
(2001) 04 PAT CK 0073
In the Patna High Court
Case No : C.W.J.C. No. 2873 of 1999

Suman Sinha

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 26-04-2001

Acts Referred:

Bangalore Development Authority Act, 1976 — Section 19(4)

Citation : (2001) 2 PLJR 791

Hon'ble Judges : S.K. Katriar, J;Nagendra Rai, J

Bench : Division Bench

Judgement

1. This writ petition in the nature of a public interest litigation has been preferred by a public spirited resident of Patna for appropriate directions to construct and complete a 40 wide public road, being part of the master plan prepared by the Patna Improvement Trust connecting Dak Bunglow Road (north-south) near a shop known as Light House to station road on south side through Bandar Bagicha, running west of the jail and parallel to the Fraser road (hereinafter referred to as the "marked road"). During the course of arguments, further pleadings were brought on record giving rise to one more relief, namely, proper utilisation of the lands on which the quondam Bankipur Central Jail exists, and the land adjacent to the same proposed to be named Chandralok. The original files relating to the issues in hand have at our behest been produced before us. We have heard learned counsel for the petitioner, the learned A.A.G.III, and the learned Government Advocate on behalf of the State at length on various dates. We shall deal with the second relief first. The land on which the quondam Bankipur Central Jail is constructed and the adjoining government lands seems to cover an area of about 26.23 acres of lands. The same is Khas Mahal land, and has without doubt to be utilised for the largest public good in view of the realities obtaining in the township of Patna in general, and the areas surrounding the lands in particular. It appears from the original records that at the meeting presided over by the Chief Secretary held on 21.11.1998, it was decided as follows:

(i) Out of the 26.23 acres of land a major portion shall be transferred for commercial constructions to the Patna Regional Development Authority (hereinafter referred to as "the P.R.D.A.") under the Stamp Act.

(ii) The P.R.D.A. shall pay annual rental to the Bihar Government, and

(iii) The State Government shall retain the remaining land for public purpose.

The same was approved by the Chief Minister on 9.12.98. It appears that the State Government started having second thoughts about the aforesaid decision for various reasons and led to expression of different views in the file. The cost of land was tentatively valued at Rs. 98 crores. The Finance Commissioner recorded his note dated 29.1.99 that the P.R.D.A. may not be able to pay that much of amount to the State Government. He, therefore, suggested that no part of the lands may be transferred to P.R.D.A. under the Stamp Act, and instead P.R.D.A. may be allowed user of the same. It appears from the note dated 3.7.99 recorded by the Secretary, Department of Urban Development, that he had been directed by the Chief Minister and the concerned Minister that lands should not be transferred to the P.R.D.A. and instead it should be directed to prepare a beautiful plan for construction of a market place comparable to Cannaught place and Palika Bazar of New Delhi with particular emphasis on greenery and open area. It appears from the note dated 26.7.2000 of the departmental Secretary that it was decided as follows at the meeting presided over by the Chief Secretary held on 21.7.2000:

(i) The aforesaid area of 26.23 acres of land be transferred to the P.R.D.A. on a token value of Rs. 1.00.

(ii) The P.R.D.A. may mortgage the same and obtain loan from HUDCO for development of infrastructure and other public utility services.

(iii) Plots of land may be carved out and may be auction-sold with individuals for commercial purposes.

(iv) Part of the money so received from auction sale shall be defrayed towards repayment of loan, and part of the same shall be given to the State Government. The responsibility for sale of lands and development of the areas shall be of the P.R.D.A.

(v) 5% of the money payable to the State Govt. may be retained by the P.R.D.A. towards administrative charges etc.

2. Over-ruling the aforesaid decisions by necessary implication, the Chief Minister recorded the following order on 28.8.2000:

" " 793

Thereafter the note dated 6.12.2000 records as follows:

6.12.2000

7.12.2000

Thus, the proposal to construct a jail on the lands in question was approved by the Chief Minister on 7.12.2000.

3. The net result of the governmental decision is that the land in question is sought to be utilised for construction of a new jail. The south-west portion of the New Market next to Bankipur jail, to be named Chandralok, may be cleared of the shops and encroachments and the lands may be utilised for widening of the road and for creation of parking space. The remainder of the Chandralok area may be utilised for purposes incidental to the new jail. We, therefore, proceed on the footing that all the orders prior to the order dated 7.12.2000 of the Chief Minister will be deemed to have been countermanded by necessary implication. We proceed to consider the validity and appropriateness of the order dated 7.12.2000, approving the suggestions indicated in the note dated 6.12.2000 (*supra*).

4. We have given our anxious consideration to the matter in the perspective and do not approve of the mode and manner in which the land is being sought to be utilised. During the past 30 years, massive commercial complexes have been constructed within half a kilometer of the jail premises, for example, (i) Maurya Lok Complex, (ii) Hira Place, (iii) Hari Niwas Complex, (iv) Jay Prakash Complex, (v) Hotel Satkar Complex and (vi) Hotel Sanghai Complex, N.P. Centre, Sahi Complex, Hariom Complex, the twin towers of Samridhi and Gaurav Complexes. We take judicial notice of the fact that 80% of the Jay Prakash Complex is unsold and unoccupied, and perhaps portion of Maurya Lok Complex also, both of which are Government Complexes. We are informed at the Bar that portions of the adjoining commercial complexes are also vacant. The premises of the Patna Jn. Railway Station and the adjoining areas are terribly clogged. Improvement of the New Market area does not seem to be in sight. The parking space provided by the Maurya Lok Complex within its premises may be up-to the desired extent, but the parking spaces provided by Hira Place and Hari Niwas Complex are inadequate. No parking space at all has been provided by the Jay Prakash Complex, Hotel Satkar Complex, & Hotel Sanghai complex. In that view of the matter, following three conclusions clearly emerge:

(i) There are several commercial complexes around the quondam Bankipur Central Jail and portions of them are unsold and unoccupied.

(ii) The parking space in the aforesaid market complexes are inadequate or completely absent.

(iii) The New Market area in general, and the premises of the Patna Jn. Railway Station in particular, are terribly clogged, and

(iv) The Patna Jn. Railway station is crying for expansion.

5. We are in this connection reminded of the judgment of the Supreme Court reported in Bangalore Medical Trust Vs. B.S. Muddappa and others, . A particular

site in the township of Bangalore known as Sankey Tank in Rajmahal Bilas Extension was reserved as an open space in an improvement scheme and the same was sought to be settled with the State Government for construction of a private nursing home. It was challenged before the Karnataka High Court, and the matter ultimately reached the Supreme Court. The question formulated by the Supreme Court to be answered by it was that whether "Public park or private nursing home which serve public interest, better, is itself an interesting issue in this appeal directed against the order of the Karnataka High Court, apart, from if the conversion of the sight from park to hospital was in accordance with law and where a private hospital was an amenity or civic amenity under the Bangalore Development Authority Act and in any case could it be considered as an improvement u/s 19(4) of the Act, if so whether the authorities while doing so acted within the constraints of law". The Supreme Court disapproved of the user of land and dismissed the appeal. Following excerpts from the judgment are relevant in the present context :

26. In *Agins vs. City of Tiburon*, (1980) 447 US 255, the Supreme Court of the United States upheld a zoning ordinance which provided... it is in the public interest to avoid unnecessary conversion of open space land to strictly urban uses, thereby protecting against the resultant impacts, such as... pollution... destruction of scenic beauty, disturbance of the ecology and the environment, hazards related to geology, fire and flood, and other demonstrated consequences of urban sprawl". Upholding the ordinance, the Court said:-

...The State of California has determined that the development of local open-space plans will discourage the "premature and unnecessary conversion of open-space land to urban uses". The specific zoning regulations at issue are exercises of the city's police power to protect the residents of Tiburon from the ill-effects of urbanization. Such governmental purposes long have been recognized as legitimate.

The zoning ordinances benefit the appellants as well as the public by serving the city's interest in assuring careful and orderly development of residential property with provision for open-space areas....

27. The statutes in force in India and abroad reserving open spaces for parks and play grounds are the legislative attempt to eliminate the misery of disreputable housing condition caused by urbanisation. Crowded urban areas tend to spread disease, crime and immorality. As stated by the U.S. Supreme Court in *Samuel Berman vs. Andrew Parker*, (1954) 99 Law ED 27: 346 US 26 :-

...they may also suffocate the spirit by reducing the people who live there to the status of cattle. They may indeed make living an almost insufferable burden. They may also be an ugly sore, a blight on the community which robs it of charm, which makes it a place from which men turn. The misery of housing may despoil a community as an open sewer may ruin a river.

...The concept of the public welfare is broad and inclusive... The values it

represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled. In the present case, the congress and its authorized agencies have made determinations that take into account a wide variety of values.... (Per Douglas, J.)

28. Any reasonable legislative attempt bearing a rational relationship to a permissible state objective in economic and social planning will be respected by the Courts. A duly approved scheme prepared in accordance with the provisions of the Act is a legitimate attempt on the part of the Government and the statutory authorities to ensure a quiet place free of dust and din where children can run about and the aged and the infirm can rest, breath fresh air and enjoy the beauty of nature. These provisions are meant to guarantee a quiet and healthy atmosphere to suit family needs of persons of all stations. Any action which tends to defeat that object is invalid. As stated by the U.S. Supreme Court in Village of Belle Terre vs. Bruce Boraas, (1974) 39 Law Ed 2d 797 : 416 US 1:-

....The police power is not confined to elimination of filth, stench, and unhealthy places. It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people.

See also Village of Euclid vs. Ambler Realty Company, (1926) 272 US 365. See the decision of the Andhra Pradesh High Court in T. Damodhar Rao and Others Vs. The Special Officer, Municipal Corporation of Hyderabad and Others, .

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33. The impugned orders and the consequent action of the BDA in allotting to private persons areas reserved for public parks and play grounds and permitting construction of buildings for hospital thereon are, in the circumstances, declared to be null and void and of no effect."

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Paragraph 48 of the judgment reads as follows:-

...Even where Statutes are silent and only power is conferred to act in one or the other manner, the Authority cannot act whimsically or arbitrarily. It should be guided by reasonableness and fairness. The legislature never intends its authorities to abuse the law or use it unfairly...

6. We are mindful of the legal position that this Court should be reluctant to interfere with the policy matters and administrative decisions of the Government, except where the same is arbitrary, mala fide, against public interest, or so unreasonable or illogical that no reasonable person can reach that conclusion. As

held herein below, the impugned decision of the State Government is arbitrary and whimsical, and is not in public interest. Further more, the learned Additional Advocate General has placed on record, the letter dated 21.4.2001 from the Secretary, Department of Urban Development, addressed to him that the Government shall not reconsider the impugned decision to construct a jail.

7. In view of the authoritative pronouncement of the Supreme Court, we are of the view that the State Government by passing its order dated 7.12.2000 has not acted reasonably and in public interest, but has in fact acted whimsically. The State Government has recently constructed a model jail known as Beur Jail on the outskirts of Patna. The State Government has not placed any material before us to show that Beur Central Jail has become inadequate according to the present needs, nor have we been informed that it is not possible to expand the same. We wonder how many cities in India have two jails. The decision to construct a jail, or for that matter a lion's safari, within the township is in our view a whimsical and unreasonable decision and fit to be overruled. Bankipur jail was constructed at a point of time when it was clearly outside the then township of Patna City, much before the development of the twin township of Patna. We observe from the records that the decision to shift the Bankipur jail and to use the land for other purposes had been taken earlier more than once. We, therefore, set aside the proposal dated 6.12.2000 read with the order of the Chief Minister dated 7.12.2000. The Government of Bihar is hereby directed to refrain from setting up a jail on the lands on which the quondam Bankipur jail stands. Keeping in view the realities of the area indicated in paragraph 5 hereinabove, particularly the acute congestion obtaining in and around the premises of Patna Jn. Railway station, we hereby constitute a Committee of the following three persons to go into the question of proper use of the lands on which the quondam Bankipur jail stands, and the Chandralok area :

(i) Sri Anup Mukherjee, I.A.S., currently posted as Managing Director, Electronics Corporation.

(ii) Secretary, Department of Urban Development, Government of Bihar.

(iii) Sri B.K. Sinha, I.A.S., currently posted as Administrator, B.S.R.T.C.

It will be open to the Committee to take the help, advice & opinion of experts, town-planers, architects, engineers, or any other person to prepare an appropriate report. The Chief Secretary shall ensure that all records and facilities are made available to the Committee which shall submit its report to this Court in three months time.

8. We call upon the Vice-chairman, P.R.D.A., to explain to this Court as to why the ground floor or the basement of the commercial complexes in Patna have not been reserved for parking purposes, resulting in acute clogging of the roads meant primarily for the vehicular traffic and pedestrians. In that view of the matter we hereby direct the Secretary, Department of Urban Development, Government of Bihar, to submit the Committee's report before this court in three

months time. Let copies of this order be handed over to Mr. Ganga Prasad Roy, Additional Advocate General No. III, Mr. H.S. Himkar, learned counsel for P.R.D.A., and Mr. J.P. Karn, Senior Standing Counsel for the Central Government.