

District Bar Association Vs. State of Bihar and ors.

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Court : Patna

Decided On : Apr-07-2004

Judge : Chandramauli Kr. Prasad, J.

Appeal No. : C.W.J.C. No. 3291 of 2004

Appellant : District Bar Association

Respondent : State of Bihar and ors.

Advocate for Def. : S.A. Hussain, SC VI

Advocate for Pet/Ap. : Keshav Srivastava, Senior Adv. and Suraj Narain Yadav, Adv.

Disposition : Application dismissed

Prior history : Chandramauli Kr. Prasad, J. 1. This application has been filed for quashing the notice dated 10.4.2004 (Annexure 5) whereby the petitioner has been asked to remove the unauthorised construction made within the premises of the District Bar Association, Civil Court, Patna by 17th of March, 2004 failing which it has been informed that the same shall be demolished and the cost of the same shall be realised from the petitioner. 2. Shorn of unnecessary details facts giving rise to the present applic

Judgement :

Chandramauli Kr. Prasad, J.

1. This application has been filed for quashing the notice dated 10.4.2004 (Annexure 5) whereby the petitioner has been asked to remove the unauthorised construction made within the premises of the District Bar Association, Civil Court, Patna by 17th of March, 2004 failing which it has been informed that the same shall be demolished and the cost of the same shall be realised from the petitioner.

2. Shorn of unnecessary details facts giving rise to the present application are that the petitioner is the District Bar Association and this writ application has been filed on its behalf through its General Secretary. An agreement dated 9th day of March, 1939 was entered between the Governor of Bihar and District Bar Association, hereinafter referred to as the Association, by which a plot of land measuring 0.72 acres in Patna Civil Court compound was demised in favour of the petitioner for construction of building of the Association on various conditions. The conditions which are relevant for the purpose of decision in the present application are as follows :--

Firstly:--That the plans of the proposed building shall first be approved by the Superintending Engineer, South Bihar Circle, before construction is commenced and that the building shall be completed in accordance with such plans. No alterations or additions shall be made to the building without the previous sanction of the Superintending Engineer, South Bihar Circle.

Fourthly :--That the District Bar Association, Patna, shall not without the previous sanction of the Government in the public works Department devote the said land and building to any other purpose than that for which the erection of the building is now permitted that is to say, the accommodation of the District Bar Association, Patna, the holding of its meetings and functions and that it shall not lease out or otherwise of dispose of the whole or any portion of the building. If the District Bar Association, Patna, breaks either of the above conditions the Government shall be entitled to require the aforesaid association to relinquish the entire building and site on one month's notice and it shall relinquish the same and shall have no claim to any compensation whatsoever

Fifthly :--That the District Bar Association shall not by reason of being allowed to erect the said building on the said Government land acquire or be entitled to any right or interest whatsoever in the soil or ground upon which such building is erected save and except the right to enjoy and use the said building subject to conditions of this agreement.

Ninthly :--That the District Bar Association, Patna, shall not erect any building on or attempt in any other way to make profit out of the strip of land measuring 27/32 ft. in width towards the eastern extremity of and included in the plot of land hereby permitted to be used and occupied by the District Bar Association, Patna and shown in the site plan attached herewith; and to ensure that this strip of land remains open and is not used as a Hackney Carriage or Ekka Stand, the Association shall enclose the same.

Provided that the well standing on this strip of land will be made available to the public for drinking purposes,'

3. According to the petitioner, on account of acute shortage of accommodation to the members of the Association and finding that they have to work under subhuman conditions due to lack of proper decent sitting and working conditions, the Association on 1.10.2003, resolved to construct more chambers for accommodation of advocates and for this purpose, it decided that pucca construction be made on the 1st and 2nd floor over the shops which are existing since last about 40-45 years. In the light of the aforesaid resolution, ten Advocate's Chambers over the shops besides one dispensary on the 1st floor, were also constructed for use of the members and extending medical help to them. Thereafter as resolved the Association constructed 11 Chambers on the 2nd floor and according to them, they had already allotted the chambers to its members and the chambers on the 1st floor have already been occupied.

4. According to the petitioner on 11.2.2004 it received letter dated 10.2.2004 (Annexure 3) of the Executive Engineer conveying to it that it had encroached on the Civil Court's land and demolished the eastern boundary of the District Bar Association compound in violation of the provisions of the Bihar Government Estate (Khas Mahal), Manual as also the terms of settlement. In the said letter, it

was further alleged that the petitioner had constructed a double storey building on the eastern portion of the District Bar Association after demolishing the existing boundary wall and had let out to different tenants to earn money in violation of the terms and conditions of the settlement. Petitioner was further asked to furnish information as to whether it had made construction after the approval of the Superintending Engineer or the Patna Regional Development Authority. Petitioner was directed to send his reply within 15 days failing which it was cautioned that appropriate legal action shall be taken for demolishing the illegal construction. Petitioner submitted its reply dated 24.2.2004 (Annexure 4) and instead of answering the allegation, attempted to divert the whole issue by writing that the law of the land can not run on the whims of the Administrative/Majesty of law is above all. Petitioner was evasive in its reply in regard to the allegation that it had made encroachment and deviated from the terms and conditions of the settlement. The Executive Engineer by the impugned notice dated 10.3.2003 (Annexure 5) requested the petitioner to remove the unauthorised construction made within the premises of the District Bar Association by 17th of March, 2004 failing which it was threatened that the same shall be demolished and the cost shall be realised from the petitioner.

5. In pursuance of the letter of the Executive Engineer, the petitioner wrote a letter to the Superintending Engineer which reads as follows :

'Inadvertently, however, the present incumbent to the post of General Secretary in absence of proper information regarding the settlement agreement from the staff, proceeded ahead with the construction and eleven chambers and one medical dispensary have been constructed on the first floor over the existing shops and eleven chambers on the second floor have also been made, only the roof casting is to be done.

Under the circumstances it will appear clearly that said constructions have been made for the welfare of the Advocates and the existing shops also cater to the requirement of the Advocates as well as the litigant public, the shops are also existing since fast 40-50 year only their nature keeps on changing according to needs of the time.

It may be made clear that the aforesaid construction of Advocates Chambers have not been made on the land of the Civil Court. It is also made clear that said constructions have been made within the area handed over to them by your office through the Registered Settlement Agreement dated 9.3.1939.

In view of the facts stated above, this is to request you to kindly grant post-facto sanction to the aforesaid construction as required. And for this the entire Advocate community shall be ever grateful to you.'

6. Mr. Keshav Srivastava, Senior Advocate, appearing on behalf of the petitioner states that the entire construction has been made without any sanction/permission of the authority but he contends that the act of the petitioner in making construction of lawyers' chamber is bona fide hence nothing prevents the respondents from according post-facto sanction to the construction already made. He submits that till the respondents take decision to the request of the petitioner for grant of post-facto sanction, the impugned order be set aside and the respondents be restrained from carrying out the demolition till such decision. He submits that such a course is open to this Court in view of the decision of this Court in the case of Mst. Laxmi Jain and Ors. v. R.S. Sohini and Ors., 1966 BLJR 963, Smt. Kamla Devi and Ors. v. The State of Bihar and Ors., 1997 BBCJ 485 and Bhola Sah and Ors. v. The State of Bihar and Ors., 1999 (2) PLJR 851.

7. Having given my anxious consideration to the plea raised, I am of the opinion that the aforesaid plea is not available to the petitioner.

8. The facts of the present case discloses a desperate act on part of the petitioner. Although according to the terms and conditions of the settlement, any alteration or addition in the building is not permitted without the previous sanction of the Superintending Engineer, still it demolished the eastern wall and in hurry, made construction of a three storey building. According to the terms of the lease, the area over which the construction has been made, was to remain open but the men in black-robos made construction with impunity. Petitioner is right, when he contends that the law of the land cannot run on the whims of the administration and majesty of law is above law, but the instant case, clearly demonstrates hollowness in its plea. Petitioner wants to be law unto itself. The fact of the present

case does not deserve any sympathy. A person who lives with the sword has to die with it. I am of the considered view that undue sympathy in such matters do more harm to the Justice delivery system and the public confidence in the efficacy of law and society could not for long endure such serious threats. The petitioner is an Association of the members of the legal profession. It is widely accepted that the members of the Bar is an important pillar in administration of Justice and it is not expected that they act in breach of law. It is inconceivable that the members of the Bar instead of respecting the law, shall breach it with impunity. Any interference by this Court in such matters will make a mockery of the entire judicial system and other citizen would venture to make construction in breach of law unauthorisedly and seek shelter in a Court of law. It is high-time that every person, however, mighty he may be had to be told loud and clear that in case they act in breach of law, they have to perish. It is high-time that respondents take such action so that the people's faith in law is not shaken, sooner the better.

9. Application stands dismissed with cost to be paid by the petitioner to the respondents which I assess at Rs. 5,000/-.

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