
(2007) 11 PAT CK 0048
In the Patna High Court
Case No : CWJC No. 10241 of 2002

Shiva Priya

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 08-11-2007

Acts Referred:

Citation : (2008) 2 PLJR 338

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Advocate : Nilu Agrawal, Ray Shivaji Nath and R.P. Burnwal, for the Appellant;
Lalit Kishore and S. Bharti, for the Respondent

Judgement

Navaniti Pd. Singh, J.—The petitioner has come up challenging the action of the respondents erstwhile PRDA in trying to demolish part of the construction on petitioner's land. PRDA has filed counter affidavit to which reply has been filed.

2. Various controversies with regard to documents and their authenticity were put in issue but in my view it is not necessary to decide those issues.

3. Heard the parties and with their consent this writ petition is being disposed of at the stage of admission itself.

4. A detailed order was passed by this Court on 31.5.2007 in these proceedings. The import of that order is that before the authorities can take up road widening steps they are in law obliged to survey the area as a whole and make a development plan of the area. This to my mind is an apparent requirement of law as when PRDA came into existence substantial constructions were made by private party. Plots carved out and the road laid out by private party. For any planned development the first requirement is to survey the existing structure and lay-out. Once it is done that become the basis for future planning and it is only thereafter correct development plan can be made and then implemented. Once such development plans are made for every area under the command of PRDA lands have to be acquired to give effect to the development plan. Where

properties are vacant they can be earmarked for development under the said plan and parties restrained from using the same but then immediate steps for acquisition has to be taken as parties cannot be restrained from enjoying their property without the PRDA acquiring them for implementing its development plan. If no such steps for acquisition are taken in a reasonable time then there was a provision under the PRDA whereby the land was freed "exempted" from the restriction under the development plan. This to my mind created bilateral obligation. First an obligation on PRDA to survey the locality, draw a development plan and in order to implement the development plan acquire property and simultaneously the second obligation was on the land owners or occupiers, who could not use those properties, which fell under the development plan till it was acquired. The process of acquisition is a must, for by acquisition the owner is divested of his title and then the title stands transferred to the State and then it will be open to public use. In absence thereof the title vests in the owner, who has a right to restrict the public from using the same.

5. A reference to Annexure 11 of the present writ application would show that though the petitioner was made to give up land on his front to make the road 20 feet he is now required to give up land on his back. In neither case the land was acquired. In spite of detailed order aforementioned to PRDA to file the development plan of the locality or survey it had earlier done as obliged by law, none has been produced and it is fairly stated that there is no specific survey or development plan of the locality.

6. In such a situation, in my view, till a proper survey and consequential development plan for the area is not made and land not acquired for the purposes of implementation of the development plan, I am afraid the authorities cannot take any action to implement any other plan of their. Even for the purposes of road widening the authorities are obliged to make a plan of the area and acquire land but before and without doing so they cannot take any action in this regard. In such circumstances, till such steps are taken by the authorities, which now would include Patna Municipal Corporation being the successor of PRDA, the petitioner's construction cannot be interfered with on the plea of road widening. Consequently, Annexure 7 becomes ineffectual. With the aforesaid observation and direction, this writ petition stands disposed of.