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R. Usha Vs. State of Bihar and ors.

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Court : Patna

Decided On : Mar-19-2002

Judge : Ravi S. Dhavan, C.J. and D.P.S. Choudhary, J.

Acts : Constitution of India - Articles 226 and 243W; Bihar Regional Development Authority Act, 1981 - Sections 32

Appeal No. : C.W.J.C. No. 6941 of 1988

Appellant : R. Usha

Respondent : State of Bihar and ors.

Advocate for Def. : V.N. Sinha, GP 9, Sidheshwari Pd. Singh, Sr. Adv., H.S. Himkar, Adv., V.V. Ambastha, Adv. for PRDA, Jitendra Singh, Adv. for Patna Mpl. Copn., Rajendra Pd. Singh, Sr. Adv., Niranjan Kumar, Adv., P.K.

Advocate for Pet/Ap. : R. Usha and Devendra Pd. Sinha, Advs.

Judgement :

1. Habitat planning in Bihar has gone haywire. The concept of Town Planning has vanished. The Regional Development Authorities, whose primary job is to plan cities worth living in, have taken a ringside seat. Constructions go on unabated on a phenomenon known as 'assumed deemed permission'. There is a fine-tuned arrangement to present a building plan, and it does not matter whether it conforms to the law or not, submit it, then wait for a prescribed period to pass and thereafter

assume that the plan has been passed. The construction goes on merrily meanwhile. By the time the -construction has been completed, urban planning regulations are laughed upon, as if they were made for fools. The deemed permission clause was meant to be an exception to remedy bureaucratic red-tape it has become the normal style. These were aspects which were debated at the Bar of the Court in this matter.

2. A proposition was put before the Court that the Court may send a team anywhere in Patna to find out whether the buildings which have come up, particularly In the last three decades, have been constructed in compatibility with urban planning laws. It was also contended that the State or the Municipal authorities, whether the Corporations or the Development Authorities, may themselves report to the Court on how many violations of urban regulations and city planning concepts have taken place. It was submitted before the Court that in the cities of Bihar, Patna not excluded, the storm drain has disappeared, the sewage lines have been built over, the sidewalks do not exist, the set backs have been encroached upon, the height restriction has been violated, residential areas have disappeared and the whole city is an unauthorized bazaar. In these matters regardless of petitioners or respondents counsel have at least acknowledged, pointing to localities and construction work that is going on at present, that the Master Plans made for Patna have been trampled upon and permitted to gather dust. The Court was invited to see sections of the city and perceive for itself the violation of building laws by buildings constructed and the constructions In progress. The arguments have come thus far, that the Court is being told that while judges go home they may clearly see the violations of the building laws and the illegally constructed buildings. The theme of the arguments was that none are so blind, as those who have eyes but will not see. The contention continued that the Municipal authorities slept while the violations of building regulations went on and continues unabated.

3. When the proposition was put by the Court that the amended Constitution of India casts an obligation on the States that habitat planning is a discipline set by the Constitution. At the Bar there appeared to be ignorance. The Court pointed out that the Constitution mandated planning as an obligation of the State and

participation of representatives of the people. District and Metropolitan planning, the Constitution requires to be taken up as a corporate venture, not as a corporation -sole by Administrators of superseded municipalities. In this regard the Court pointed out that the State needs to pay heed to Articles 243ZD, and 243ZE on district and metropolitan planning. The Constitution requires that there would be planning committees. For District planning, four fifths of the total number of members of such committees shall be elected from among elected members of the Panchayats and the Municipalities, and for Metropolitan planning, two -thirds of the members from amongst the elected members of the Municipalities and Chairpersons of the Panchayats. The Court asked the question whether this has been prescribed by the State of Bihar in the laws which control the planning and development of urban habitats. The Development Authorities may not have sanction to function without these obligations in the enactment which creates them. Counsel for respondents (aside their briefs) were at least frank enough to acknowledge that perhaps no one even saw these provisions. The Court pointed out that providing for municipal and civic matters Is now a Constitutional obligation with people's participation. In this regard the Court pointed to the Twelfth Schedule of the Constitution to be read with Article 243W of the Constitution. In no uncertain terms, urban planning with people's participation is part of the democracy envisioned in the Constitution. Significant aspects to be noticed in the Twelfth Schedule are certain entries which refer to :

1. Urban planning including town planning.

2. Regulation of land-use and construction of buildings

3. Planning for economic and social development.

4. Roads and bridges.

5. Water supply for domestic, industrial and commercial purposes.

6. Public health, sanitation conservancy and solid waste management.

7. Fire services.

8. Urban forestry, protection of the environment and promotion of ecological aspects.

9. Safeguarding the interests of weaker sections of society. Including the handicapped and mentally retarded.

10. Slum improvement and upgradation.

11. Urban poverty alleviation.

12. Provision of urban amenities and facilities such as parks, gardens, playgrounds.

13. Promotion of cultural, educational and aesthetic aspects.

14. Burials and burial grounds; cremations, cremation grounds and electric crematoriums.

15. Cattle pounds; prevention of cruelty to animals.

16. Vital statistics Including registration of births and deaths.

17. Public amenities Including street lighting, parking lots, bus stops and public conveniences.

18. Regulation of slaughter houses and tanneries.'

4. The Constitution of India on this subject is virtually requiring a guiding principle that in matters of urban planning, the planning committees will have due regard to 'spatial planning' and 'the integrate development of infrastructure and environmental conservation'. Any old law, which was inconsistent with the provisions of the Constitution in this context, could at best continue for a limited period. When the Court asked whether these planning committees had been formulated and are functional, the answer of the respondents was in the negative.

5. On behalf of the Patna Regional Development Authority, it was contended that now the Authority has become very strict and recently it has issued notices to 200 violators asking them to show cause why buildings have been constructed

unauthorisedly. And it was further contended that those who are under notice will have to face proceedings. It was acknowledged that these notices were issued while these matters were pending, and particularly in the last three months. This is like locking the stable after the house has bolted. Of all the unauthorized constructions that have taken place whether these have been enlisted, monitored and, noticed, there was no answer. It was contended that the Authority will demolish any building which the Court so orders. The question arises, why was the Authority structured at all, and what was it doing all this time? Playing safe, or in the throes of corruption amidst the building mafia? Firing a gun on the borrowed shoulder of the Court will not be a solution. And, the Court is not about to lend its shoulder so easily.

6. Such is the state of affairs of all others towns in Blhar, it seems. Over 170 cases are pending in matters pertaining to city problems, to put It mildly, of Patna alone. There are yet others that relate to the urban planning misadventures in other towns. The Court feels the pressure of public interest litigations, yet the Court cannot shut its doors to a courageous citizen who would like to point out aberrations which have resulted in a lawless urban sprawl. It is pointed out to the Court that the Development Authorities have failed in their functions and the violation of urban planning concepts was inherent in the very nature of their structure. The Court is being told that if the corporate entity of the Regional Development Authority (under the Bihar Reglonal Development Authority Act 1981) were to be seen, then from top to bottom it is nothing but State functionaries, there is no content which would reflect this Authority is part of a self-governing institution. Even a few representatives from the elected representatives, at best five, are nominated by the State Government. The constitution of the Authority is a total contradiction to the provisions of the Constitution of India which require participation as an Institution of self Government where the players are In majority elected representatives of the people -- whether fourfifths or two-thirds. The Bihar Regional Development Authority Act 1981, and the Development Authorities created by it claim that urban planning is their function.

7. The Bihar Regional Development Authority Act 1981 does not even recognise institutions of self government as the Constitution of India desires it to be

recognised. There is ro denying that this Act was enacted 'to provide for the development of various regions of the State of Bihar accord-Ing to place and matters ancillary thereto'. Responsibility of the Development Authority for planning (and execution) of schemes relating to Development areas is provided in this Act (Section 12). Preparation of the regional place is the duty of the Development Authority (Sectionl6). The manner in which the sue of land in the development areas shall, be regulated; carried out would be the theme of Master Plans, which the Development Authority shall cause to be made as a draft plan (Section 18). These plans will be submitted to the State Government for approval (Section 20). A semblance of Inviting objections on the draft plan Is contained In the Act (Section 21).

8. But where is the exercise of peoples' involvement 'to prepare a draft development plan'? Article 243ZD and Article 243ZE. Making development plans. If there are to be the functions of the Development Authority, then why has not the spirit of peoples' participation not seen amendments to the Act as envisaged by the Constitution. Instead, the amendments have been incorporated In the Patna Municipal Corporation Act. 1951 (Section 41-C) providing for a Committee for Metropolitan Planning, referred to in Article 243ZE of the Constitution. A lip service amendment has been made in the Bihar and Orissa Municipal Act, 1922 (Section 51B) but without noticing the details mentioned in Article 243ZD of Constitution.

9. The Development Authorities in Bihar (Bihar Regional Development Authority Act 1981) have cleverly kept the mandate of the Constitution away from them. Will these Development Authorities function at tangent and away from the municipal and civil authorities? Municipal Elections are round the corner. The result will bring corporators and municipal councillors to corporations and municipalities. Elected representatives have been kept at bay from Development Authorities. This is bad legal architecture to retain power which is mandated to self governing institutions.

10. The net result today is that the conforming uses of land. Whether in Patna or In other towns, have seen violations. Open spaces to be kept open as an essential ratio correlated with population density have disappeared. Set back violations are not an exception but the rule. Street alignments have been permitted to be

violated. This has taken a toll of the drainage system. It is accepted that sewer lines and drinking water supply lines run side by side. A survey sample of the water supply in sections of the city has shown E-Coli content. There is an endless list of evidence of the collapse of civic amenities, a direct result of the naked violation of planning laws. Information requested by the Court on urban planning regulations, city maps and bye laws, has been difficult to come by. At one stage the Court was even told that these records have been lost.

11. By far the most practical suggestion has come from Counsel for the Patna Municipal Corporation. He stated that he is not holding the brief of the Patna Municipal Corporation alone but as a citizen of Patna trying to assist the Court in this matter. He acknowledged that the civic services and amenities have collapsed and urban planning laws have been violated with impunity.

12. Everybody at the Bar seemed to be having a memory of the grandeur which Patna may have had as a garden city. The VIP section, the section where the Ministers, the bureaucrats and the Judges reside, and the quarter where the Raj Bhavan is, has a touch of Luteyn's Delhi. But these are the privileged few, who live In these spacious bungalows, only temporarily. Counsel for the Patna Municipal Corporation suggested, and none of the respondents opposed, that the matter needs a through examination by a very independent committee, which should be composed of professionals whose primary job is town planning and architecture. Perhaps, for the present, this may be the only remedy, when no information seems to be forthcoming to the Court from the respondents on the extent of violations which have taken 'place.

13. Even if the Master Plan were to be attempted to be imposed, it could not be. The Constitution speaks of spatial planning, not constriction. Clearly spatial planning, an expression used in the Constitution, refers to space allocation, the planning of it, and reserving these spaces for conforming uses of land. Violation of these spaces is an illegality which is incurable. The phenomenon of 'compounding' has been completely misunderstood.

14. Thus, the Court proposes the setting up of a committee completely independent and composed of professionals whose job it is to plan--architects and

planners of habitat. The Court takes its guidance from the Architects Act 1972. Under this enactment there is a Council of Architecture. The only other authority which may join in this committee at present is the Chief Town and Country Planner of the State of Bihar. Thus the Court would request the Council of Architecture, if it would be so kind, to examine the state of violations in the city of Patna of urban planning laws and regulations and the last Master Plan of 1967; the subsequent ,one remained in the draft stage.

15. The request of the Court, to the Council of Architecture be conveyed by the Registrar General to their headquarters in New Delhi and their response to this request may be responded to anytime between now and when the Court reopens after Holi vacations on 1 April. On this response the Registrar General may list the case for orders on 2 April.

16. A copy of this order be sent to the Chief Secretary, Bihar, who was kind enough to be present at these proceedings. The Urban and building Secretary was not present.

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