

(2009) 12 PAT CK 0013

In the Patna High Court

Case No : CWJC No's. 12831 and 17775 of 2008

Drikung Charitable Society

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 08-12-2009

Acts Referred:

Bihar and Orissa Municipal Act, 1922 — Section 188(3)

Bihar Regional Development Authorities Act, 1981 — Section 16, 17, 19, 38, 43

Citation : (2010) 1 PLJR 866

Hon'ble Judges : Navaniti Prasad Singh, J

Bench : Single Bench

Advocate : Ashwani Kumar Singh, Gajendra Pratap Singh, Pankaj Kumar Singh and Pankaj Kumar Das, for the Appellant; P.K. Shahi, General, Santosh Kumar, SC 22, Alok Kumar Rahi, Kalpana and Tripurari Nath Ambastha, ACs to SC 22, for the Respondent

Judgement

Navaniti Prasad Singh, J.—By these two writ applications, petitioner has come to this Court against the action of the district authorities and the Nagar Parishad, Bodh Gaya by which it has been asked to not only stop constructions but demolish the same on the ground that it is not in conformity with the master plan for Bodh Gaya which has since been declared a heritage city. Exhaustive counter affidavits have been filed and in view of the pleadings, a firm stand was taken by the petitioner that the draft master plan, as approved by the State Government for Bodh Gaya, was legally invalid in all its aspects. Mr. Advocate General assisted the Court on behalf of respondents. With consent of parties, these two writ petitions are being disposed of at this stage itself.

2. Petitioner-organization is a charitable Society and is constructing a meditation centre formed for furthering the teachings of Lord Buddha. It has all clearances from Government of India for bringing funds into India, acquiring property and developing the same. In furtherance to the said aims and objects, it acquired certain properties in Bodh Gaya and then got a plan drawn up for construction of a building thereon. It made application to the Gaya Regional Development

Authority as then constituted under the Bihar Regional Development Authority Act which plan was duly sanctioned. Thereafter, a draft master plan for Bodh Gaya was prepared. Then the Nagar Parishad, Bodh Gaya noticed the petitioner to obtain no objection in respect of the construction from them. Petitioner made an application with reminders thereof. There was no refusal and, as such, petitioner claims it to be a case of deemed grant. Thereafter, as considerable time had been lost in all this, petitioner made due application after payment of fee for renewal of its sanctioned plan which was immediately granted and the plans were revalidated. It is now that the district authorities of Gaya and the Nagar Parishad is ordering demolition of petitioner's already partly constructed building and to vacate all structures therefrom. One of the main grounds of attack by the respondents on the property of the petitioner is that it is in gross contravention to the master plan. In view of that petitioner has taken a positive stand that the draft master plan is not enforceable in law and suffers from various vital statutory infirmities. However, having heard the matter in detail, in my view, it is not necessary to decide the issue with regard to the validity or otherwise of the draft master plan because in my view, petitioner's writ petitions have to succeed on grounds other than those.

3. The facts are not in dispute. On 20.02.2004, petitioner had duly made an application for sanction of building plan to the Gaya Regional Development Authority which is constituted under the Bihar Regional Development Authority Act, 1981. Section 76 of the said Act gives an overriding effect to the provisions of this Act that is the Regional Development Authority Act over all other Acts in respect of matters covered therein. The Regional Development Authority Act provides for town planning, sanction of building plans etc. Thus, to the exclusion of all other Acts, the provisions of the Regional Development Authority Act would apply and, accordingly, on 26.02.2004, plan was duly sanctioned by the Gaya Regional Development Authority. While arrangements were being made for construction, it appears that on or about 31.08.2005, a draft master plan for Bodh Gaya is alleged to have been published. I am consciously not dealing with facts related thereto as they are not relevant. On 10.12.2005, on insistence of the Bodh Gaya Nagar Parishad, petitioner filed an application for sanction to build before the Nagar Parishad which, as noticed above, in view of Section 76 of the Bihar Regional Development Authority Act, was redundant. Application being made before the Nagar Parishad, reminders were given and no refusal having been received in terms of Section 188(3) of the Bihar and Orissa Municipal Act, 1922 as was applicable then it became a case of deemed grant even if there was a requirement to be complied with. On 06.02.2007, petitioner deposited Rs. 4,014/- as renewal fee to the Gaya Regional Development Authority for revalidating the sanction as in all these things construction could not significantly take place and interference by one or the other was delaying the matter. On the same day, the plans were duly revalidated by the Vice Chairman of the Gaya Regional Development Authority in terms of Section 43 of the Regional Development Authority Act as would be apparent from Annexure-11, the letter of

the Nagar Parishad, Bodh Gaya dated 14.08.2008 wherein this fact has been categorically admitted. By this letter, the Nagar Parishad had objected to petitioner's construction in view of the master plan. Now the petitioner has been visited with the impugned communications from the Nagar Parishad, the District Magistrate-cum-Collector, Gaya, the order of the Commissioner, Magadh Division, all asking petitioner to stop further construction and demolish its constructions as made partly because the construction being done is in contravention of the master plan for Bodh Gaya. The question is whether the stand of the respondent-State and its authorities is correct or not. Having considered the matter, in my view, the stand of the State cannot be accepted. This is even so where this Court would not like to interfere with the master plan for the present. The reason is very simple. It is not in dispute that the petitioner had applied for and was duly sanctioned the building plan for the meditation centre long before the draft master plan was even allegedly published for objection. Thus, once the plans were sanctioned and the petitioner had taken steps towards its implementation by construction that became a vested right of the petitioner. Now if we look at Sections 16, 17 and 19 of the Bihar Regional Development Authority Act 1981, one would find that the law contemplates a regional plan for a region within the region. It contemplates a master plan for a particular development area and then a zonal plan for an area within the development area but before proceeding to make the regional plan or the master plan or the zonal plan, there is a condition precedent and that is that the area has to be surveyed. The purpose is not far to search. The development plans, regional, master or zonal, are to affect the land user rights of citizen. The plan must be made keeping in mind the existing rights and structures. No plan can be de hors the existing structure for if let us assume a road has to be constructed across a certain area which is already in habitation then the habitation has to be shown in the survey and over the habitation the regional plan or the master plan or the zonal plan would show road and when the matter then is sent to the State Government for approval while approving the master plan, State Government would be obliged to first compulsorily acquire by payment of compensation all those lands which are to be taken away from individuals and put to public use because if that is not done then the master plan cannot be implemented at all.

4. Here, in petitioner's case, he had a sanction plan. That was known to the Gaya Regional Development Authority when they were considering drafting of the master plan. Thus, law assumes that they have taken note of it for even if they know of it, law assumes that it has been surveyed because that is the condition precedent for a master plan to be prepared. Once it is assumed that the master plan in law had taken note of petitioner's construction then it cannot be said that a construction or a plan sanctioned for construction earlier would become invalidated on passing the master plan. There is no provision under the Bihar Regional Development Authority Act which invalidates a validly passed building plan on coming into force of the master plan. The only power to cancel a duly sanctioned plan is to be found in Section 38 on which action can be taken only if

there is a case where sanction having been obtained on misrepresentation which is, admittedly, not the case in the present. Thus, the plan was duly sanctioned. Even if there was a requirement to get a further clearance from the Nagar Parishad in terms of Section 188(3) of the Bihar Municipal Act 1922, there was deemed sanction then there was revalidation. Thus, as of date, the building plan of petitioner suffers from no legal infirmity and the subsequent master plan cannot make it invalid in any respect. There is yet another aspect to the matter which flows from the concept of building equities. Once building plans are passed, constructions started then the authorities are expected to take action in case of deviations with promptitude. People invest money which may be their life long saving and if authorities permit such investment, it cannot later on get up or wake up or destroy the same if it is on citizen's own land. This, of course, does not go to the extent of condoning illegalities. These considerations are part of building equities.

5. Thus found, the authorities are wrong in their approach that as petitioner's plan was in contravention of the master plan, the petitioner ought to have stopped constructions and demolish whatever construction because petitioner's plan preceded the master plan. Thus, the orders of the respondents, in directing petitioners to stop construction and demolish constructions already made, cannot be sustained in fact or in law. They are all, accordingly, set aside. The Nagar Parishad, the District Magistrate -cum- Collector, Gaya or the Commissioner, Magadh Division will not now interfere with the building activity of the petitioner so long as it is in conformity with the sanctioned plan as sanctioned on 26.02.2004.

6. This disposes of the first writ petition.

7. So far as the second writ petition is concerned, that primarily challenges the validity of the master plan.

8. For the reasons discussed above, it is not necessary to adjudicate upon these questions as petitioner gets its relief otherwise to which learned Advocate General has no objection.

9. This writ petition also stands disposed of accordingly.