

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.142 of 2017
In
Civil Writ Jurisdiction Case No.7885 of 2015

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1. Bihar State Housing Board, through it Managing Director
2. The Managing Director, Bihar State Housing Board, Sardar Patel Marg, Patna.
- Petitioners
- Versus
1. Kumar Prashant Son of Late Prof Nand Kishore Singh, Resident of 2m/44, Sector 2, Bahadurpur Housing Colony, Patna.
2. The State of Bihar through Principal Secretary, Building Construction Department, Govt. of Bihar, P
- Opposite Parties
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Appearance :

For the Petitioners : Mr. Lalit Kishore, Senior Advocate
For the Opposite Party : Mr. Ajit Kumar, G.A.-9
Mr. Arvind Kumar, AC to GA-9

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE NAWNEET KUMAR

PANDEY

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 08-11-2023

The Bihar State Housing Board (hereinafter referred to as ‘the Board’) has filed this application for review of the order dated 15.09.2015 passed in C.W.J.C. No. 7885 of 2015 (Kumar Prashant Vs. The State of Bihar and Others).

2. The writ petition, under Article 226 of the Constitution of India, in the nature of public interest litigation, was filed by respondent No.1 for restraining the Board from converting a plot, i.e., Plot No. PS-I in Sector-II of Bahadurpur Housing



Colony, which was earmarked for a primary school, into a memorial park.

3. It was not disputed in the writ proceedings that in accordance with the lay out plan of the Bahadurpur Housing Colony of the Board, the plot, in question, was earmarked for a primary school. A counter affidavit was filed in the writ petition on behalf of the State of Bihar sworn by Jagat Paswan, an Executive Engineer under the Building Construction Department, Government of Bihar, stating that the Department was acting upon a proposal for setting up a park over the said Plot No. PS-I of Sector-II of the Colony in pursuance of the instructions received from the State Government communicated through letter No. 290 dated 27.04.2015, a copy of which was brought on record by way of Annexure-A to the writ petition. The said Annexure-A contained the minutes of the proceedings of a State level inter-departmental meeting held by the Chief Secretary of Bihar for taking decision for the purpose of installation of statue of great men and women of the country in their memory at various places. According to the counter affidavit filed on behalf of the State of Bihar in the writ proceeding, it was their stand that Bihar State Building Construction Corporation was raising a statue of a former Prime Minister of India in implementation of the decision taken in the said inter-departmental meeting.



4. It was argued in the writ proceeding on behalf of the petitioner, *inter alia*, that establishment of a primary school in the area was of immense public interest since within the said residential area, no government school has been established. It was also argued that keeping in view the interest of the residents of the area, adequate spaces have been earmarked in each of the Sectors of the Bahadurpur Housing Colony for establishing primary schools and so far as Sector-II of the colony is concerned, the said space was earmarked for construction of a primary school and also a high school. It was also argued that there has been mushroom growth of private schools in the residential area with no infrastructure and/or ambiance conducive for proper development of children because of the failure of the State Government in discharge of its duty to establish a good school, despite availability of adequate space in the area concerned and, on the other hand an attempt was being made to change the user of the space, which is unreasonable and would also diminish of hopes and legitimate expectations of the residents of the area for all times to come that there would be primary/high school in the locality with adequate infrastructure.

5. A stand was taken by the Board in its counter affidavit that the plots were advertised in the year 2008 inviting applications from desirous persons for raising educational institutions for the



purpose of their allotment in which the cost of land earmarked for the primary school was shown as 6,55,53,784/-. It was the stand of the Board that it was quite unlikely that any private person would invest such a huge amount for establishing a primary school as value of the land in question was Rs.88,64,000/-. It was in that background that the Board had taken a plea that it was decided to raise a memorial park over the land by way of temporary measure in order to minimize the possibility of encroachment by unauthorised persons. After having noted the stand of the parties in the writ proceeding, this Court allowed the writ application with following observations and directions: -

“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 interdepartmental 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.”

6. The Housing Board, however, instead of carrying out the said order of this Court dated 15.09.2015 passed in C.W.J.C. No. 7885 of 2015, filed this review application seeking review of the order, on 13.04.2017. There was no plea in the review application that there was any error apparent on record in the order under review nor that any legal or factual aspect of the matter could not be taken into account, vital for just adjudication of writ petition in the public interest litigation, for any reason. The review application, as a matter of fact, did not contain any ground for review. However, following statements have been made in paragraphs 8 and 9 in the review application: -

8. That for the implementation of the order dated 15.09.2015 passed in CWJC No. 7885/15, a meeting presided over by Learned Chief Secretary was held on 23.11.2015 in which Principal Secretary, Nagar vikash and Managing Director Bihar Housing Board also participated. The factual position of the plots was placed before the committee from which it is apparent that out of five plots earmarked for educational institution three plots were vacant one plot was partially encroached and upon another one construction of Park was being made. On the plot in which park was being constructed, boundary was



constructed in order to keep the plot from the Sept. possibility of encroachment by unauthorized person. In this background a decision was taken by Government in the meeting held under the chairmanship of the Learned Chief Secretary that the 3 vacant plots earmarked for educational institution and after getting the encroachment removed from the partially encroached plot i.e. the fourth plot, a proposals for handing it over to the education department be sent after arranging the necessary fund for construction of Primary school and High School. Minutes of the meeting further takes into consideration report of the Executive Engineer Patna Division-2, that in the radius of 3 Km. of the subject plot total 9 High Schools cum Primary School are situated and further non-Governmental School are also functioning. As per the circular bearing letter No. 6025 dated 26.11.2012 of Bihar Educational Project council the primary School will be established within the radius of 1 Km. of the habitat where at least 40 children are residing between age group of 6 to 40. The minutes further records that within the radius of 1 Km. of the plot, primary Schools as well as High Schools are situated but no park is there. The minutes further records that the local residents near plot in question in order to have the better environment and to have a play ground to the children have been requesting for construction of park upon the plot in question. Accordingly taking into consideration all these aspects a decision has been taken in the meeting to make a prayer before the Hon'ble High Court for lifting ban for construction of park upon the land in question the petitioner also craves leave of this Hon'ble Court to bring on record the letter n. 1984A dated 21.11.2015 which is the report of the Executive Engineer pertaining to availability of School in Sector-II Bahadurpur Housing Colony within the radius of 6 Km.



9. That the petitioner Bihar State Housing Board also collected the opinion of allottees for park/School in vicinity of plot no. PS-1 Sector-II of Bahadurpur, Patna and out of altogether 31 allottees 27 allottees have given their consent for park and four allottees have given their consent for school. They have also stated that they use it for Morning walk and for Yoga programme. The petitioner craves leave of this Hon'ble Court to annex letter no. 964 dated 18.06.2016 of the Executive Engineer Division-II along with the opinion of the allottees for park or school dated 18.06.2016."

7. It has been stated in paragraph 10 that in the aforesaid circumstance, this Court should permit the Board and the State of Bihar for making changes/amendments in the lay out plan in plot No. PS-I, Sector-II, Bahadurpur Housing Colony, Patna, from a school to a park.

8. Subsequently, a supplementary affidavit came to be filed on 13.11.2017 taking following five grounds for review of the order: -

"i) For that the Hon'ble Court may consider to review its order by lifting ban for construction of park upon the land in question and to allow the petitioner and state of Bihar for making change/amendment in the layout plan in plot no. PS/1 Sector II Bahadurpur Housing Colony. Patna from school to park in the larger public interest and in the interest of justice.

ii) For that this Hon'ble Court while taking note of the argument of ld. Senior Counsel for the writ petitioner in paragraph 4 and 6 of the Judgment to record that it was never the decision of the State Government to set up a park or raise statue in the



name of Ex-Prime minister at the plot in question instead of primary school, in para 6 of the judgment the Hon'ble High Court has come to the conclusion that 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 over the plot in question and in this background the Hon'ble High Court has directed the respondents not to raise any constructions over plot no. PS1 of Sector II of Bahadurpur Housing Colony in terms of decision taken in inter-departmental meeting dated 27.03.2015. But by way of subsequent decision dated 23.11.2015 the Government took the decision under the Chairmanship of the Chief Secretary that three vacant plots earmarked for educational institutions and after getting the encroachment removed from the partially encroached plot i.e. the fourth plot a proposal for handing it over to the education department be sent after arranging the necessary fund for construction of primary school and high school.

iii) For that in the abovementioned meeting the committee further takes into consideration report of the Executive Engineer Patna division II that in the radius of 3 KM of the subject plot total 9 high schools cum primary schools are situated and further non-governmental schools are also functioning. The minutes further record that within a radius of 1 KM of plot, primary schools as well as high schools are situated but no park is there

iv) For that the minutes of the meeting further record that local residents near plot in question in order to have a better environment and to have playground for the children have been requesting for construction of park upon the plot in question.

v) For that in order to prevent miscarriage of justice and in interest of justice the order dated 15.09.2015 may kindly be reviewed.”



9. Subsequently, the Board filed a supplementary affidavit on 27.04.2023 stating that a meeting was convened, presided over by the Chief Secretary, Government of Bihar, whereby a decision has been taken that no park shall be constructed over the plot, i.e., Plot No. PS-I, Sector-II, Bahadurpur Housing Colony, Patna. A copy of the decision dated 25.04.2023 taken in a meeting, headed by the Chief Secretary, Bihar, has been brought on record by way of Annexure-5. Following two decisions appear to have been taken: -

“1. निर्णय लिया गया कि भूखंड संख्या-PS/1, बहादुरपुर सेक्टर-2 पर पार्क का निर्माण नहीं किया जायेगा। साथ ही उक्त भूखंड पर स्थापित पूर्व प्रधानमंत्री स्व० चन्द्रशेखर की आदम कद प्रतिमा को हटाकर अन्यत्र स्थापित किया जायेगा।

2. विद्यालय हेतु कर्णांकित भूखंड संख्या-PS/1, बहादुरपुर सेक्टर-2 पर विद्यालय निर्माण के लिए बिहार राज्य आवास बोर्ड शिक्षा विभाग, बिहार को निर्धारित दर पर उक्त भूखंड हस्तांतरित करें। यदि शिक्षा विभाग इच्छुक नहीं हो तो बिहार राज्य आवास बोर्ड अधिनियम, 1982 के तहत विद्यालय निर्माण हेतु अग्रेतर कार्रवाई की जाय।

अंत में धन्यवाद ज्ञापन के साथ बैठक की कार्यवाही समाप्त की गई।”

10. The said meeting was attended by the Additional Chief Secretary, Urban Development and Housing Department, Government of Bihar, Divisional Commissioner, Patna, Managing Director, Bihar State Housing Board, Patna, the Education



Secretary, Government of Bihar, Patna, and the District Magistrate,
Patna.

11. It is noteworthy that when this review application was taken up on 10.05.2023, following order was passed in the light of the respective stands taken on behalf of the State of Bihar and the Board: -

“It has been stated by Mr. P.K. Shahi, learned Advocate General, that a formal request has been made on 08.05.2023 by the Education Department, Government of Bihar to the Bihar State Housing Board to transfer plot No. PS-1, Bahadurpur Housing Colony, Sector-2, Patna for establishing a school. A copy of the said request has been made available to this Court which has been taken on record.

Mr. Lalit Kishore, learned Senior Counsel appearing on behalf of the Bihar State Housing Board, has drawn the Court’s attention to Section 109 of the Bihar State Housing Board Act, 1982 (‘the Act’ for short) and has submitted that the Board is duty bound to abide by any direction which may be issued by the State Government of Bihar for carrying out the purposes of the Act and if any direction is issued by the State Government in exercise of the said power, the Board shall make available the said plot for the purpose of establishing a school.

List this case on 18.05.2023 to be taken up at 11.30 am so as to enable learned Advocate General to inform this Court the developments in the meanwhile on the point of State Government’s decision in exercise of power under Section 109 of the Act.”

12. It is apparent from the subsequent developments that the review application lost its significance in the wake of the stand



taken on behalf of the State Government and the Board that they would proceed to comply with this Court's order dated 15.09.2015 passed in C.W.J.C. No. 7885 of 2015. There are various affidavits filed on behalf of the State and the Board. On 12.09.2013, the Board filed an affidavit, paragraphs 5 to 12 of which read as under:

"5. That it is important to state here that during the pendency of the present review petition, a meeting was conveyed, presided over by the Chief Secretary, Government of Bihar, whereby, decision was taken that no park shall be constructed over Plot No. - PS/1, Bahadurpur Sector-2 and the "statue" shall be shifted at some other place. Further, Plot No. -PS/1, Bahadurpur Sector-2 which is marked for school in layout plan shall be transferred by the Bihar State Housing Board to Education Department Bihar, for construction of school, at scheduled rate, if they are willing. In case of unwillingness by the Education Department, Government of Bihar, then further steps may be taken for the construction of school in accordance with the provisions contained in the Bihar State Housing Board Act, 1982 (As contained in memo no. 1960 dated 25.04.2023, Annexure-5 to the petition).

6. That pursuant thereto, by filing supplementary counter affidavit, on behalf of the respondent State, it was brought on record that the Education Department, Government of Bihar vide Memo No. 6/Nyay-06-36/2019-1496 dated 28.07.2023, had requested the Urban Development and Housing Department, Government of Bihar, to issue necessary order to transfer, free of cost the plot in question to the Education Department, Government of Bihar.

7. That in response to the letter vide Memo No. 1496 dated 28.07.2023 of the Education



Department, Government of Bihar, it was requested by the Urban Development and Housing Department, Government of Bihar requested to Education Department, Government of Bihar that if, they are willing to construct school over the plot in question, the prescribed cost may kindly be paid to the Bihar State Housing Board vide its Memo No. 4552 dated 29.08.2023.

8. That in meantime vide memo no. 1701 dated 08.09.2023, the Additional Chief Secretary, Education Department, Government of Bihar, has again requested the Additional Chief Secretary, Urban Development and Housing Department, for free of cost transfer of land by pointing out the provision of section 109 of the Bihar State Housing Board Act, whereby, an order to this effect is expected to be issued from the administrative department i.e., Urban Development and Housing Department, Government of Bihar.

9. That it is humbly stated that the under section 109 of the Bihar State Housing Board Act 1982 mandates the State Government to issue general instructions which are necessary and expedient to carry out the purposes of this Act. It does not specifically mentions to give instructions to the Board for free of cost transfer of land to any institution.

10. That it is humbly stated that in response to Memo No. 1701 dated 08.09.2023 of the Education Department, the Urban Development and Housing Department, referred the matter to Bihar State Housing Board vide its letter No. 4893 dated 11.09.2023 to place the issue before Board of Directors to take suitable decision and further action considering all aspects.

11. That it is humbly stated that in this light the meeting of the Board of Director of Bihar State Housing Board shall be convened soon to



consider the proposal of the Education Department, Government of Bihar and the appropriate decision shall be taken in accordance with the Bihar State Housing Board Act.

12. That it is most humbly and respectfully stated that in this process sometime is expected to be consumed and for that petitioner prays before the Hon'ble Court, for grant of four weeks' time for consideration of proposal of the Education Department, by the Board."

13. Further, the Board filed a fifth supplementary affidavit stating following facts in paragraph No. 5 to 13:-

"5. That it is important to state here that during the pendency of the present review petition, a meeting was conveyed, presided over by the Chief Secretary, Government of Bihar, whereby, decision was taken that no park shall be constructed over Plot No.-PS/1, Bahadurpur Sector-2 and the "statue" shall be shifted at some other place. Further, Plot No. -PS/1, Bahadurpur Sector-2 which is marked for school in layout plan shall be transferred by the Bihar State Housing Board to Education Department Bihar, for construction of school, at scheduled rate, if they are willing. In case of unwillingness by the Education Department, Government of Bihar, then further steps may be taken for the construction of school in accordance with the provisions contained in the Bihar State Housing Board Act, 1982 (As contained in memo no. 1960 dated 25.04.2023, Annexure-5 to the petition).

6. That pursuant thereto, by filing supplementary counter affidavit, on behalf of the respondent State, it was brought on record that the Education Department, Government of Bihar vide Memo No. 6/Nyay-06-36/2019-1496 dated 28.07.2023, has requested the Urban Development and Housing Department, Government of Bihar, to



issue necessary order to transfer, free of cost the plot in question to the Education Department, Government of Bihar.

7. That in response to the letter vide Memo No. 1496 dated 28.07.2023 of the Education Department, Government of Bihar, it was requested by the Urban Development and Housing Department, Government of Bihar to the Education Department, Government of Bihar that if, they are willing to construct school over the plot in question then, prescribed cost may kindly be paid to the Bihar State Housing Board vide its Memo No. 4552 dated 29.08.2023 (Annexure-12).

8. That in the meantime vide memo no. 1701 dated 08.09.2023, the Additional Chief Secretary, Education Department, Government of Bihar, has again requested the Additional Chief Secretary, Urban Development and Housing Department, Government of Bihar, for free of cost, transfer of land for construction of school by pointing out the provision of section 109 of the Bihar State Housing Board Act, whereby, an order to this effect is expected to be issued from the administrative department i.e., Urban Development and Housing Department, Government of Bihar (Annexure- 13).

9. That it is humbly stated that in response to Memo No. 1701 dated 08.09.2023 of the Education Department, Government of Bihar, it was instructed by the Urban Development and Housing Department, Government of Bihar, vide its letter No. 4893 dated 11.09.2023 to put-up the matter before the Board of Directors, Bihar State Housing Board for taking appropriate decision in accordance with the law so that, further steps may be taken (Annexure-15).

10. That it is humbly stated that in the background of aforesaid facts, the special meeting of the Board of Directors, Bihar State Housing Board was convened on 19.09.2023, wherein proposal of the Education Department, Government of Bihar for



free transfer of land in question, for construction of school, was considered at length.

11. That it is most humbly and respectfully stated that after review of the proposal, the Board of Directors have taken the decisions along with others that the Board will have huge financial lose, if the land would be transferred to the education department, free of cost. Hence, the proposal of free of cost transfer of land in question to the Education Department, Government of Bihar was rejected.

12. That it is humbly stated that as per layout plan, the land in question has been marked for Educational Institution. In view to ensure that the same shall be allotted, for construction of School Building, in favour of institute duly recognized by the Educational Institution/Govt. of India or Board/Educational Institution recognized by Government of Bihar.

13. That in order to facilitate allotment of land in question in favour of educational institution, decision has been taken to lower the reserve price i.e. 1/4th of MVR for participation in e-auction after publication of advertisement to this effect so that large no. of prospective Educational Institution may have equal opportunity participate in the same.”

14. There is sixth supplementary affidavit also filed on behalf of the Board. We need not go into the said affidavit for the purpose of the present adjudication.

15. In view of the subsequent developments, as disclosed in the affidavits filed on behalf of the Board, the review application has lost its purpose. In any view of the matter, no ground is made out for review of the order dated 15.09.2015 passed in C.W.J.C. No. 7885 of 2015.



16. It is, however, observed that the State Government and the Board shall keep in mind the larger interest of the under-privileged sections of the society, where the children cannot afford to bear the expenses of studying in private schools and there being no Government school located in the area, establishment of such school is a necessity in conformity with the State’s Constitutional obligation to make free/affordable education available to the needy.

17. This review application is disposed of with the above observations.

(Chakradhari Sharan Singh, J)

Nawneet Kumar Pandey, J: - I agree.

(Nawneet Kumar Pandey, J)

Pawan/-

AFR/NAFR	NAFR
CAV DATE	30.10.2023
Uploading Date	09.11.2023
Transmission Date	09.11.2023

