

(2009) 04 JH CK 0112

In the Jharkhand High Court

Case No : Writ Petition (C) No. 3154 of 2007

Jay Mangal Kumar @ Jai Mangal Kumar

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 17-04-2009

Acts Referred:

Citation : (2009) 57 BLJR 2442

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : G.M. Misra, No. 7, K.P. Deo, M.M. Prasad, Nos. 4, 5 and 6, for the appearing parties; V.P. Singh, for the Respondent Nos. 8-11, R.P. Singh, J.C to G.P-II and S.L. Agrawal, for the Respondent Nos. 12 and 13, for the Respondent

Judgement

Narendra Nath Tiwari, J.

I.A. No. 1058/2009

In this interlocutory application the respondent Nos. 8-11 have prayed for recalling the interim order dated 20.3.09 passed by this Court in W.P(C) No. 3154/2007. By order dated 20.3.09 the said writ petition was admitted for hearing and an interim order was passed in absence of the respondents, as follow:

Until further orders, the impugned order dated 4.5.2007 passed by the Notified Area Committee shall be non-operative.

According to the respondents, by the said impugned order dated 4.5.07, the plan for construction of a building was sanctioned by the N.A.C in favour of the respondent Nos. 8-11. The writ petitioner sought to assail the said plan mainly on the ground that after the amendment in the Constitution, and introduction of part IX (A), the Municipality or Notified Area Committee became non-operative and has got no jurisdiction to sanction the map and as such the said order is nonest and without jurisdiction.

In this application the respondent Nos. 8-11 have taken the stand that after the amendment and introduction of Part IX(A) in the Constitution, the question regarding the status and functioning of the Municipality had come for consideration before Patna High Court. A Division Bench of the Patna High Court in the case of Prof. Rabindra Nath Singh Vs. State of Bihar and Others, examined the provisions and disposed of the petition in view of the decision of the Apex Court in 1997 (1) PLJR 129 (SC) in which the Collectors of the District were empowered to take overall charge of local bodies. It has been submitted that in view of the said decision of the Patna High Court and the Supreme Court, a Special Officer was appointed in the Jamshedpur Notified Area Committee to take charge of the Committee and in discharge of his official duty he had sanctioned the plan of the respondents. It has been further submitted that after getting the plan sanctioned by the competent authority for construction on the Plot No. 9/10, the respondents have already completed the construction of building over the said area. After completion of construction, the finishing work is also nearing completion. It has been submitted that in view of the above, the said interim order which was obtained in absence of the respondents by suppressing the facts, has no meaning and the same is fit to be recalled/vacated.

A rejoinder to the interlocutory application has been filed on behalf of the writ petitioner. It has been, inter alia, stated that the construction is still going on and the same is not complete. However, on going through the rejoinder, I find no reply to the fact stated by the respondent regarding appointment of a Special Officer in view of the judgment of the Patna High Court in the case of Professor Rabindra Nath Singh. The writ petitioner in his rejoinder has annexed the photographs (Annexures- A & B) of the structure which shows that building has been raised on the land in the full shape and the work of white washing is in progress. It has been alleged that the construction has been made illegally and the same was continued even after the knowledge of the interim order of this Court. The photograph shows a digital date printed thereon as 8.4.09.

Having heard learned Counsel for the parties and considering the interlocutory application and the rejoinder, I find that in the rejoinder there is no specific reply to paragraphs 8-13 of the interlocutory application regarding the fact that the plan was sanctioned by the Special Officer appointed by the Collector of the District in the light of the decision of the Patna High Court in the case of Professor Rabindra Nath Singh. The respondents have denied the allegation of continuing construction after getting the knowledge of the interim order of this Court. The said fact is thus disputed. But one thing is admitted in the rejoinder and shown in the photographs attached thereto by the writ petitioner (Annexures- A & B) that the building has already been constructed over the plot in question. Since the writ petitioner has not denied the statement made by the respondents in Paragraph 8 and onwards of interlocutory application that the plan was sanctioned by the Special Officer who was appointed by the Collector and since the construction of the building is clearly depicted in the photographs (Annexures- A & B) to the rejoinder filed by the writ petitioner, the interim order

has no meaning. In view of the above, the interim order dated 20.3.09 is, hereby, recalled.

This interlocutory application stands disposed of.