
(1997) 08 PAT CK 0009
In the Patna High Court
Case No : C.W.J.C. No. 3205 of 1996 (R)

Brigadier Ravi Kumar

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 19-08-1997

Acts Referred:

Citation : (1997) 2 BLJR 1547 : (1997) 2 PLJR 639

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—In this writ application, the petitioner has prayed for issuance of appropriate writ in the nature of mandamus commanding upon the respondents to grant permission to the petitioner for construction of commercial complex over the land bearing Plot No. 310, Khata No. 218 situated at Doranda, Ranchi.

2. The petitioner claims himself to be the first defence personnel from Bihar who has been awarded the National Gallantry award of "VIR CHAKRA" by the President of India for his bravery in Indo Pak War in 1971. It is stated that the Government of Bihar on appreciation of the act of bravery of the petitioner allotted 30 Dec. of land for construction of residence at Ranchi in the year 1979 (at Booty) for which a lease deed was registered, but possession could not be given to the petitioner due to non-removal of encroachment. Again, the State of Bihar leased out another piece of plot in Deepa Toli to the petitioner in the year 1982, but possession of the said land was not delivered because of illegal encroachment. Again in the year 1986 the Government of Bihar leased out a new piece of land in Doranda, bearing Plot No. 310, khata No. 218 having an area of 30 Dec. for which lease deed was executed on 6th October, 1986. After allotted of the said plot the petitioner had constructed his residential house and applied for making commercial construction over a portion of the said land. The petitioner's further case is that the Government has taken a policy decision that the leaseholders of the Khas Mahal lands can use the leased out land for

commercial purposes, provided that the same is permissible in accordance with the master plan. Accordingly, the petitioner applied for permission for construction of commercial complex and the matter was placed for approval before the Cabinet, as would be apparent from the letter dated 7.2.1989 as contained in memo No. 471. The petitioner contended that since several representations were filed by the petitioner and recommendations were made by the authorities but the formal order regarding commercial use of the plot by the petitioner has not been granted as yet. It is stated that the Deputy Commissioner and the Commissioner South Chotanagpur Division, Ranchi, have duly recommended the case of the petitioner. The Revenue Minister and the Revenue Secretary also recommended the case of the petitioner for grant of permission, but no permission has been granted. The petitioner further stated that because of the assurance given by the respondents, the petitioner submitted a plan and deposited a sum of Rs. 45,000/- towards the charges for passing the plan, and even plan has been passed by the Ranchi Regional Development Authority (hereinafter referred to as the RRDA) for construction of commercial complex by the petitioner. The petitioner, therefore, made a grievance that in absence of such formal order, the petitioner is not in a position to start the construction of commercial complex and he is suffering a great financial loss. Lastly, the petitioner stated that even the chief Minister of the State while he was at Ranchi discussed the matter with the Chairman of the RRDA and directed him to grant permission, but nothing has been done till date.

3. A counter-affidavit has been filed on behalf of the respondents, in which it is stated that the application of the petitioner for conversion of residential land to a commercial land has been rejected by an Government and the same was communicated by the Additional Secretary, Deptt. of Revenue and Land Reforms vide memo No. 2641 dated 9.10.1996 copy of which has been annexed as annexure-A to the counter-affidavit. It is further stated that the decision for conversion of Khas Mahal land for commercial purposes is taken on the merit of each case taking into consideration all the relevant facts. It is further stated that the petitioner as a matter of right cannot claim that his application for conversion of the land for commercial use of the plot must be allowed. Lastly, it is stated that the land was given to the petitioner for residential purpose which was accepted by him at that time and that the land was within the residential area and still considerable number of residences are there.

4. In view of the statements made in the counter-affidavit that the application of the petitioner was rejected by order dated 9.10.1996, the petitioner has challenged the said order by filing amendment petition, a copy of the said order which is Annexure-A to the counter-affidavit has been annexed as annexure-8 to the amendment petition.

5. I have heard Mr. Debi Prasad, learned Sr. Counsel for the petitioner, and J.C. to the learned Standing Counsel appearing for the respondents.

6. From perusal of the writ application and uncontroverted statements made

therein the following facts emerge in his case:

(i) The petitioner was granted a lease on the year 1986 in respect of 30 Dec. of land of Khata No. 218, Plot No. 310 situated at Doranda, P.S. Doranda within the Ranchi town Circle in the district of Ranchi.

(ii) From the letter as contained in Memo No. 471 dated 7.7.1989 (Annexure-2) issued under the signature of the Secretary, Revenue and Land Reforms Government of Bihar, it appears that the Government took a decision that permission can be granted to the lessee of the Khas Mahal leasehold land for conversion of the land from residential to commercial purposes, provided the same fulfills the conditions of the master plan. It is also made clear in that policy decision that if the proposed conversion of land for commercial use is not in accordance with the master plan, then permission cannot be granted.

(iii) The letter of the R.R.D.A. as contained in Memo No. 372 dated 25.4.1997 addressed and communicated to the petitioner clearly shows that the plot in question falls within the commercial area.

(iv) By letter No. 471 dated 7.2.1989 addressed to the Secretary to the Chief Minister, the Minister of Revenue and Land Reforms recommenced the case of the petitioner for conversion of 3/4th. portion of leased out land into a commercial complex. This letter reveals that the Minister had a talk and discussion with the Chief Minister who has granted such permission. A copy of the said letter is Annexure-3 to the writ petition.

(v) The facts stated in the aforesaid letter (annexure-3) finds support from the endorsement made by the Chief Minister in the application made by the petitioner to the Chief Minister. In the said application the Chief Minister endorsed the letter itself directing the Deputy Commissioner, Ranchi, to take necessary steps for conversion of the land into a commercial one. The said endorsement made on the application has been annexed as annexure-4/B to the writ application.

(vi) The Commissioner, South Chotanagpur Division, Ranchi, in his letter addressed to the Secretary, Revenue and Land Reforms, certified that the land in question falls within the commercial area as shown in the master plan. The Commissioner recommended the case of the petitioner for giving his permission for the said conversion. A copy of that letter is Annexure-5 to the writ application.

(vii) Similarly, the Deputy Commissioner, Ranchi, also sent recommendation to the Secretary, Department of Revenue and Land Reforms, for granting permission for conversion of the land by the petitioner into a commercial one from residential purpose. A copy of that letter is Annexure-5/A to the writ application.

(viii) The petitioner submitted a plan for construction of commercial complex and deposited necessary fees of Rs. 45,000/- and permission was accorded by the R.R.D.A. A copy of the said plan and the permission thereof are annexed as

annexure-6 and 6/B to the writ application.

(ix) Annexure-7 is a copy of the D.O. letter dated 12.9.94 addressed to the Deputy Commissioner, Ranchi, by the Chairman of the R.R.D.A. giving reference to his talk with the Chief Minister and requested him to take steps at his end and apprise the undersigned with the steps taken by him.

7. All the aforesaid facts supported by the documents have neither been denied nor disputed by the respondents in their counter-affidavit. Surprisingly enough the only averment made in the counter-affidavit is that the application of the petitioner for permission to use the land in question-for commercial purposes has been rejected and in support of that a copy of the letter has been annexed, but neither in the counter-affidavit nor in the said letter even a single word has been whispered as to what is the reason and on what on ground the permission has not been granted.

8. During the course of argument, the J.C. to the learned Standing Counsel failed to satisfy me as to under which law or policy decision of the Government or for what reason, the Government has not granted permission to the petitioner for use of portion of the leased out land for commercial purposes.

9. From perusal of the counter affidavit it appears to me that it was so loosely drafted that no foundational fact has been stated in support of the fact that rejection of the application of the petitioner was in accordance with law. Some ornamental paragraphs have been written in the counter affidavit, but there is nothing in it to support the same. For better appreciation paragraphs-5 and 6 of the counter affidavit are re-produced hereinbelow:

5. That the petitioner has not come up before this Hon''ble Court with clean hands and has filed the instant writ application after suppressing the material facts only to mislead this Hon''ble Court and hence the same is liable to be dismissed.

6. That the statement made in paragraph-1 of the writ application is not maintainable as because the application of the petitioner for conversion of lease residential land to commercial lands has been rejected by the Government as communicated by the Additional Secretary, Department of Revenue and Land Reforms vide Memo No. 2641 dated 9.10.1996.

10. From bare reading of the aforesaid paragraphs, it appears that the respondents have made allegation against the petitioner for suppression of material facts and misleading the Court, but nothing has been stated as to which facts have been suppressed by the petitioner and how the petitioner mislead the Court. Similarly in paragraph-6, simply it is stated that the application of the petitioner for conversion of residential land into commercial land has been rejected by the Government. As noticed above, there is nothing in the counter affidavit or in any of the documents filed by the respondents giving reason or showing grounds justifying rejection of the application of the petitioner.

11. Although it is the State Government who is the final authority in the matter of grant of sanction for the transfer of the Khas Mahal land by way of sale and lease and also for the purpose of granting permission for the use of the land for residential purposes or commercial purposes but under the Khas Mahal Manual, the Commissioner of the Division has been vested with vast power in the matter of recommendation for such transfer of the land. Without the approval of the Commissioner the Government is not supposed to grant on transfer the Government land. In the instant case as noticed above, almost all the authorities namely the Deputy Commissioner, the Commissioner of the Division, the Revenue Secretary, the Minister of Revenue and Land Reforms and even the Chief Minister have recommended the case of the petitioner for use of at least 3/4th portion of land for commercial purposes. I do not find any reason as to why the prayer of the petitioner was ultimately rejected by the impugned order of rejection. Surprisingly enough, since 1986 the petitioner has been pursuing his application and in the year 1989 itself the matter was placed for approval before the Cabinet and thereafter the Revenue Minister and the Chief Minister recommended the case of the petitioner for grant of permission but no formal order of sanction was issued by the Government. It is only after the writ application was filed on 27.9.1996 the State Government rejected the application by the impugned order dated 9.10.1996. This action of the respondent does not appear to be bona fide.

12. It is well settled that where the law requires an authority to act or decide "if it appears to it necessary" then it should be done objectively, fairly and reasonably. In a democratic set up the people or community being sovereign the exercise of discretion must be guided by the inherent philosophy that the exercise of discretion is accountable for his action. The authority exercising discretion must not appear to be impervious to legislative directions. The action of decision must not only be reached reasonably and intelligibly but it must be related to the purpose for which power is exercised. No one howsoever high can arrogate to himself or assume without any authorisation express or implied in law a discretion to ignore the rules and deviate from rationality by adopting a strained or distorted interpretation as it renders the action ultra vires and bad in law. It is equally well settled that if the representation made to the Government is rejected after its consideration in a fair and just manner, order of rejection would not be rendered illegal merely on the ground of absence of reasons. However, it does not mean that the administrative authority is at liberty to pass order without their being any reasons for the same. In Governmental functioning before any order is issued the matter is generally considered at various levels and the reasons and opinions are contents in the notes on the file. The reasons contained in the files enable the competent authority to formulate its opinion. If such an order is challenged in a court of law, it is always open to the competent authority to place the reasons before the court which may have led to the rejection of the representation. It is always open to an administrative authority to produce evidence aliunde before the court to justify its action. The application

of principles of natural justice and its sweep depend upon the nature of the rights involved, having regard to the setting and context of the statutory provisions. Where a statute requires an authority though acting administratively to record reasons, it is mandatory for the authority to pass speaking order and in the absence of reasons the order would be rendered illegal. Where a vested right is adversely affected by an administrative orders, or where civil consequences ensue principles of natural justice apply even if the statutory provisions do not make any express provision for the same and the persons concerned must be afforded opportunity of hearing before the order is passed. The object underlying the rules of natural justice "is to prevent miscarriage of justice" and secure fair play in action. The requirement about recording of reasons for its decision by an administrative authority exercising quasi judicial function achieves this object by excluding chances of arbitrariness and ensuring a degree of fairness in the process of decision making. Keeping in view the expanding horizon of the principles of natural justice. Therefore, it must be held that the requirement to record reasons can be regarded as one of the principles of natural justice which governed exercise of power by administrative authorities.

13. In the light of settled proposition of law reiterated hereinabove, if we examined the facts of the instant case, it is evident that the belated action of the respondent concerned in rejecting the application of the petitioner without assigning any reason is not only bad in law but discloses arbitrariness. Admittedly, the petitioner is a defence personnel and because of his act of brevity he was awarded the National Galantary award "Virchakra" On account of his serving the nation bravely at the risk of his life he was given a portion of the land for using it for his residence. Under the policy of Government also the defence personnel have been given certain amenities to make the defence service more lucrative and attractive. As noticed above, no reason or explanation has been given by the respondents and no statutory provisions have been shown which deprive the petitioner from using a portion of the land for commercial purposes. The concerned respondents who passed the impugned order rejecting the application ought to have taken into consideration the facts and the circumstances stated hereinabove. The impugned order of rejection which is non-speaking order will amount to arbitrary exercise of power and, therefore, the said order cannot be sustained in law.

14. Having regard to the facts and circumstances of the case and the reasons stated hereinabove. I have no option but to allow this writ application and quash the impugned order dated 9.10.1996 as contained in annexure-8 to the writ application. The respondent, State Government, is hereby directed to reconsider the representation/application of the petitioner and pass appropriate order in accordance with law, keeping in mind the observation made hereinabove, within two weeks from the date of receipt of a copy of this order.