

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19822 of 2019

Indian National Trust For Art and Cultural Heritage (INTACH) Patna Chapter, through its Convener Sri Jatindra Kumar Lall, aged about 83 years, Male, S/o Late Y.K. Lall, R/o Near IOC Petrol Pump, Raja Radhika Raman Path, Boring Road, Patna, Bihar- 800001.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Chief Secretary, Patna, Bihar.
2. The Principal Secretary Department of Urban Development, Patna, Bihar.
3. The Principal Secretary Department of Home, Patna, Bihar.
4. The District Magistrate Patna, Bihar.
5. Patna Municipal Corporation, Patna.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 19847 of 2019

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2. The Principal Secretary, Department of Urban Development, Patna, Bihar.
3. The Principal Secretary, Department of Home, Patna, Bihar.
4. The District Magistrate, Patna, Bihar.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 19822 of 2019)

For the Petitioner/s : Mr. Sanket, Advocate.

For the Respondent/s : Mr. Lalit Kishore, A.G.

Mr. Prabhat Kumar Verma, AAG-3.

(In Civil Writ Jurisdiction Case No. 19847 of 2019)

For the Petitioner/s : Mr. Sanket, Advocate.

For the Respondent/s : Mr. Yogendra Prasad Sinha, AAG-7



**CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)**

Date : 01-09-2020

The petitioner has approached this Court seeking protection of a structure built by the Dutch in the 18th Century. According to the petitioner, the structure is an ancient monument having great historical importance and significance. As such, it must be protected and preserved.

It is not in dispute that the structure, subject-matter of the present petition, is commonly termed as “Collectorate”. In the 18th Century the building was built and used for commercial use and purpose, perhaps to propagate the trade of opium. Post-independence, the structure was put to use by the district administration for housing various government offices. As evident from the inspection report dated 3rd May, 2016, prepared by experts headed by the Director, Archaeology, Bihar, for the period pre-independence the building was used for commercial purposes. The Dutch used the same for storage of Shora (Saltpeter) and Opium and that over time, the significant portion of the structure(s) stood damaged and are in a dilapidated condition. Significantly, in the year 1972, a survey was carried out by the Archaeological Survey of India whereby



specific sites and monuments, after inspection, were declared to be Protected Monuments/Sites under the provisions of the Bihar Ancient Monuments and Archaeological Sites Remains and Art Treasures Act, 1976. Additionally, 72 sites/monuments were declared as protected sites/monuments under the provisions of the Ancient Monuments and Archaeological Sites and Remains Act, 1958. At no point in time, the building in question, commonly termed as “Collectoriate” was notified to be a Protected Site/Monument under any one of the statutes.

What was the genesis or necessity of inspection and submission of the report of experts dated 3rd May 2016 is not clear from the record? However, fact remains that even in this report, there is no whisper, of the building found suitable or fit to be declared as a Monument as per law. In fact, a specific reference in the report indicates that the building used for commercial purpose has got the indirect historical connection and structural features (Dutch) with “The Elements of Aesthetic Sense” being “relatively insignificant”.

However, keeping in view the historic value of the building, it was recommend to build the replica of the exterior pillars of the building near the façade structure so that its historical reference maintained even after non existence of



the original structure. Building Construction Department shall exhibit the architectural features and history of existing Collectorate Campus Building in a courteous way in new Collectorate Building.

What steps did the petitioner take pursuant to the preparation of the said report is not clear, save and except for requesting the Government to restore the property?

Be that as it may, it has come on record that the Government of Bihar took a conscious decision, perhaps, with the support of the Central Government, to declare Patna, capital of Bihar, as a “Smart City”. Under the said project, a decision was taken to build a modern structure in Patna, for housing different departments of the Government. The endeavour is to make the complex as a one-stop place, increasing efficiency in administration, apart from bringing convenience to the genuine public. For the construction of a modern Collectorate building having all modern amenities and facilities, the existing structure requires demolished and as per the project report, a total sum of approximately Rs. One hundred forty crores to be spent for which tenders are also invited. This, was way back in the year 2018/early 2019. It was only when the issue of finalization of construction of a modern complex was expedited that the



petitioner, for the first time, highlighting importance and significance of the structure approached the Court by filing the instant petition (CWJC No. 19822 of 2019) on 23rd September, 2019, inter alia, praying for the following relief(s):

“(i) For issuance of writ/writs, order/orders, direction/directions in the nature of Mandamus directing the respondent authorities not to demolish Patna Collectorate Complex which includes Dutch era Record Rooms, old District Engineers Office, District Board Building and neighbouring buildings and British era District Magistrate Office.

(ii) For issuance of writ in the nature of order(s), direction(s) in the nature of Mandamus directing the respondent authorities to preserve/restore and maintain the Patna Collectorate Complex which includes Dutch era Record Rooms, old District Engineers Office, District Board Building and neighbouring buildings and British era District Magistrate Office.

(iii) To any other relief or reliefs for which the petitioner is found to be entitled in the facts and circumstances of the case.”

Yet another petition (CWJC No. 19847 of 2019) by the very same petitioner was filed about the very same subject-matter on 23.09.2019, inter alia, praying for the following relief(s):

“(i) For issuance of writ in the nature of order(s), direction(s) in the nature of Mandamus directing the



respondent authorities to constitute Constitution of "Bihar Urban Arts and Heritage Commission" (hereinafter referred as Commission") in terms of Section 77 of the Bihar Urban Planning and Development Act, 2012.

(ii) For issuance of writ in the nature of order(s), direction(s) in the nature of Mandamus directing the respondent authorities to earmark the heritage buildings in the State and frame policies for its conservation and protection.

(iii) To any other relief or reliefs for which the petitioner is found to be entitled in the facts and circumstances of the case.”

It is a matter of record that tender for the construction of the Collectorate building, after the demolition of the existing structure stands finalized. Work order stands awarded vide communication dated 31st July 2019, accepting the lowest bid.

As canvassed, two issues arise for consideration before us: (a) whether action of the Government violates provisions of the Bihar Urban Planning and Development Act, 2012 (hereinafter referred to as the "Development Act"); (b) whether action of the Government in developing the site as a Collectorate, after demolition of the “Afim ka Bhandar/Collectorate” can be said to be arbitrary, perverse or capricious.



On the first issue, the only illegality pointed out is about the Constitution of the Committee, notified vide Notification dated 30th March 2020, being contrary to the provisions of Section 77 of the Development Act relevant portion whereof is extracted as under:

“77. Constitution of Urban Arts and Heritage Commission for the State.-

(1) The Government may, by Notification, constitute an Arts and Heritage Commission for the State, to be called "The Bihar Urban Arts and Heritage Commission" (hereinafter called the "**Commission**") which shall consist of a Chairperson and such other members, representing among others, Urban Planning, Visual arts, Architecture, Indian History or Archaeology, Tourism and the Environmental Sciences, as specified in the Notification by the Government.

(2) The Commission shall make recommendations to the Government as to-

(a) the restoration and conservation of urban design and of the environment and heritage sites and buildings in the Planning Areas;

(b) the planning of future urban design and of the environment;

(c) the restoration and conservation of archaeological and historical sites and sites to high scenic beauty;

(3) The powers to be exercised and the functions to be performed and the procedure to be followed by the Commission shall be such as may be specified in the Notification.



(4) The Government may, after consideration of the recommendations of the Commission and after giving an opportunity to the respective Planning Authority, Local Authority and other authorities concerned to make representation, issue such directions to the Planning Authority or Local Authority or other authorities concerned as they may think fit, and the Planning Authority or the Local Authority or other authorities shall comply with every such direction of the Government.”

(Emphasis supplied)

In **Mukund Dewangan v Oriental Insurance Company Limited (2017) 14 SCC 663** (Para 35) a full bench of the Hon'ble Apex Court reiterated that the principle that the Statute must be read as a whole is equally applicable to different parts of the same section. The section must be construed as a whole whether or not one of the components is a saving clause or a proviso. It is not permissible to omit any part of it; the whole section must be read together. This was followed from settled law on interpretation in **Balasinor Nagrik Cooperative Bank Ltd v Babubhai Shankerlal Pandya and Ors (1987) 1 SCC 606**, **State of Bihar v Hiralal Kejriwal AIR 1960 SC 47** and others.

In the case of **Maqbool Vs. State of Uttar Pradesh and another**, reported in **(2019) 11 SCC 395** (Para 11 and 12), **Mukund Dewangan Vs. Oriental Insurance**



Company Limited, reported in **(2017) 14 SCC 663** (para 36) and multiple other decisions of the Hon'ble Apex Court, the Court has upheld that it is settled law that while interpreting any provision of the Statute, the plain meaning has to be given effect and if the language used is simple and unambiguous, there is no need to traverse beyond the same.

We notice that the members of the newly constituted Commission are the Principal Secretary of the Art, Culture and Youth Department, Bihar; Deputy Secretary-cum-Director, Archaeological Directorate, Bihar; Director, Tourism Department, Bihar; Deputy Secretary-cum-Secretary, Bihar; Lalit Kala Academy; Art, Culture and Youth Department, Bihar.

The language of the Statute is simple, clear and unambiguous. The State Government has to constitute a Commission by issuing a notification. The Commission must consist of a Chairperson and such other members, representing among others, Urban Planning, Visual Art, Architecture, Indian History, Art, Archaeology, Tourism and the Environmental Sciences. The expression "among others" would take in its sweep persons conversant with the specified areas and subjects. In our considered view, the Government has accounted for all such factors while constituting and notifying the Commission.



Persons handling the affairs of Art, Culture, Youth, Tourism, Archaeology have been called upon to discharge their statutory functions. The Constitution of the Commission is as per the statutory provision.

Hence, we do not find any reason to interfere on this issue.

On the second issue, as we have already observed, to declare the site/monument having historical value/importance or significance is the duty cast upon bodies constituted by the Government under the relevant statutes.

Part-IVA of the Constitution [51-A(f)] mandates the citizens of India- each one of us- to value and preserve the rich heritage of our composite culture.

In the case of **K. Guruprasad Rao Vs. State of Karnataka and others**, reported in **(2013) 8 SCC 418** the Court emphasized the need for preservation and protection of ancient and historical monuments, more so for it to be a matter of concern for the Government and private individuals alike. It reiterated the jurisprudence and the endeavour of the Courts in zealously protecting and preserving the National rich cultural heritage including the monuments, i.e., Taj Mahal; National Parks; Sanctuaries; water bodies etc. The principle of



sustainable development stood reiterated and expanded to ensure that development is only coexistent with the natural environment.

Subsequently, in the case of **Sarika Vs. Administrator, Shri Mahakaleshwar Mandir Committee, Ujjain (Madhya Pradesh) and others**, reported in **(2018) 17 SCC 112** while dealing with one of the shrines of a particular religion the Hon'ble Apex Court observed as under:

“8. Mahakaleshwar Jyotirlingam has so much importance for spiritual and other gains, there is a constitutional duty to protect it as envisaged in Article 25, Article 26 read with Article 49, at the same time there is a fundamental duty under Article 51-A of the Constitution to promote harmony and the spirit of common brotherhood as provided in Article 51-A and to value and preserve the rich heritage of our composite culture. It is also the duty to strive towards excellence in all spheres of individual and collective activity as provided in Article 51-A(a) to (j).”

We notice that even the Archaeological Survey of India has not intervened in declaring the monument as a historical one. Nor has the newly constituted Commission found it to be so.



Projects for development, which are in the wider public interest, cannot be stalled endlessly, particularly, when we find the action to be bona fide and in the public interest.

On 31st January 2020, the State had moved an application seeking modification of interim order dated 25th September 2019 passed by this Court restraining demolition of the existing structure. The Application was disposed of clarifying that if the State were to constitute a committee under the provisions of the Development Act, the Court would consider the State's prayer. To our mind, the Constitution of the Committee cannot be said to be illegal and this Committee, vide its inspection report dated 1st June 2020, after minutely examining the record; the structure; the artefacts and other material, has clearly opined that the building, in any case, is in a totally dilapidated condition; beyond repair and has no historical importance or significance and that it needs to be demolished for re-development of the Collectorate.

We see no reason to differ with such a finding. The members of the Committee have considered the material in its entirety.

The State, in any event, has decided to set up a model of the existing structure, adjacent to the new complex to



be constructed in place thereof.

We may also note that the building housing Government offices in close vicinity, with time, would also be housed in the new Collectorate building. Eventually, Patna as a whole would be developed as a Smart City. The action of the Government cannot be said to be perverse, arbitrary, illegal or whimsical. Equally, the opinion of the experts cannot be said to be perverse, arbitrary, capricious or without any basis or foundation.

In the case of **Indian Young Lawyers Association and others (Sabarimala Temple, In Re) Vs. State of Kerala and others**, reported in (2019) 11 SCC 1 and **Swiss Ribbons Private Limited and another Vs. Union of India and others**, reported in (2019) 4 SCC 17 following the Constitution Bench of the Hon'ble Apex Court in **Navtej Singh Johar and others Vs. Union of India through Secretary, Ministry of Law and Justice**, reported in (2018) 10 SCC 1 (Para 353), the Court reiterated that provisions which are capricious, irrational or without adequate determining principle, as also if they are excessive or disproportionate, would suffer from arbitrariness.

Applying the said principles, we do not find the action to suffer from the vice of mala fides or arbitrariness.



Yes, in history there may have been some significance attached to this complex, but that is for the use of storage of Opium and Saltpeter for commercial purpose. But then there is nothing more than that. The building has no significance, whatsoever, with art, culture or heritage or with that of any one of the movements of the struggle for freedom, leading to the independence of India. Equally, no celebrated person is associated with the same.

Since the year, 1976 onwards, the Government have taken measures, both under the Central and the State Statutes, of protecting historical sites and monuments in Bihar. This Court can take judicial notice of the new Bihar Museum-a Monument in itself- which stands established at Patna, inviting tourists from all over the world, equally enthusing youth of the State help restore the centuries-old tradition of art, heritage, language and culture.

From paragraph-5 of the counter affidavit dated 9th June 2020, it is apparent that the State itself does clarify that the aesthetic importance of the building is "rare", but then it does not imply that the structure is fit enough to be declared as a heritage monument/building. However, we would only impress upon the State that rather than demolishing the building with the



use of a bulldozer, it should endeavour removing, at least the pillars of the structure, in a planned and methodological manner. Perhaps it would be ensuring that the very same material, i.e. bricks etc. can be protected, preserved and re-used for setting up a model of the existing building.

Learned counsel for the petitioner emphasized the following observation made by the experts in its report dated 3rd May, 2016:

“व्यापारिक उपयोग की संरचना होने के कारण इसमें सौंदर्य बोध (aesthetics) के तत्व अपेक्षाकृत विरल हैं”

Shri Verma, learned senior counsel has submitted the translated version thereof in the following terms:

“The English translation of this sentence is as follows; “For the reason that the structure is for commercial use the elements of aesthetics is relatively sparse.” In this context it will be relevant to give the dictionary meaning of Hindi word “विरल” is “sparse” as per Chambers and Googles Hindi-English Dictionary. It means कम, अपर्याप्त”

Learned counsel are ad idem on those as mentioned earlier.

Shri Verma next emphasized that the word “विरल” is not “दुर्लभ” which if translated would mean “rare”. “विरल” is sparse



and not rare. He next clarified that by inadvertence, perhaps on account of a typographical error, in Paragraph 5 of the supplementary counter-affidavit, which we have noticed supra, the word “rare” was typed, whereas it ought to have been “sparse”.

We accept such explanation, more so when we read the affidavit in its entirety, what was meant to be conveyed was that the structure was just a godown where saltpetre and opium were stored. There is hardly any aesthetic value/importance.

Further, even under the Development Act, twice the site was inspected, and on both the occasions it was observed that the structure has no importance from the point of view of either history, architecture, art, aesthetics or culture. The experts have already expressed their opinion on this issue and, as such, we find no reason to interfere with the same, particularly when no mala fides stand alleged. The Court has to rely on the experts, and there is nothing perverse with this opinion.

The Constitution Bench of the Hon’ble Apex Court in **The University of Mysore Vs. C.D. Govinda Rao and Anr.**, reported in **AIR 1965 SC 491** has held that usually,



the Court should be slow to interfere with the opinion expressed by the experts, for it is ordinarily wise and safe to leave the decision to the experts, familiar with the subject and problems. Significantly, this view was reiterated by the Court in the context of preservation of the Victoria Memorial Hall and the Court in the case of **The Secretary & Curator, Victoria Memorial Hall Vs. Howrah Ganatantrik Nagrik Samity And Ors.**, reported in (2010) 3 SCC 732 observed as under:

“37. The Constitution Bench of this Court in **The University of Mysore Vs. C.D. Govinda Rao and Anr.** AIR 1965 SC 491 held that "normally the Court should be slow to interfere with the opinions expressed by the experts." It would normally be wise and safe for the Courts to leave the decision to experts who are more familiar with the problems they face than the Courts generally can be. The view consistently stands reiterated as is evident from the Judgments in **The State of Bihar & Anr. Vs. A.K. Mukherjee & Ors.** AIR 1975 SC 192; **Dalpat Abasaheb Solunke etc.etc. Vs. Dr. B.S. Mahajan etc.etc.** AIR 1990 SC 434; **Central Areca Nut & Cocoa Marketing & Processing Co-operative Ltd. Vs. State of Karnataka & Ors.** (1997) 8 SCC 31; and **Dental Council of India Vs. Subharti**



K.K.B. Charitable Trust & Anr. (2001) 5 SCC 486.

38. However, if the provision of law is to be read or understood or interpreted, the Court has to play an important role. [Read : **P.M. Bhargava & Ors. Vs. University Grants Commission & Anr.** AIR 2004 SC 3478 and **Rajbir Singh Dalal (Dr.) Vs. Chaudhari Devi Lal University, Sirsa & Anr.** (2008) 9 SCC 284.

39. In the instant case, the Expert Committee was appointed by the High Court itself. No allegation of malafide or disqualification against any Member of that Committee had ever been made/raised. Thus, we fail to understand as on what basis, its recommendation on the issue involved herein, has been brushed aside by the High Court without giving any reason whatsoever, particularly, when the Act governing VMH does not prohibit the use of the part of the compound for the purpose other than connected with Queen Victoria.

41. Reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, it becomes lifeless. Reasons substitute subjectivity by objectivity. Absence of reasons renders the order indefensible/unsustainable particularly when the order is subject to further challenge



before a higher forum. [Vide **Raj Kishore Jha Vs. State of Bihar & Ors.** AIR 2003 SC 4664; **Vishnu Dev Sharma Vs. State of Uttar Pradesh & Ors.** (2008) 3 SCC 172; **Steel Authority of India Ltd. Vs. Sales Tax Officer, Rourkela I Circle & Ors.** (2008) 9 SCC 407; **State of Uttaranchal & Anr. Vs. Sunil Kumar Singh Negi** AIR 2008 SC 2026; **U.P.S.R.T.C. Vs. Jagdish Prasad Gupta** AIR 2009 SC 2328; **Ram Phal Vs. State of Haryana & Ors.** (2009) 3 SCC 258; **Mohammed Yusuf Vs. Faij Mohammad & Ors.** (2009) 3 SCC 513; and **State of Himachal Pradesh Vs. Sada Ram & Anr.** (2009) 4 SCC 422].

42. Thus, it is evident that the recording of reasons is principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and fairness in decision making. The person who is adversely affected may know, as why his Application has been rejected."

We do not doubt the bonafide of the present petitioner in highlighting the issue, though, to our mind, initiating the instant action, perhaps maybe belated. We are not dismissing the petition on the ground of delay and laches. But



petitioner ought to have approached this Court and not waited for the last minute for the Government to have issued tenders for constructing a new modern complex as a Collectorate building.

Be that as it may, but we notice that since the year 2016 onwards, petitioner has been representing to the appropriate authorities, with a fervent appeal of not dismantling the structure. It only amplifies the petitioner's interest in protection, preservation and development of the art, heritage and culture.

It is in this background we recommend to the State Government to associate the petitioner only in the proposed establishment of the model of the old building, to be set up adjacent to the newly constructed Collectorate Building. We may not be misunderstood that under all circumstances petitioner is to be associated for such purpose. But, we hope and expect the State to have active consultation and account for the suggestion so made.

It is in these circumstances, we do not find any reason sufficient enough to accept any one of the prayers made by the petitioner and, as such, we vacate the interim order dated 25.09.2019 leaving it open for the Government to take



necessary consequential action.

Petitions stand disposed of.

Interlocutory Application, if any, shall stand
disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

sujit/-.

AFR/NAFR	AFR
CAV DATE	
Uploading Date	06.09.2020
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