

(1999) 09 PAT CK 0020
In the Patna High Court
Case No : C.W.J.C. No. 8364 of 1999

Sri Gauri Shankar Verma

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 20-09-1999

Acts Referred:

Bihar Regional Development Authorities Act, 1981 — Section 54

Citation : (1999) 3 PLJR 819

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Advocate : Ambar Nath Banerjee, for the Appellant; R.P. Singh for the State, for the Respondent

Final Decision : Allowed

Judgement

Aftab Alam, J.—There is a single petitioner before this Court who seeks to challenge an order dated 2.8.1999 (Annexure 1) passed by the Vice Chairman, Patna Regional Dev. Authority ("the Authority", hereinafter) in Case No. 12167/1996. By the impugned order the petitioner is directed to surrender, for widening of the lanes, strips of land 5" 6" deep on the northern side and 5" deep on the eastern side of his plot, over which his residential house is constructed. The order further states that on petitioner's failure to surrender the strips of land as directed will be taken over by force, with the help of armed forces and, if so required, by demolishing portions of his house, the cost of which would also be realised from the petitioner. The Authority in purported compliance with the directions given by this Court appears to be engaged in the widening of a lane, called the "Nutan Chetan School Lane" going eastwards from Yarpur road. In that connection the petitioner was earlier threatened with demolition of portions of his house. He then came to this Court in CWJC No. 12167 of 1996 seeking its protection against any demolition of his house on the plea that it was constructed on the basis of and in accordance with a construction plan duly sanctioned by the Patna Improvement Trust (the predecessor of the present Authority). That writ

petition was disposed of by order, dated 12.1.1997 (Annexure 7) with a direction to the Vice Chairman of the Authority to dispose of the representation earlier filed before him by the petitioner in that regard. It was further directed that the Vice Chairman should have, the measurement of the petitioner's plot along with its adjoining land/lane taken in his presence and should then take a final decision on this matter. It was further observed that if on the basis of the measurement taken, it is found that the house of the petitioner was making any encroachment, he should be first allowed an opportunity to remove the encroachment(s) within 48 hours failing which the authorities would be free to remove the encroachment(s) forcibly and to realise the cost from the petitioner.

2. Pursuant to the order passed by this Court in CWJC No. 1267 of 1996, measurements were taken and on the basis of the measurement report, the Vice Chairman passed the impugned order.

3. In the impugned order there is no mention that the house of the petitioner made any encroachment on any lane/public land. It is, however, stated that in course of enquiry it was found that the house was constructed in considerable deviation from the sanctioned plan which was quite contrary to the provisions of the Regional Development Authority Act ("the Act", hereinafter) and for this a separate proceeding was directed to be instituted for taking suitable action. It is further stated in the impugned order that the land on the northern side of the petitioner's house was only 9' 1" in width and another lane on the eastern side of his house was 10' in width. For widening these two lands upto 20', the petitioner was required to surrender strips of land 5' 6" deep from the northern side of his plot and 5' deep from the eastern side. The order accordingly directed the petitioner to surrender strips of land as aforesaid stating further that on his failure to do so those will be taken forcibly, if so required after demolishing portions of his house. The direction is issued in purported exercise of power u/s 54 of the Act.

4. It is undeniable that the petitioner had a duly sanctioned construction plan for his house, though it is found that the construction was made in substantial deviations from the sanctioned plan. In that situation it is to be examined how far the Authority can force a person to surrender pieces/strips from the plot of land lawfully owned by him and on which his house is constructed for widening of the lane(s) on which the house is situate.

5. In *Damyanti Devi vs. State of Bihar and others* (CWJC No. 1237 of 1997) a bench of this Court on 28.2.1997 passed the following order :

The petitioner makes a grievance that the Patna Regional Development Authority is compelling her to give more space for road when she has already contributed about ten to twelve feet for the road. According to her, occupants of the houses opposite to her land should also be required to make equal contribution. Counsel for the Patna Regional Development Authority submits that all these houses have been built without sanctioned plan and, therefore, there is a justification for

demolition of the houses under the Act. However if the occupants of such houses submit plan for approval, the Patna Regional Development Authority may consider such plan if the houses are constructed on a road having width of 20 ft. as approved in the Master Plan. With a view to save the houses of persons like the petitioner the Patna Regional Development Authority will require them to make available a road of 20 ft. Width. He submits that the owner of the houses on both sides of the road are required to make equal contribution for the road.

(emphasis added)

6. Again in *Parbhawati Shukla and another vs. State of Bihar and others* (CWJC No. 1271 of 1997), an order dated 5.5.1997 was passed to the following effect :

It is not disputed that the petitioners have raised structures without getting a building plan sanctioned and therefore it is always open to the P.R.D.A. even to demolish the structures under the provisions of the Act. However, we have in the past given direction to the P.R.D.A. to entertain application for sanction of the building plans if they are submitted in accordance with the building plans if they are submitted in accordance with the building bye-laws etc. We have also noticed that the minimum width of the lane under the draft Master plan submitted for approval in case of unspecified lanes/roads is 20 feet and therefore, it will not be possible for the P.R.D.A. to sanction a building plan which is situate on a road/lane which is less than 20 feet in width.

Vice Chairman of the P.R.D.A. is directed to identify the road 20 feet wide, having regard to the latest survey map available and P.R.D.A. shall require the plot holders of both sides to make equal contribution of land so that the lane/road is atleast 20 feet wide. If the plot owners do not like to make contribution to widen the lane/road to the extent of 20 feet, it will be open to the PAPA to proceed under the provisions of the Act to demolish the structures raised Without getting the building plan sanctioned in accordance with the provisions of the Act. In this case notice must be given by the P.R.D.A. to plot holders of both sides of the road fixing a date and time for measurement so that they may be present at the time, of measurement with their document of title on the basis of which they may be required to surrender some land for widening the lane/road. If the lane is widened to the extent of 20 feet as required under the draft master plan, it will be open to the owners of the houses constructed on such plots to apply to the P.R.D.A. for granting ex post facto sanction to the building plan which will be considered by the P.R.D.A. in accordance with law.

(emphasis added)

7. From the two orders quoted above, it is plain and clear that the direction to forcibly demolish a house either in whole or in part, on the owner's failure to voluntarily surrender sufficient land for widening of the lane upto 20", was given in respect of cases where a house was constructed on a lane being less than 20" in width (and thus being in violation of the draft plan) without obtaining sanction for construction from the Authority. In other words, surrender of sufficient land

for widening of the lane upto 20" was deemed just penalty or price to be paid by the owners of houses constructed without obtaining sanction from the Authority.

8. The same approach, however, cannot apply in case of houses constructed on the basis of a sanctioned plan even though their construction might be found to be in deviation from the sanctioned plan. This is for the simple reason that in case sanction was given for construction of a house on the plot of land, the responsibility for the construction of the house on a narrow lane would not be attributable to the owner of the house so much as on the statutory authority giving sanction for construction. Unless it is shown that in the plans submitted for sanction, the material facts were mis-represented and the width of the lane on which the proposed house was to be constructed was falsely stated, it is evident that before according sanction, the sanctioning authority was well aware of the dimensions of the lane on which the house was going to be constructed and if it gave sanction after being fully aware of the material facts and circumstances, the responsibility for the wrong doing, if any, would lie with the statutory authority and not with the owner of the land. In that circumstances it would be quite unjust to allow the Authority to punish the land owner, long after the house was constructed, for the lapse committed by the Authority itself.

9. It may be noted that the distinction between a house constructed without a sanctioned plan and a house constructed after obtaining sanction for its construction has been carefully maintained in the orders passed by this Court.

10. From the impugned order it further appears that the Authority has engaged itself in the exercise of widening of lanes in furtherance of the directions given in the orders passed by this Court from time to time in CWJC No. 2290 of 1990 : Arun Kumar Mukherjee vs. State of Bihar and others. I do not know how far even that is correct. The directions to widen the lanes upto 20", as provided in the draft master plan submitted by the Authority, are given by this Court in writ petitions other than CWJC No. 2290/1990. From a number of orders passed in CWJC No. 2290 of 1990 (Arun Kumar Mukherjee vs. State of Bihar) which were brought to my notice, it does not appear that the directions given in that case related as such to the widening of lanes in accordance with the draft master plan. The directions in the case of Arun Kumar Mukherjee were rather aimed at removal of encroachments from roads and road flanks and such structures which, though standing on a private piece of land abutting on a road, were constructed in a manner so as to cause obstruction in the free flow of traffic. But even in the directions given in CWJC No. 2290 of 1990 the distinction between a structure without a sanctioned plan and a structure constructed on the basis of a sanctioned plan is obvious and well maintained. In the order dated 13.9.1996, [1993(3) PLJR 272] passed in CWJC No. 2290 of 1990 it was directed as follows :

Fourthly, whatever a citizen claims that he has raised the structures on the basis of a sanctioned plan or where the structure was raised when there was no requirement of obtaining a sanctioned plan, the authorities must examine the claim of the owner of the structure before taking any action against him. In such

a case a proper notice should be given to the person concerned and he should be called upon to produce all materials in his possession to satisfy the authorities that the structure is not unauthorised. If it is found that the structure is not unauthorised the authorities will not touch such structures, and in case any action is to be taken, it must be done strictly in accordance with law.

.....We clarify that if there is a sanctioned plan, and the construction has been raised strictly in accordance with the sanctioned plan, and the authorities require the owner such structure to remove his boundary wall for the purpose of widening of the road to the required extent, this should be done only after giving notice to the person concerned. We have clarified this in our order dated 4.5.1995 where we reiterated if a building has been constructed in accordance with a sanctioned plan, no part of the structure should be demolished, even if the width of the road in front of such structures is less than 20 ft. In such cases, if need be, the land may have to be acquired before any demolition takes place or it may be done with the consent of the owner of the property.

11. Again in the order dated 19.8.1996 passed in CWJC No. 2290 of 1990 it was directed as follows :

With regard to removal of encroachments there are certain misgivings which we would like to clarify. Firstly, (sic) have directed the removal of encroachment from the roads and its flanks, which are of such nature as tend to interfere with the free flow of traffic. This is the dominant consideration. Secondly, whenever we have referred to unauthorised structures it should be understood to mean an unsanctioned structure raised at any place. If the structure is authorised in the sense that the structure was sanctioned by the competent authority at the relevant time, the authorities must satisfy themselves about the sanction granted to such structures and only thereafter take appropriate action. Counsel for the P.R.D.A. states that this is always done and whenever any person placed that the structure is an authorised structure, the papers are examined by the authorities before taking any action. This application must be kept in mind by the authorities all over the State so that if a person claims to have erected a sanctioned structure, he should be called upon to produce necessary documents before the structure is demolished. The demolition of any structure which does not prevent free flow of traffic, must be done in accordance with law. Our directions are mainly for removal of these encroachments which impede free flow of traffic on the road, and this may include unauthorised structures on private land which abut the road, because such structures also hamper free flow of traffic as they attract customers who part (sic) their vehicles on the road, blocking a part thereof.

12. This aspect of the matter was considered by this Court in Ram Nath Arora Vs. The State of Bihar and Others, . In paras 10 and 12 of that decision it was observed and held as follows :

10. Mr. Rajendra Pd. Singh, counsel appearing for the Authority could not dispute

this position and he simply accepted the proposition that buildings constructed in accordance with a sanctioned plan cannot be subjected to the same rough and ready method devised by the Authority to deal with the buildings constructed without a sanctioned plan. Mr. Singh further accepted that in a case where a building was constructed on the basis of a sanctioned plan all that the Authority could do was to verify whether or not in actuality the construction conformed with the sanctioned plan and in case it was found that in constructing the building deviations were made from the sanctioned plan, such deviations could be dealt with under the provisions of the Regional Development Authority Act and the Rules and the bye-laws framed thereunder.

11. From the pleadings of the parties, it appears that the petitioner's building has been constructed on the basis of a sanctioned plan. It is, thus, covered by the directions of this Court in respect of the buildings constructed in accordance with a sanctioned plan as contained in the Order dated 18.9.1996 passed in CWJC No. 2290/1990. The petitioner's building, therefore, cannot be subjected to the rough and ready device of putting a mark on it and compelling the demolition of the marked portion.

13. Lastly coming to the reference made in the impugned order to Section 54 of the Act, it is obvious that any reliance on the provisions of Section 54 of the Act is quite ill conceived. Section 54 empowers the Authority to order for demolition of a building or its portions in case it is found to be constructed in contravention of the original plan, master plan, zonal plan or without the permission/approval or sanction of the Authority, but the provision does not empower the Authority to divest the owner of his title to the land and take it over for being made a part of the public lane.

14. For all these reasons, I have no hesitation in holding that the direction given to the petitioner for surrendering strips of land as indicated above for the widening of the lanes cannot be said to be on the basis of any directions given by this Court. The impugned direction cannot be supported by any provision of law either. It must, therefore, be held to be unsustainable in the eyes of law. The impugned order, therefore, in so far as it directs the petitioner to surrender the strips of land from the north and east of his plot is set aside. It will be, however, perfectly open to the Authority to proceed against the petitioner in connection with the construction of the house in deviation from the sanctioned plan. In that proceeding the Authority will pass appropriate orders, after affording the petitioner an opportunity of hearing, in accordance with law. In the result, this writ petition is allowed to the extent indicated above and subject to the observations made hereinabove. No costs.