
(2008) 09 PAT CK 0103
In the Patna High Court
Case No : CWJC No. 15742 of 2001

Hari Kishore Prasad Sinha

APPELLANT

Vs

Bihar State Housing Board and Others

RESPONDENT

Date of Decision : 09-09-2008

Acts Referred:

Citation : (2008) 09 PAT CK 0103

Hon'ble Judges : Chandra Mohan Prasad, J; Barin Ghosh, J

Bench : Division Bench

Advocate : Harsh Anuj, for the Appellant; Basant Kr. Choudhary, Arvind Kumar and Mr. Anil Kr. Sinha for the Housing Board, for the Respondent

Final Decision : Dismissed

Judgement

Barin Ghosh & C.M. Prasad, JJ.—The private respondent Shri Bhagirath Prasad Singh was allotted Plot No. Q/ 360, measuring an area of 68 ft. x 35 ft. by the respondent-Board in accordance with allotment order No. 2618 dated 27th December, 1979. There was and is no, dispute pertaining to the said allotment. The private respondent obtained permission/sanction from the then Patna Regional Development Authority on 3rd May, 1980 for making construction over the same. While construction in terms of the said sanction was in progress, the petitioner, an allottee of M.I.G.-60, a plot situate opposite the plot allotted in favour for the private respondent, lodged a complaint with P.R.D.A. stating that private respondent is making construction contrary of the sanction accorded. On the said complaint Vigilance Case No. 117B of 1996 was registered and upon notice to the parties, the same was decided on 28th November, 2000. The decision recorded that the private respondent has admitted that he has occupied more area than was allotted to him by the respondent-Board, but the respondent-Board has been approached by the private respondent for allotment of additional land in his occupation. The order dated 28th November, 2000 records that when the sanction was accorded local measurement-cum-inspection report suggested that sanction to construct was accorded for a ground plus first floor house with

30 ft. wide road on the West and South. However, on the date of the said order the width of the road on the West side was found 13.60 meters i.e., more than 30 f.t. and the width of the road on the South side was found 10 meters i.e., more than 30 ft. The order dated 28th November, 2000, amongst others, directed the respondent not to enclose or to make any construction over the additional land in respect of which the respondent had applied for settlement from the respondent-Board. The said order, therefore, makes it clear that as on the date of the said order some construction had been made on the plot of land actually allotted in favour of the respondent, but such construction was not in accordance with the sanction accorded, inasmuch as the front and the side set back, as was provided in the sanction had not been maintained. The order further made it clear that the actual physical construction remained within the plot of land allotted.

2. No sooner, the petitioner came to learn that the respondent has applied for sanction of additional plot of land, he approached the Board with a request not to make such allotment, holding out that beneath the land applied for further allotment, sewer line of the area passes. Despite such contention but without any notice to the petitioner, the respondent-Board allotted extra land measuring 4 ft. x 71 ft. on the Western side and 3 ft. x 35 ft. on the Southern side of the plot allotted to the respondent. This allotment was made on 20th April, 2001 and in the meantime on 20th November, 2000, P.R.D.A. in no certain term held that the construction by the respondent is confined within the precincts of the land, as was originally allotted to him.

3. Inasmuch as such allotment was made, petitioner came to this court in C.W.J.C. No. 6641 of 2001, making a complaint that such allotment was improper. This Court vide an order dated 24th July, 2001 directed the Managing Director of the respondent-Board to decide the contentions of the petitioner in the presence of the respondent. In terms [hereof, the Managing Director considered the grievance of the petitioner as regards allotment of such further land attached to the plot originally allotted to the respondent and while doing so heard the respondent too. The Managing Director of the Board also took assistance of the Officers of the Board to come to a final conclusion. The Managing Director, ultimately by an order, communicated on 7th November, 2001, held out that beneath the additional land allotted no sewer passes. The complaint to the Managing Director of the Board was thus concluded.

4. Being aggrieved thereby, the petitioner filed the present writ petition challenging the said order of the Managing Director. Subsequently, the present writ petition was converted into a Public Interest Litigation inasmuch as the petitioner held out that by reason of construction of house by the respondent over the sewer, there is now no sewer for taking out water accumulating in the locality in question. Petitioner relied upon sewer plan of the area in question and annexed a copy thereof as Annexure-7/1 to the writ petition. The object of annexing the said plan was to show that the sewer is passing beneath the extra

land that has been allotted to the respondent. Annexure-7/1, does not identify the plots. In order to identify the plots, the petitioner relied upon another map, copy whereof is Annexure-7. The object of annexing Annexures-7 & 7/1 was to show that the allotment of extra land on the West and South of the subject plot in favour of the respondent stretches over the sewer, as has been mapped in Annexure-7/1. Since, Annexure-7/1 was a plan copy, we permitted the petitioner to file a certified copy of the original sewer plan. Accordingly, copy of the certified copy of Annexure-7 had been filed. They are almost identical. The same suggests that the sewer passes beneath the road and not beneath any plot of land. However, the Map suggests a road curvature taking place on the western side of plot No. 360. The fact remains, as appears from Annexure-7, that a part of the said curvature became part of plot No. Q60. After a part of the curvature became part of Plot No. 360, if the extra land allotted to the respondent writ petitioner came over the sewer, the same is not decipherable from Annexure-7/1, since the said Map has not been made on scale.

5. Be that as it may, if the Northern point of the sewer is sifted a little towards the left side the sewer would pass through the middle of the road separating the plot of the petitioner and the plot of the respondent. Furthermore, if the Map in Annexure-7 is true then plot No. 361 has also come over the sewer, but no step has been taken by the petitioner to implead the owner of plot No. 361, although on the said plot until now no construction has been made.

6. Be that as it may, by visually comparing Annexure-7 with Annexure-7/1, it would be evident that plot No. Q60 did not come over the sewer and it is also not the case of the petitioner that plot No. Q60 is over the sewer. It is the case of the petitioner that the extra land later on allotted on the West and South of plot No. Q60 came over the sewer. As per the finding of P.R.D.A., no construction has been made over the extra allotted land and in such view of the matter considering all the papers and documents produced by the petitioner, it does not appear that construction made on plot No. 360 did at all damage any sewer. The petitioner seeks to rely upon a report prepared by a Committee on 2nd September, 2006. One of the members of this committee was Sri Mundrika Sahu, Executive Engineer of the Board. In that report committee suggested that under Plot No. Q60, sewer line had been laid. That is not even the case of the petitioner. He has never contended that any sewer line passes beneath Plot No. Q60. it is his contention that beneath the extra land, which was allotted to the respondent to the South and West of Plot No. Q60 sewer line passes. Furthermore, the self-same Sri Mundrika Sahu reported to the Board on 22nd August, 2006 in his capacity as an employee of the Board and as Executive Engineer of the Board that no sewer line passes through the land in occupation of the respondent i.e., Plot No. Q60 together with extra land attached thereto. In the circumstances, it would not be appropriate on our part to make a declaration, as has been prayed that the respondent has damaged the sewer line of the locality in question. Accordingly, the writ petition fails and the same is dismissed.