

(2002) 05 PAT CK 0048
In the Patna High Court
Case No : C.W.J.C. No. 4259 of 2002

Manoj Kumar Singh

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 16-05-2002

Acts Referred:

Bengal Public Parks Act, 1904 — Section 1(2)

Citation : AIR 2003 Patna 26 : (2002) 4 PLJR 492

Hon'ble Judges : Ravi S. Dhavan, C.J

Bench : Single Bench

Advocate : Kumar Gaurav, for the Appellant; S.A. Hussain, S.C. Kumar Abhimanyu Pratap and Mridula Mishra, for the Respondent

Judgement

Ravi S. Dhavan, C.J.—This matter—was brought as a Public Interest Litigation. It is about an open space within the urban agglomeration of Patna known as Hardinge Park. There is no issue, whether it is archives or history, that this Park had been laid out at the time of the visit of Lord Hardinge as Viceroy. Viceroy's and Vicereines of colonial empire meant a lot to those who were administrators under the Crown. A Viceroy had to be feted with grandeur. In those days, what is present Bihar was part of Bengal. People seem to forget that what is Bihar today, at the time of Viceroy Hardinge was part of one province known as Bengal, a province important for the Empire, From Calcutta the Empire moved eastward to take in Burma, and westward for the drama of the grand durbar at Delhi. To the west of Calcutta, the next important city was Patna.

2. At the time of the First World War, particularly the period between 1912 and for the next five years, acquisitions were undertaken under the Land Acquisition Act, 1894. Sovereign powers were utilised to usurp or acquire peoples land to lay out a city known as New Patna. The Court has no hesitation in making an observation that the Land Acquisition Act, 1894 in the manner in which it utilised the sovereign powers, displayed the sting of colonial rule. Many facets of usurpation of land by the colonial rule owe their origins to this enactment.

3. Today, the Court has before it the records, the files and the notings which begin from 1914. The demarcation of the file is file No. IG/3 of 1915. The subject of the File is "Transfer of a piece of land measuring 24.30 acres in the new Capital site at Patna to the Hardinge Park Committee." The file notings make very interesting reading. This Hardinge Park Committee was a camouflage. Land was acquired to dedicate a memorial for the Viceroy, as a public Park.

4. Whereas on the one hand the Crown was making out a trust deed, a document of faith and trust, half of the things were not mentioned in it. The instance, the trust deed did not mention that under the Bengal Parks Act (Bengal Act II 6f 1904) the Park had been declared as a public park. The trust deed did not mention that this land had been put into the area of Government estates as "Khasmahal". These are games which the guardians of the Empire played with the Indian people. The money to be spent on the Viceroy's visit, in effect, was taken from the Maharaja of Darbhanga by offering a misplaced acknowledgment that the park would be dedicated to the public though known as Harding Memorial Park and there would be a Committee to manage it.

5. Some of the notings from the file of 1915 are being reproduced :

"GOVERNMENT OF (1915) REVENUE BIHAR AND ORISSA DEPARTMENT LAND REVENUE

FILE NO. IG-OF 1915.

3 JULY

Nos. 32-35

Transfer of a piece of land measuring 24.30 acres in the new capital site at patna to the Hardinge Park Committee.

Bankipore, the 25th April, 1914.

From-- G. L. SEARIGHT, Esq. Superintending Engineer,

To--The Hon''ble Mr. E. R GARDINER, Secretary to the Government of Bihar, Orissa, Public Works Department.

The Committee seem to have ignored my suggestions altogether and assume that I can do all this off my own bat, which of course I could not do in any case without the sanction of Government and even with that sanction it would be necessary to have the plan and estimate sanctioned and money deposited before work could be started. I could get the survey made at an approximate cost of Rs. 200. Will you please let me know what reply I should make to the Maharaja; the safest for me to make at present would be that I have referred the question to Government and that I cannot undertake any outside work without sanction. Government could then decide what is the best course to adopt bearing in mind that I am not a landscape gardener, and have no spare time to devote to this particular job.

D.O. No. 7529B, dated Ranchi, the 27th April, 1914.

From--The Hon"ble Mr. E. R. GARDNER, Secretary to Government of Bihar and Orissa, Public Works Department.

To-- G. L. SEARIGHT, Esq., Superintending Engineer, Bankipore.

Yours of the 25th about the Park.

You will have by this time got orders about demarcating the area and making it over to the Committee.

I entirely agree that our staff cannot spare the time even if it were desirable that they should do so to carry out any detailed work.

I doubt whether Government contemplates giving the services of its "Officers to such a purely local matter as this. On that point I would write you further as it is possible that the Maharaja has been in correspondence with His Honour on the subject. For present purposes I would reply to the Maharaja that Government propose employing an expert on the general question of laying out the capital site (I have already written the Superintendent, Botanical gardens) and that you suggest the Committee consulting him regarding the work and expenditure necessary. I would say definitely that you regret that you have not the time to give such a technical matter your personal attention but that you will be glad to get the necessary detailed survey made for them at an approximate cost of so much and then get an outside surveyor (not any one of your existing staff) to do this for them.

Ranchi, the 24th May, 1914

From-- The Hon"ble Maharaja Bahadur SIR RAMESHWAR SINGH, N.C.I.R. of Darbhanga.

To-- The Hon"ble SIR CHARLES R. BAYLEY ECIR of Darbhanga.

Mr. Searight informs me that Government is contemplating engaging an expert at Bankipore and I beg to ask on behalf of the Hardinge Memorial Committee whether it will please Government to instruct him to help them in the matter of laying out the Park. The Committee will feel greatly obliged if Government can find its way to assist them in this matter.

Bankipur, the 10th July. 1914.

From-- The Hon"ble Mr. W. MOUDE, C.S.I., I.C.S., Member. Board of Revenue. Bihar and Orissa.

To-- The Hon"ble Mr. E.R. GARDINER. Secretary to the Government of Bihar and Orissa, Public Works Department.

Your demi-official No. 12690 B

IC-48

dated the 9th July, 1914, on the subject of the land for the Hardinge Park Memorial.

All I did was to get the Committee after much difficulty to agree to this site, and then I asked Searight to get it marked out and possession given so that they could start work as soon as they were prepared to do so. I did not particularly discuss the terms but I understood that Government was prepared to let them have the land free of rent and I think they understood that this would be done.

We did not discuss the form of conveyance but the idea in my mind was that they would be given a long lease, as you say in your letter, subject to resumption by Government if the land should ever cease to be used for the purpose for which the lease is given.

If a rent is, however, considered necessary I do not think the Committee would object provided the rent is in reality purely nominal.

Hon"ble Member-

The Revenue Department may then take over the case and consider the terms of the lease. I think that it would be better to grant a long lease on a nominal rental, subject to resumption if the land is no longer required for the purpose for which it is granted. I understand that there is to be an endowment of Rs. 50,000 for the upkeep of the Park. Legal Remembrancer will presumably advise whether the Trustees are a body competent to contract.

E.V.L. (Evinge)-20-7-1914.

The demi-official draft shown to the Hon"ble Mr. Maude who sees no objection to its issue,

Get it out quickly and let me have case back to send to Revenue Department.

E.R. GARDINER, 23-7-1914.

Revenue Secretary-

I regret the delay in noting on this case.

(8) The English precedent contains some other clauses which might perhaps be considered, namely :--

"The Committee shall not at any time permit public meetings for the discussion of political, religious, trade, or social questions, or other matters of controversy to be held, or religious services to be conducted, or lectures or addresses delivered on any part of the said land, nor permit the said lands or any part thereof to be used except as a public park or for any purposes except those of recreation and enjoyment" and at the end,

No. 2034-R.. dated Ranchi, the 29th

IG-3 March. 1915,

From--The Hon"ble Mr. H.Mc Person, ICS, Secretary to the Government of Bihar and Orissa, Revenue Department.

To-- The Secretary to the Board of Revenue, Bihar and Orissa.

In reply to your letter No. S. 123-3, dated the 1st December, 1914, on the subject of the transfer of a piece of land in the new Capital site to the Hardinge Memorial Committee at Patna for the site of the Hardinge Park, I am directed to say that the Superintendent and Remembrancer of Legal Affairs, who was asked to examine the draft lease forwarded with your letter cited above, has advised, that, for the reasons explained in the accompanying copy of his note of the 29th January, 1915, the form of the lease should be revised, and has prepared of fresh draft, a copy of which is enclosed. I am to request that the Board will be so good as to ascertain and report to Government whether the agreement would be accepted by the Hardinge Park Committee in this revised form which appears to the Lieutenant-Governor in Council to be generally suitable..

2. I am also to invite attention to the provisions of Bengal Public Parks Act, (Bengal Act II of 1904) and to say that, if the Committee so desire. Government would be prepared to declare the Park "a public park" under the Act and to make such rules u/s 4 as may be considered necessary.

3. The plan received with your letter is returned and I am to request that it may be resubmitted to Government with the Board's reply.

1. That the said piece of land shall be used solely for the purpose of a public park.

2. That the Secretary of State reserves the whole and entire proprietary right in the said piece of and subject only to the right of use thereof by the public as a park.

3. 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 of purposes for which it is granted.

4. and 5.

6. That the Committee shall at their own expense proceed to lay out the land hereby demised as and for a public park or recreation ground, and shall for that purpose plant the same with ornamental trees and shrubs, and make and construct such roads and footpaths through the same as may be necessary or convenient.

7.

8. That the Committee shall permit the inhabitants of Bankipur, Patna and the neighbourhood thereof, and the public generally to have the use and enjoyment of the said land as a public park for the purposes of recreation at all reasonable times.

9. to 12.....

Dated Bankipore, the 19th May, 1915 From-- Khan Bahadur SARFARAZ HUSAIN KHAN, Joint Secretary and Officer-in-charge of Hardinge Memorial Committee, Bankipore.

To-- The Collector of Patna

With reference to your Memo No. R-331-11, dated the 5th May, 1915, forwarding the Commissioner's letter No. R-331-10, dated the 30th April, 1915. I have the honour to inform you that there is no objection to the Government declaring the Hardinge Park to be a "Public Park" under the Bengal Public Parks Act (Bengal Act II of 1904). The Committee wish to point out, however, that they reserve to themselves the right to the income arising out of the sale of fruits, etc., within the area of the Park which they guarantee will be exclusively devoted to the improvement of the Park."

6. It was arranged that for the visit of Viceroy "Lord Hardinge to Patna a public meeting will be called to consider the proposals for commemorating the visit of the Viceroy. It was, thus, that a public meeting was held at the Patna College Building at Patna on the 28th September, 1913. It is recorded that the Honourable the Maharaja Bahadur Sir Rameshwar Singh, G.C.I.E., K.B.E., of Dargbhanga, as President, formulated the proposals to give a suitable memorial to commemorate the visit of the Viceroy.

7. The trustees who were identified by the trust deed in 1934 are also mentioned in the trust deed itself. It is recited :

"2. That the Hardinge Memorial Committee constituted at the public meeting held on the 28th September, 1913 do stand dissolved and that they do make over all assets in their hands to the Trustees of the Hardinge Memorial Fund.

3. That the following persons namely ;

(i) The Commissioner of the Patna Division, ex-officio, Patna.

(ii) The Chief Engineer, to the Government of Bihar and Orissa, Roads and Buildings, ex-officio, Patna.

(iii) The Executive Officer, Patna Administration Committee, ex-officio, Patna.

(iv) The Hon''ble Sir Ganesh Dutt Singh, Minister Local Self Government, Bihar and Orissa, Patna.

(v) The Hon''ble Mr. Nirsu Narayan Singh, Member, Executive Council, Bihar and Orissa, Patna.

(vi) The Hon''ble Mr. Justice Varma, Patna High Court, Patna.

(vii) Sachchidanand Sinha Esqr., son of Buxi Ramyad Sinha, by caste Kayestha and by profession Barrister-at-law, Patna.

(viii) Khan Bahadur Saiyed Muhammad Ismail, son of Syed Khurshald Nawab

Saheb by caste Syed and by profession Zamindar, Patna City.

(ix) Sir Syed Sultan Ahmad son of Khan Bahadur Syed Khairat Ahmad by caste Syed and by profession Barrister-at-law, Patna

be appointed Trustees of the Hardinge Memorial Fund."

8. In the trust deed it is mentioned that an endowment of Rs. 50,000/- has been made for the maintenance of the park. The trust deed of 1934 refers to this particular fund. But, a major portion of it was taken out from this 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 Vicereine and establish a Hardinge Memorial Hospital and now a medical college at Delhi. The details on what happened to the endow-merit and in what shape it lies at present either with the Government of Bihar or the trust, are not available. Learned State Counsel says that these records have not been located.

9. Whether the file notings or the trust deed, references are repeated again and again that this park had been dedicated to the public as a public park. By law this had been declared as a public park under Bengal Act II of 1904.

10. As time passed by, the dedication as a public park became unclean. The park came into disuse. Parts of the park began to be let out for a performing circus and other entertainments. In the circumstances, this compromised the dedication as a public park. This dedication cannot be compromised. Public park it was and a public park it will remain.

11. Patna has already lost its open spaces. If the plans of Patna were to be seen at the time when it was being laid out as New Patna and the areas were planned to conform as open spaces, whatever be the cause, it will be seen that these spaces have disappeared and been encroached upon.

12. Insofar as the trustees are concerned, either the trust deed was a camouflage and the Englishmen did not tell the trustees truthfully what they had done on record. To keep the influential persons happy a trust was declared with them as trustees, the social elite. 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.

13. Today, these are times of a republic and that also a democratic socialist republic and the games of the Empire must come to an end. This park has to 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 as a public park to the people of Patna.

14. When this matter comes up in July, the Court expects that between the State Government and the Patna Municipal Corporation they will give a dedicated plan

for the manner in which this park would hereinafter continue to be maintained as a public park and the State Government is to consider how much fund It will give to the Municipal Corporation so that furtherance of the original intention when the dedication was made is kept for all times.

15. Insofar 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, a concept of the rule of perpetuity. The declaration of Intent being a public park.

16. Place in the first week of July, 2002 in the supplementary list.

Order accordingly.