

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Miscellaneous Jurisdiction Case No.1098 of 2020**

**In**  
**Civil Writ Jurisdiction Case No.15445 of 2005**

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1. The State of Bihar
  2. The Commissioner-cum- Secretary, Revenue Department, Government of Bihar, Patna.
  3. The Legal Rememberancer, Government of Bihar, Patna.
  4. The Divisional Commissioner, Patna Division, Patna.
  5. The Collector, Patna.
  6. The Circle Officer, Patna Sadar, Patna.

... .. Petitioner/s

Versus

Hardinge Memorial Fund Trust through its Secretary, Son of Late Teharal Hussain, Ahmad Manjil, New Milat Colony, Fulwarisharif, Patna- 801505.

... .. Opposite Party/s

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with

**Civil Writ Jurisdiction Case No. 12603 of 2015**

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Shambhu Sharan Singh Son of Late Mahima Sharan Singh, resident of Mohalla- 9/5, Kasturbapath, North Sri Krishnapuri, District- Patna

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Urban Development and Housing, Govt. of Bihar, Patna
3. The Commissioner cum Secretary, Revenue Department, Govt. of Bihar, Patna
4. The Divisional Commissioner, Patna Division, Patna
5. The District Magistrate, Patna
6. Senior Superintendent of Police, Patna
7. Bridge Construction Corporation, Patna, Bihar.

... .. Respondent/s

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**Appearance :**

(In Miscellaneous Jurisdiction Case No. 1098 of 2020)

For the Petitioner/s : Mr.Bishwa Bibhuti Kumar Singh ( Ac To Ag )

For the Opposite Party/s :Mr.Shambhu Sharan Singh, Advocate

(In Civil Writ Jurisdiction Case No. 12603 of 2015)

For the Petitioner/s : Mr.Shambhu Sharan Singh, Advocate

For the Respondent/s : Mr.Lalit Kishore, AG

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**CORAM: HONOURABLE THE CHIEF JUSTICE  
and  
HONOURABLE MR. JUSTICE S. KUMAR**

**CAV JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE S. KUMAR)**

**(The proceedings of the Court are being conducted through Video Conferencing and the Advocates joined the proceedings through Video Conferencing from their residence.)**

**Date : 09-08-2021**

Heard learned counsel for the parties.

MJC No.1098 of 2020 has been filed by State of Bihar for modification of order dated 20.07.2007 passed in CWJC No.15445 of 2005 by which this Hon'ble Court had directed not to allow any activity on the 22.82 acres of land other than what had been specifically mentioned in the government grant of 1915, whereas CWJC No.12603 of 2015 has been filed by Shambhu Sharan Singh for a direction to the State authorities to develop Park on the entire 22.82 acres of land, as per earlier order and direction dated 20.07.2007 passed by learned Single Judge in CWJC No.15445 of 2005 and appeal

preferred was dismissed by Division Bench by order dated 20.02.2008 passed in LPA No.979 of 2007.

Briefly stated the facts of the case is that by a deed of grant dated 8.9.1915, executed by the Collector on behalf of Secretary of State for India, land measuring 24.30 acres was handed over to Hardinge Memorial Committee for establishing and maintaining a public park as Hardinge Park in memory of Lord Hardinge and thereafter Hardinge Park was developed and opened for general public on 31.01.1916. After the original members of Committee died, some of surviving original subscribers and some of the representatives of the deceased original subscriber to the Harding Memorial Committee convened a meeting on 17.11.1934 resolving that Harding Memorial Committee constituted on 28.9.1913 stands dissolved and Hardinge Memorial Fund Trust is created as its successor by a registered deed for the maintenance and upkeep of the Hardinge park which included 9 persons and thereafter said Trust started managing the affairs of Hardinge Park.

In the year 1953, the Post and Telegraph Department as well as the Labour Department, Government of Bihar requested the Trust to transfer 1.48 acres of land of

Hardinge Park left unused and considering said request the trustees send a proposal to the Collector, Patna by letter dated 22.12.1953 to accord necessary permission upon which the Collector by letter dated 2.12.1954 accorded permission to said proposal and accordingly 1.48 acres of land was transferred to the Patna GPO and only 22.82 acres of land out of 24.30 acres, remained with the Hardinge Park Fund Trust.

Subsequently on 22.01.1986, the Commissioner-cum-Secretary, Department of Revenue, Government of Bihar, issued a letter to the Trust resuming the said land of the Hardinge Park on the ground that it was not being utilized as per the terms of deed of grant dated 8.9.1915 against which two writ petitions were filed being CWJC No.11129 of 1996 and CWJC No.8894 of 1996 on the ground that said order of resumption of land was passed without any show cause notice and in violation of principle of natural justice and by order dated 29.11.1996, both writ petitions were allowed and the order of resumption was set aside giving liberty to the State to proceed in accordance with law after issuing show cause notice and providing opportunity of hearing to petitioners.

The High Court further clarified that Divisional

Commissioner, Patna and Secretary of the Trust shall continue as Executive Committee of the Trust who shall exercise all the powers including the financial power so that there is no difficulty in day-to-day management of the park and after two years on 16.11.1998, a fresh show cause notice was issued to the Trust by the Commissioner-cum- Secretary, Department of Revenue, Government of Bihar, Patna for resumption of land on the ground of violation of terms and conditions of the grant and after considering the reply to show cause filed by the Trust, the State Government found the Trust to have grossly violated the terms and conditions of grant and it was decided to resume 22.82 acres of land for which vide memo dated 7.10.2005 the Collector, Patna passed an order for resumption of aforesaid 22.82 acres of land and a follow-up order dated 14.10.2005 was issued by the Circle Officer, Patna Sadar.

CWJC No.15445 of 2005 was filed by Hardinge Memorial Fund Trust through its Secretary challenging order of Collector, Patna dated 7.10.2005 as well as follow-up order dated 14.10.2005 issued by Circle Officer, Patna Sadar, Patna by which the State Government had resumed the entire 22.82 acres of land of Hardinge Park Memorial Fund Trust which was dismissed by order dated 20.07.2007. LPA No.979 of 2007 filed

by Hardinge Memorial Fund Trust was also dismissed by Division Bench by its order dated 20.2.2008 and order passed by learned Single Judge was affirmed and same attained finality.

An intervention petition was filed in the writ petition in representative capacity by the users and beneficiaries of the Hardinge Park because of its ecological and situational importance and same was allowed and intervenors were added as party respondent nos. 7 to 10. It was submitted by the intervenors that park and its land were being mismanaged by the Trust and condition of park was deteriorating day by day due to negligence of Trust and supported resumption of the land by the government.

Learned Single Judge has held that the proprietary and ownership right over 24.30 acres of land vested in the State Government and the Committee was only constituted to look after the maintenance of public park and the learned Single Judge has also approved the validity of transferring 1.48 acres of land to the Patna GPO as the proposal of the Trust was approved by the State Government through the Collector, Patna. Finding recorded by learned Single Judge with respect to ownership and title of the State Government over the land and

its competence and authority to alienate part of the land was dealt by learned Single Judge in paragraph no.20 and 27 of the judgment which is reproduced below:-

*“20. From the deed of grant dated 8.9.1915 (annexure-10) it is apparent that the proprietary right remained with the State and hence the Committee or the Trust cannot even sublet, transfer, encumber or grant lease, right or any permission to anyone else without any written permission of the Collector. By the said grant, no indefeasible right was given to the Committee or the petitioner Trust as the land belonged to the Government and no right to property was created in favour of the Committee or the Trust by the Grant of 1915 (annexure-10) or by the Trust Deed of 1934 (annexure-3). Hence, in these circumstances, the Government has only to see whether any term of grant has been violated and if it has been violated then the Government has full authority to resume the lands in question, as provided in the terms of the grant.*

*“27. So far the second violation is concerned, it is alleged that the petitioner-Trust has transferred 1.48 acres of land to the Post and Telegraph Department, Government of*

*India, which was not for the purposes for which the grant was made, namely for establishing and maintaining Hardinge Park. It is an undisputed fact that in the year 1953, the Post and Telegraph Department, as well as the Labour Department, Government of Bihar requested the Trust to transfer 1.48 acres of land of the Hardinge Park which was left unused between the compound of General Post Office, Patna and the bungalow of Assistant Director of Postal Services. It is also apparent that on the said request, the Trust did not take any decision, rather it referred the matter to the Collector, Patna vide letter dated 22.12.1953 (annexure-6), whereafter it was the Collector who by his letter dated 2.12.1954 (annexure-7) accorded sanction to the said proposal and in compliance of the Collector's sanction letter the said land was transferred to Patna General Post Office. In the said circumstances, it was not the trustees including the Commissioner of Patna Division, the Chief Engineer, Roads and Buildings, the Executive Officer, Patna Administration Committee etc. who took the decision for transfer of the said 1.48 acres of land to Patna General Post Office, rather the sanction was given by the Collector on behalf of the State Government who had the power to accord such sanction as per the terms of the Grant*

***and hence the petitioner-Trust cannot be held liable for the said transfer of 1.48 acres of land or for violation of the terms of the deed of grant with respect to the said transfer, specially when the land in question belonged to the State Government which had sanctioned the said transfer.”***

Learned Single Judge has also dealt with southern part of Hardinge Park land (subject matter of present modification petition), which was given to the transport department, Govt. of Bihar by the Trust for running a bus stand. The learned Single Judge has held that petitioner has not brought any material to show that there was any written permission of the Collector, Patna or the State government for handing over said portion of land to the transport department for opening a bus stand. Earlier, same was used as goat market. Admittedly, these lands were not in possession of the Hardinge Park Memorial Fund Trust nor any step was taken by them to regain its possession.

Learned Single Judge has dealt with respect to transfer of southern part of Hardinge Park by the Trust to Transport Department, Government of Bihar and has not approved said transfer of land on account of lack of competence

of trust who transferred said land to Transport Department to open a bus stand without any sanction of such transfer by the State Government/Collector, relevant paragraph no. 29 of the judgment is reproduced below:-

*“29. Although tall claims have been raised by the petitioner, but no material has been produced by them to show that there was any written direction of the Collector, Patna or the State Government for handing over any portion of the land in question to the Transport Department for locating a temporary bus stand. Before the temporary bus stand the said land was also used as goat market without any such sanction. Furthermore, the claim of the petitioner that management of the lands of the Trust has been left in the hands of the Collector, Patna is also frivolous and contrary to their own claim that it is the trust who has been managing the land in question since the creation of the trust in the year 1934. No material has been produced by the petitioner even to show that it had taken any step for regaining possession of the said land. With regard to encroachment of 3.11 acres of land of the Hardinge Park, the petitioner has failed to show that they had taken any step to get the said encroachment removed. Merely stating that the Government and the Collector were aware of*

***the said encroachments will not absolve the petitioner from its duty to look after and manage the land of Hardinge Park and it was also its duty to inform the authorities and take legal steps in that regard, in which it miserably failed.”***

The learned Single Judge has recorded the statement of learned Additional Advocate General, appearing for the State of Bihar and its authorities, that the government is resuming aforesaid 22.82 acres of land for benefit of public and intends to develop the entire land as a modern and unique park for public purposes and on the basis of undertaking given by the State, learned Single Judge directed to develop said land into a park and further directed that State shall not allow any activity on the above mentioned 22.82 acres of land other than what had been specifically mentioned in government grant of 1915. In case of any violation of the aforesaid orders/directions, the petitioner or the intervenors shall have liberty to approach this Court for appropriate and necessary orders/directions.

In view of liberty granted by learned Single Judge, several IAs were filed by intervenors in the disposed of writ petition thereupon several directions and orders were issued by the Single Judge, however, by order dated 16.7.2013, the

learned Single Judge observed that order dated 20.7.2007 passed in writ petition stands merged with the order dated 20.2.2008 passed by Division Bench, as such, the matter was referred to Division Bench, however, the Division Bench dismissed the IAs filed by intervenors in a disposed of writ petition by order dated 22.07.2014 that IAs cannot be entertained in a disposed of writ petition with liberty to parties to file fresh writ petition, if so desired.

In view of liberty granted by the Division Bench, CWJC No.12603 of 2015 was filed by Shambhu Sharan Singh as a public interest litigation to direct State Government to honour its earlier commitment and undertaking given before this Court of developing park over the said land for benefit of public at large.

From the map and report submitted by the Circle Officer, it appears that Mithapur R Block road (2.11 acres) crosses through the Hardinge park and it divides Hardinge Park into two parts, northern part (16.31 acres) and southern part (4.8009 acres). This was the physical status of Hardinge Park even at the time of filing of previous writ petition. From the report and Map, it appears that northern part of the park

measures 16.31 acres of land and southern part measures 4.8009 acres of land and for development of northern part in first phase, sufficient fund during pendency of writ petition was released by the State government and well developed park came into existence and the park (16.31 acres) has also been renamed in memory of veteran freedom fighter Babu Kuer Singh and is directly managed by Government of Bihar through Department of Forest and Environment in which several facilities for visitors are provided such as:-

|                                                                                               |                                                                                                     |                                                   |
|-----------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------|---------------------------------------------------|
| (i) jogging track and paver track.<br>Development of grass land and land escaping throughout. | (ii) greeneries, i.e., big, medium and small size plants along with hedge plants and beautiful lawn | (iii) CCTV cameras and public announcement system |
| (iv) Solar light facility                                                                     | (v) drinking water facility with RO and cooler and food kiosk                                       | (vi) Sitting arrangement in the park              |
| (vii) Water bodies with boating facility                                                      | (viii) Fountains                                                                                    | (ix) parking facility                             |
| (x) Toilets                                                                                   | (xi) Open gym                                                                                       | (xii) children park                               |
| (xiii) football ground                                                                        | (xiv) cricket practice ground                                                                       | (xv) basket ball ground                           |

It has been stated that lacs of visitors come to this Park every year and over 4000 morning walkers come to this Park daily.

In next phase, steps were being taken to develop southern part of Hardinge park measuring 4.8009 acres of land into a park. However, on account of subsequent developments,

the State has filed modification petition bearing MJC No.1098 of 2020 to permit them to transfer said land to the Railways in the larger public interest and in lieu thereof, railways intends to transfer its land upon which railway track is existing and has become useless for railways and after removing the railway track, the Government of Bihar wants to construct a 4-lane road with service road to ease out traffic jam within the town of Patna.

It is contended on behalf of the State Government that for smooth traffic management and to meet the increasing traffic volume of Patna town, the State Government requested the railways to transfer certain land being used as rail line between Patna ghat to Patna Sahib station as said stretch of land runs through densely populated area of Patna town and was found suitable for being used as a road and same was useless for railways, as no train was running on said railway track and railways agreed to exchange its 18.5495 of acres of said land of railway track as well as 9.5913 acres of railway land near Danapur Station against said 4.8009 acres of land of southern part of Hardinge Park which is adjacent to railway line for development of railway infrastructure, such as, extensions and development of additional platforms for operational needs at

Patna Junction and said proposal was approved vide letter dated 1.3.2019 by Ministry of Railway, Government of India, New Delhi.

It has been further submitted on behalf of the State that new 4 - lane with service road has been developed from R Block crossing (near southern part of Hardinge Park) to Digha upon which previously railway track was existing and same was transferred to the State of Bihar for construction of 4-lane road with service road which has been found to be very beneficial to ease out traffic load within Patna town giving much respite to the residents of Patna town from frequent traffic jam. Sufficient plantation has been done on both sides of the road which is quite visible. The State Government proposes to construct similar type of road on lands of railway which is proposed to be exchanged for 4.8009 acres of southern part of the Hardinge park land which lies adjacent to railway line.

Having heard learned counsel for the parties, this Court finds that proposal of the State Government to exchange its 4.8009 acres of land (southern Hardinge Park) with 18.5495 acres of railway land within Patna town and 9.5913 acres of railway land near Danapur Station is beneficial for both as well

as in the larger public interest. Frequent traffic jams has become a regular feature within Patna town which results in increase in air pollution as well as results in ecological imbalance and construction of road over railway land which passes through the heart of city will bring much respite to the residents of Patna as well as development of infrastructure of railways on the 4.8009 acres of land of the State Government will be beneficial for public at large as well as railways to meet ever increasing rush of passengers by construction of additional railway platforms and will provide ample parking space for vehicles.

In view of discussion as made above, this Court finds that the exchange of lands between the Government of Bihar and Railways serves public purpose and is beneficial for State Government, Railways as well as public at large and accordingly, the order dated 20.07.2007 passed in CWJC No.15445 of 2005 is modified to the extent that Government is permitted to go ahead with proposal of exchange of lands.

This Court appreciates the relentless effort and contribution of Shambhu Sharan Singh, learned Advocate and a public spirited person in developing North Hardinge Park (16.31 acres) now known as “ Shaheed Veer Kunwar Singh Azadi

Park” into well developed recreational park with all modern facilities and amenities.

MJC No.1098 of 2020 and CWJC No.12603 of 2015 are accordingly, disposed of.

**( S. Kumar, J)**

**I agree.**

**(Sanjay Karol, CJ)**

Sanjay/-

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|--------------------------|------------|
| <b>AFR/NAFR</b>          | NAFR       |
| <b>CAV DATE</b>          | 27.05.2021 |
| <b>Uploading Date</b>    | 10.08.2021 |
| <b>Transmission Date</b> | NA         |