

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7885 of 2015

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Kumar Prashant, son of late (Prof) Nand Kishore Singh, resident of
2m/44, Sector 2, Bahadurpur Housing Colony, Patna.

.... Petitioner/s

Versus

1. State of Bihar through Principal Secretary, Building Construction
Department, Government of Bihar, Patna
2. The Bihar State Housing Board, through its Managing Director,
Saradar Patel Marg, Patna
3. The Managing Director, Bihar State Housing Board, Saradar Patel
Marg, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shravan Kumar Sr. Advocate

For the Respondent/s : Mr. Ashok Kumar Keshri, AAG-I

For the Board : Mr. Anil Kumar, Advocate

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

**HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH**

ORAL JUDGMENT

**(Per: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH)**

Date: 15-09-2015

1. This application, in the nature of public interest litigation, under Article 226 of the Constitution of India, has been filed raising grievance against the action of the respondents, State of Bihar and the Bihar State Housing Board, of converting a plot earmarked for a Primary School into a memorial Park. The plot, in question, has been described as PS-I in Sector-II of Bahadurpur Housing Colony.

2. Counter affidavits have been filed on behalf of respondent State (respondent No.1) and the Bihar State Housing Board (respondent Nos. 2 and 3).

3. The fact that in the lay out plan of Bahadurpur Housing colony of the Bihar State Housing Board, the plot, in question, has been earmarked for Primary School is not in dispute and has, rather, been admitted in the counter affidavit filed on behalf of the Housing Board. In the counter affidavit filed on behalf of the State of Bihar, sworn by Jagat Paswan, an Executive Engineer under the Building Construction Department, it has been stated that the concerned department is acting upon the proposal for setting up a park over plot No. PS 1 Sector 1 of the Colony in pursuance of instructions received from the State Government, communicated through letter No. 290, dated 27.04.2015, a copy whereof has been brought on record by way of Annexure-A to it. Annexure-A, as brought on record is a copy of the minutes of the proceedings of a State level inter-departmental meeting, headed by the Chief Secretary of Bihar, held for taking decision for the purpose of installation of statues of great men and women of the country, in their memory, at various places in the State. As per the counter affidavit, the Bihar State Building Corporation, which is a Corporation under the Building Construction Department, is raising the statue of a former Prime

Minister of India at the plot in question, in implementation of the decision, taken in the inter departmental meeting as aforesaid.

4. Mr. Shravan Kumar, learned Senior Counsel, appearing on behalf of the petitioner, has pointed out apparent contradiction between the said decision taken in the inter-departmental meeting, dated 27.03.2015, and the statement made in paragraph 7 of the counter affidavit filed on behalf of the State respondents. He has submitted that it was never the decision of the State Government, as would be evident from the proceedings dated 27.03.2015, to set up a Park or raise a Statue in the name of an Ex-Prime Minister at the plot in Sector-II of Bahadurpur Housing Colony, which has been earmarked for a Primary School. The said decision refers to installation of the said statue in the Park of Sector-II of Bahadurpur Housing Colony and not at the plot earmarked for a Primary School. He has further contended that establishment of a Primary School, in the area, is of immense public interest as within the said residential area in question, no such school has been established at the initiative of the State Government. He has further submitted that keeping in view the interest of the residents of the area, sufficient space has been provided, in each Sectors of Bahadurpur Housing Colony, for establishing a Primary School and so far as Sector-II is concerned, space has been left for construction of a



Primary and also High Schools. He has submitted that there has been mushroom growth of schools in residential houses with no infrastructure and/or ambience conducive for proper development of children, because the State has failed in its duty to establish good school despite availability of enough space in the area concerned and, on the other hand, attempt is being made to change the user of the space, which is unreasonable and diminish all hopes and legitimate expectations of residents of the area for all times to come that there will be primary/High School, in the locality, with proper infrastructure as per the lay out plan

5. Mr. Anil Kumar Sinha, learned counsel, appearing on behalf of the Bihar State Housing Board, on the other hand, referring to the counter affidavit filed on behalf of the Board, has submitted that the plots, in question, were advertised, in the year 2008 inviting applications from desirous persons, running educational institutions, for the purpose of their allotment showing cost of the land earmarked for Primary School as Rs. 6,55,53,784/-. However, no person, institution or any organization had expressed any interest. He has further submitted that it is quite unlikely that any private person would invest such a huge amount for the purpose of establishment of a Primary School as the value of the land, in question, is Rs.88,64,000/-. In this background, Mr. Sinha

contends, it was decided to raise a Memorial Park over the land, by way of temporary measure, in order to minimize possibility of encroachment by an unauthorized persons.

6. Mr. Shravan Kumar, learned Senior Counsel, appearing on behalf of the petitioner, appears to be right in his submission that the construction, sought to be made on the plot, in question, is not in conformity even with the decision taken in inter-departmental meeting of the different departments of the State Government held on 27.03.2015. From Annexure-A, it appears that it has been decided to establish statues of some of eminent leaders at various places in the State of Bihar including Bahadurpur Housing Colony in the Park of Sector-II. There is no decision in the said inter-departmental meeting nor any intention appears from the proceedings (Annexure-A) to raise a statue at the plot earmarked for the Primary School in Sector-II. The stand of the petitioner that contrary to the said decision of the State Government, the respondents are trying to establish statue at “plot No. PS-I of Sector-II of Bahadurpur Housing Colony”, appears to be correct and acceptable to this Court. No decision by a competent authority has been brought on record to demonstrate that there was any decision to establish statue or develop memorial park at Plot No. PS-I of Sector-II Bahadurpur Housing Colony.

7. We, accordingly, direct the respondents not to raise any construction over Plot No. PS-I of Sector-II of Bahadurpur Housing Colony in terms of the decision taken in the inter-departmental meeting, dated 27.03.2015 (Annexure-A to the counter affidavit filed on behalf of Respondent No.1).

8. From the pleadings on record, it appears to us that the respondents, who are State within the meaning of Article 12 of the Constitution of India, have not taken due interest as expected from them for the purpose of establishing Primary Schools and High Schools in the locality, in question, despite there being specific provision for such Schools in the area as per the lay out plan.

9. We cannot lose sight of the situation prevailing in the City of Patna, as has been submitted by Mr. Shrawan Kumar, learned Senior Counsel, that there has been mushroom growth of private schools in residential areas. We expect that the State of Bihar and the Bihar State Housing Board would rise to the occasion and take all possible measures, in accordance with law, to ensure that the plots in housing colonies, earmarked for Schools, are utilized for the said purpose by establishing Primary and High Schools with proper infrastructure and teaching staff in order to cater to the needs of the residents of the locality, in furtherance of constitutional scheme of the citizens, as guaranteed under Article

21A of the Constitution of India. It is obligatory, on the part of the respondent State, to ensure that the spaces/plots, meant for establishing Schools, are utilized for the avowed purpose in public interest and are not allowed to remain abandoned, on specious plea that private persons are not showing any interest in establishing the Schools.

10. We, therefore, direct the Chief Secretary of Bihar and the Managing Director of Bihar State Housing Board to decide, within three months from today, as to the manner in which the State of Bihar and the Board shall proceed towards establishing Schools on the plots, earmarked for Primary Schools and High Schools in Lohiya Nagar and Bahadurpur Colonies.

11. This application stands allowed with the observations as aforesaid.

12. Let a copy of this order be communicated to the Chief Secretary of Bihar.

(I. A. Ansari, ACJ)

(Chakradhari Sharan Singh, J)

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