

(2021) 08 PAT CK 0029

In the Patna High Court

Case No : Miscellaneous Jurisdiction Case No. 1098 Of 2020 In Civil Writ
Jurisdiction Case No. 15445 Of 2005, 12603 Of 2015

State Of Bihar

APPELLANT

Vs

Hardinge Memorial Fund Trust

RESPONDENT

Date of Decision : 09-08-2021

Acts Referred:

Citation : (2021) 08 PAT CK 0029

Hon'ble Judges : Sanjay Karol, CJ;S. Kumar, J

Bench : Division Bench

Advocate : Bishwa Bibhuti Kumar Singh, Shambhu Sharan Singh, Shambhu Sharan Singh, Lalit Kishore

Final Decision : Disposed Of

Judgement

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Heard learned counsel for the parties.,,

MJC No.1098 of 2020 has been filed by State of Bihar for modification of order dated 20.07.2007 passed in CWJC No.15445 of 2005 by which this,,

Honâ??ble Court had directed not to allow any activity on the 22.82 acres of land other than what had been specifically mentioned in the government,,

grant of 1915, whereas CWJC No.12603 of 2015 has been filed by Shambhu Sharan Singh for a direction to the State authorities to develop Park on",,,

the entire 22.82 acres of land, as per earlier order and direction dated 20.07.2007 passed by learned Single Judge in CWJC No.15445 of 2005 and",,,

appeal preferred was dismissed by Division Bench by order dated 20.02.2008 passed in LPA No.979 of 2007.,,

Briefly stated the facts of the case is that by a deed of grant dated 8.9.1915, executed by the Collector on behalf of Secretary of State for India, land",,,

measuring 24.30 acres was handed over to Hardinge Memorial Committee for establishing and maintaining a public park as Hardinge Park in memory,,
of Lord Hardinge and thereafter Hardinge Park was developed and opened for general public on 31.01.1916. After the original members of,,
Committee died, some of surviving original subscribers and some of the representatives of the deceased original subscriber to the Harding Memorial",,,
Committee convened a meeting on 17.11.1934 resolving that Harding Memorial Committee constituted on 28.9.1913 stands dissolved and Hardinge,,
Memorial Fund Trust is created as its successor by a registered deed for the maintenance and upkeep of the Hardinge park which included 9 persons,,
and thereafter said Trust started managing the affairs of Hardinge Park.,,
In the year 1953, the Post and Telegraph Department as well as the Labour Department, Government of Bihar requested the Trust to transfer 1.48",,,
acres of land of Hardinge Park left unused and considering said request the trustees send a proposal to the Collector, Patna by letter dated 22.12.1953",,,
to accord necessary permission upon which the Collector by letter dated 2.12.1954 accorded permission to said proposal and accordingly 1.48 acres of,,
land was transferred to the Patna GPO and only 22.82 acres of land out of 24.30 acres, remained with the Hardinge Park Fund Trust.",,,
Subsequently on 22.01.1986, the Commissioner-cum-Secretary, Department of Revenue, Government of Bihar, issued a letter to the Trust resuming",,,
the said land of the Hardinge Park on the ground that it was not being utilized as per the terms of deed of grant dated 8.9.1915 against which two writ,,
petitions were filed being CWJC No.11129 of 1996 and CWJC No.8894 of 1996 on the ground that said order of resumption of land was passed,,
without any show cause notice and in violation of principle of natural justice and by order dated 29.11.1996, both writ petitions were allowed and the",,,
order of resumption was set aside giving liberty to the State to proceed in accordance with law after issuing show cause notice and providing,,
opportunity of hearing to petitioners.,,
The High Court further clarified that Divisional Commissioner, Patna and Secretary of the Trust shall continue as Executive Committee of the Trust",,,
who shall exercise all the powers including the financial power so that there is no difficulty in day-to-day management of the park and after two years,,
on 16.11.1998, a fresh show cause notice was issued to the Trust by the

Commissioner-cum- Secretary, Department of Revenue, Government of",,,
 Bihar, Patna for resumption of land on the ground of violation of terms and conditions of the grant and after considering the reply to show cause filed",,,
 by the Trust, the State Government found the Trust to have grossly violated the terms and conditions of grant and it was decided to resume 22.82",,,
 acres of land for which vide memo dated 7.10.2005 the Collector, Patna passed an order for resumption of aforesaid 22.82 acres of land and a follow-",,,
 up order dated 14.10.2005 was issued by the Circle Officer, Patna Sadar.",,,
 CWJC No.15445 of 2005 was filed by Hardinge Memorial Fund Trust through its Secretary challenging order of Collector, Patna dated 7.10.2005 as",,,
 well as follow-up order dated 14.10.2005 issued by Circle Officer, Patna Sadar, Patna by which the State Government had resumed the entire 22.82",,,
 acres of land of Hardinge Park Memorial Fund Trust which was dismissed by order dated 20.07.2007. LPA No.979 of 2007 filed by Hardinge,,
 Memorial Fund Trust was also dismissed by Division Bench by its order dated 20.2.2008 and order passed by learned Single Judge was affirmed and,,
 same attained finality.,,,
 An intervention petition was filed in the writ petition in representative capacity by the users and beneficiaries of the Hardinge Park because of its,,
 ecological and situational importance and same was allowed and intervenors were added as party respondent nos. 7 to 10. It was submitted by the,,
 intervenors that park and its land were being mismanaged by the Trust and condition of park was deteriorating day by day due to negligence of Trust,,
 and supported resumption of the land by the government.,,,
 Learned Single Judge has held that the proprietary and ownership right over 24.30 acres of land vested in the State Government and the Committee,,
 was only constituted to look after the maintenance of public park and the learned Single Judge has also approved the validity of transferring 1.48 acres,,
 of land to the Patna GPO as the proposal of the Trust was approved by the State Government through the Collector, Patna. Finding recorded by",,,
 learned Single Judge with respect to ownership and title of the State Government over the land and its competence and authority to alienate part of the,,
 land was dealt by learned Single Judge in paragraph no.20 and 27 of the judgment which is reproduced below:-,,
 â??20. From the deed of grant dated 8.9.1915 (annexure-10) it is apparent that

the proprietary right remained with the State and hence,,
the Committee or the Trust cannot even sublet, transfer, encumber or grant lease, right or any permission to anyone else without any written",,
permission of the Collector. By the said grant, no indefeasible right was given to the Committee or the petitioner Trust as the land belonged",,
to the Government and no right to property was created in favour of the Committee or the Trust by the Grant of 1915 (annexure-10) or by,,
the Trust Deed of 1934 (annexure-3). Hence, in these circumstances, the Government has only to see whether any term of grant has been",,
violated and if it has been violated then the Government has full authority to resume the lands in question, as provided in the terms of the",,
grant.,,

â??27. So far the second violation is concerned, it is alleged that the petitioner-Trust has transferred 1.48 acres of land to the Post and",,

Telegraph Department, Government of India, which was not for the purposes for which the grant was made, namely for establishing and",,

maintaining Hardinge Park. It is an undisputed fact that in the year 1953, the Post and Telegraph Department, as well as the Labour",,

Department, Government of Bihar requested the Trust to transfer 1.48 acres of land of the Hardinge Park which was left unused between",,

the compound of General Post Office, Patna and the bungalow of Assistant Director of Postal Services. It is also apparent that on the said",,

request, the Trust did not take any decision, rather it referred the matter to the Collector, Patna vide letter dated 22.12.1953 (annexure-6)",,

whereafter it was the Collector who by his letter dated 2.12.1954 (annexure-7) accorded sanction to the said proposal and in compliance of,,

the Collector's sanction letter the said land was transferred to Patna General Post Office. In the said circumstances, it was not the trustees",,

including the Commissioner of Patna Division, the Chief Engineer, Roads and Buildings, the Executive Officer, Patna Administration",,

Committee etc. who took the decision for transfer of the said 1.48 acres of land to Patna General Post Office, rather the sanction was given",,

by the Collector on behalf of the State Government who had the power to accord such sanction as per the terms of the Grant and hence the,,

petitioner-Trust cannot be held liable for the said transfer of 1.48 acres of land or

for violation of the terms of the deed of grant with respect,,
to the said transfer, specially when the land in question belonged to the State Government which had sanctioned the said transfer.â??",,

(i) jogging track and paver track.

Development of grass land and land

escaping throughout.", "(ii) greeneries, i.e., big, medium

and small size plants along with

hedge plants and beautiful lawn", "(iii) CCTV cameras and public

announcement system

(iv) Solar light facility,"(v) drinking water facility with

RO and cooler and food kiosk", (vi) Sitting arrangement in the park

(vii) Water bodies with boating facility, (viii) Fountains, (ix) parking facility

(xiii) football ground, (xiv) cricket practice ground, (xv) basket ball ground

proposal was approved vide letter dated 1.3.2019 by Ministry of Railway, Government of India, New Delhi.",,

It has been further submitted on behalf of the State that new 4 - lane with service road has been developed from R Block crossing (near southern part,,

of Hardinge Park) to Digha upon which previously railway track was existing and same was transferred to the State of Bihar for construction of 4-,,

lane road with service road which has been found to be very beneficial to ease out traffic load within Patna town giving much respite to the residents,,

of Patna town from frequent traffic jam. Sufficient plantation has been done on both sides of the road which is quite visible. The State Government,,

proposes to construct similar type of road on lands of railway which is proposed to be exchanged for 4.8009 acres of southern part of the Hardinge,,

park land which lies adjacent to railway line.,,

Having heard learned counsel for the parties, this Court finds that proposal of the State Government to exchange its 4.8009 acres of land (southern",,

Hardinge Park) with 18.5495 of acres of railway land within Patna town and 9.5913 acres of railway land near Danapur Station is beneficial for both,,

as well as in the larger public interest. Frequent traffic jams has become a regular feature within Patna town which results in increase in air pollution,,

as well as results in ecological imbalance and construction of road over railway

land which passes through the heart of city will bring much respite to,,
the residents of Patna as well as development of infrastructure of railways on the
4.8009 acres of land of the State Government will be beneficial for,,
public at large as well as railways to meet ever increasing rush of passengers by
construction of additional railway platforms and will provide ample,,
parking space for vehicles.,,

In view of discussion as made above, this Court finds that the exchange of lands
between the Government of Bihar and Railways serves public",,,

purpose and is beneficial for State Government, Railways as well as public at
large and accordingly, the order dated 20.07.2007 passed in CWJC",,,

No.15445 of 2005 is modified to the extent that Government is permitted to go
ahead with proposal of exchange of lands.,,

This Court appreciates the relentless effort and contribution of Shambhu Sharan
Singh, learned Advocate and a public spirited person in developing",,,

North Hardinge Park (16.31 acres) now known as "Shaheed Veer Kunwar
Singh Azadi Park" into well developed recreational park with all,,

modern facilities and amenities.,,

MJC No.1098 of 2020 and CWJC No.12603 of 2015 are accordingly, disposed of.",,,