

(2007) 07 PAT CK 0132

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 15445 of 2005

Hardinge Memorial Fund Trust

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 20-07-2007

Acts Referred:

Citation : (2007) 07 PAT CK 0132

Judgement

S.N. Hussain, J.—An intervention petition has been filed by M/s Vijay Kumar, Anil Kumar, Bashisth Narain Srivastava and Parmanand Prasad in the instant case on 24.1.2006 in representative capacity of the users and beneficiaries of the Hardinge Park as they are vitally concerned with the ecological necessity, public requirement and situational importance of the Park. Neither any counter affidavit has been filed to the said petition, nor any objection has been raised thereto by any of the parties. This Court also finds it desirable to implead the said intervenors in this case in the larger interest and for proper adjudication of the matter involved. Hence the intervention petition is allowed and the said intervenors are added as respondents No. 7 to 10 in the instant writ case.

2. This writ petition has been filed by the Hardinge Memorial Fund Trust through its Secretary for quashing order of the Collector, Patna (respondent No. 5) dated 07.10.2005 (annexure-1) as well as the follow up letter issued by the Anchal Adhikari, Patna Sadar, Patna dated 14.10.2005 (annexure-2) and also for directing respondents No. 1 to 6, who are the State of Bihar and its authorities, not to disturb the possession of the petitioning trust over 22.82 acres of land of Hardinge Park and if it is found dispossessed from any part thereof to restore the possession of 22.82 acres of land of Hardinge Park to the petitioning trust.

3. The facts of this case covers a period of over ninety years and hence they have become a bit complicated and require clear appreciation. Admittedly the land involved in the case measured 24.30 acres of Government Estate land situated on either side of the Hardinge Road, Patna under village-Mithapur, P.S. - Phulwari, Thana No. 19, Pargana Azimabad in the district of Patna which came

under Ward "A" of the Patna Administration Committee area, now Patna Municipal Corporation. However, since survey plot number, khata number and Tauzi number of the said land were not fixed, it has been described by its boundaries which are as follows:

South- East Indian Railway Line.

West- Surpentine ditch which runs through the New Capital site.

North- a land allocated for the Sanitary Institute.

East- Compound of the Patna Post and Telegraph Officer.

4. It is also not disputed that to commemorate the visit of the Viceroy Lord Hardinge; a Committee known as "Hardinge Memorial Committee" was constituted by the authorities of the State on 28.09.1913 with Hon"ble Maharaja Bahadur Sir Rameshwar Singh, C.C.I.F., K.B.F., of Darbhanga as its President and M/s Sarferaj U. Khan, Krishna Sahay and Sachchidananda Sinha as its Hon"ble Joint Secretaries. As per the aforesaid decision a deed of grant dated 08.09.1915 (annexure-10) was executed by the Collector on behalf of the Secretary of State for India in Council in favour of Hardinge Park Committee for grant of the above mentioned 24.30 acres of land by the Local Government for establishing a public park as Hardinge Park to be maintained by the Committee. The terms "Collector on behalf of the Secretary of State" as well as "Hardinge Park Committee" included their respective successors, assigns and representatives in interest. Thereafter, the said Hardinge Park was developed and was opened for general public on 31.01.1916 by the then Lieutenant Governor of Bihar and Orissa Sir Edward Gait.

5. After the original members of the Committee died, "some of the surviving original subscribers and some of the representatives of the deceased original subscribers to the Hardinge Memorial Fund convened a meeting on 17.11.1934 (annexure-3) resolving that the "Hardinge Memorial Committee" constituted on 28.09.1913 stands dissolved and "Hardinge Memorial Fund Trust" is created as its successor under the registered deed for the maintenance of the Park in which the following nine persons were made trustees:

- (i) The Commissioner of the Patna Division, ex-officio,
- (ii) The Chief Engineer, to the Government of Bihar and Orissa, Roads and Buildings, ex-officio.
- (iii) The Executive officer, Patna Administration Committee, ex-officio.
- (iv) The Hon"ble Sir Ganesh Dutt Singh, Minister Local Self Government, Bihar & Orissa, Patna.
- (v) The Hon"ble Mr. Nirsu Narayan Singh, Member Executive Council, Bihar and Orissa, Patna.
- (vi) The Hon"ble Mr. Justice Verma, Patna High Court, Patna

(vii) Sachchidananda Singh, Esqur, Barrister-at-law Patna.

(viii) Khan Bahadur Saiyid Muhammad Ismail, Zamindar Patna City.

(ix) Sir Syed Sultan Ahmad, Barrister-at-law, Patna.

6. It was also resolved that all the unspent balance of fund raised by Hardinge Memorial Committee was made over to the aforesaid trustees in whom the said Hardinge Park and the said securities vested and from that date the Hardinge Memorial Fund Trust started managing the affairs of the Hardinge Park regarding which no objection was raised by anyone for several decades. However, in the year 1953, the Post and Telegraph Department as well as the Labour Department, Government of Bihar, requested the Trust to sell to it 01.48 acres of land of Hardinge Park left unused between the compound of General Post Office, Patna and the bungalow of Assistant Director of Postal Services and considering the said request the trustees sent the said offer to the Collector, Patna by letter of its President dated 22.12.1953 (annexure-6) to accord necessary permission for the same, whereupon the Collector vide his letter dated 02.12.1954 (annexure-7) accorded sanction to the said proposal and the said land was accordingly transferred to the Patna General Post Office. Thereafter only 22.82 acres of land, out of 24.30 acres, remained with the Hardinge Park.

7. Subsequently on 22.01.1996, the Commissioner-cum-Secretary, Department of Revenue, Government of Bihar, issued a letter to the petitioner resuming the said land of the park on the ground that it was not being utilised as per the terms of the deed of grant dated 08.09.1915. The said communication was challenged by the petitioner in this High Court vide CWJC No. 11129 of 1996, whereas with respect to the same matter another writ case bearing CWJC No. 8894 of 1996 was filed by Rashtriya Chetna Parishad on the ground that the said order of resumption was passed without any show cause notice to the petitioner which was violative of the principles of natural justice as well as Rules 21 and 22 of the Bihar Khas Mahal Manual and without giving them any opportunity of being heard. In the said circumstances, this Court by order dated 29.11.1996 (annexure-4) disposed of both the aforesaid writ cases holding as follows:

Accordingly, we set aside the impugned communication dated 22.01.1996 and further orders subsequent thereto. However, we make it clear that this order will not come in the way of the State Government in resuming the land after issuing show cause notice and in accordance with law. We further make it clear that the Executive Committee shall continue to be that of the Commissioner, Patna Division and the Secretary of the Trust as per the terms of the Trust Deed and the Secretary shall continue to exercise all the powers including financial powers as hitherto before. We are confident that there shall not be any disturbance in the day to day management of the park and meeting necessary expenses for that purpose.

8. About two years thereafter i.e. on 16.11.1998 (annexure-9), the Commissioner-cum-Secretary, Department of Revenue, Govt. of Bihar, Patna,

issued notice to the petitioner's trust to show cause as to why the said land be not resumed for the following reasons:

- (i) The grant was given to Hardinge Memorial Committee and not to the petitioner's trust which is not the successor or representative of the Committee.
- (ii) The petitioner's trust has transferred 1.48 acres of land to the Post and Telegraph Department, Govt. of India, which was not for the purposes for which the grant was given.
- (iii) 4.17 acres of land of the public park is being used for purposes other than the purposes for which the grant was given.
- (iv) Out of the land of Hardinge park 3.11 acres of land is under encroachment due to the negligence of the petitioner- trust.
- (v) On a portion of land of Hardinge Park, exhibition, circus and Melas are held every year, whereas some other land of the Hardinge Park is used as Bus Depot.
- (vi) The petitioner- trust has failed in developing Hardinge Park and in its proper management.
- (vii) The standard of the Hardinge Park has diminished.
- (viii) The purpose for which the settlement/grant was made, has been frustrated by the petitioner-trust.
- (ix) The petitioner-trust has openly violated all the conditions of lease.

9. Although 15 days time was given in the said notice to the petitioner for filing its show cause, but the show cause was filed much later on 01.01.1999 (annexure-5) stating that the Hardinge Memorial Fund Trust was formed on 17.11.1934 after the approval of the Government and the then Collector, with nine trustees including the Commissioner of the Patna Division, the Chief Engineer, Roads and Buildings and the Executive Officer, Patna Administration Committee, Ex- Officios along with other six trustees, and only after 65 years, the Government is seeking to challenge the formation of Trust Fund. Explanations with respect to the other issues were given in various sub-paragraphs of paragraph 10 of the said show cause.

10. Considering the order passed by this Court as mentioned above as well as the aforesaid matter including the show cause filed by the petitioner, the State Government found that the petitioner-trust has committed gross violation of the terms of the grant and hence it decided to resume 22.82 acres of land. In view of the aforesaid decision of the State Government, the Collector, Patna by its memo dated 07.10.2005 (annexure-1) passed an order for resumption of the aforesaid 22.82 acres of land, whereafter the Circle Officer passed a follow up order dated 14.10.2005 (annexure-2). The said two orders of the authorities are under challenge in this writ petition.

11. Learned Counsel for the petitioner submitted that the entire proceeding of

resumption as well as the impugned orders are illegal and arbitrary and the respondent-State cannot be allowed to resume possession in such an extra judicial manner as even a trespasser or an encroacher cannot be ousted like that without initiation of any legal proceeding specially when the petitioner-trust is in possession on the basis of legal documents. Learned Counsel for the petitioner has further submitted that if the property in question is of Khas Mahal (Government Estate), then the authorities were bound to act as per the provisions of Rules 21 and 22 of the Bihar Government Estate (Khas Mahal) Manual, 1953 in which resumption can be only for public purposes and even that through Civil Court, but if it is not Khas Mahal, then this would be a case of perpetual grant in which the general law would be applicable. In this regard he referred to a decision of the Hon"ble Apex Court in case of Bishan Das and Others Vs. The State of Punjab and Others, . He also averred that the Division Bench of this Court passed its orders dated 29.11.1996 (annexure-4) and without deciding the question whether the land in question was Khas Mahal ordered for reconsideration. Learned Counsel for the petitioner further stated that the transfer of 1.48 acres of land to the Post and Telegraph Department as well as the use of some land for other purposes were at the instance and/or with the permission of the authorities including the Collector with regard to which authorities themselves wrote to the petitioner and passed orders and now they are blaming petitioner for the acts committed by them. In the said circumstances, petitioner claims that the impugned orders of the authorities concerned are baseless, arbitrary, perverse and illegal and are fit to be quashed.

12. Learned Counsel for the State of Bihar and its authorities (respondents No. 1 to 6) averred that admittedly the entire land in question measuring 24.30 acres belonged to the State of Bihar and on the request of Hardinge Memorial Committee it was granted to the Committee by the Government and on that land a park was developed and was opened for general public in January, 1916. He further submitted that without any sanction of the Government a few persons dissolved the earlier Committee and constituted a trust in 1934 and hence the said trust cannot be deemed to be a legal entity nor it can be assumed to be the substitute or representative of the Committee and hence it had no right to occupy, use and manage the land of the Government granted to the Committee. Learned Counsel for the State also submitted that the instant case is with respect to a simple government grant which is governed by the Government Grants Act, 1895 and according to Sections 2 and 3 of the said Act, the provisions of the Bihar Government Estates (Khas Mahal) Manual as well as of the Transfer of Property Act etc. are not applicable to the instant case and in such circumstances where there is violation of the terms of the grant, the land has to be resumed by the Government notwithstanding anything else as by such grant no right to property is transferred.

13. Learned Counsel for the aforesaid respondents also submitted that the Collector had only granted permission and that too in writing for transferring 1.48 acres out of the said land to the Postal Department in the year 1953, but

apart from that it never granted any other permission for any portion of the said land for bus stand or for melas, circus, exhibitions etc, but inspite of that the petitioner allowed such activities to be held on the land in question and never objected to any such activities or encroachments which are clearly violative of the terms of grant by the Government and the petitioner was unable to give any reasonable explanation for the same in its show cause and hence after fully satisfying itself the authority concerned passed the impugned order committing neither any illegality nor any irregularity in the process of the decisions.

14. Learned Counsel for the respondents -State further stated that a public interest litigation bearing CWJC No. 4259 of 2002 was filed in this Court which was heard by a Division Bench of this Court on 16.05.2002 (annexure-E) and while adjourning the case to July, 2002, it was observed that in so far as the trustees are concerned such of those who were made trustees in ex-officio position, it will continue as a Committee in furtherance of the intention of the trust. Learned Counsel for the State also averred that although the aforesaid writ petition was dismissed as withdrawn on 20.2.2006 due to the passing of the impugned order, but the said order dated 16.05.2002 was effective and binding on the date of passing of the impugned order dated 07.10.2005 (annexure-1). He further pointed out that strangely enough Standing Counsel No. VI, who was representing the State of Bihar in the said writ case, was himself a trustee of the trust in question.

15. Learned Counsel for the intervenors submitted that due to violation of the terms of grant by the petitioner the general public has been put to immense loss as most of the lands of the park are being used for purposes other than those prescribed in the grant. He further submitted that the park and its lands are being misused and mismanaged by the petitioner and its trustees and the park is deteriorating day by day due to the violation of the terms of the grant and also due to the negligence and personal aggrandisement of the trustees, who have made it their family affair as few of them are descendants of the earlier trustees who in turn were the descendants of the original trustees. Hence he submitted that neither the Park and its lands are safe in the hands of such persons, nor the park can gain its lost glory under their management. Learned Counsel for the intervenors also averred that the decision of resumption had been taken by the Department of Revenue and Land Reforms, but the said order has not been challenged by the petitioner, rather the consequential order of the Collector dated 07.10.2005 (annexure-1) has been challenged and hence no writ of certiorari can be issued in such circumstances.

16. From the averments made by the learned Counsel for the parties and from perusal of the materials on record, it is quite apparent that the impugned memo dated 07.10.2005 (annexure-1) issued by the learned Collector, Patna (respondent No. 5) is a consequential order in view of the decision of resumption taken by the Department of Revenue and land Reforms, Government of Bihar, Patna, but neither the said order of the Department has been challenged in this

writ petition, nor a copy thereof has been annexed thereto.

17. From the facts and circumstances of this case it is quite apparent that the grant was made by the State Government with regard to the said lands for the welfare of general people of Patna by constructing and maintaining a park for them and hence the proprietary right remained with the State Government as the basis of the instant matter is merely a deed of grant dated 08.09.1913 (annexure-10) with respect to 24.30 acres of Government lands executed by the Collector on behalf of the Secretary of State for India in Council in favour of Hardinge Park Committee only for establishing and maintaining a public park as Hardinge Park by the Committee. Thus it is a matter of pure government grant which has to be governed by the Government Grants Act, 1895, Section 2 and Section 3 of which provide as follows:

2. Transfer of Property Act, 1882, not to apply to Government grants.- Nothing in the Transfer of Property Act, 1882, contained shall apply or be deemed ever to have applied to any grant or other transfer of land or of any interest therein heretofore made or hereafter to be made by or on behalf of the Government to, or in favour of any person whomsoever; but every such grant and transfer shall be construed and take effect as if the said Act had not been passed.

3. Government grants to take effect according to their tenor.- All provisions, restrictions, conditions and limitations over contained in any such grant or transfer as aforesaid shall be valid and the effect according to their tenor, any rule of law, statute or enactment of the Legislature to the contrary notwithstanding.

18. Furthermore, it may be noted in this connection that the Bihar Government Estates (Khas Mahal) Manual is not a provincial Act, rather it is merely a compendium of executive instructions for the management of Khas Mahal, hence it cannot override the specific provisions of any Act. In the said circumstances, either the provisions of the Transfer of Property Act or the provisions of the Bihar Government Estates (Khas Mahal) Manual would not be applicable to the instant case in the presence of specific provisions under the Government Grants Act. Hence in case of any violation in the terms of the grant, the Government has full authority to resume the same as per the provisions of the Government Grants Act notwithstanding anything else, but the said resumption has to be for the purposes for which the Government grant was created.

19. The aforesaid matter had been considered by the Privy Council as well as the Supreme Court and several High Courts of our country, such as in case of Jagannath Baksh Singh v. United Provinces reported in AIR 1946 PC 127, in case of Collector of Bombay v. Nusserwanji reported in 1955 Supreme Court 298, in case of Azizus Subhan Vs. Union of India (UOI) and Others, and in case of State of Madras and Others Vs. T.M. Oosman Haji and Co., Madras and Others, , in which it was held that general words used in Section 3 of the Government Grants Act, 1895 cannot be read in their apparent generality as the whole Act was

intended to settle doubts which had arisen as to the effect of the other Acts on government grants. It was further held that a legislature can by express words or by necessary implication take away the effect of Section 3 of the Government Grants Act while enacting a particular legislation but unless such legislation is specifically made no enactment can be invoked contrary to the terms of the government grants. It was also held that it was open to the State to put forward successfully the contention that the express stipulations had been made in the terms of the grant, such as that the lessee should surrender possession or the possession is resumed by the Government, can take effect, notwithstanding the provisions of any other Act. In view of the aforesaid legal position, the case law cited by the learned Counsel for the petitioner, i.e. the decision of the Hon'ble Apex Court in case of Bishan Das and others (supra) is not applicable to the facts and circumstances of this case as it was not with respect to any government grant. Hence, in the instant case, Section 3 of the Government Grants Act would prevail and the State would not be bound by the provisions of any other Act in case of such grant.

20. From the deed of grant dated 08.09.1915 (annexure-10) it is apparent that the proprietary right remained with the State and hence the Committee or the Trust cannot even sublet, transfer, encumber or grant lease, right or any permission to anyone else without any written permission of the Collector. By the said grant, no indefeasible right was given to the Committee or the petitioner Trust as the land belonged to the Government and no right to property was created in favour of the Committee or the Trust by the Grant of 1915 (annexure-10) or by the Trust Deed of 1934 (annexure-3). Hence, in these circumstances, the Government has only to see whether any term of grant has been violated and if it has been violated then the Government has full authority to resume the lands in question, as provided in the terms of the grant.

21. Considering the aforesaid facts and circumstances of the case as well as the provisions of law this Court on the earlier occasion passed its order dated. 29.11.1996 (annexure-4) disposing of CWJC No. 11129 of 1996 filed by the instant petitioner quashing the earlier order of resumption on the only ground that it was passed without giving any show cause notice or opportunity of being heard to the petitioner. However, it was specifically held that the said order will not come in the way of the State Government in resuming the land after issuing show cause notice and in accordance with law. It was also made clear that the Executive Committee shall continue to be that of the Commissioner, Patna Division and the Secretary of the Trust as per the terms of the Trust Deed of the year 1934 and the Committee of the Commissioner and the Secretary shall continue to exercise all the powers including financial powers so that there is no disturbance in the day to day management of the Park and in meeting necessary expenses for that purpose. The said order of the Division Bench of the High Court has not been challenged by any one and it has attained finality. Furthermore in compliance of the said order of this Court show cause notice was duly sent to the petitioner and after considering their explanation in the show cause as well as

the available materials, the impugned order has been passed. In the deed of grant also the provision of resumption has been specifically mentioned. In the said circumstances, it cannot be said that the impugned order of resumption has been passed in extra judicial manner and as such the Government had full authority and jurisdiction to pass an order of resumption if any of the terms of grant was violated for which no valid explanation was given by the petitioner.

22. It is not in dispute that the terms of the deed of grant dated 08.09.1915 (annexure-10) executed by the Collector on behalf of the Secretary of State for India in Council in favour of Hardinge Park Committee for grant of 24.30 acres of land by the Local Government for establishing a public park as Hardinge Park were binding on the parties. The only dispute is as to whether the nine violations alleged in the show cause notice dated 16.11.1998 (annexure-9) issued by the Department to the petitioner enumerated in paragraph-8 of this judgment were committed by the petitioner.

23. So far the first violation is concerned, it is alleged that the grant was made in favour of Hardinge Park Committee and not in favour of the petitioner trust, which is not legally a successor or representative of the Committee. It is true that the Government Grant was made in favour of Hardinge Park Committee in the year 1915 with Hon"ble Maharaja Bahadur Sir Rameshwar Singh, C.C.I.F., K.B.F., of Darbhanga as its President and M/s Sarferaj U. Khan, Krishna Sahay and Sachchidananda Sinha as its Joint Secretaries, but subsequently the office bearers of the Committee and many of its original subscribers passed away and the surviving original subscribers and representatives of the deceased original subscribers of the Committee convened a meeting on 17.11.1934 in which it was resolved that "Hardinge Park Committee" be dissolved and "Hardinge Memorial Fund Trust" be created as its successor, under a registered deed dated 17.11.1934 (annexure-3) for the maintenance of the park and nine persons detailed in paragraph-5 of this judgment were made trustees.

24. In the agreement with respect to grant dated 08.09.1915 (annexure-10) it had been clearly provided vide Clause 2 thereof that the Secretary of State reserved the whole and entire proprietary right in the said piece of land subject only to the right of use thereof by the public as a park, whereas Clause 3 of the said document shows that the said piece of land shall be liable to be resumed by the Secretary of State if used for other than the specified purpose or purposes for which it is granted. In the said circumstances, any change could have been made or any right could have been transferred to any other committee or trust only by the owner of the property and not by any one else. Considering the said aspect of the matter, some of the original subscribers along with representatives of some of the deceased subscribers held a meeting and prepared a trust deed dated 17.11.1934 (annexure-3) in which purpose of the trust was mentioned to carry out the objects comprised in the scheme of the grant and for that purpose balance amount of securities of the earlier committee was made over to the trustees to hold the properties of the Hardinge Park only for receiving income,

making expenditure and investment, for opening and operating Bank Account as well as Promissory Notes, certificates, bonds, securities, for paying salaries, remuneration, expenses, taxes etc, for purchasing/selling plants, for erecting demolishing, modifying or repairing buildings or structures of the park and for receiving, collecting and investing subscriptions and donations and contributions. These functions have been clearly mentioned in various clauses, namely 1 to 11 of the resolution in the trust deed. It is thus clear that in the aforesaid circumstances the land of Hardinge Park or its properties, movable or immovable, never vested in the trustees of the said deed of trust nor could it have legally vested in them as the author of the said trust deed was neither the owner nor the proprietor of the property, which admittedly was the State Government, rather the authors of the said trust deed were not the settlors/owners but were only subscribers of the fund and the trustees, who had no right, title or interest in the lands reserved for public park by the State government vide its grant, nor were they legally entitled to create or confer any such right or interest either on themselves or on others with respect to the said lands. It is well settled by a catena of decisions that there have to be two main parties in a trust deed, namely the settlor who has to be the owner and the trustees, whereas the beneficiaries would indirectly be a third party to the instrument. Reference in this regard may be made to a decision of the Hon'ble Apex Court in case of Commissioner of Income Tax, Kanpur Vs. Kamla Town Trust, as well as to a decision of the Hon'ble Privy Council in case of AIR 1944 78 (Privy Council) and also to a decision of the Division Bench of the Madras High Court in case of Kamurudeen Sahib and Ors. v. Noor Mahomed Usman Sahib and Ors. reported in AIR 1916 Mad 657.

25. The Indian Trusts Act, 1882 specifically defines that the "trust" is an obligation annexed to the ownership of property and arising out of a confidence reposed in and accepted by the owner, namely the author of the trust, or declared and accepted by him for the benefit of another. Section 6 of the said Act specially provides that trust is created when the author of the trust, namely the owner of the property, indicates with reasonable certainty by any words or acts an intention on his part to create thereby a trust, the purpose of the trust, the beneficiary and the trust property and also transfers the trust property to the trustee. Section 7 of the said Act provides that a trust may be created by every person competent to contract and with the permission of a principal Civil Court of original jurisdiction, by or on behalf of a minor. Here in the instant case admittedly the deed of trust dated 17.11.1934 (annexure-3) was not signed by the owner of the property and hence persons who had executed the said deed of trust were not competent to contract, nor there was any permission from any court of law, hence there was no question of any transfer of proprietary right over the land and properties of the Hardinge Park to the trustees, nor the same ever vested in them. In the said circumstances, the trust in question cannot be said to be a real and legal trust as per the provisions of law, nor the trustees can legally claim that the lands and the properties, both movable or immovable, have

vested in them. They merely acted in place of the earlier committee which was formed to look after the park and manage the same as per the earlier deed of grant and the State Government and its authorities allowed them to act accordingly.

26. In the said circumstances, no fundamental right of the petitioner or its trustees is involved in this case, nor they have any personal right, title or interest in the property in question. So far their claim is concerned, either the trust deed was a camouflage or the Englishmen did not tell the trustees truthfully what they had done on record. To keep the influential persons happy a frivolous deed of trust was created with them as trustees, the social elite. But unknown to the socialite trustees, on record the land of the park was put in the category "Government estates", and a public park was declared under the Bengal Regulations. It would also be noted that now the said Trust is being used more as a heritable property than as the land of the Government granted for the purposes of Hardinge Park for the people in general, as after the death of several original trustees other members of their families have stepped into their shoes, whereafter even the third generation has come. But it is nowhere explained by the petitioner how this has happened or has been managed. Definitely Hardinge Park cannot be made a family affair, nor the fraud of the trust can be legally allowed to continue. Moreover even the legacy of the erstwhile Rulers cannot be allowed to continue as these are the times of republic and that also a democratic socialist republic and the games of the Empire must come to an end and this park must be restored to the people of Patna and between the Municipal Corporation and the State Government they have to take the responsibility and the obligation to restore the park with its entire 22.82 acres of land as a public park to the people of Patna.

27. So far the second violation is concerned, it is alleged that the petitioner-Trust has transferred 1.48 acres of land to the Post and Telegraph Department, Government of India, which was not for the purposes for which the grant was made, namely for establishing and maintaining Hardinge Park. It is an undisputed fact that in the year 1953, the Post and Telegraph Department as well as the Labour Department, Government of Bihar requested the Trust to transfer 1.48 acres of land of the Hardinge Park which was left unused between the compound of General Post Office, Patna and the bungalow of Assistant Director of Postal Services. It is also apparent that on the said request, the Trust did not take any decision, rather it referred the matter to the Collector, Patna vide letter dated 22.12.1953 (annexure-6), whereafter it was the Collector who by his letter dated 02.12.1954 (annexure-7) accorded sanction to the said proposal and in compliance of the Collector's sanction letter the said land was transferred to Patna General Post Office. In the said circumstances, it was not the trustees including the Commissioner of Patna Division, the Chief Engineer, Roads and Buildings, the Executive Officer, Patna Administration Committee etc. who took the decision for transfer of the said 1.48 acres of land to Patna General Post Office, rather the sanction was given by the Collector on behalf of the State

Government who had the power to accord such sanction as per the terms of the Grant and hence the petitioner-Trust cannot be held liable for the said transfer of 01.48 acres of land or for violation of the terms of the deed of grant with respect to the said transfer, specially when the land in question belonged to the State Government which had sanctioned the said transfer.

28. So far 3rd, 4th and 5th violations are concerned, it is alleged that 4.17 acres of land of the public park is being used as Bus Depot, i.e. for purposes other than the purposes for which the grant was made, 3.11 acres of land is under encroachment due to the negligence of the petitioner-Trust and on portions of the land of Hardinge Park, exhibition, circus and Melas are held, In this regard, the petitioner has claimed that 4.17 acres of land has not been permanently alienated, rather the Trust agreed to make over the land to Transport Department for locating a temporary Bus Stand as the management of the land in question has been left in the hands of the Collector. Learned Counsel for the petitioner has also submitted that encroachment on some portions of the said land had been forcibly made by miscreants and the trustees are in no way parties to the said encroachments, but despite the Government being aware of the said encroachments, they did not get the lands vacated and hence the trustees were helpless as they did not have any force at their command. Learned Counsel for the petitioner also stated that a children park, which is a part of Hardinge Park was being used for circus, exhibition and Fairs for amusement of the children and the families after the approval of the Collector, Patna and since these facilities were considered everywhere to be part of the facility of a park, the petitioner-Trust had granted permission.

29. Although tall claims have been raised by the petitioner, but no material has been produced by them to show that there was any written direction of the Collector, Patna or the State Government for handing over any portion of the land in question to the Transport Department for locating a temporary bus stand. Before the temporary bus stand the said land was also used as goat market without any such sanction. Furthermore, the claim of the petitioner that management of the lands of the Trust has been left in the hands of the Collector, Patna is also frivolous and contrary to their own claim that it is the trust who has been managing the land in question since the creation of the trust in the year 1934. No material has been produced by the petitioner even to show that it had taken any step for regaining possession of the said land. With regard to encroachment of 3.11 acres of land of the Hardinge Park, the petitioner has failed to show that they had taken any step to get the said encroachment removed. Merely stating that the Government and the Collector were aware of the said encroachments will not absolve the petitioner from its duty to look after and manage the land of Hardinge Park and it was also its duty to inform the authorities and take legal steps in that regard, in which it miserably failed.

30. With regard to the use of land of the park for exhibitions, circus and melas also, the petitioner has failed to bring on record any material to show that the

petitioner had sought any permission from the Collector or the State Government in that regard or the Collector or the Government had granted any written permission with respect thereto. Furthermore, the land which was being given for holding exhibitions, melas and circus are lands of children park which is part of the Hardinge Park and the said children park had to be maintained and kept for the daily recreation and play of the children to keep them physically fit which are clearly hampered by commercial activities, such as melas circus and exhibitions etc. It is an undisputed fact that children park is devoid of any facility for day to day recreation of the children and is not being used by the petitioner for the purposes for which the grant was made rather it has been put to commercial use. Since the Grant had been made in favour of the Committee for construction and maintenance of the Park in terms of the deed of grant, it was the duty of the petitioner to act in terms of the deed of grant in which it had miserably failed as before granting any permission for the said activities, which were not enlisted in the Grant, it should have seen that there was written sanction from the State government in that regard. Inept acts and handling by the authorities of the State cannot by statutory operation transform an ephemeral permission to do something into a permanent estate by petitioner in it. In that regard, reference may be made to a decision of the Hon'ble Apex Court in case of Chairman, Ramappa Gundappa Sahakari Samyakta Besava Sangha Ltd. Vs. State of Mysore and Others, .

31. So far 6th, 7th, 8th and 9th violations are concerned, it is alleged that the petitioner-Trust has failed in developing Hardinge Park and in its proper management, that the standard of the Hardinge Park is diminished, that the purpose for which the settlement/grant was made, has been frustrated and that the petitioner-trust has openly violated the conditions of the grant. In this regard learned Counsel for the petitioner has claimed that the Trust is managing the park diligently and for the purposes set out in the Trust Deed and the Hardinge Park is maintained in a very high standard. But the facts and circumstances of this case mentioned in above paragraphs falsify such claims as it is quite apparent that the petitioner has failed to develop and maintain Hardinge Park and has also failed to properly manage it as per the terms of the deed of grant due to which large chunks of the land in question have been rendered useless for the purposes for which the grant was made, the standard of the Hardinge Park and the flora and plantaria it once boasted of has diminished drastically and the purposes for which the grant was made, have been frustrated by open violation of the conditions of the grant and by putting big portions of the said land to commercial use.

32. It may further be noted that in the trust deed it was mentioned that an endowment of Rs. 50,000/-has been made for the maintenance of the park, but a major portion of the said endowment was taken out from the Trust fund and sent to Delhi for the establishment of Lady Hardinge Memorial Hospital. There appears to be no nexus between the Trust which was created at Patna to maintain a public park as a memorial to the Viceroy and the transfer of funds to

Delhi to dedicate a memorial for the Vicerene by establishing a Hardinge Memorial Hospital and now a Medical College at Delhi. The details of what happened to the endowment and in what shape it lies at present either with the Government of Bihar or with the Trust, are not available as learned Counsel had stated that these records could not be located. It is also very apparent that from the date of creation of the trust in the year 1934 as time passed by, the dedication as a public park became unclean and park came to disuse or even misuse as parts of the park began to be let out for performing circus and other commercial purposes and hence the dedication of land as public park has been compromised, although it cannot in any way be compromised. A public park it was and a public park it has to remain. In this regard, it may be mentioned that Patna has already lost its open spaces and if the petitioner Trust is allowed to continue to manage the Hardinge Park, it would be seen very soon that the spaces have disappeared and have been encroached upon as has been the fate of other parks and open spaces of Patna.

33. It may be mentioned here that this writ petition has been filed only through the present Secretary of the Trust, whereas the President of the Trust is impleaded as respondent No. 4 and he is contesting the claim of the petitioner along with the State of Bihar and its executive functionary, namely the Collector of Patna, who are impleaded as respondents Nos. 1 and 5 to the writ petition. No trustee has come forward to support the claim of the petitioner, nor there is any material to show that they have ever authorised the Secretary to file this writ petition.

34. In the aforesaid facts and circumstances, I do not see any illegality or even irregularity either in the process of the decision making by the authorities or even in the impugned decision taken by them. In such matters subjective satisfaction of the authority concerned is required and it is quite apparent that the authorities concerned have passed the impugned order after fully satisfying themselves by considering the violations alleged against the petitioner, its explanation in show cause and the materials on record. Hence, I find no occasion for any judicial review of the matter involved or of the impugned orders/actions of the respondents.

35. Learned Additional Advocate General appearing for the State of Bihar and its authorities have specifically stated that the Government is resuming the aforesaid lands of the Hardinge Park measuring 22.82 acres for public at large and this Court as per the earlier order of the Division Bench of this Court dated 16.05.2002 passed in CWJC No. 4259 of 2002, which was a public interest litigation, may monitor the development of the Park as undertaken by the State and its authorities. In their supplementary counter affidavit dated 18.8.2006 filed on behalf of the State and its authorities it is clearly stated and undertaken that the State Government intends to develop the entire land of Hardinge Park as a modern and unique park for the public purposes and the idea is to develop it in the manner as has been done in other Metropolitan cities, out of which some part

will be used for an amusement park and some part will be used as an elaborate and exquisite green park in the spirit of the grant. It has also been stated in the said supplementary counter affidavit that the proposal of plan of action for the aforesaid purposes has been prepared and has also been approved by the Minister, Department of Revenue and Land Reforms Department, Government of Bihar and the same was sent to the Chief Minister through the Chief Secretary, whereafter even the Chief Minister has approved the proposal sent to him by the said Department regarding development of Hardinge Park as mentioned above. It has also been mentioned in the said supplementary counter affidavit that the matter was referred to the Finance Department which has assured that for the said development of Hardinge Park there will not be any constraint of funds. It has also been stated and undertaken in the said supplementary counter affidavit as well as by the learned government counsel that detailed scheme for the development of park as mentioned above will be prepared soon by appointing an expert consultant and the said scheme would be completed in near future. Although the said supplementary counter affidavit had been filed on 18.08.2006, but perhaps due to pendency of this writ case, no further step in that direction might have been taken by the authorities concerned.

36. 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 respondents 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 intervenors may approach this Court for appropriate and necessary orders/directions.

37. With the aforesaid directions/observations, this writ petition is disposed of.

38. Let a copy of this order be handed over to the learned Addl. Advocate General III appearing for respondents No. 1 to 6 for communication to the concerned respondents- authorities.