IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1164 of 2017
IN
Civil Writ Jurisdiction Case No. 15279 of 2001

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The Patna Secretariat Ministerial Officers' Co-Operative House Construction Society Ltd. Patna, through its Secretary, Sri Jogendra Prasad Singh, S/o Late Bipin Bihari Prasad Narayan Singh, Residing at House No. B/53, P.S. Patrakar Nagar, Kankarbagh, District- Patna- 800020.

.... Appellant/s

Versus

1. The State of Bihar through the Secretary to the Government in the Department of Housing, Patna.
2. The Bihar State Housing Board, through its Managing Director, 6 Mangles Road, Patna.
3. The Patna Regional Development Authority through its Vice Chairman, Maurya Lok, Patna.
4. The District Magistrate, Patna.
5. Manoj Kumar, S/o late Madheshwar Prasad, R/o A/4 Sachivalaya Colony, P.S. Patrakar Nagar, District/Town- Patna- 800020.
6. Binoy Kumar Singh, Son of Late Rajeshwari Prasad Singh, R/o B/57, Sachivalaya Colony, P.S. Kankarbagh, District- Patna- 800020.
7. Patna Municipal Corporation through Municipal Commissioner, Patna.
8. Municipal Commissioner, Patna Municipal Corporation, Patna.
9. Rewati Raman Prasad, S/o Late Kartik Prasad, At present Resident of House No. 65, Sector-J, P.C. Colony, P.S. Kankarbagh, District- Patna.
10. Munindra Bhushan Prasad, S/o Late Bhuwaneshwar Prasad at present R/o House No. 5/182, Hanuman Nagar, P.S. Patrakar Nagar, District- Patna- 800020.

.... Respondent/s

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Appearance :
For the Appellant/s : Mr. S.K. Bose, Sr.Adv.
For the Respondent/s : Mr. Shashi Sekhar Dwivedi, Sr.Adv.
Mr. Vinod Gautam, Adv.

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)
Date: 21-06-2018

Challenge in the present Letters Patent Appeal is to the order dated 23.07.2013 passed by learned Writ Court in Civil Writ Jurisdiction Case No.15279 of 2001 by which the learned Writ Court

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has been pleased to quash Annexure-10 and 12 of the writ application which were the orders earlier passed by the Vice-Chairman, Patna Regional Development Authority (PRDA) and further direction to submit a fresh lay out plan before the Municipal Commissioner, Patna Municipal Corporation, by the Society (appellant). The learned Writ Court held that the Municipal Commissioner has an obligation to take into consideration the observation and direction of the Division Bench in its order as contained in Annexure-2 to the writ application as according to the learned Writ Court the objections raised by the erstwhile Vice-Chairman had ignored the order of the Division Bench. Being aggrieved by the order passed by the learned Writ Court it is the Society known as 'Patna Secretariat Ministerial Officers' Co-operative House Construction Society Ltd.' through its Secretary, has moved this Court in this Intra-Court Appeal. It is the grievance of the society that the learned Writ Court has committed an error by directing the Society to submit lay out plan to Patna Municipal Corporation ignoring the pleadings available on the record that the land in question was earlier earmarked for greenery/park and the same was provided as amenities to general public by the Housing Department.

2. Mr. Bose, learned senior counsel representing the appellant submits that the registered lease of 99 years was executed on

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22.12.1967 by and between the society and the Housing Department, Government of Bihar whereunder 10.31 acres of land were transferred to the Society, the Society was registered on 23.03.1963 and had approached the Housing Department through its 127 members for allotment of chunk of land in Kankarbagh. Learned senior counsel submits that in addition to the said 10.31 acres of land, the Housing Department also provided two numbers of parks (small park-'O'42 of 9 kathas and big park 'O'41 of 46 kathas) for general public for which the Society did not pay any consideration amount to the Housing Department.

3. It is its case that the land provided for two parks remained the property of the Housing Department, Government of Bihar. Out of 10.31 acres of land, 127 plots were carved out by the Society and allotments were made to all 127 members including respondent nos.9 and 10 who were original members of the Society. The respondent no.9 got plot no.A/42 of three kathas and respondent no.10 got plot no.B/57 of two kathas.

4. In the meantime, 9 new members also joined in the Society. Since the respondent nos.9 and 10 including 7 other original members did not get their plots registered in their names, their allotments were cancelled by the Society and plots allotted to respondent nos.5 and 6

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respectively who were inducted as new members in the Society. This led to a dispute raised by the respondent nos.9 and 10 and 7 other left over allottees which ultimately travelled to this Court in CWJC No.630 of 1997 and CWJC No.272 of 1997. Both the writ applications were decided and disposed of by a common order dated 24.02.1981. A copy of the common order dated 24.02.1981 has been brought on record by way of Annexure-2 to the writ application. This Court has been taken to the common order (Annexure-2). The operative part of the order reads as under:-

> *"……The society will carve out nine new plots from the small park and by reducing the areas of three kathas plots, leaving 30 ft. wide road in front of the park. We are impressed with the argument of learned counsel for the parties that this small park is not at all needed in the interest of the colony as the colony has already a large park as also open lands on the eastern side in the premises of the Central School and has a road 90 ft. wide on the northern side and 110 ft. wide road on the western side. We are satisfied that to end the long litigation it is advisable to lose this small park rather than leave everybody in uncertainty for years to come."*

5. From Annexure-3 to the writ application it appears that when a contempt application was filed in this Court vide MJC

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No.894 of 1989 for the alleged disobedience of the order dated 24.02.1981 (Annexure-2), the then learned counsel representing the Society gave an undertaking to the Court that the direction contained in the judgment dated 24th February, 1981 will be carried out within three months and expressed his regret for the failure of the Society to do so till date.

6. Mr. Bose submits that when a new Board of Directors of the Society was constituted, it was found by the Society that at that time there was no vacant 3 kathas plot for reducing the area to comply the order dated 24.02.1981 and hence all left over members were accommodated in big park no.O/41. On such allotments having been made the respondent no.10 submitted an application before PRDA for sanction of house plan which was allowed, but subsequently PRDA stayed the construction on objection made by members of neighbouring Doctor's Cooperative Housing Society. Left out members/allottees once again moved this Court in CWJC No.4410 of 1988 against the order of staying construction. One writ application being CWJC No.3200 of 1998 was filed by Dr. Geeta Singh of Doctor's Cooperative Housing Society. Both the writ applications were heard together and were disposed of vide order dated 14.10.1988 passed by Hon'ble Division Bench of this Court in which it was held that no residential house can be allowed to be

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constructed over the land provided for greenery and park. It was also observed that the respondents (left out members) played fraud in connivance with the then office bearers of the Society.

7. The left out allottees preferred SLP No.909-19/89 before the Hon'ble Apex Court against the common order dated 14.10.1988 which was also dismissed vide order dated 01.08.1989 passed by the Hon'ble Supreme Court with liberty to the leftover allottees to move to the State Government or the Housing Board for allotment of some other plots which may be available and same can be allowed under the law.

8. In the light of the undertaking given in MJC No.894 of 1989 the respondent nos. 9 and 10 were allotted plot no.A/68 and B/62 after carving out the same from small park. CWJC No.4629 of 1993 was field by the five petitioners, their grievance was that the respondents should be restrained from making any construction over the park land since the land is earmarked for a park under the development plan of the Board situated in Sector 'O' of the colony. They also prayed for restraining the PRDA from sanctioning any plan for the construction of any residential or commercial structure over any portion of the land earmarked for the park. A prayer was also made to restrain the Cooperative Society from allotting any portion of the park land to any of its members for construction of residential

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house or other constructions thereon. At the same time, the respondent nos.9 and 10 preferred CWJC No.7262 of 1994 in which they complained that the order of the Court dated 25.06.1990 passed in the contempt proceeding being MJC No.894 of 1989 is not being effectively implemented by the respondents. They further complained that as a result the petitioners in CWJC No.7262 of 1994 were not getting physical possession of the plots allotted to them by the Society.

9. In the aforementioned background when CWJC No.7262 of 1994 and CWJC No.4629 of 1993 were taken up for consideration, a stand was taken by the Bihar State Housing Board that no title, deed or agreement of settlement had been registered by the Housing Board either in favour of the respondent-Cooperative Society in regard to plot no.41 or plot no.42 of Sector 'O' nor any settlement had been made by the Housing Board individually with any of the members of the Cooperative Society.

10. The Hon'ble Division Bench dealing with both the writ applications at the relevant time in its order dated 20.01.1998 also took note of the submissions that in the lay out plan of the colony, the plot no.O/42 has been shown as a park and unless the lay out plan is modified so as to convert the park area into building site, the PRDA cannot sanction any building plan within an area comprising the park.

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The Hon'ble Division Bench having taken note of the submissions on behalf of the PRDA held that the stand of the PRDA was justified. CWJC No.7262 of 1994 was disposed of with a direction to the PRDA to consider the building plan submitted by the petitioners strictly in accordance with law and if the plot in question which is earmarked for a park does not belong to the respondent Cooperative Society, it was held that the petitioners cannot lay any claim to any part of the land which is part of the park bearing plot no.O/42. The Hon'ble Division Bench directed the PRDA to consider whether any modification in the lay out plan is permissible having regard to the necessary parameters laid down in the building bye-laws. The PRDA had to consider all relevant matters before allowing a modification. The Bench also held that no modification can be allowed contrary to the bye-laws and regulations applicable. The views taken by the Hon'ble Supreme Court that the park land cannot be utilized for construction activities have also been take note of by the Hon'ble Division Bench in its order dated 20.01.1998.

11. In the aforementioned background of facts and the materials available on record Mr. Bose, learned senior counsel representing the appellants submits that the Writ Court has completely missed out the judgment dated 28.01.1998 (Annexure-6 to the writ petition) passed by the Hon'ble Division Bench while disposing of

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CWJC No.7262 of 1994. It is his submission that the common order as contained in Annexure-2 and the order dated 25.06.1990 passed in MJC No.894 of 1989 cannot be taken as a basis for a direction to the Society (appellant) to submit a fresh lay out plan to the Patna Municipal Corporation.

12. The submissions advanced by Mr. Bose, learned senior counsel representing the appellant has been contested by Mr. S.S. Dwivedi, learned senior counsel appearing on behalf of the contesting respondents. Learned senior counsel submits that the learned Writ Court has not committed any illegality or infirmity by issuing a direction to the Society to submit lay out plan. It is his submission that principle of estoppel will apply against the Society inasmuch as it is the Society who has allotted the plots in question in terms of the order as contained in Annexure-2 to the writ application and the subsequent undertaking given before the Hon'ble Court in the contempt application.

13. Having heard learned counsel for the parties and on perusal of the records, we find that attention of the learned Writ Court could not be drawn towards the order dated 20.01.1998 while disposing of CWJC No.7262 of 1994 and CWJC No.4629 of 1993. We would like to quote paragraph 10 from the said judgment of the Hon'ble Division Bench herein:-

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"10. In these circumstances we find justification for the stand taken by the Patna Regional Development Authority. We therefore dispose of C.W.J.C. No. 7262 of 1994 with a direction to the Patna Regional Development Authority to consider the building plan submitted by the petitioners strictly in accordance with law. If the plot in question which is earmarked for a park does not belong to the respondent-Cooperative Society, obviously the petitioners can lay no claim to any part of the land which is part of the park bearing Plot No. 0/42. The matter has to be resolved by the Housing Board and the Respondent-Cooperative Society and if the Housing Board decides to settle that land with the Respondent-Cooperative Society, the Respondent-Cooperative Society may take further action in accordance with law. That, however, would not bring to an end the problems faced by the petitioners. The Patna Regional Development Authority has to first consider whether any modification in the lay out plan is permissible having regard to the necessary parameters laid down in the Building Bye-laws, Building Regulations etc. The Patna Regional Development Authority has to consider all relevant matters before allowing a modification. No modification can be allowed contrary to the Bye-laws and Regulations applicable. In fact the Supreme Court has held that park land cannot be utilized for construction activities. Every citizen has a right in such park, green zones etc. The Patna Regional Development Authority has to consider the matter from this aspect as well. It is further to consider whether the green zone provided in the colony meets the legal

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requirements and whether having regard to the Bye-laws and the Regulations, it is permissible to modify the lay out plan by converting the small park into building site. These are all matters which the Patna Regional Development Authority has first to consider and therefore we need say nothing further on this aspect of the matter. The petitioners cannot claim mandamus from this Court directing the Patna Regional Development Authority to sanction the building plans submitted by them."

14. A bare reading of the complete order and particularly aforesaid paragraph from the judgment of the Hon'ble Division Bench as contained in Annexure-6 to the writ application, we have no doubt that the common order dated 24.02.1981 passed in CWJC No.2416 of 1976 and the order dated 25.06.1990 passed in MJC No.894 of 1989 have been duly taken note of by the subsequent Division Bench in its judgment dated 20.01.1998. We are of the view that the judgment dated 20.01.1998 (Annexure-6) having attained finality as to the given effect to in its terms and spirit. The observations of the learned Writ Court in the impugned order are not to be taken as an opinion of this Court on the merit of the contentions.

15. The orders, as contained in Annexure-10 and 12 of the writ applications, were passed by the erstwhile PRDA as a result of the directions given by the Hon'ble Division Bench vide its judgment dated 20.01.1998 (Annexure-6 to the writ application), even

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though the orders, as contained in Annexure-10 and 12, have been quashed by the learned Writ Court, we would direct that on the contesting respondents filing an appropriate application before the Patna Municipal Corporation raising their grievance in the matter of sanction of map for construction of residential house, the same shall be considered strictly in accordance with law keeping in mind the observations and directions of the Hon'ble Division Bench in its judgment dated 20.01.1998 (Annexure-6 to the writ application) passed in CWJC No.7262 of 1994.

16. The order of the learned Writ Court is modified to the extent indicated hereinabove. The Letters Patent Appeal is disposed off accordingly.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Arvind/-

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CAV DATE	N/A
Uploading Date	29.06.2018
Transmission Date	N/A

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