

---

**(2009) 08 PAT CK 0101**  
**In the Patna High Court**

Pratibha Prasad

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

---

**Date of Decision :** 24-08-2009

**Acts Referred:**

**Citation :** (2009) 08 PAT CK 0101

**Final Decision :** Dismissed

---

## **Judgement**

Ajay Kumar Tripathi, J.—By virtue of the order passed on 17.2.2009 in CWJC No. 11763 of 2008 by the High Court the order contained in annexure-1 has come to be passed by the Municipal Commissioner of Patna Municipal Corporation. The dispute relates to construction of sump house by the municipal authority with cooperation of Bihar State Water Board in the portion of a park of Co-operative Society which is known as Aarakshi Karmcharigan Sahkari Grih Nirman Samittee Ltd. (hereinafter refereed to as the Society). The order passed by the Municipal Corporation has irked the petitioner to challenge the same in the present writ application which is annexed as annexure-1 to the writ application.

2. From the pleadings and the materials brought on record it is long drawn battle initiated by the petitioner with the handful persons who do not want the sump house to be constructed in a portion of the land which has been earmarked as a park by the said Society. Submissions are many which will be subsequently dealt with. But one primary fact which must be noted is that the resistance of the petitioner to the construction of the sump house is more or less her personal agenda. The General Body of the Cooperative Society has resolved and authorized construction of the sump house by the official respondents which is likely to have a major beneficial effect and solve the problem of water logging not only of the Society but other adjacent areas as well. It may also be recorded that all major works of laying down the pipeline etc. after spending a few corers have already been completed but the same is not being made functional because the sump house is not being allowed to be put in place.

3. In an earlier writ application filed by the petitioner, the High Court relegated

her along with few other persons who joined the said writ application as petitioners to the Municipal Commissioner to decide the issue after giving them hearing. On a detailed representation filed, a public hearing was held and after taking into consideration the stand or the contentions of one and all, the impugned order dated 16.4.2009 i.e. annexure-1 came to be passed. Reading of the said speaking order would show that the Municipal Commissioner was handed over decision of the General Body of the Cooperative Society authorizing the municipal authority to install the sump house and necessity for completion of the project on due priority has also been conveyed.

4. The Municipal Commissioner has also recorded that installation of the sump house and completion of the project was not only in the interest of the Society but also for the city of Patna to prevent water logging during monsoon. In fact, the background to laying down of the drainage pipelines and construction of sump house is also in compliance of an order of the Division Bench of the Hon"ble Court which came to be passed in a PIL filed on behalf of the citizens of Patna.

5. But the reasoning assigned by the Municipal Commissioner does not satisfy the present petitioner and she is trying to raise larger issue on the ground that the public park can never be allowed to be used for any other purpose by any authority whatever be the circumstances. If the main plan of the society stands approved by the Regional Development Authority and the place has been shown to be a public park then it shall remain so all its life. In support of such a contention reliance has been placed by learned Senior Counsel representing the petitioner on the decisions rendered in the case of Bangalore Medical Trust Vs. B.S. Muddappa and others, and in the case of Dr. G.N. Khajuria and others Vs. Delhi Development Authority and others, as well as a Division Bench decision of the Patna High Court which is the case of Vijay Vasayayan Vs. State of Bihar and Others, Saving the ecology according to learned Senior Counsel for the petitioner is of paramount importance.

6. Counter affidavits have been filed not only on behalf of the official respondents but also respondent No. 9 i.e. the Secretary of the Cooperative Society in question. The stand of the society is that the total area which has been made available for setting up the sump house is 35" x 35" from a total area of 2033 square meters. It is not the total park is being disturbed with the work done or has been done. It has the fullest support of the majority of the members of the Society and the present litigation is more to satisfy the ego or to protect the personal interest of the present petitioner who has also encroached upon some area of the Society and her house is located near the said park. It is also stated that in the same park there are some other constructions as well such as a community hall and its office, milk booth and two small rooms, one for the use of night guards and the other for the purpose of keeping the records of the Society and its members. Besides that this is not the only park available for the use of the members of the society. It is one of them. The affidavit of respondent No. 9

shows that Society wants construction and installation of sump house.

7. Official respondents in their counter affidavit have explained the background and the necessity of setting up the sump house. It is to alleviate misery which is faced by the residents of the locality as well as other citizens of the town due to water logging, specially when monsoon is vigorous. They also assert that the work has been carried out on the basis of the direction of the Hon"ble High Court in a PIL and it has the support of the majority of the members of the Society. It is also contended that the work has been held up because of the present litigation which has been going on for quite a while. Merely because the rain God has been kind this year it does not mean that the project can be abandoned due to non-construction of the sump house.

8. From the rival submissions and the proposition of law which has been urged at the bar, the Court has no hesitation in recording that the present litigation lodged by the petitioner is a motivated one having some personal agenda as the resistance is primarily from her and not from the majority of the members of the Society. No doubt, she has tried to peg her submission at the altar of high sounding preservation of ecology and the necessity to protect the same. But from what has been noticed in the earlier part of the order the Court has no hesitation in recording that the hype built up by the petitioner to resist the installation and completion of the project is otherwise in larger public interest. In none of the decisions relied on by the petitioner the issue or the facts were similar and that being so it cannot be said that the decisions cover the case squarely to warrant interference. Conservation of ecology will have to be weighed against the social cost the society may have to pay if the work in question is abandoned at its altar. It has also to be seen whether the bogey of conservation is real or only a smoke screen.

9. With the materials and the reasonings being what they are in the impugned order it cannot be said by any stretch of imagination unreasonable, arbitrary or motivated. The order passed by the Municipal Commissioner contained in annexure-1 requires no interference. After all, the act of the respondents is not only at the behest of a direction of the High Court in yet another matter but also in larger public good informed with reason.

10. This writ application therefore has no merit and it is accordingly dismissed.