
(1999) 05 PAT CK 0004

In the Patna High Court

Case No : C.W.J.C. No. 2922 of 1998 & C.W.J.C. No. 2922 of 1998 (R)

Hotel V.I.P. Pvt. Ltd., Dhanbad

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 17-05-1999

Acts Referred:

Citation : (1999) 3 PLJR 145

Hon'ble Judges : S.K. Katriar, J

Bench : Single Bench

Judgement

S.K. Katriar, J.—Heard Mr. Ram Balak Mahto, Senior Advocate, for the petitioner, and Mr. Tara Kant Jha, Senior Advocate, for respondent nos. 3 and 4. This writ petition is being disposed off with consent of the parties at the admission stage itself. The petitioner is a Private Limited Company registered under the Companies Act, 1956, and is engaged in hotel business at Dhanbad. It owns the land and the building thereupon which is the subject matter of adjudication in this writ petition. The building which accommodates the hotel business of the petitioner has also as tenants a few companies whose offices are situated therein. Portion of the building were demolished at the behest of respondent nos. 3 and 4 on 23.10.98 and 25.10.98.

2. This writ petition has been preferred with the prayer for issuance of an appropriate writ or order or direction, commanding the answering respondents not to demolish further the petitioner's structure which is situated in a busy commercial area in the city of Dhanbad. Further prayer has been made to order for payment of compensation proportionate to the damage caused to the building in question as stated above.

3. As stated above, second instalment of the demolition took place on 25.10.98, and the present writ petition was instituted in this Court on 28.10.98. The matter was taken up by this Court on 2.11.98, notices were issued on which respondent nos. 3 and 4 entered appearance, the interim order was passed to the effect that further demolition of the petitioner's construction shall not take place until

further order of this Court. Respondent nos. 3 and 4 filed their counter affidavit, which was followed by the petitioner's Rejoinder. Respondent nos. 3 and 4 filed their reply to the same. Respondent nos. 1, 2 and 5 to 8 have also filed their counter affidavit. In the meanwhile, the petitioner filed an application for amendment of the writ petition. The proposed amendment is stated in para 5 of the amendment application which covers a number of sub-paragraphs which is also pressed for consideration today.

4. Mr. Ram Balak Mahto submitted that the petitioner had constructed the ground, the 1st and the 2nd floors after getting the plan for construction duly sanctioned by respondent nos. 3 and 4, a photo copy of which is marked Annexure-1 to the writ petition. He further submitted that it is true that there were minor deviations in the construction from the sanctioned plan (Annexure-1), namely, the mandatory set off had not been provided in terms of the Bihar Coal Mining Area Development Authority Act, 1986 (for short, the "Act"). Respondent authorities in all fairness ought to have given proper notice to enable the petitioner to rectify the mistake but they mercilessly scrapped the same causing damage to the structure as well as the hotel business. He, therefore, submitted that respondent nos. 3 and 4 should be directed to pay appropriate compensation to the petitioner. He also in this connection pressed his aforesaid amendment application so that the pleadings are complete and full justice is done to the petitioner. Relying on the following reported judgment, he submitted that compensation is payable in such circumstances. :--

(i) Hindusthan Petroleum Corporation Ltd. Vs. The State of Bihar and Others

(ii) Parmottam Prasad Singh Vs. State of Bihar and Others,

5. Learned Counsel for the petitioner next submitted that 3rd and 4th floors of the building in question were surely without a sanctioned plan for construction, but the fault is entirely attributable to respondent nos. 3 and 4. He took me through various Annexures including Annexures 7 & 7A to establish that his applications for modification of the sanctioned plan thereby seeking addition of the 3rd and 4th floors, were submitted long time ago and have remained pending on account of inaction attributable to respondent nos. 3 and 4. He also took me through some paragraphs of his petition alleging ulterior motives on the part of respondent no. 4. He further submitted that this part of the allegation has remained completely undenied by him. Relying on a Supreme Court judgment, he further submitted that such allegations are entirely directed against the concerned authority personally and, therefore, it is incumbent on such authority to personally answer the charges before the court.

6. Learned Counsel for the petitioner further submitted that there are provisions in the Act to grant ex-post facto sanction which ought to have been granted by respondent nos. 3 and 4. In this connection, he relied on the following reported judgments :

(i) 1991 (2) P.L.J.R. 398 (Sudisht Kumar Purbey vs. P.R.D. Authority)

(ii) Khurshid Alam Vs. Md. Zahir and Others,

(iii) Ravindra Kumar and Others Vs. The State of Bihar and Others,

7. Learned Counsel for the petitioner further submitted that the petitioner has been subjected to hostile discrimination and has been singled out for such harsh and illegal treatment because the petitioner had refused to meet the illegal demands of respondent no. 4. He took me to paragraph 14 of his rejoinder to the counter affidavit of respondent nos. 3 and 4 which, as stated above, has remained unanswered. He also took me through paragraphs 13 and 15 of the same rejoinder where he has mentioned the names of Naresh Agrawal, Suresh Agrawal, Kamal Dudhani and many others who have constructed marketing complex at Purana Bazar area in the district of Dhanbad. They are similarly circumstanced persons in the same township, yet no action for demolition of their unauthorised structures has so far been taken. According to the averments made in paragraph 15 of the Rejoinder, one Ramesh Kumar Sharma, a similarly circumstanced person of the same township, had moved this Hon'ble court in C.W.J.C. No. 1172/93 (R) against threatened demolition of his structure which was disposed off by a Division Bench on 16.4.93 (Annexure-14), whereby respondent nos. 3 and 4 were directed to take steps against the said Ramesh Kumar after giving notice to him. He being a favourite of the authorities, no steps are being taken against him inspite of clear direction of this Court.

8. Mr. T.K. Jha, Learned Counsel for respondent nos. 3 and 4, submitted that the amendment application introduces new facts, sets up a new case, and is completely beyond the frame of the writ petition. In fact, the averments made in the writ petition, on the one hand, and the proposed amendment on the other, are diametrically opposed to each other, and it would be impossible for the answering respondents to reply to the same in the same proceeding. He further submitted that the petitioner has absolutely no case on merit either. He took me through Annexures E, E/1, and K to his counter affidavit which are the reports of the answering respondents which clearly establish gross violation of the sanctioned plan marked Annexure-1. It is manifest from a bare perusal of the sanctioned plan for construction of the ground, 1st and 2nd floors itself states in no uncertain terms that the total area of the petitioner's plot of land is 8886 Sq. feet, sanction was accorded to cover 2700 sq. feet by construction, and the said reports marked Annexures E, E/1 and K make it clear beyond all doubt that the construction has been done over the entire area covering 8886 Sq. feet.

9. Mr. Jha further submitted that the petitioner never submitted any revised plan for construction of the 3rd and 4th floors before the answering respondents, and the letters marked Annexures 7 and 7A to the amendment application are forged and fabricated documents. He took me to various other documents on record to establish his contention that the petitioner had never submitted revised plan before the respondent authorities and the same is an afterthought before this Court. He also took strong exception to the petitioner's attempt to malign respondent no. 4. He lastly submitted with regard to the question of

discrimination that it is impracticable to undertake demolition of all the unauthorised construction in a thickly populated city like Dhanbad simultaneously. The demolition is going on according to a well thought-out plan covering the entire township in accordance with law. Chronic cases are given priority. He very frankly conceded that in so far as the names of house owners mentioned in paras 13 and 15 of the petitioner's rejoinder is concerned, whole hearted attempt shall be made to demolish their unauthorised constructions expeditiously.

10. Having considered the rival submissions, this Court is of the view that the petitioner's first grievance relating to the scrapping of the unsanctioned portions of the building is without substance. It is manifest from a plain reading of the sanctioned plan (Annexure-1), that sanction was accorded for construction on 2700 Sq. feet of the existing area out of 8886 Sq. feet. It is further manifest from the inspection reports marked Annexures E, E/1 and K that the actual construction is over the entire area of 8886 Sq. feet. The effort to scrap the construction beyond 2700 Sq. feet is undoubtedly a legal action on the part of the answering respondents. The construction on the 3rd and 4th floors are equally unauthorised, which were added without the mandatory sanctioned plan. The documents relied on the petitioner to establish that it had submitted application for obtaining sanction for construction or for ex-post facto sanction do not in the totality of the facts and circumstances of the case inspire confidence. The authorities had given repeated notices to the petitioner apprising them of the unauthorised constructions and calling upon to remove them failing which the same shall be removed by the authorities at the petitioner's cost. This position is manifest from the notices dated 9.2.96 (Annexure-E), dated 5.5.97 (Annexure-L), and dated 21.8.97 (Annexure-N), to the counter affidavit. The petitioner in its replies accepted the unauthorised constructions, and requested for condonation on payment of requisite fee, vide letters dated 19.5.97 (Annexure-M), dated 5.9.97 (Annexure-N/1), and dated 10.2.98 (Annexure-Q), to the counter affidavit.

11. Once it is found that the constructions are illegal, it follows as a matter of natural corollary that the prayer for compensation is wholly unmerited. The amendment application is, therefore, rejected.

12. this Court, therefore, records the following directions ;--

(i) Respondent nos. 3 and 4 shall truncate the existing construction to 2700 Sq. feet within a period of two months from today,

(ii) So far as the question of ex-post facto sanction of the 3rd and 4th floors are concerned, the petitioner shall be at liberty to submit a revised plan for ex-post facto sanction and/or fresh sanction of construction of the said floors which shall be disposed off by the answering respondents in accordance with law within a period of two months from the date of submission of the plan, &

(iii) In so far as the allegation of hostile discrimination is concerned, Mr. Tara Kant Jha gave the undertaking to this Court that the answering respondents shall

take care to demolish the unauthorised construction with respect to the buildings of the persons named in paras 13 and 15 of the petitioner's Rejoinder and repeated in paragraph 8 hereinabove which includes all those who have constructed marketing complex at Purana Bazar Area within a period of six months from today.

13. Before I part with this case, I must record my feeling of uneasiness with respect to the standing, role and conduct of respondent no. 4. Detailed arguments were advanced with respect to the position held by him in the previous organisation, his standing and eligibility to hold the present post, the hiatus between the two, the grievance relating to his integrity and his tendency to harass others. this Court, therefore, directs respondent no. 3 to keep respondent no. 4 under surveillance, to conduct an enquiry as to his basic eligibility and qualifications to hold his present position as well as his over all performance and suitability to hold the post, and take appropriate action in accordance with law. The writ petition is disposed off with the aforesaid directions. There shall, however, be no order as to costs.