

Shanti Devi Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Apr-11-2008

Judge : Ajay Kumar Tripathi, J.

Appellant : Shanti Devi

Respondent : The State of Bihar and ors.

Disposition : Application dismissed

Prior history : Ajay Kumar Tripathi, J. 1. Petitioner wants quashing of order dated 30.5.2007 passed by Patna Municipal Corporation, the respondent No. 3 in Plan Case No. 4B of 2007 by virtue of which the petitioner has been directed to demolish her house within fifteen days because the house in question has not been constructed on a piece and parcel of land for which the post facto sanction was granted by the respondent PRDA but on a piece and parcel of land which is not the plot for which the sanction was

Judgement :

Ajay Kumar Tripathi, J.

1. Petitioner wants quashing of order dated 30.5.2007 passed by Patna Municipal Corporation, the respondent No. 3 in Plan Case No. 4B of 2007 by virtue of which the petitioner has been directed to demolish her house within fifteen days because the house in question has not been constructed on a piece and parcel of land for

which the post facto sanction was granted by the respondent PRDA but on a piece and parcel of land which is not the plot for which the sanction was obtained.

2. Petitioner claims to have purchased a piece and parcel of land by way of sale deed executed on 25.7.1991. The land is supposed to have an area of 2.912 sq. fit and located on survey plot No. 366 (p) as would be evident from annexure-1. The said land was mutated as per the petitioner in her name and rent was being paid to the State. Thereafter a double storied house was constructed as a dwelling house. This was done without obtaining any prior approval from the respondent PRDA as it then existed. This according to petitioner was due to lack of knowledge of prior approval of PRDA for making construction of a dwelling house.

Petitioner is supposed to have obtained post facto approval from PRDA after due deliberation on 22.3.2007. The Plan Case No.897 of 2006 was approved. The plan categorically records its approval in relation to plot No. 366 (P). There seems to be some dispute thereafter between the petitioner and the members of a Cooperative Society, namely, Bihar Asainik Sahkari Grih Nirman Samiti Ltd. respondent No. 5 in the present case.

3. The reason why the dispute arose was because the members of respondent No. 5 raised serious objection that the house which was constructed by the petitioner was not on the piece and parcel of land purchased by her or for which the post facto sanction was obtained by her. According to respondent No. 5 the petitioner had constructed her house on the land not belonging to her but on plot Nos. 361, 362 and 369 which are the lands and plots belonging to respondent No. 5. Besides various kinds of litigations respondent No. 5 also decided to approach the Regional Development Authority.

4. Petitioner was served with a notice dated 22.5.2007 in Vigilance Case No. 4B of 2007 which was instituted for violation of Article 36 of Bihar Regional Development Act, 1981 as well as Section 313 of the Bihar Municipal Act, 2007. After hearing the parties and the evidence which was brought on record which included the report of the Amin who carried out local measurement, respondent No. 3 categorically recorded that the petitioner had constructed the house in question on plot Nos. 361, 362 and 369 instead of plot No. 366(P) for which post facto approval was

obtained from the respondents. In view of the above finding and conclusion a direction for demolition of the house in question was ordered.

5. The matter was heard on various dates and several submissions have been made on behalf of the petitioner from time to time. On 16.2.2008 a categorical submission was made at the bar that the earlier measurement and verification carried out by PRDA authority was behind the back of the petitioner and therefore the said decision was violative of the principles of natural justice. This Court without testing the veracity of the said stand in the interest of justice directed a fresh measurement to be made on 31st January, 2008 in presence of the petitioner/her nominee and all the parties to the dispute. An affidavit along with the report and the map has come to be filed by the respondents. The present exercise has not altered the position and the finding which was recorded by respondent No. 3 in the impugned annexure-7 to the writ application. However, some new set of submissions are being made before this Court.

6. Learned Senior counsel appearing on behalf of the petitioner primarily submits that it is not within the power and domain of the Municipal authority to decide right, title and interest of the parties. He further contends that in view of the law laid down way back in the case of Munder Lal Sahu and Ors. v. Jiwan Ram Marwari reported in AIR 1944 Pat. 254 and in the case of Sheodhyan Singh and Ors. v. Mst. Sanichara Kuer and Ors. reported in : [1962]2SCR753 that if the boundary of the land in question purchased by the petitioner matches the description then merely because she is sitting on the piece and parcel of land different from one mentioned in the sale deed she still has a right to sit over the said property. Another contention is that if there is dispute with regard to a piece and parcel of land relating to a cooperative society the matter should be thrashed out by the Registrar, Cooperative Societies under Section 48 of the Cooperative Societies Act and the respondents cannot adjudicate such issue.

7. Learned Counsel appearing on behalf of respondent No. 5 submits that the above submissions have even no legal legs to stand. His submission is that the petitioner has intentionally occupied the piece and parcel of land belonging to their cooperative society and the legal submission or innovation are only a ploy to get

recognition for her illegal act. Petitioner all along knew what she was doing and the Court should not come to her rescue because that would amount to a seal of approval to her out and out illegal conduct and action. The narration as well as the stand of the respondents have been described in detail in the counter affidavit filed by them. But they may not be recorded in detail in the present litigation keeping in mind the issue which deserves to be adjudicated upon in the present writ application.

8. At the out set after hearing the parties this Court is of the opinion that the order impugned passed by respondent No. 3 is within his power and domain and there is nothing wrong with such exercise of power.

9. The basic dispute which travelled to respondent No. 3 was whether the house in question constructed by the petitioner was in conformity with the piece and parcel of land for which post facto sanction was taken by the petitioner. There is overwhelming evidence from the sale deed as well as the post facto approval that the petitioner had obtained sanction for construction of a house on plot No. 366(P). If she has ended up building the house on plot Nos. 361, 362 and 369 over which she has no claim under law then the PRDA authorities were duty bound to look into the matter and decide whether the construction so made is on the sanctioned piece and parcel of land or on yet another property not belonging to the petitioner. If the evidence is prima facie available on record that the petitioner has not got the house in question constructed in accordance with the sanction accorded by the respondents then that will not amount to deciding title. In the opinion of this Court there is nothing wrong with such adjudication. The Court further records that in view of the subsequent order dated 16.1.2008 as well as the recent report submitted by Amin contained in the supplementary affidavit filed by the respondent Municipal Authority there is no change in the position that the house in question stands on a piece and parcel of land which does not belong to the petitioner as the plots in question are admittedly a different than the one for which the petitioner obtained post facto approval.

10. In so far as the contention of the petitioner that the matter falls within the realm of the Registrar, Cooperative Societies, this Court can only observe that it may be

a remedy to the petitioner for getting certain issue resolved if there are dispute within two cooperative societies and their working. But this Court is of the opinion that the basic dispute giving rise to passing of the impugned order may not be an area which can be adjudicated upon by the Registrar, Cooperative Societies under the various provision of the Act.

11. As for the proposition submitted by learned Counsel for the petitioner in the cases of AIR 1944 Pat. 254 and : [1962]2SCR753 (Supra) those are matters which may occupy the field in an appropriate adjudication before a civil court since the right, title and interest of the petitioner is not be decided or adjudicated upon in the present proceeding. The above ratios of two cases have no application.

12. If the petitioner is being sucked into a quick-sand, her own creation then the responsibility totally lies on her and no kind of legal ingenuity can bail her out of the present predicament. If in view of overwhelming evidence the petitioner had gone ahead and constructed a house on a piece and parcel of land not belonging to her but to respondent No. 5 then the only consequence which can flow from the same is the one indicated in the impugned order annexure 7. This Court does find any merit in the present writ application and the same is dismissed.