05/16 as being wholly illegal and without jurisdiction.

(ii) for direction to the respondents to act upon the agreement dt 10/09/11 executed respondents no- 2 & 3 with the petitioner;

(iii) for a direction to the respondents restraining them from disturbing the land which has been allotted to the petitioner in terms of decision dt 06/09/11 to enable the petitioner to complete construction work.

3. The brief facts of the case is/are as follows:-

4. The petitioner was allotted a piece of land pursuant to the decision taken by the Board of the Biharsharif Municipal Corporation and after an agreement was

entered into between the petitioner and the Municipal Corporation, Bihar Sharif on 10.09.2011, a bank draft of Rs. 20,00,000/- was made available to it.

5. The possession of the land thereafter was delivered for which it prepared a plan and invested money. However, to his surprise within a fortnight, on 27.09.2011, without affording any opportunity to him, the same was cancelled. The proceedings of the said decision was communicated to him vide memo No. 2507 and 2509 both dated 11.10.2011 (Annexures-3 & 4 to the petition).

6. The same was challenged by the petitioner in CWJC No. 21264 of 2011 in which status quo was granted on 01.02.2012. Finally, the writ petition was disposed of on 25.04.2016 by which the decision of the Board vide Special meeting dated 27.09.2011 as also the memo no. 2509 dated 11.10.2011 were quashed with liberty to take a fresh decision in the matter in accordance with law and after the grant of reasonable opportunity to the petitioner in the matter.

7. Subsequently, vide resolution dated 31.05.2016, a copy of which was communicated to the petitioner vide letter no. 4844 dated 16.09.2016, the claim of the petitioner was once again rejected.

8. This again followed filing of the CWJC No. 319 of 2017. The same was allowed on 17.08.2017 on the ground that the petitioner was denied a fair and reasonable opportunity of being heard. However, liberty was again granted to the respondents to pass a reasoned order in accordance with law after giving effective and reasonable opportunity to the petitioner of being heard in an open and transparent manner.

9. The petitioner was aggrieved by the said opportunity granted to the respondents and filed LPA No. 1274 of 2017 which was heard on 18.01.2018 and while granting time to the respondents to file counter affidavit, the operation of the order was stayed.

10. The respondents, in turn, filed counter affidavit bringing on record the order dated 09.01.2018 and contended that a decision was already taken prior to the status quo order granted by the appellate Court and after granting opportunity to the petitioner-appellant.

11. The reasoned order/findings of the Board is incorporated herein below :-

12. The LPA No. 1274 of 2017 was finally taken up on 14.05.2018 and the following order was passed:-

Heard the parties.

A fresh decision dated 09.01.2018 has been taken by the Bihar Sharif Municipal Corporation, a copy of which is Annexure-K to the counter affidavit filed on behalf of respondent nos. 1 to 3. In view of the same, the direction and order passed by the learned Single Judge has been carried out in letter and spirit. The Court fails to understand as to why the appeal should have been preferred.

If the appellant is not satisfied with the decision dated 09.01.2018, he may have remedy in law before the forums he may decide

Appeal stands disposed off.

13. Still aggrieved, the petitioner moved before the Hon'ble Apex Court in SLP (Civil) Diary No (s) 31502/2018 which was dismissed as withdrawn on 17.09.2018 (Annexure-16 to the petition).

14. This followed the present writ petition.

15. Heard learned counsel for the parties.

16. The contention of the learned counsel for the petitioner is that the decision taken by the Board initially could not have been cancelled by the Municipal Commissioner, Bihar Sharif Municipal Corporation. It is his further submission that pursuant thereto not only he deposited draft but made huge investment and as such the decision taken against him has to go.

17. The further submission is that once they took a decision, allotted the plot and validly entered into an agreement and received consideration amount, they could not have turned around and cancelled the agreement. The further submission is that the petitioner has suffered a lot since last decade and as earnest money of Rs. 20,00,000/- remained with the Bihar Sharif Municipal Corporation.

18. Learned counsel appearing for the Bihar Municipal Corporation, on the other hand, has taken this court to Annexure-1 to show that the meeting of the Board of the Bihar Municipal Corporation dated 06.09.2011 simply talks about the allotment and at no point of time, any decision was taken to allot the same to the petitioner and he is duty bound to show that a decision was taken in his favour.

19. learned counsel submits that pursuant to the Board's decision, the petitioner became a blue eyed boy and grabbed the place by compromising the transparency that was required in the allotment.

20. It is his further submission that so far as the earlier order (vide memo no. 2509 dated 11.10.2011) is concerned, that already stands quashed by the writ Court in CWJC No. 21264 of 2011.

21. The second decision was subsequently also not found fit in accordance with law by the writ Court in CWJC No. 319 of 2017 quashed. Thereafter, providing full opportunity to the petitioner, finally the order in question was passed. He has taken to this Court to the findings/decision of the Board, according to which:

(i) the place in question is closer to Anugrah Narayan Park where the old aged person and the children come to stroll and this is the only place for the parking;

(ii) again, there are 50 shops in the Palika Market and the shopkeepers also park their vehicles at the same place;

(iii) in any case a vacant place is needed for the Fire Brigade and the shopkeepers (in case of emergency) that cannot be ignored.

22. It was further held by the Board in its meeting that :-

(i) on 06.09.2011, the Board had simply taken decision to construct the Sohsarai Market on P.P.P mode and taking a leaf out of it, on a non-judicial stamp, an agreement was made which was not in accordance with law;

(ii) the agreement was not approved by the Board and the said agreement having no feasibility report of the Engineer cannot be considered the decision of the Board;

(iii) it was not in public interest as in case of earthquake and fire, the person present in the market could be at risk.

23. He as such submits that after granting opportunity to the petitioner, the decision of the Board on 09.01.2018 to approve the original order of cancellation of the allotment made to the petitioner as also to return him Rs. 20,00000/- is/are fully justified and the writ petition is fit to be rejected.

24. This Court has gone through the facts of the case as also the submission put forward by the parties. The petitioner has based his case on the decision dated 06.09.2011 of the Board of Bihar Sharif Municipal Corporation by which it decided to make allotments under P.P.C mode so far as Sursarai market area is concerned. However, a perusal of the same clearly shows that there was no such decision to allot it to a particular individual much less the petitioner herein.

25. Further, it was not the case of the petitioner that pursuant to the decision taken by the Board, any advertisement/notice was issued in which he participated, was successful which followed the agreement.

26. This Court can clearly hold that in the garb of the board decision, it was a backdoor entry by the petitioner through the agreement signed between the parties for which the signatories of the Municipal Corporation, Bihar Sharif too are responsible who acted in complete violation of the guidelines/rules that has to be followed and/or the transparency that is to be maintained in such matters. It will be open for the authorities to take appropriate action against the then erring officials.

27. Further, the reasoned order dated 09.01.2018 of the Board clearly held that the place in question is the only open area where not only the vehicles can be parked, in case of emergency, (earthquake/fire) the Fire Brigade and all the emergency vehicles can come to that place and in its absence, the lives of those inside the market can be completely compromised.

28. Thus in the considered opinion of this Court, the reasoned order/decision date 09.01.2018 taken by the Board of the Bihar Sharif Municipal Corporation to keep the area open needs no interference and this writ petition is fit to be rejected.

29. Having justified the decision of the Board of the Bihar Sharif Municipal Corporation, this Court cannot overlook one important fact. Rs. 20,00,000/- of the petitioner has remained with the authorities since last 12 years and thus decision of Board to refund the same has to come along with the interest.

30. As such, while dismissing the writ petition having found no merit in the case, this Court holds that the petitioner is entitled to the refund of Rs. 20,00,000/- (Rupees twenty lakhs only) along with 6 percent interest from the date the same was deposited with the Bihar Sharif Municipal Corporation till the actual payment is made.

31. The aforesaid exercise shall be completed as early as possible and maximum within eight weeks from today.