

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5865 of 1999

1(a) Krishna Ballav Sharma.

1(b) Sitaram Singh.

1© Anjani Kumar.

1(d) Krishna Nandan Kumar.

1(e) Pravin Kumar.

All sons of Late Prasuram Singh, residents of village Jhunathi P.S. Kurtha District Jehanabad.

1(f) Chandrawati Devi wife of Dr. Gyaneshwar Prasad Singh, resident of village and P.O. Bambhai District Arwal.

1(g) Gayatri Devi wife of Sri Dhananjay Kumar resident of village Ankorha P.O. Gaini District Aurangabad.

2.Smt. Janki Devi wife of Parshuram Singh, resident of village Jhunathi, P.S. Kurtha District Jehanabad.

.... Petitioner/s

Versus

1. The P.R.D.A. Maurya Lok Complex, Patna through its Vice Chairman.

2. The Vice Chair man, PR DA, Maurya Lok Complex, Patna.

3. Mithilesh Prasad Singh son of Sri Sachchidanand Singh. Resident of village Warsaliganj District Nawada.

4. Rakesh Kumar son of Dharmadeo Rai.

5. Vinay Kumar son of Anugrah Narain Singh.

6. Ajay Kumar son of Balmiki Sharma.

All residents of Chandmari Road (Azad Nagar) P.O. and P.S. Kankarbagh, Town and district Patna.

7. Sri Dilip Kumar Singh, Minister of State for Relief and Rehabilitation, Govt. of Bihar, Qr. No.5, Bailey Road, P.S. Kotwali Town and district Patna.

.... Respondent/s

with

Civil Writ Jurisdiction Case No. 8989 of 1999

1. Rakesh Kumar Rai @ Rakesh Kr. Son of Sri Dharamdeo Rai.

2. Ajay Kumar son of Sri Balmiki Sharma.

3. Vinay Kumar son of Sri Anugrah Narayan Sharma.

All residents of Mohalla Chandmari Road (Azad Nagar) P.O. and P.S. Kankerbagh, District Patna.

4. Mithilesh Prasad Singh son of Sri Sachidanand Singh, resident of village Malichak P.O. & P.S. Warsaliganj, District Nawada.

.... Petitioner/s

Versus

2. P.R.D.A. through its Vice Chairman, Mauryalok Complex, Dakbunglow Road, Patna.

2. Vice Chairman, PRDA, Mauryalok Complex, Dakbunglow Road, Patna.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 6651 of 1999

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Pramod Kumar son of Shri Bhup Narayan Singh Resident of Bhutnath Ashram Road, P.S. Agam Kuan, Town and district - Patna.

.... Petitioner/s

Versus

1. The P.R.D.A. through its Chairman,
PRDA, Mauryalok Complex, P.S. Kotwali, Town and district Patna.
2. Sri Tej Narain Lal Das, Vice Chairman,
PRDA, Mauryalok Complex, P.S. Kotwali, Town and district Patna.
3. Shri Dilip Kumar Singh, State Minister, Govt. of Bihar, Deptt. Of
Rehabilitation, 5 Bailey Road, Patna.
4. Sri Mithilesh Prasad Sinha son of Sachida Nand Singh, r esident of village
Malichak, P.S. Warsaliganj District Nawada. At present residing at 5, Bailey
Road, Patna.

.... Respondent/s

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Appearance :
(In CWJC No. 5865 of 1999)

For the Petitioner/s : Mr. PUSHKAR NARAIN SHAHI, Sr. Adv.
Mr. Patanjali Rishi,Adv.
Mr. S.K.Singh, Adv.

For the Res. No. 1 and 2 : Mr. Sanjay Prakash Verma, Adv.
For the Res. No.3 to 6 Mr. Tuhin Shanmar, Adv.

(In CWJC No. 8989 of 1999)

For the Petitioner/s : Mr. Tuhin Shankar, Adv.

For PRDA(now PMC) Mr. Sanjay Prakash Verma, Adv.

For the Interveners: Mr. Pushkar Marain Shahi, Sr. Adv.

(In CWJC No. 6651 of 1999)

For the Petitioner/s : Mr. Abhi Narayan Sharma, Adv.
Mr. Aditya Nath Pandey, Adv.

For the PRDA(now PMC) Mr. Sanjay Prakash Verma, Adv.

For the Respondent/s : Mr. Rajeshwar Prasad Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date: 03-08-2015

As in all these three cases, facts are inextricably connected and identical issue is involved, they have been heard together and are being disposed by common order.

For the purpose of common order, facts of CWJC No. 5865 of 1999 and CWJC No. 6651 of 1999 are being taken into account. Petitioners of CWJC No. 5865 of 1999 and CWJC No. 6651 of 1999 have made a prayer for quashing the order dated 7th June 1999, by which the Vice Chairman of Patna Regional Development Authority (hereinafter, in short, referred to as 'PRDA') has cancelled the building sanction plan of Kamla Apartment being built over the land of the petitioners and sanctioned vide Building Plan Case No. 786 of 1996 in exercise of power under Section 38 of the Bihar Regional Development Authority Act 1974 (for short, the 'Act').

The facts of the present case is that Kamleshwari Prasad Narayan Singh was the original land holder of Khata No. 409, Tauzi No. 876 plot no. 132 having an area of 7 Katha and odd which he got in family partition and out of which he sold 4 katha 8 dhur and 5 dhurkies on 10th May 1966 leaving 60 ft. wide road in front of said plot on the eastern flank of the plot. Kameshwari Prasad Narayan Singh executed another sale deed for 2 katha 16 dhurs of land on 26th



April 1980 in favour of Haribansh Narayan Sharma who in turn executed further sale-deed of the aforesaid land on 17th February 1982 in favour of Rakesh Kumar, Vinay Kumar and Ajay Kumar, respondent nos. 4, 5 and 6 respectively and they executed power of attorney in favour of Mithilesh Prasad Singh, Respondent no.3, the deed shows his address to residence of the then Minister namely, Late Dilip Kumar Singh. The original petitioner with help of developer was intending to make construction of Multi-storied building, petitioners filed a map for its sanction which was registered as Building Plan Case No. 786 of 1996 after proper enquiry the map, was approved and passed, accordingly, the petitioners with the help of builder, namely, Pramod Kumar, constructed the building over the said land. While the building was to be inaugurated, an application was filed by Mithilesh Prasad Singh respondent no.3 making allegation that by suppression of fact of having 60 ft. wide road on the eastern flank of plot got the plan approved, whereupon notice was given to the petitioners asking them to show cause for the demolition of the building in view of the fact that they obtained sanction of the building map giving wrong fact.

The matter was heard by the Vice Chairman, PRDA and vide the impugned order dated 7th June 1999 cancelled the map and directed for demolition of the building which is under challenge

before this Court.

Counsel for the petitioners submits that the subsequent purchaser of 2 katha 16 dhurs never came in possession of the land. Actually the said land was not in existence as per the master plan showing 60 ft. wide road in front of the disputed plot, entire road is known as Kavi Raman Path. If the road is 60 ft. wide, no land measuring 2 katha 16 dhurs, left for purchase, now it cannot be claimed the road was/is not 60 ft. wide as the reason assigned for cancellation of the map is completely de hors and inconsistent to the stand taken by the PRDA in CWJC No. 6192 of 1997 (Shyam Kishore Sharma v. The State) where prayer was made for demolition of unauthorized building. PRDA (now PMC) filed counter affidavit, in Para-6 of the counter affidavit plea was taken that Kavi Raman Path has 60 ft. wide road so much so that as per the old master plan of 1967 and also the revised master plan, road has been shown as 60 ft. wide. If it is so the ground of setting aside the plan and declaring unauthorized construction of building, giving direction for demolition of building is per se illegal, not sustainable in law.

It has further been submitted that when positive stand has been taken by the PRDA in its affidavit in CWJC No. 6192 of 1997 now they cannot turn round, say width of road in front of disputed plot is less than 60 ft., construction of the building illegal. It

was further submitted the subsequent purchases of 2 katha 16 dhurs of land is nothing but bag of wind.

Counsel for the respondents vehemently opposed the prayer of petitioners and submitted that admittedly the land was standing in the name of Kameshwari Prasad Narayan Singh and he has every right to sell the rest left portion of 2 katha 16 dhur portion apart from 4 katha 8 dhurs and it is also admitted fact that the said land was never acquired by the State Government. If there was no acquisition, question of having 60 ft. wide road does not arise and the width of road was much below 60 ft. so much so the Patna Municipal Corporation recently in the information provided under the RTI Act shows the existing road in between 29 ft. 8 inch to 28 ft. 6 inch which is apparent from Annexure-6 to the supplementary counter affidavit filed by the respondents and as such it is clear the width of the road was less than plan of building passed.

Counsel for the petitioners in reply submitted that as Section 23 of the Bihar Regional Development Authority Act, the land was declared as part of the road under the Master plan, even draft publication of master plan extinguishes the right of individual to make construction over the land though respondents have a right to seek compensation but right to construct building over the said land, is obliterated as Section of the Act prohibits construction on any portion

of land marked for the purpose of road under the Master plan, in support of submission placed reliance on 1995(1) PLJR 418.

As the fact of the present case and CWJC No. 8989 of 1999 are completely interlinked to each other, this Court feels that it is necessary to deal with the facts of that case. Respondents of CWJC No. 5865 of 1999, is petitioners in the present case, are challenging the order dated 30th August 1989 passed in Vigilance Case No. 31 of 1999 which has been affirmed, vide order dated 6th September 1999 passed in Appeal No. 11 of 1999 by the Appellate Tribunal, PRDA whereby the order passed for demolition of structure by the Vice Chairman has been affirmed by the Appellate Tribunal.

The facts of this case is completely identical with the facts of the aforesaid case, this Court is not repeating save and except necessary facts. In this present case, petitioners had purchased from Haribansh Narayan Sharma 2 katha 16 dhurs in plot no.132 and made construction over the same. On complaint, Vigilance Case No. 11 of 1999 was initiated, after notice it has been held that the encroachment has been made by the petitioners on 60 ft. wide road and illegally constructed the building and vide order dated 30th August 1999, directed for demolition. It was tested in Appeal No. 11 of 1999 and the Tribunal did not find any error and rejected the claim of petitioners and sustained the order passed by the court below.



Counsel for the Patna Municipal Corporation did not dispute the fact that as per proposed master plan the road is 60 ft.. Counsel for the Municipality has tried his best to save orders passed in both cases but he could not explain as to how both conflicting orders can be sustained, as in one case the affidavit shows that it was 60 ft. as well as gave direction for demolition showing encroachment whereas in another order it shows that the road was less than 60 ft.. He has placed reliance on Para-6 of the common affidavit filed in CWJC No.8989 of 1999 which is as follows:

“Para-6 : That it is further mentioned here that altogether 44 residents have constructed their residential houses on the western flank and eastern flank of the Kavi Raman Path. Out of 44 persons, only 12 persons have submitted their sanction plan in the office e of Patna Regional Development Authority. From perusal of the different sanction plans either sanction granted by Patna Regional Development Authority or Patna Improve Trust. In some of the plan cases the width of the road has been indicated as 60 ft. wide whereas in some cases 20 ft. wide. The house No. 28 of Sri Bishwanath Mishra whose sanction has been granted by Patna Improvement Trust B7uilding



Plan Case No. 490/72 on 60 ft. wide road. Similarly the house no.1 owned and possessed by Smt. Krishori Sinha, her building plan Case No. PIT 395C/69 was also shown sanction on 60 ft. wide road. Although there is discrepancies with regard to the width of the road. However the Patna Regional Development Authority has taken stand that on 30th of July 1986 a revise Master Plan was published in the gazette showing Kavi Raman Pat h on 60 ft. wide Road. It is further reiterated that the survey was held in Patna in the year 1907. Old Master Plan was prepared in the year 1962 and the same was approved by the State Government in the year 1967. Thereafter revised Master Plan was published in the gazette in the year 1986 and the same was sent to the State Government for its approval.”

Counsel for the Municipality submitted in view of aforesaid facts, width of the road from one point to another point is not uniformly 60 ft. wide road but certain particular point the width of road is less than 60 ft. but failed to explain at which point of the road it is 60 ft. and where it is less than 60 ft.

On perusal of Para-6 of the Counter affidavit it does not disclose width of road at plot no.132, in such circumstance will have



to fall back on the statement made in the counter affidavit filed by the Municipal Corporation in CWJC No. 6192 of 1997 so much so the sketch map shows the width of road at Kavi Raman Path is 60 ft. at the same time the map (Annexure-4) also shows that in front of plot no.132 width of the road is 60 ft..

Let the impugned order dated 7th June 1999 of CWJC No. 5865 of 1999 be tested on merit, the ground for cancellation of Plan Case No. 786 of 1996 has been mentioned the petitioners have wrongly shown 60 ft. wide road in front of plot but on physical verification, it was found 9.9 meter, not 18.25 meters (60 ft.). The question would arise whether the petitioners have wrongly shown 60 ft. wide road or they have rightly shown in plan case 60 ft. wide road. For finding out the real fact it requires an enquiry about the existence of the road which has been shown in the master plan and the stand of the PRDA with regard to width of the road of Kavi Raman Path.

In CWJC No. 6192 of 1996, the PRDA in Para-6 of the counter affidavit has specifically stated that in old master plan was prepared in 1962 approved in the year 1967 and later on new master plan published in the Gazette in 1986, Kavi Raman Path has been shown to be 60 ft. wide road.

Next document is the impugned order passed in CWJC No. 8989 of 1999 proceeding in Vigilance Case No. 41-B of 1999



was initiated, order of demolition is based on recording of finding that width of Kavi Raman Path, at disputed place is 60 ft. wide on that premise Vice Chairman has arrived to a positive finding, in master plan said road has been shown to be 60 ft. wide and illegal construction has been made by the petitioners, namely, Rajesh Kumar Rai, Ajay Kumar, Vinay Kumar and Mithilesh Prasad Singh.

This fact is further corroborated from topography map (Annexure-5) has not been disputed by any party prepared by the Government. The road in front of Plot No. 132 has been shown to be 60 ft. wide. In view of overwhelming material showing 60 ft. wide road the ground that has been assigned that the petitioners have wrongly mentioned in Plan Case No 60 ft. wide road, is not sustainable in view of the fact that the PRDA all through has taken a plea that the width of the road is 60 ft.. Though it has emerged during argument the private land which has become part of width of the road, has not been taken in acquisition by the State Government or the PRDA, now Patna Municipal Corporation (for short 'PMC').

Section 23 of the Bihar Regional Development Authority Act provides that no person shall on or after the publication of a draft Plan institute or change the use of any land covered by the Plan for any purpose other than agriculture, or carry out any development in respect of any such land without the previous

permission in writing of the authority. So complete ban has been imposed when the master plan shows width of the road 60 ft, even if some land of private person has fallen within the limit will not make him entitled to make any development work over the land.

This has been approved in 1985(1)PLJR 418 (S.K.Puri Boring Road Vyapari Sangh v. State of Bihar), relevant to quote Para-8 as follows:

“Para-8 : The aforesaid Section makes it quite clear that the prohibitions contained therein apply as soon as the draft Plan is published. The petitioners contended that the Plan has not been approved, but that does not make any difference to the operation of section 23 of the Act, since it is not disputed that the Draft Plan has been published and is presently under consideration of the State authorities. Section 23 of the Act is in the nature of a restriction not only on the right of the owner, but also on the power of the Authority to sanction a plan not in conformity with the Master Plan, meaning thereby, for purposes contrary to the purpose for which the land is



earmarked in the Draft Master Plan. It is in the nature of preventive action, so that the proposal in the Draft Master Plan is not defeated even before it is approved and implemented. The provision enables the Authority to take action under Section 54 of the Act even if a building Plan is legally sanctioned, if the same is not in conformity with the Draft Master Plan.”

The impugned order suffers from patent illegality from another angle. As per the impugned order, width of the road in front of disputed premises is 9.90 meter i.e. 30 ft.. The authority did not take an enquiry on the premise whether 30 ft. wide road fulfils the condition of set off for the construction of Multi storied building i.e. as per the Building by-laws for a particular specified height. So the impugned order dated 7th June 1999, as mentioned above, is illegal and the same is quashed and CWJC No. 5865 of 1999 is allowed.

As the facts of CWJC No. 8989 of 1999 is by and large identical with the facts of CWJC No. 5865 of 1999 but the only deviation fact is that after purchase by these petitioners of the land having an area 2 Katha 16 Dhurs vide deed dated 26th April 1988 made some construction over the plot of land, is proper and legal.



For deciding this issue this Court will have to examine the factual aspect of the present case. It appears that the original vendor Kamleshwari Prasad Narayan Singh while selling the property in 1966, himself showed the road 60 ft. wide. In such circumstances, after selling out the property 4 Katha 8 Dhurs and 5 Dhurkies, 2 Katha 16 Dhurs does not exist, though may have semblance of right claiming private land but in view of the notification of the master plan so much so in terms of Section 23 of PRDA Act, no construction could have been made.

As discussed above, PRDA, now PMC it self in the counter affidavit filed in CWJC No. 6192 of 1997 the road has been shown to be 60 ft. wide road and the Vice Chairman while making enquiry has arrived to a conclusion that the construction has been made on the plot which falls within 60 ft. wide road.

In such view of the matter, the order passed in CWJC No. 8989 of 1999 cannot be said to be illegal but it is not the end of the matter. PRDA, now PMC has amalgamated private land in 60 ft. wide road. The petitioners of CWJC No. 8989 of 1999, if so advised, may claim compensation from the PRDA/PMC of a suitable amount for their land having been taken over. If such application is filed, the authority concerned will examine the case of these petitioners and take necessary action for payment of compensation amount after due

enquiry on the ownership of the land.

With this observation and direction, CWJC No. 8989 of 1999 is hereby dismissed.

As the petitioner of CWJC No.6651 of 1999 is sailing in the same boat with the petitioners of CWJC No. 5865 of 1999, there is no need to pass any separate order. The order passed in CWJC No. 5865 of 1999 will govern CWJC No.6651 of 1999.

In result, the order dated 5th April 1999 (Annexure-8 to CWJC No. 5865 of 1999) is quashed and this writ petition is allowed and CWJC No. 8989 of 1999 is dismissed.

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(Shivaji Pandey, J)