

(2002) 10 PAT CK 0013
In the Patna High Court
Case No : C.W.J.C. No. 3999 of 2002

Sardar Patel Memorial College

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 29-10-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8

Citation : (2003) 1 PLJR 219

Hon'ble Judges : R.S. Garg, J

Bench : Single Bench

Advocate : Navin Sinha and Anjani Kr. Sharan, for the Appellant; Azfar Hassan, AbhaVerma for State, Hemendra Pd. Singh, for University and Anil Chandra, for Intervenor, for the Respondent

Final Decision : Allowed

Judgement

1. Heard learned Counsel for the Petitioner, counsel for the State and the intervenor.

2. It appears that in the year 1978 certain. land was settled in favour of the Petitioner college which is a constituent college with Magadh University. The college authorities made an application to the State Government through its officers that they be provided proper assistance and protection so that they raise certain constructions over the land settled in their favour. The application was taken into its true spirit and a direction was issued that on deposit of certain amount proper protection would be provided to the Petitioner. It appears that subsequent to the first direction certain inside action started taking place, therefore, the" concerned officer who was to provide the assistance on payment of the money informed the Principal of the College that in view of letter dated 4.3.2002 bearing No. 1052 issued by the District Confidential Cell the assistance can not be provided. The amount of Rs. 28,700/- deposited by the Petitioner was also refunded. Being aggrieved by the letter dated 11.3.2002 refusing to provide the protection the Petitioner has come to this Court inter alia submitting that the

State authorities can not act whimsically or arbitrarily nor can they refuse to provide assistance specially when the Petitioner is ready and willing to pay the amount.

3. The Respondent State in its turn has stated that land appears to have been wrongly settled in favour of the Petitioner the same could not be settled in favour of the Petitioner as the land was used as a cremation ground/graveyard. It is also contended in the reply that certain idols of Shamshan Baba and others are installed at the land, therefore, and as the public feelings are associated with the said land the permission to raise any construction can not be granted.

4. The Respondent State also submitted that on an earlier occasion certain public spirited people had filed a suit under Order 1 Rule 8 CPC and obtained a decree against Defendants of the said matter. The Petitioners in their additional affidavit/ rejoinder have submitted that an application was filed by the University to support the case and cause of the Petitioner that the said ex-parte judgment be set aside and, later on the said judgment was set aside. From the said judgment it would clearly appear that the University was protecting and supporting the present Petitioner.

5. On 6.9.2002 a question was raised by Mr. Azfar Hassan, S.C. VII in the Court that the authorities of Magadh University do not appear to be aware of the present matter and this petition appears to be a venture personally to the Principal of the said College. It was also contended that though there was a finding by the Civil Court to the contrary, local enquiries by the officials revealed that the land settled with the college was, in fact, cremation ground and was used for a number of other public purposes. Mr. Hassan expressed his bewilderment in the subject by suggesting the Court that the University may not agree to the present litigation. This Court directed the University to file an affidavit of the Registrar of the University containing a declaration that the Vice-chancellor had personally gone through the statements made in the counter affidavit and he supports those statements. In accordance with the direction of this Court one Shyam Kant Jha, a Deputy Registrar of the Magadh University has filed the counter affidavit. In the affidavit he has clearly mentioned that the land in question was settled with the College by the State of Bihar as far back as in the year 1973 (it should be 1978) and the University is not aware of its character or use and as such the Respondent No. 2 Magadh University is not in a position to take the stand regarding the user of the land. The University did not speak even a single word against the interest of the Petitioner nor it had stated that it does support the action taken by the present Petitioner.

6. Mr. Azfar Hassan, learned Counsel for the State submits that so long as the land stands settled in favour of the college they have the right to use and occupy the land but his further submission is that any particular user by the College is likely to lead to law and order problem, therefore, the State does not wish to become a party to the action of the college by providing its force even if the college is ready to make the payment. The intervenor submits that the land was

used for a particular purpose for long and as the allotment/settlement in favour of the college is bad this Court must ask the State authorities to review the lease and cancel the same. Learned Counsel for the Petitioner submits that if the land is Settled in favour Of the Petitioners then so long as the valid settlement/lease exists the Respondents State or the intervenors can not restrain the Petitioner from using the land in a particular manner.

7. The submission of the learned Counsel for the State that if the land is used for any particular purpose for construction then the same is likely to lead to law and order problem, is not palatable. It is within the jurisdiction and duty of the State authorities to see that the law and order is maintained in its true spirit. The people who hold the authority and are in authority can not be allowed to say that if they take a particular legal step it may lead to law and order problem because to maintain the rule of law every step has to be taken. The pretext of law and order problem or protection under the law and order problem would speak bad against the administration. If the administrator, the police, the officer or the State Government can not maintain the law and order then they must go home because they can not be allowed to say that they would occupy the office and at the same time would not do any thing but succumb to the pressure of hooligans, miscreants, gundas, rangdars and such persons who held law in their hands and strike the citizens who are law abiding persons. If the law and order problem likely to be created by a particular section of society and such Situation is considered to be so grave should this Court allow the University to unleash its power and take the law in its hand against those miscreants, should anybody be allowed to take law in its hands, can the State be allowed to say that it would not interfere in the matter. Should this Court because of the inaction or notation on the part of the State allow two sections to fight on the roads. If answer to all above is in affirmative then what is the need of the State. We may return back to the primitive stage where might was right, there was no respect to law, muscle could manipulate the man, survival was the right of fittest. The policy of appeasement has caused much harm to the nation. The maintenance of law is the warp and enforcement of the order is the weft by which the moral fiber is woven. On one side we talk of the rights of wild animals and on the other hand we are not ashamed of annihilating the human race by giving criminal power in the hands of few. The alleged cremation ground/graveyard cannot be allowed to become a battle ground for pro-viding dead bodies for cremation or burial. If that all is allowed it would lead to anarchism and would ultimately lead to nothing.

8. The State under the Constitution is protector of the rights. It has to protect the rights of those, who have rights under the law. It can not protect the assumed rights of those persons, who have nothing under the law and are simply projecting their rights because they have more muscle and use their brawn in place of their duties.

9. The power of a section of society can not be matched with the power of the State Government. An action taken by a section of society, if is illegal has no

sanctity nor any rational of law but when the State takes action against them it has then sanctity of action and have absolute authority of law.

10. Can the State be. allowed to say that it would not take an action against those persons, who are acting contrary to law, in favour of a person, who makes an approach to the State because the State is of the opinion that their action may trigger of the law and order situation. The State under the law is almighty. It has to protect the interest of every citizen.

11. In the present case the State Government and its officers know well that in the year 1978 almost 24 years back they have settled the land in favour of the college. Should it be presumed that in the year 1978 nobody made an enquiry into the character of and user of the land or should we presume that after making a proper enquiry land was settled in favour of the college authorities. If the presumption is against the interest of the State then it is bad. If the presumption is in favour of the Petitioner then the State can not say that what they have settled in favour of the Petitioner shall not now be protected by them. The State and its agencies are bound and obliged to protect the interest of the Petitioner. The Petitioner before me Is not a person but is a constituent college which is imparting education a section of general public. Should we allow an institution to die and allow persons to burn the dead bodies at a place today under the law they have no right. One can understand burning of the effigies on a public road but none can be allowed to bury/cremate the dead bodies on the land which does not belong to them nor has been specially kept apart for that purpose and has been allotted and settled in favour of a particular person/college.

12. The letter dated 4.3.2002 is still not produced before this Court. Nobody knows that what persuaded the Confidential Section to issue such a letter. What enquiries were made by them and why they required the Commandant not to provide the assistance/ force to the Petitioner is still a mystery. The letter dated 11.3.2002 simply says that in view of the letter dated 4.3.2002 issued by the District Confidential Section the force could not be deployed to protect the interest of the Petitioner.

13. In the opinion of this Court the withdrawal of the police assistance speaks bad. It speaks bad against the administration. It speaks worse of the action of the State and tells worst about the law and order problem, now sought to be created by. State and its officers. The State authorities are obliged and duty bound to protect the interest of its own citizen. So long as the lease is in favour of the Petitioner, the State authorities can not be allowed to say that they will not allow the Petitioner to use and occupy the land and put it to a particular use.

14. At one point of time it was suggested by Mr. Azfar Hassan that as the Petitioners have already been dispossessed they may be asked to go to the civil Court for restoration of the possession. This argument of desperation and frustration should not detain this Court unnecessarily. Can the State be allowed to say that because of its in action or non-action some one has suffered loss,

therefore, that person be asked to go to civil Court for compensation or possession. The State, the protector instead of protecting the interest is trying to protract the litigation. The State in matters like this should hold the sword in its hands and strike at the illegality and its root instead of having a sheath to cover its face and shameless inaction.

15. I can not accept the argument raised by the learned Counsel for the State. It is made clear that if during pendency of this petition the Petitioners have been dispossessed then on their making application to the Collector/District Magistrate/Superintendent of Police, the encroachers shall be removed by the administration and the possession shall be restored back to the Petitioner because undisputedly the land is still under settlement in favour of the Petitioner and it is not the case of the State Government that they have cancelled the lease, have turned down the settlement and have resumed the possession.

16. The petition deserves to and is accordingly allowed. The letter dated 11.3.2002 (Annexure-10) is quashed. The State Government through its officers/District Magistrate/Superintendent of Police Commandant are hereby directed to provide proper protection to the Petitioner if the Petitioner proposes to raise some construction in accordance with law over the land settled in their favour and restore possession in favour to the Petitioner if because of the in-action/non-action on the part of the State Government the Petitioners, have been dispossessed by third parties or interveners or anyone else. The petition is allowed.