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**(2014) 07 PAT CK 0072**  
**In the Patna High Court**  
**Case No : CWJC No. 15445 of 2005**

Hardinge Memorial Fund Trust

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

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**Date of Decision :** 22-07-2014

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2015) 1 PLJR 132

**Hon'ble Judges :** I.A. Ansari, J;Anjana Mishra, J

**Bench :** Division Bench

**Advocate :** Rajeev Kumar Singh, Niranjana Kumar and Mukul Jee, Advocates for the Appellant; Shambhu Saran Singh, Advocates for the Respondent

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## Judgement

I.A. Ansari, J.—We have heard Mr. Shambhu Saran Singh, learned Counsel for the Intervenor, and Mr. Lalit Kishore, learned Principal Additional Advocate General, appearing on behalf of the State. Having perused the materials on record including various orders passed therein and upon hearing submissions made before us, the material facts, which emerge, may, in brief, be set out as under:-

"(i) On 28.9.1913, Hardinge Memorial Committee was constituted by the State of Bihar to commemorate the visit of the Viceroy Lord Hardinge. On 8.9.1915, a deed of grant, with respect to 24.30 acres of land, was executed by the Collector, on behalf of the Secretary of the State for India-in-Council, in favour of Hardinge Park Committee, for establishing a public park. On 31.1.1916, the then Lieutenant Governor decided to develop the Park and open it for the public at large.

(ii) When some of the original members of the Hardinge Memorial Committee died, some of the original surviving sub-scribers and some of the representatives of the original deceased subscribers got constituted, on 17.11.1934, "Hardinge Memorial Fund Trust" and resolved to dissolve Hardinge Memorial Committee and, thus, further management of the Park was taken over by the Hardinge

Memorial Fund Trust.

(iii) With the prior permission and sanction of the Collector, Patna, 1.48 acres -of land, out of 24.30 acres of land, was transferred to Patna General Post Office, in the year 1954, and, therefore, the area of the Park was reduced to 22.82 acres of land only.

(iv). The Commissioner-cum-Secretary, Department of Revenue, Government of Bihar, issued a letter, on 22.1.1996, to the writ petitioner, namely, Hardinge Memorial Fund Trust, resuming the said land of the Park on the ground that it was not being utilized as per the terms of the deed of grant, dated 8.9.1915.

(v). Hardinge Memorial Fund Trust challenged the communicated, dated 22.1.1996, aforementioned, by way of a writ petition, made under Article 226 of the Constitution of India, which gave rise to CWJC No. 11129 of 1996, the ground of challenge to the communication, dated 22.1.1996, being that the said communication had been issued without giving any notice of showing cause to the writ petitioners.

(vi) By order, dated 29.11.1996, the writ petition, namely, CWJC No. 11129 of 1996, was allowed and the communication, dated 22.1.1996, aforementioned, was set aside giving liberty to the State Government to proceed afresh, in the matter, upon issuing notice of showing cause to the writ petitioner.

(vii) The Commissioner-cum-Secretary, Department of Revenue, Government of Bihar, Patna, on 16.11.1998, issued a fresh notice directing the petitioner to show cause as to why the said land be not resumed for reasons mentioned therein. To the show cause notice so issued on 16.11.1998, the writ petitioner filed its show cause, on 1.1.1999. Reply to the show cause was considered and the Commissioner-cum-Secretary, Department of Revenue, Government of Bihar, Patna, found that the petitioner Trust had committed gross violation of the terms of the grant.

(viii) With the finding. so arrived at and, acting upon the decision of the State Government, the Collector, Patna, passed an order, on 7.10.2005, resuming 22.82 acres of the land and the Circle Officer, Patna Sadar, Patna, passed, in this regard, on 14.10.2005, necessary consequential orders.

(ix) The petitioner Trust, once again, came to this Court, with a writ petition, made under Article 226 of the Constitution of India, which gave rise to a writ petition, namely, CWJC No. 15445 of 2005. By the latter writ petition, the petitioner Trust challenged the order, dated 7.10.2005, passed by the Collector, Patna, and the consequential order, dated 14.10.2005, passed by the Circle Officer, Patna Sadar, Patna.

(x) Having come to the conclusion that there was no illegality committed, while passing the order, dated 7.10.2005, and the follow up order, dated 14.10.2005, a learned Single Judge of this Court, by order, dated 20.7.2007, declined to interfere with the impugned orders and dispose of the writ petition with, of

course, following observations and directions:-

"In the said circumstances and on the basis of the aforesaid undertaking given by the State Government and its authorities themselves, it is directed that an expert consultant be appointed immediately and a detailed scheme for the development of Park etc. be prepared for the entire 22.82 acres of lands of Hardinge Park mentioned above within three months from the date of receipt of a copy of this order. It is also directed that thereafter the development of the aforesaid entire land of Hardinge Park should be started, as stated above, which should be completed expeditiously, preferably within a period of nine months thereafter. However, during the aforesaid period and till the final goal, as mentioned above, is achieved, the State Government and its authorities, namely, respondent No. 1 to 6, shall not allow any activity on the above mentioned 22.82 acres of land other than what had been specifically mentioned in the Government grant of 1915. In case of any violation of the aforesaid orders/directions, the erstwhile trustees of the petitioner Trust or the interveners may approach this Court for appropriate and necessary orders/directions."

(Emphasis is added)

(xi) Aggrieved by the decision in the writ petition, namely, CWJC No. 15445 of 2005, the petitioner Trust preferred a Letters Patent Appeal, namely, L.P.A. No. 979 of 2007, impugning therein the order, dated 20.7.2007. On 20.2.2008, the Letter Patent Appeal was dismissed. While dismissing the appeal, the Division Bench observed, ".....this impugned order does not suffer from any error and accordingly no interference was called for in the appeal". The consequence of the dismissal of the Letters Patent Appeal was that the observations made in the writ petition and the directions issued therein were maintained.

(xii) Before, however, the Division Bench dismissed the appeal, on 20.2.2008, an interlocutory application was filed by the intervenors, in the writ proceeding, alleging therein, inter alia, that the Court, while disposing of the writ petition, had issued a direction that an expert consultant be, immediately, appointed and a detailed scheme for the development of the Park be prepared within three months from the date of receipt of a copy of the order and, thereafter, development of the Park should be started and completed expeditiously, preferably, within a period of nine months and that during the said period of nine months and until the end result is achieved, the State Government and its authorities shall not allow any activities on 22.82 acres of the land and that in the case of any violation of the aforesaid orders/directions, the erstwhile trustees of the petitioner Trust or the intervenors "may approach this Court" for appropriate and necessary orders/directions, but after this order, the petitioner Trust had not taken any interest in developing the Park, the boundary walls of the northern side of the Park had fallen to the ground and, as a result thereof, a large number of pigs roam in the Park and, thus, the Park was without any attention by the petitioner Trust or by the State Government and nobody had been caring for proper upkeep of the Park and though everyday one or the other

processions of employees/persons assemble in the Park and frequently used the Park for easement etc. and whenever the intervenors walk through the Park, they notice that the upkeep and maintenance were in deplorable condition and though a period of five years had already elapsed since the time the writ petition had been disposed of, neither the petitioner Trust nor the State Government had done anything in this regard and, hence, the State Government may be directed to take steps, in the light of the order, dated 20.7.2007, whereby the writ petition was disposed of.

(xiii) The learned Single Judge, having given notice to the State Government, proceeded in the matter and started issuing directions from time to time. In the mean-while, the Division Bench dismissed the appeal, on 20.2.2008; but the learned Single Judge continued to monitor the matter by issuing various directions and, eventually, the learned Single Judge passed an order, dated 16.7.2013, observing therein that since the order, dated 20.7.2007, passed in the writ petition, namely, CWJC No. 15445 of 2005, stands merged with the order, dated 20.2.2008, passed, in L.P.A. No. 979 of 2007, by a Division Bench of this Court, the matter may be referred to a Divisional Bench of this Court.

(xiv) It is in the backdrop of the above facts that this Court is, now, required to pass further orders."

2. It has been submitted, on behalf of the intervenors, that the interlocutory application, which the intervenors had filed and which has given rise to various orders, as indicated above, be, now, treated as a Public Interest Litigation and may be dealt with accordingly.

3. Resisting the submission noted above, Mr. Lalit Kishore, learned Principal Additional Advocate General, has submitted that the writ petition stood disposed of by order, dated 20.7.2007, and, thereafter, it was not open to the learned Single Judge to start monitoring the case on the basis of the interlocutory application filed by the intervenors inasmuch as the learned Single Judge fell in error in continuing to pass orders in the disposed of writ petition despite the fact that the order, dated 20.7.2007, passed in the writ petition, namely, CWJC No. 15445 of 2005, stood, as eventually noticed, merged in the order, dated 20.2.2008, passed by the Division Bench in L.P.A. No. 979 of 2007. The interlocutory application, which has given rise to the present proceeding and the order, dated 16.7.2013, are, therefore, according to the learned Principal Additional Advocate General, not maintainable. Support for this submission is sought to be derived from the case of State of Uttar Pradesh Vs. Brahm Datt Sharma and Another, . Reference has also been made, in this regard, to the case of Shipping Corporation of India Ltd. Vs. Machado Brothers and Others, .

4. Repelling the submissions made on behalf of the State,. Mr. Shambhu Saran Singh, learned Counsel, submits that while disposing of the writ petition (CWJC No. 15445 of 2005), on 20.7.2007, the learned Single Judge had clearly mentioned, ".....in case of any violation of the aforesaid orders/directions, the

erstwhile trustees of the petitioner Trust or the intervenors may approach this Court for appropriate and necessary orders/directions" (emphasis added) and these observations have not been interfered with by the Division Bench, while disposing of the appeal, on 20.2.2008 and, hence, the intervenors were and are entitled to bring the violation of the orders/directions, passed in CWJC No. 15545 of 2005, to the notice of the Writ Court subsequent to the disposal of the writ petition. Viewed from this angle, contends Mr. Shambhu Saran Singh, learned Counsel, the interlocutory application, which was filed by the intervenors, as well as passing of the various orders as a result of filing of the said interlocutory application, are in accordance with law.

5. In the light of the rival submissions, which have been made before us, let us, now, determine the legality or validity of the interlocutory application, which the intervenors had filed, in the disposed of writ petition, and the orders, which have been passed, since thereafter, in the writ petition.

6. In *Brahma Datta Sharma* (supra), the Supreme Court has laid down that no miscellaneous application can be filed, in a disposed of writ petition, to revive the writ proceeding in respect of subsequent events and the High Court has no jurisdiction to entertain such an application, when no proceeding is pending before it, and that the High Court had erred in proceeding on a miscellaneous application, which was founded on a separate cause of action. The Supreme Court further observed, in *Brahma Datta Sharma* (supra), that when proceedings stand terminated by final disposal of a writ petition, it is not open to the Court to re-open the proceeding by means of a miscellaneous application in respect of a matter, which provided a fresh cause of action, and if this principle is not followed and adhered to, there would be confusion and chaos, and the finality of the proceedings would cease to have any meaning. The relevant observations, appearing at paragraph 10, in *Brahma Datta Sharma* (supra), read as follows:-

10. The High Court's order is not sustainable for yet another reason. Respondents' writ petition challenging the order of dismissal had been finally disposed of on 10.8.1984, thereafter nothing remained pending before the High Court. No miscellaneous application could be filed in the writ petition to revive proceedings in respect of subsequent events after two years. If the respondent was aggrieved by the notice dated 29.1.1986 he could have filed a separate petition under Article 226 of the Constitution challenging the validity of the notice as it provided as separate cause of action to him. The respondent was not entitled to assail validity of the notice before the High Court by means of a miscellaneous application in the writ petition which had already been decided. The High Court had no jurisdiction to entertain the application as no proceedings were pending before it. The High Court committed error in entertaining the respondent's application which was founded on a separate cause of action. When proceedings stand terminated by final disposal of writ petition it is not open to the court to reopen the proceedings by means of a miscellaneous application in respect of a matter which provided a fresh cause of action. If this principle is not

followed there would be confusion and chaos and the finality of proceedings would cease to have any meaning."

(Emphasis is supplied)

7. While considering the decision in *Brahma Datta Sharma* (supra), one cannot avoid noticing the decision in *K.A. Ansari and Another Vs. Indian Airlines Ltd.*, wherein the Supreme Court has, later on, clarified that it is within the power of the Court to clarify its own order. What is reflected from the decision, in *K.A. Ansari* (supra), is that an order, made in a writ petition, must give the relief, which the person, approaching the Court, was entitled to, and if, in order to make the relief available, the Court finds that a clarification is necessary to make as to what it had decided or ordered, it would remain within the powers of the Court to so clarify its own order.

8. To the case at hand, the decision, in *K.A. Ansari* (supra), is not relevant inasmuch as no clarification has been sought for by the interveners and what they had alleged was the violation of the Court's orders and directions and sought, therefore, Court's interference by filing the interlocutory application.

9. To such a situation, as indicated hereinbefore, the decision, in *Brahma Datta Sharma* (supra), is relevant and is squarely applicable inasmuch as the Supreme Court has made it clear, in *Brahma Datta Sharma* (supra) (and it has not deviated since then), that when a writ petition is disposed of, no miscellaneous application can be filed or entertained in respect of subsequent events, when the subsequent events relate to a different cause of action.

10. In the case at hand, the cause of action is the alleged violation of the various orders and directions of the Court passed in the writ petition, namely, CWJC No. 15445 of 2005. Since the violation of the orders/directions allegedly took place subsequent to the disposal of the writ petition, no miscellaneous application, in the light of the decision, in *Brahma Datta Sharma* (supra), could have been filed by the writ petitioner or entertained by the Court.

11. Though Mr. Shambhu Saran Singh, learned Counsel, has insisted that an opportunity has been given, in the writ petition itself, ".....in case of any violation of the aforesaid orders/directions, the erstwhile trustees of the petitioner Trust or the interveners may approach this Court for appropriate and necessary orders/directions", (emphasis supplied), suffice it to point out that it was, nowhere,, stated in the order, dated 20.7.2007, that the violation of the various orders/directions can be challenged by the trustees or the interveners by any miscellaneous/interlocutory application. What the learned Single Judge had done, and what the Division Bench had agreed to, was that in the case of violation of the orders/directions of the Court, the erstwhile trustees of the petitioner Trust and/or the interveners may approach this Court for appropriate and necessary orders/directions. The expression "this Court" is merely indicative of the forum and, therefore, in the case of violation, the remedy lied either in approaching "this Court" (and not any specific Bench of this Court) with an

application seeking to draw a proceeding for contempt of court or an application, under Article 226 of the Constitution of India, seeking enforcement of the orders/directions passed by this Court. It is trite that an application, for enforcement of the order passed in a writ petition, under Article 226 of the Constitution, is maintainable, though in rare circumstances. [See, Food Corporation of India Vs. S.N. Nagarkar, and Devaki Nandan Prasad Vs. State of Bihar and Others, .

12. What surfaces from the above discussion is that the observations made in the order, dated 20.07.2007, which read, "in case of any violation of the aforesaid orders/directions, the erstwhile trustees of the petitioner Trust or the intervenors may approach this Court for appropriate and necessary orders/directions" merely gives the trustees and the intervenors the right to approach "this Court" for appropriate and necessary orders/directions if any violation of the orders/directions, passed in the writ petition, takes place. This does not mean to permit any of the trustees or the intervenors to approach "this Court" by way of a miscellaneous/interlocutory application. If the intervenors had any grievance as regards violation of the orders/directions passed in the writ petition, their remedy lied in filing an application seeking drawing of a proceeding of the Contempt of Court or a writ petition, under Article 226 of the Constitution of India, for enforcement of the orders/directions; but, in no way, the present interlocutory application can be maintained.

13. Merely because the learned Single Judge has" given the trustee and the intervenors liberty to approach "this Court" in the case of any violation of the orders/directions, this cannot be stretched to mean that as against violation of the orders/directions of "this Court", an interlocutory application can be filed, when there is no final order to be passed inasmuch an interlocutory application is always in aid of a final order and when the writ petition already stood disposed of and final order had been passed, no further interlocutory application lied.

14. Coupled with the above, we may also hasten to add that the interlocutory application, in the form in which it has been brought, cannot be treated as a Public Interest Litigation.

15. Because of what have been discussed and point out above, the interlocutory application, in question, is hereby held not maintainable and shall accordingly stand dismissed. It would, however, remain open to anyone to raise a Public Interest Litigation by making appropriate application. If such an application is filed and found sustainable, further consequential action would be taken.

Anjana Mishra, J.

I agree.