

(2006) 07 PAT CK 0001
In the Patna High Court
Case No : CWJC No. 13829 of 2005

Nagar Parishad

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 13-07-2006

Acts Referred:

Bihar Municipal Act, 2007 — Section 11A, 12, 58
Constitution of India, 1950 — Article 243G, 243W

Citation : (2006) 3 PLJR 303

Hon'ble Judges : S.N. Hussain, J

Bench : Single Bench

Judgement

S.N. Hussain, J.—Heard learned counsel for the petitioner, learned counsel for the State of Bihar and its authorities as well as learned counsel for respondent No. 5 Zila Parishad. This writ petition has been filed by the Nagar Parishad of Jehanabad against the notices published in the newspaper by the officials of Jehanabad Zila Parishad notifying fresh proposal for construction of shops at different places within the area of Jehanabad Nagar Parishad and inviting applications from persons desiring to have shops.

2. Learned counsel for the petitioner submits that the lands in question are public lands, admittedly, falling within the area of Nagar Parishad (Municipality) as the areas and jurisdiction of the Nagar Parishad and Zila Parishad have been categorically defined and separated. He further submits that Articles 243G and 243W of the Constitution of India as well as the provisions of Bihar Municipal Act, 1922 (hereinafter referred to as Municipal Act") and the Bihar Panchayat Raj Act (hereinafter referred to as "Panchayat Raj Act") have clearly distinguished the areas of the Zila Parishad and Nagar Parishad. He further submits that in the aforesaid circumstances even if the records of lands situated within the area of the Nagar Parishad are prepared in the name of the Zila Parishad, it cannot be held to be the lands of Zila Parishad because such lands are recorded as such since before the bifurcation of the Zila Parishad and Nagar Parishad. Thus, the case of the petitioner is that all the lands of any Parishad falling within the area

of Nagar Parishad shall be deemed to be lands of Nagar Parishad and no other authority, including the Zila Parishad can have any right or authority to make any construction thereon or settle the same in favour of third person. He also avers that the petitioner had earlier moved this Court in C.W.J.C. No. 6610 of 2004, which was dismissed on 20.7.2005 (Annexure 7) on the ground that while pressing their claim, the Nagar Parishad had not established from the records that the lands had vested in it, hence Nagar Parishad was given a liberty to move this Court again in the event it can establish that the area in dispute is within its domain in law. He further submits that now this writ petition has been filed after giving details as per the said earlier order of this Court.

3. On the other hand, learned counsel for respondent No. 5 (Zila Parishad) submits that the lands in question, on which constructions are going to be made, are the exclusive lands of the Zila Parishad standing in its own name and the Zila Parishad has got every right to have lands at any place and its right and title cannot be legally affected on the mere ground that the said lands are situated within the jurisdiction of the Nagar Parishad. He further submits that the rights and responsibilities of the Nagar Parishad and the Zila Parishad are defined under the Panchayat Raj Act and no such right or responsibility can be interfered with by any other authority. This would also be clear from Section 58 of the Municipal Act, which provides management and control of the Municipality (Nagar Parishad) over certain lands and the lands belonging to and recorded in the names of other authorities, including the Zila Parishad, are conspicuous by their absence in the said provision.

4. Learned counsel for respondent No. 5 also submits that Articles 243G and 243W of the Constitution of India do not speak about vesting of properties of other authorities (including Zila Parishad) into the Nagar Parishad (Municipality) and nowhere in the 12th Schedule, prepared under Article 243W of the Constitution, it is mentioned that the lands of others (including Zila Parishad) will be taken over by the Nagar Parishad. It is also averred that Sections 11A and 12 of the Municipal Act provide the same powers, authority and responsibility to the Municipality (Nagar Parishad) as is provided in the 12th Schedule of the Constitution. He also submits that the Zila Parishad has got all the right, title and authority over the lands standing in its name and it can use such land for its own purpose, wherever it is situated. In this regard, he refers to Section 62(2) of the Panchayat Raj Act, 2006, which provides that a Zila Parishad can acquire, hold and transfer movable and immovable properties, whether without or within the limits of the area over which it has authority, of entering into contracts and of doing all things necessary, proper or expedient for the purpose, for which it is constituted. Hence, he submits that the Zila Parishad (respondent No. 5) is constructing shops on the lands owned by it to improve its finances in accordance with the said provisions of law and as per the instructions of the Director, Panchayat Raj in his letter dated 30.6.2004 (Annexure B). Thus, learned counsel for respondent No. 5 submits that the Zila Parishad was within its jurisdiction and right while issuing the said notices and getting it published in the

daily newspapers and the petitioner Nagar Parishad has got no authority or right over the land in question and hence its objection cannot be held to be legal and valid.

5. Considering the facts and circumstances of this case, it is not in dispute that the lands in question are recorded in the name of Zila Parishad (respondent No. 5). Furthermore, no provision of law has been referred to show that the lands of other authorities (including Zila Parishad) falling within the area of Nagar Parishad will be taken over by the Nagar Parishad or will fall to the Nagar Parishad after its bifurcation. It is a settled principle of law. that every juristic person or authority has a right to hold or acquire lands at any place in accordance with law and no such land can legally vest into any other authority unless there is a specific provision of law with respect thereto. Hence, it is quite apparent that such lands, which are owned by and are standing in the name of Zila Parishad, will be legally considered to be the lands of the Zila Parishad and the petitioner Nagar Parishad can have no right to raise any claim over the same even if the said lands are situated within the area of Nagar Parishad (Municipality). This matter has earlier been decided in the abovementioned C.W.J.C. No. 6610 of 2004 and the said writ petition of the Nagar Parishad was dismissed with liberty to it to again move this Court only when it can establish that the area in dispute is within its domain in law. But the petitioner has miserably failed to establish that the area in dispute is within its domain in law and it has any right or authority over the same as it is legally owned and possessed by the Zila Parishad, which has the sole right and title over such land.

6. Moreover, it appears from the impugned notices, namely, Annexures 1 and "2" series, that the numbers and areas of plots, over which the constructions are sought to be made, and are sought to be allotted to others, have not been mentioned therein. Furthermore, it is alleged by the petitioner-Nagar Parishad that some of the plots over which constructions are to be made, are adjacent to the Main Roads and National Highway and they may be required for widening the roads and other public purposes, but if constructions are allowed to-be made thereon, the public in general will suffer huge difficulties and harassments. It is also apparent that although the lands in question belong to the Zila Parishad, but they fall within the municipal area and hence for making any constructions on those lands, permission has to be obtained from the Municipal authorities as per the provisions of law and the municipal authorities are obliged to grant such permission if it is in accordance with the provisions of law and are not violative of any such provision or Government policy.

7. In the aforesaid facts and circumstances, it is held that the lands belonging to and standing in the name of the Zila Parishad are the lands of the Zila Parishad irrespective of the fact as to where it is situated and the Zila Parishad has full right, title and interest therein. However, for making any construction upon its lands, situated within the area of the Nagar Parishad, the Zila Parishad will have to take prior permission of the Municipal authorities and the Zila Parishad will

also have to issue supplementary notification and get it published in the newspaper giving the details of the land with plot numbers and areas, upon which the constructions are sought to be made and which are sought to be allotted to others. Hence, without fulfilling the aforesaid two requirements, the notices contained in Annexures 1 and 2 series shall not be given effect to. With the aforesaid directions, this writ petition is disposed of.