

(2004) 07 PAT CK 0137
In the Patna High Court
Case No : C.W.J.C. No. 5822 of 2004

Jai Prakash Uddyan Sah Sandy's Compound Vikas Samiti and Others APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 13-07-2004

Acts Referred:

Constitution of India, 1950 — Article 243, 243 ZD, 51 A

Citation : (2004) 4 PLJR 90

Hon'ble Judges : Ravi S. Dhavan, C.J.; Shashank Kr. Singh, J

Bench : Division Bench

Advocate : Shashank Shekhar, Purshottam Kr. Jha, Chakrapani, for the Appellant; S.K. Ghose for the State and Mr. D.P. Ramaiah, IAS, D.M., Bhagalpur, for the Respondent

Judgement

1. This matter is about an open space initially referred to in the Gazetteer of Bengal having existence more than 200 years ago. At the beginning of the last century, there was a land acquisition proceeding and a track of land was acquired. During the acquisition proceeding it was noticed that there were certain structures. The acquisition is of 1906. These aspects are noticed in the court's last order dated 5.7.2004. Since those structures predate the acquisition proceedings, they are protected for no other reason than that after a lapse of almost 100 years those buildings need to be protected as heritage buildings preferably used as museum buildings rather than functional purposes. For this will show what the administrative life, or institutional life in undivided Bengal of those days was and these buildings could be heritage structures for the district of Bhagalpur and its citizens. The concern of the court is no more than it is an obligation under the Constitution to protect the environment and ecology (Article 51 A). This matter is no different than the matter which was engaging the attention of the Supreme Court Bangalore Medical Trust Vs. B.S. Muddappa and others, and Dr. G.N. Khajuria and others Vs. Delhi Development Authority and others, .

2. In so far as the open space is concerned it should be the pride of Bhagalpur because very few cities can claim a heritage dating back to the East India Company days. Thus, what is recorded in the acquisition proceeding that the area is to be preserved as an open space.

3. Renewal of open spaces is a constitutional obligation (Article 243 ZD). The court can do no more than reproduce the Prime Minister's speech to the nation on 24 June 2004 which was broadcast nation wide. The particular passage needs to be paid attention to on the Prime Minister's concern, about where have all the footpaths, streets, open space and the parks gone. Perhaps, this may be one area where a special team, in each city, may see on what exactly unplanned urbanization has done to an open area. The Prime Minister, perhaps, is concerned how would spatial planning be blended with integrated development. The Prime Minister talks of resurrection and renewal, so does the Supreme Court, so does the Constitution and this is the concern of this court. The passage of the Prime Minister's speech is reproduced:

A striking feature of development in our country has been the rapid increase in urbanization. There are now more than 30 cities with a population of more than one million. The rapid and unplanned growth of these cities has contributed to increased urban pollution, crime and absence of the required infrastructure like access to drinking water, sanitation, roads, footpaths for pedestrians and public spaces, parks and greenery is making life in urban India a living hell for many. Most of the responsibility for this rests with States and Municipal Governments. It will be our effort to give special attention to policies that can encourage urban development and urban renewal. We will actively seek public-private partnership in building urban infrastructure in a planned manner.

4. The court is afraid that the District Magistrate has been too slow in his plans to resurrect the open spaces and give this open space to the citizens of Bhagalpur. Of course, there is irritation in anybody who has to be asked to leave this particular area which he may have occupied. Nobody wants to leave his occupation, law or no law, Constitution or no Constitution. Environment (Protection) Act 1986 or ecology seems a platitude when protecting it. If the municipal and district administration in every city paid heed to the discipline required in habitat planning on land use (Article 243 ZD), the Prime Minister would not have been showing his concern and speaking of renewal.

5. Nobody understands environment and ecology except when it disrupts nature inside his own private land. If anybody throws rubbish in anybody's compound then everybody understands what environment is about. Encroach somebody's private pre serve and then one will find out what the philosophy of spatial planning is as the Constitution of India spells it out. Divert a dirty drain into a private house then everybody will start remembering the Prime Minister's speech. Let a person's access be blocked by covering a footpath then everybody wants to yell and would like to remind the offender of the Prime Minister's speech and ask the administration where has the footpath disappeared. These

are vested interests.

6. What is paramount here is that citizens of Bhagalpur must have an open space. The land was acquired under sovereign powers to be preserved as open space. And, once the Constitutional amendment brought in Article 243, open space is a conforming character of land use. For almost 100 years it was not protected by a dedicated plan. It was either unmindfully or stealthily given for occupation for a motley of unconnected usurpations of open spaces. Shops, hotel, offices, a half way house to cater to sports by leases to societies and associations. Any one who had a pull with the government took a slice of the cake. This is unplanned rape of open spaces. Constriction of space. The Constitution of India speaks of "spatial planning". It further mentions of the integrated development of infrastructure and environmental conservation (Article 243 ZD). A breathing lung of nature is what environment is about, within it is an ecological balance. Some to be seen by the human eye and some not visible. Conservation and preservation is what the Constitution demands. Nature is what the Constitution respects. It is an obligation of the government to give the citizens of Bhagalpur this open area as a park sans concrete iron rods etc.

7. This effort is going to be a continuous process and it is not going to happen in a day. This is like in the case of T.N. Godavarman Thirumulkpad Vs. Union of India and others, , in which forests were to be protected, green cover is to be preserved. Thus, while the District Magistrate plans the resurrection of this open space to utilize it as a public park or a garden, the area around the acquired area, contiguous to it has to be protected with greenery. A radius of 100 meters beyond the acquired area must see special effort of being made more green and forested. If there are any private estates, citizens are to be encouraged to plant trees provided at State expense. Only then such environment preservation and exercises will restore the ecological balance. It will have to be a dedicated cause which will ultimately contribute to a better civic life all round. This is what integrated development of infrastructure and environment conservation is as referred to in Article 243 ZD. This is the concern on "urban renewal" as spelt by the Hon"ble Prime Minister on 24 June, 2004.

8. In so far as a re-allocation plan is concerned, it will have to be thought out very carefully. The reallocation plan is virtually going to work like depressurization of mid town as a centrifugal exercise to take it outside and re-allocate occupiers as part of an integrated development.

9. This concern for preserving the environment and in keeping the environment plans to protect conforming uses of land, parks, open spaces, greenery, forests apparently has become an obligation demanded by the Constitution. Urbanization is a subject on which the Prime Minister has shown concern, the Law Commission of India also has had to virtually recommend that there must be a legislation in the public interest to establish environment protection courts. This means that the constitutional obligation to protect and conserve the environment has come thus far in its seriousness. Such was the recommendation of the Supreme Court

also Vellore Citizens Welfare Forum Vs. Union of India and others, . At the request of learned counsel for the parties, put up on Tuesday next (20.7.04).