

Saket Housing Ltd. Vs. the Patna Regional Development Authority and anr.

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Court : Patna

Decided On : Nov-25-2003

Judge : P.N. Yadav and B.N.P. Singh, JJ.

Appeal No. : Letters Patent Appeal No. 902 of 2003

Appellant : Saket Housing Ltd.

Respondent : The Patna Regional Development Authority and anr.

Advocate for Def. : Sidheshwari Prasad Singh, Sr. Adv., H.S. Himkar, Ashok Kumar and Sunil Kumar Sharma, Advs.

Advocate for Pet/Ap. : Tara Kant Jha, Sr. Adv. and Lalit Kishore, Adv.

Disposition : Appeal dismissed

Prior history : B.N.P. Singh, J. 1. Scarce land and rising population, which made housing problem complex for teeming millions, aspiring to seek shelter in urban areas, has given rise to a new dimension to solution of this problem, known as Housing Complex or Multi-Storeyed Apartments. Paradox is that even though builders/ developers of such complexes may not have their own land for construction of complexes, yet they develop land, erect multi-storeyed buildings thereon and claim ownership thereof. 2. M/s.

Judgement :

B.N.P. Singh, J.

1. Scarce land and rising population, which made housing problem complex for teeming millions, aspiring to seek shelter in urban areas, has given rise to a new dimension to solution of this problem, known as Housing Complex or Multi-Storeyed Apartments. Paradox is that even though builders/ developers of such complexes may not have their own land for construction of complexes, yet they develop land, erect multi-storeyed buildings thereon and claim ownership thereof.

2. M/s. Saket Housing Ltd. through its Managing Director, the appellant, having lost CWJC No. 7904 of 2002 before a Bench of this court, has now chosen this forum for appeal, filing LPA No. 902 of 2003. Since manifold contentions were raised at Bar on behalf of the appellant and the respondents, salient features of the case of the parties can be noticed to appreciate them.

3. Since learned Single Judge in his judgment has set out in elaborate details all the relevant facts pertaining to reason and subsequent development of the case, it is not necessary for us to recapitulate in the judgment all these materials in full. However, we shall refer to certain salient features emerging from the pleadings of the parties and submissions made. Put up briefly the essential facts are these. On being approached by appellant Company, for construction of multi storeyed building, commercial and residential, on Municipal Plot No. 156 under Ward No. 2, Circle No. 6, Holding No. 128/95 in Patna, the respondent Patna Regional Development Authority (hereinafter referred to as 'PRDA') accorded sanction of building plan case No. 35 of 1998 on 31st July, 1998, known as 'Santosh Complex' With certain terms and conditions which were conveyed to the appellant for construction of basement + Ground Floor + six floors with following specifications :--

(A) Set Back

(i) Front - 7.5 mt. + 3.0 mt

(Strip for r/w)=

10.50mt. for height 21.0 mt.

(ii) Rear - 3.60 mt. + 1.5 mt.

(for r/w = 5.1 mt.)

for height 21.0 mt.

(iii) Left - 6.0 mt.

(iv) Right - 6.0 mt. (0.05 to 0.35 mt. R/W)

(B) Built Up Area

Basement - 44.25 sq. mt.

G.F. - 330.15 sq. mt.

1st floor- 764.75 sq. mt.

2nd floor - 764.75 sq. mt.

3rd floor - 764.75 sq. mt.

4th floor - 764.75 sq. mt.

5th floor - 764.75 sq. mt.

6th floor - 764.75 sq. mt.

(C) FAR - 2.99

(D) Height - 21 mt.

3. In terms of the sanction, respondents sanctioned plan for construction of 24 flats on 1st floor to 6th floor. It, however, came to notice of the respondents PRDA, from report of Vigilance Cell that during construction of building in question, large scale deviations had been made from sanction plan and thereafter on submission of inspection report by Assistant Director, PRDA, holding appellant company responsible for substantial deviation for construction from sanction plan, a Vigilance Case bearing No. 11-A/2000 was instituted. During local inspection by

the Vice- Chairman along with high officials of PRDA, measurement of construction in question was made in presence of representative of the appellant company, and finding gross violation of sanction plan, show cause had been issued against which a representation was filed in respect of (A) Set Back, (B) Balconies affecting Set Back, (C) Parking space, (D) Built UP Area and (E) Height of construction, in which while other deviations were sought to be justified on some excuses, the appellant company agreed to demolish 37 small cubicles, measuring 331.24 sq. mt. in basement. Though the representation of the appellant company to the extent that the area of left wall, fire escape, cut outs and ducts should be deleted from total built up area, found favour with the respondent PRDA, along with others, contention of the appellant that it was ready to seal the balcony area and not to leave it usable as additional built up area, was rejected.

4. The respondent PRDA on consideration of report of its officers and also representation of the appellant, found that while in respect of Set Back, it had enclosed by wall, 3 mt. wide strip for R/W, which had affected height finally achieved, in respect of Rear Set Back, there was shortfall of 0.95 mt. and there was enclosure of 1.5 mt. wide strip for R/W by constructing boundary wall. In southern side of Set Back, there was shortfall of 0.15 mt. and as for parking space, against sanctioned plan of Ramp with gradient of 1.10, ramp gradient was 1.25. As for built area basement, against sanction plan of 4962.90 sq. mt., there was excess built up area of 4083.67 sq. mt. with three additional floors. Against sanction of 24 flats on 6 floors @ 4 flats on each floor, there was construction of 46 flats @ 6 flats on nine floors, and hence due to additionality in construction, the FAR and height of building had increased much more than the sanction plan.

5. Considering these major deviations from the sanction plan, the Vice Chairman, respondent No. 1, in Vigilance Case No. 11- A/2000 by order dated 22.4.2000, directed appellant for demolition of construction to the extent it was beyond sanction plan, and further direction was issued for payment of Rs. 34,77,514/- under the head Condonation/Compounding fee for certain portion of the building which was found under condonable limit.

6. Aggrieved appellant preferred appeal before the Appellate Tribunal under Section 54(2) of the Bihar Regional Development Authority Act, 1981, (hereinafter called 'the Act') which, on consideration of various aspects of the matter, dismissed the appeal to the extent regarding shortfall in the set back left, in southern side, which was found to be appropriate by the appellate tribunal. The appellant thereafter, moved this Court in writ jurisdiction in CWJC No. 7904 of 2002 for quashing the order dated 22.4.2002 passed by the Vice-Chairman. PRDA in Vigilance Case No. 11-A/2000 and also order dated 4.6.2002 passed in Appeal No. 19 of 2000. It seems that though the appellant, before the Vice Chairman, while showed good gesture to comply the direction, also filed an application during the pendency of appeal along with revised map, for post facto sanction for construction of a building over plot No. 156/184 on acquisition of adjacent land, which will neutralise increased occupancy load on the building in question due to additional storeys and flats beyond sanction plan, which was registered as Building Plan Case No. P-Ararra PRN-7-455/2002 for construction of multi-storeyed commercial building.

7. Learned counsel appearing for the appellant in his anxiety to justify the construction made by the company beyond sanction plan, submits that so far as increase in height from 21 mt. to 31.05 mt. was concerned, Table 2 B-I of proviso 20.2.1 of the PRDA bye-laws does not put a bar on construction of the building, beyond 15 mt. height, and that apart, Note 1 of proviso 20 of the PRDA Bye-laws also provides for building above 30 mt. with extra set back. The contention is that apart from the fact that the set back, as required, are available, the appellant had also acquired adjacent land for covering up shortfall, if any, in the set back and as for construction of 46 flats against 24 flats, the argument is that for extra built up area, a revised map had already been submitted before the respondents and the appellant was ready to pay condonation/compounding fee as calculated by the PRDA for the said built up area. As for enclosing 3 mt. wide strip for road widening within the boundary wall, the argument is that as per provision of proviso 21.3 of PRDA Bye-laws, the land provided for road widening, voluntarily by the owner, shall be vacated by a deed of transfer to be executed by the owner in favour of the authority. But since, no such deed has been executed, the appellant had enclosed the said land within its boundary wall, in order to protect the strip of land from

encroachment and being used for dumping of garbage and urination by the locals. However, the appellant undertakes to hand over the aforesaid strip of land to the PRDA as and when road will be widened and if there is execution of the sale deed. As for shortfall of Order 91 in the rear set back, the case of the appellant was that in fact shortfall was only to the extent of 11 cm. and not 95 cm., and that apart, the appellant was also entitled to 20% condonation in the rear set back under the provisions of proviso 10,2 and Appendix - L of the PRDA Bye-laws. As for ramp gradient, it was submitted that it had been rectified which would appear from revised map submitted by the appellant. For the excess built up area of the building to the extent of 4083.67 mt., the grievance of the appellant was that the built up area had not been properly measured after removal of 37 cubicles which being temporary construction, has since been removed. As for additional FAR and height of building, the contention of the appellant is that to meet the shortfall and deviation in the building, almost all the FAR variations including 3 upper floors stood removed, for which adjacent land was available and a development agreement too was entered, in which stipulations were made that additional built up area of Santosh Complex could be accommodated from the land attached to the plot and on these premises, with all stress, it was urged that the revised plan, submitted by the appellant, had taken care of all the shortcomings/shortfalls/deviations even they survive.

8. While assailing observations made by the learned Single Judge, Shri T.K. Jha, learned counsel for the appellant, would argue with all vehemence that for development of land, the builder was not required to establish its title over the land in question, as, had it been so, there would not have been mushroom growth of multi-storeyed complex in urban areas. Many of the developers, it is submitted even though they did not have their own land, have developed complexes on the land on the strength of an agreement executed by them with the owners of the land. It was only in context of findings of the respondents about deviation from the sanction plan, that the appellant had entered into formal agreement with the adjacent land owner which would neutralise the shortfalls/deviations beyond sanction plan. The appellant's assertion is that it gave a notice to the PRDA, pursuant to submission of revised plan, in terms of Section 37(5) of the Act, which was duly received in the office of the respondent Vice Chairman and since the

Vice Chairman did not pass any order within 30 days of service of notice, the revised plan, in the eyes of law be deemed to have been sanctioned and hence in no way the respondents were authorised to ask the appellant for demolition of the construction to the extent it was found beyond sanction plan.

9. As for institution of Title Suit No. 145 of 2003 in the Court of Sub Judge I, Patna, seeking injunction in the matter, contention raised was that as the appellant company was facing threats for demolition of the construction, in the suit, prayer for injunction was sought by the company with no ulterior object, but shortly after the writ filed by the appellant before this Court came to be listed for admission, to avoid multiplicity of proceedings, suit filed before the Sub Judge I, Patna, was eventually withdrawn. As for rejection of the revised map by the respondent, for there being no document for the adjacent land sought to be acquired, contention raised is that in case any document was wanting on part of the appellant, in all fairness, before rejection of the revised map, the appellant should have been afforded opportunity to place on the record document which appeared to be wanting, and on these premises, learned counsel would urge that the communication made to the appellant by the respondent vide memo No. 140 dated 15.4.2003 stands vitiated for gross violation of the principles of natural justice, as undisputedly civil consequences may follow, and hence the grounds given in the communication were untenable.

10. Resisting contentions raised on behalf of the appellant, contention on behalf of the respondent PRDA was that after major deviation from the sanction plan in the matter of construction of Santosh Complex came to its notice, communication Order dated 22nd April, 2000, passed by the Vice Chairman, PRDA was made to the appellant for demolition of construction and removing the shortfalls, which were not in terms of the sanction plan and the appellant was directed also to deposit condonation/compounding fee on certain portion of the building plan which was under the compoundable limit. If at all the appellant was sincere to meet the shortfalls, it was required to present a revised plan before the Vice Chairman, PRDA, but instead of filing a revised plan, the appellant played a role of fraud with mala fide intention by filing a fresh separate plan, which on thorough inquiry, was rejected, as not only the evidence of title/ownership of the additional land sought to

be acquired by the appellant was wanting, but even development agreement was found unjust and hence it merits rejection in terms of proviso 5.2 (V) of the Modified Building Bye-laws. As for other frauds allegedly committed by the appellant company, the contention is that notwithstanding pendency of CWJC No. 7904 of 2002 for adjudication before this Court, the appellant had chosen to file T.S. No. 145 of 2003 in the Court of Sub Judge, Patna, even though jurisdiction of Civil Court in terms of Section 91 of the Act was expressly barred, and on these premises Shri Sidheshwari Prasad Singh, learned counsel appearing for the PRDA, would strongly urge that in view of gross violation in construction of complexes beyond sanction plan, move of the appellant has to be ruthly curbed.

11. As has been noticed earlier, in its show cause filed before the Vice Chairman, PRDA, while other deviations from the sanction plan were sought to be justified on some excuses, the appellant company had agreed to demolish 37 small cubicles measuring 331.24 sq. mt. in basement. The representation of the appellant company that the area of left wall, fire escape, cut outs and ducts be deleted from total built up area had also found favour with the respondent PRDA. However, along with others, its representation that the balconies area would be sealed, making it unusable as built up area, was rejected by the PRDA and hence these matters were no longer debatable.

12. Contentions raised on behalf of the appellant that the set back available on the site was more than the minimum requirement under the Building Bye-laws 20.2.1, merits rejection for the reason that the set back sanctioned were specifically for a building of height of 21.0 mt. whereas the height of the complex had gone to 31.0 mt. for which extra set back in respect of additional height was required. As against construction of six storeys and 24 flats thereon, there had been construction of 9 storeys with 46 flats thereon beyond sanction plan and hence admittedly there had been increase in occupancy load in the building in question.

13. Though as per the provisions of sanction plan, FAR should have been 2.99 it was found to be 5.459, and though in terms of proviso 21.2, the height of the building is to be governed by the limitation of FAR, absolute height of the building shall not exceed 1/5th times the width of the road abutting the property plus front

open space, there had been additional height of 10.05 m against sanction plan of 21 mt. The provisions made in the bye-laws either about floor area ratio or the area and height limitations are not without significance, as these provisions have been made in the bye-laws considering factors like density of population, state of availability of infrastructure and also potential for development etc. Height of the building is governed by a number of factors and proviso 21.2 (a) of the bye-laws provides only one of the restrictions on the height of the building and the height of the building is also restricted by FAR and set backs provided in the building. The front Set back available is sufficient only for a building of height of 21.0 mt. while appellant had constructed a building of height of more than 31 mt. for which front set back was inadequate. The set backs required for the building are governed by Table 2-B-I and 2-B-II read along with Note (1) of proviso 20.2.1 of the bye-laws. As for 10.5 mt. front set back, as per Master Plan, only 7.5 mt. would be available after road widening. Parameter like front and set backs of the building would not change. Though all the deviations/shortfalls are sought to be met by acquisition of adjacent land, we are of the firm view that parameter like front and set backs of the building would not change even if the appellant would obtain land to rear of the building in question.

14. In view of submission of report in the Vigilance case before the PRDA, major deviations beyond sanction plan are writ large and though while some deviations were acknowledged with some excuses, others were sought to be justified on acquisition of additional land adjacent to the construction, but that development agreement was found to be unjust, and move of the appellant that acquisition of the additional land would neutralise the deviations had rightly been rejected by the PRDA with cogent reasons and this fact had also been considered by the learned Single Judge of this Court in its true perspective.

15. Though much has been argued on observations made by the learned Single Judge in the writ petition about there being no evidence of title in respect of adjoining land sought to be acquisitioned by the appellant, the provisions enjoined in proviso 5.2 (v) should not be lost sight of, which are in the following terms :--

Every application for development permit shall be accompanied by the following for verifying proof of ownership :--

(a) Attested copy of the original sale/lease deed, and

(b) Attested copy of the revenue receipt (Malguzari receipt/Municipal

Holding Tax receipt with khesra/holding No. or mutation records :

Or affidavit or other documents acceptable to the authority.

The PRDA while considering application for development permit are obliged to ascertain about ownership/title of the complex and there is no gain saying that the document, which was placed before the PRDA to justify the deviation beyond sanction plan was only about acquisition of adjacent land on strength of an unjust development agreement, which in clear terms, did not satisfy the requirements enjoined in the statute. That apart, though the appellant was required either to remove the deviations or meet shortfall which were beyond sanction plan, nothing sort of that was exhibited on their part and instead of submission of revised plan, what was placed before the PRDA, was more or less a new plan for which sanction had been sought by the appellant. The conduct too of the appellant smacks fishy deal, as pursuant to submission of new plan, said to be a revised plan by them, they also served a notice on the PRDA in terms of Section 37(5) of the Act, and took plea that since no order was passed by the Vice Chairman within 30 days of service of notice, the plan in question was deemed to have been sanctioned. The evidences placed before us do suggest that the matter was enquired into by the respondents and it was found that the receipt clerk of the office had made back dated entry of the purported notice after deleting original letter which had been recorded against this number, and considering misconduct of the official, he had been put under suspension by the PRDA and a departmental proceeding had been initiated against him. This was not the end of the chapter. Even during pendency, the writ application before the learned Single Judge of this Court, a move to scuttle the stand of the PRDA was taken by the appellant by filing a title suit bearing No. 145 of 2003 before Sub Judge I, Patna, and even status quo In the matter had been obtained, notwithstanding that the jurisdiction of the

civil Court in terms of Section 91 of the PRDA Act, 1981 was expressly barred. These aforesaid conducts admittedly gave rise to adequate grounds for prima facie suspense and connivance of the appellant with those who seem to be determined to defeat the object of the provisions of the bye-laws and the Act,

16. Grievance of the appellant was that even if there had been any deviation from the sanction plan, its condonation was permissible by the PRDA in terms of provisions of Section 10.2 of the Modified Building Bye-Laws or the Act. However, we feel that while making these submissions, learned counsel seems to have lost sight to notice the essence of the provisions which in clear terms enjoin that condonation was permissible only for minor deviations, and these minor deviations have been incorporated in provisions of Appendix L of the Act, and that apart, minor deviations asked to be condoned would not affect the Master Plan. There is nothing gainsaying the fact that the condonation sought for by the appellant were major deviations from the sanction plan also affecting the Master Plan and hence this argument merits rejection.

17. It need not be emphasised over and again that rules/bye- laws incorporated in the Act are with an object of betterment in hygiene/movement of the occupant of the building/complex and also considering potentials of future development not affecting the interest of the persons residing in the neighbourhood. It also aims to prevent haphazard construction and to regulate the same in accordance with certain standards.

18. In case deviation from the sanction plan comes to notice of the authorities, following course, in terms of Section 54 of the Act is open :--

'(1) Where any development or erection of building has been commenced or is being carried on or has been completed in contravention of the regional plan, master plan, or zonal development plan or without the permission, approval or sanction referred to in Sections 35, 36, 37 or in contravention of any condition subject to which such permission, approval or sanction has been granted, any officer of the authority empowered by it in this behalf may, in addition to prosecution that may be instituted under this Act, make an order briefly stating the reasons therefor directing that such erection of development work shall be

removed by demolition, filling or otherwise by the owner thereof or by the person at whose instance the erection or development work has been commenced or is being carried out or has been completed within a period of 30 days from the date on which a copy of the order of removal has been delivered to the owner or that person as may be specified in the order and on his failure to comply with the order, any officer of the authority may remove or cause to be removed the erection or development work and the expenses of such removal shall be recovered from the owner or the person at whose instance the erection or development was commenced or was being carried out or was composed, as arrears of land revenue :

Provided that no such order shall be made unless the owner or the person concerned has been given a reasonable opportunity to show cause why the order should not be made.'

19. This is not in dispute that when major deviations came to notice of the PRDA, a notice as required under Section 54(1} of the Act had been issued to the appellant but instead of either removing the deviations or meeting the shortfalls, which were beyond the sanction plan, the appellant company dragged respondent PRDA to litigate, and made all endeavours to justify the wrongs committed by it. As regards deviation beyond the sanction plan, there has been concurrent finding of the Vice Chairman, PRDA, PRDA Tribunal and also the learned Single Judge of the Court on the major issues and the appellant has failed to make out good grounds warranting interference in the finding recorded by the learned Single Judge of this Court, in this Letters Patent Appeal.

20. After bestowing our careful consideration to all the aspects of the matter, we are clearly of the opinion that the view taken by the learned Single Judge is perfectly correct and this appeal has only to be dismissed. This Letters Patent Appeal is accordingly dismissed with a direction to the appellant to deposit condonation/compounding fee of Rs. 34,77,514/- (thirty four lacs seventy seven thousand five hundred and fourteen) and also to remove deviations/meet shortfalls which were found beyond sanction plan within 45 days from the date of the judgment, subject to reliefs granted by the Vice Chairman, PRDA.

21. It came to our notice that other three writ applications bearing CWJC Nos. 3612, 3620, and 3610 of 2003 were also filed by the allottees of the aforesaid complex along with CWJC No. 7904 of 2002. Since petitioners of these writ petitions did not have vested right in the matter and their interest was largely linked with the petitioner of CWJC No. 7904 of 2002, findings were accordingly recorded by the learned Single Judge. Even considered otherwise, if the structures have been illegally constructed and order under Section 54 of the Act is justified, it makes no difference whether the premises are self occupied or are tenanted premises. The mere fact that the premises are tenanted will not protect them from the consequences that flows from Section 54 of the Act.

22. While parting with the judgment, we are constrained to observe that the facts brought on the record also largely reflect on working of the Patna Regional Development authority. After a plan is sanctioned by the PRDA, it is incumbent on them to have watch on the construction so as to frustrate the design of deviations of the developers. We believe that the PRDA must have agency to supervise the constructions which are being carried out under the sanction plan. Failure of the PRDA to have a watch or supervision on the construction leads to multiplicity of litigations and also expenses borne by the PRDA and at the same time it also becomes quite painful for the developers to demolish the construction found beyond sanction plan. It also adversely affects the interest of the tenants or the allottees for no fault of their own, and they too have to suffer the consequences and bear the brunt. If PRDA feels handicapped of such infrastructure to supervise the construction, before such situations arise before them, it is high time that they must ponder over it.

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