(2000) 10 PAT CK 0038

In the Patna High Court

Case No : C.W.J.C. No. 6467 of 1999

Vijai Kumar Sinha @ Vijay Sushil Kumar Sinha APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 19-10-2000

Acts Referred:

Citation : (2001) 1 PLJR 730

Hon'ble Judges : Ravi S. Dhavan, C.J;Aftab Alam, J

Bench : Division Bench

Advocate : A.P. Prabhakar, for the Appellant; S. Nayar Hussain and Rilesh Kumar for State, for the Respondent

Final Decision : Dismissed

Judgement

Ravi S. Dhavan, C.J.—The Petitioner resists the action of the Respondents in collecting commercial taxes against certain buildings which the Petitioner has made on his plots under his tenancy given by the State Government. In effect, the Petitioner desires that the notice dated 25 January, 1999 issued by the Tax Officer, Phulwarisharif, district Patna, be quashed. This notice appended as Annexure 1, on the face of it, cautions the Petitioner that in a residential area he has constructed buildings for commercial purposes and accordingly, he has been assessed to pay Rs. 46,875/- on which, 25% of the amount, Rs. 11,719/- is being demanded as ad interim measure.

2. While issuing notice on the petition the Court had required the District Magistrate, Patna to file an affidavit on the factual aspects as the notice on the face of it charged the Petitioner for misutilising the land by violating the conforming land use. The District Magistrate has answered the petition by affirming a counter affidavit. He has drawn the attention of the Court that regard being had to lie circumstances that the Petitioner violated the norms of a residential area by putting it to commercial use. The matter of the Petitioner is pending as case No. 520/97-98 before the Deputy Collector, Land Reforms, Patna Sadar. A notice was issued to the Petitioner and he did not submit any reply. In

the circumstances a final order had been passed fixing commercial rates as taxes. But, as certain cases are pending at the Patna High Court and in view of general direction in C.W.J.C. No. 5411 of 1995 to charge only 25 per cent of the amount so assessed, only 1/4th of the amount is being demanded from the Petitioner as an ad interim measure.

3. On behalf of the Petitioner it is intended that no notice at all had been received by the Petitioner. But the fact of he matter is that a case has been -registered and it is not that the Petitioner s not aware of it.

4. The District Magistrate, Patna had tie area, occupied by the Petitioner, surveyed. The survey revealed that the Petitioner had constructed shops and godowns on the plot in his possession. 14 shops have been constructed occupying 2188 square feet and the remaining area 13.3/4 decimals, is being used for commercial purposes as godowns for keeping sand, stone chips and other building materials in the name of Sonu Traders. The District Magistrate submits in his counter affidavit that the shops, in question, are running by the side of Anishabad Khagaul Road. He has named the persons occupying the shops as Mahamaya Timber, Kushwaha Cement, Bank of Jammu & Kashmir, Sangram Vastralya, Sweta Medical Hall, Chandani Medical Hall, etc. The District Magistrate contends in his affidavit that between 14 shops on the plot, in question, along with the godowns, the entire plot is covered and this obliges the Respondents to fix commercial rates. The District Magistrate further mentions in his affidavit that he personally inspected the spot on 27th June 2000 and found these 14 shops running adjacent to Anishabad and Khagaul Road. He mentions in the affidavit that on the back side of the plot, there is a godown for storing the building materials. The District Magistrate states that the entire land is being used for commercial purposes.

5. The District Magistrate further mentions that upon an inquiry from the Patna Regional Development Authority, it was indicated that the Petitioner constructed the shops and godowns in a residential area and, further, no permission had been taken from the Patna Regional Development Authority before making the construction.

6. In so far as the aforesaid two aspects are concerned, learned Counsel for the Petitioner admitted that (1) the shops exist and (2) before construction due permission of the Patna Regional Development Authority had not been taken.

7. Thus, on facts there is no issue that conforming use of the land was changed when in a residential area shops were constructed and further the constructions were made unauthorisedly without seeking permission of the authority. The situation is explained on behalf of the Petitioner that whatever may have happened be condoned and that he is prepared to pay the tax as of now. The submission has been qualified with an explanation that the entire area is not in occupation for commercial use. The latter aspect is at best an issue inconsistent with the record.

8. Equity is against the Petitioner. The law does not favour him either. The Petitioner took the law into his own hands in making shops in a residential area and what is worse is that he had not applied for permission to seek sanction of the authority before constructing the shops. This in itself makes it clear that the Petitioner was conscious at every given time that if had he applied for permission he would not have received sanction to make these constructions.

9. The area where the Petitioner has constructed the shops lies south west of Patna and the southern side of the airport and the railway-tracks. Such unauthorised constructions, authorised not excluded, which have presented difficulties, tragedies not excluded, the like of which took place as an aricrash in July this year near the Patna airport.

10. In so far as the compounding part is concerned as suggested by the Petitioner, the law does not permit it. Changing a residential area into a commercial area is in illegality which is incurable. In the circumstances, the question of compounding the offending structures does not arise. In this regard the Court take recourse to the decision of the Supreme Court Shri K. Ramadas Shenoy Vs. The Chief Officers, Town Municipal Council, Udipi and Others, . The land use cannot be changed. If persons like the Petitioner were given an indulgence to start changing the land use in an urban habitat then the administration would be faced with the problem of changing the master plan discipline and jeopardise planned development.

11. In so far as the Respondents are concerned, they seem to be interested only in raising their commercial taxes. To this extent whether the State Respondents or the Patna Regional Development Authority both have readily permitted these encroachments made by persons like the Petitioner and jump into the scene for levying taxes only. The Court is not impressed by the stand taken by the Respondents either. Unplanned development permitted by the State Respondents and the City administration, in an otherwise open area has given rise to a serious problem of reallocating the airport to another site. Again, a price which the people will pay, And these mistakes, errors or collusion seems to be getting noticed only when a tragedy occurs with loss of lives as happened in an aircrash recently.

12. Admittedly, the Petitioner has put his plot to a commercial use. To this extent he is liable to pay the taxes as he has been assessed.

13. In so far as the illegality which he has committed in making construction without permission and that also by changing the land use, it will be the obligation of the Respondents to remove the construction.

Dismissed.

Aftab Alam, J.

14. I agree.

