

Domco (Pvt.) Ltd. Vs. Ranchi Regional Development Authority and ors.

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Court : Jharkhand

Decided On : Feb-07-2005

Reported in : AIR2005Jhar81; [2005(2)JCR3(Jhr)]

Judge : M.Y. Eqbal, J.

Acts : Bihar Regional Development Authority Act, 1981 - Sections 21; [Constitution of India](#) - Article 226

Appeal No. : W.P. (C) No. 1627 of 2004

Appellant : Domco (Pvt.) Ltd.

Respondent : Ranchi Regional Development Authority and ors.

Advocate for Def. : M. Pd., S.C. (L and C),; A.K. Singh and; P.R. Das, A

Advocate for Pet/Ap. : R. Krishna,; S. Shrivastava and; P. Akhouri, Adv.

Disposition : Writ application allowed

Judgement :

M.Y. Eqbal, J.

1. In this writ petition, petitioner has prayed for quashing the letter as contained in Memo No. 1592 dated 29.11.2003 issued under the signature of the Secretary, R.R.D.A., Ranchi whereby the petitioner was informed that the land in question

has been shown as partly open space and partly residential and further for a direction that the land and building in question cannot be declared as open space in the Master Plan.

2. The facts of the case lie in a narrow compass.

3. Petitioner owned and possessed the land together with building commonly known as 'Gol Kothi' comprised within Khata No. 360, R.S. Plot No. 1133 situated at Mouza Missir Gonda Kanke Road, Ranchi having been purchased by virtue of registered deed of sale from the rightful owner. Petitioner thereafter decided to construct multi-storied building in the said plot and, therefore, applied to the Ranchi Regional Development Authority (in short P.R.D.A) for Floor Area Ratio (F.A.R.). In response to the said application, respondent-R.R.D.A. by letter dated 29.11.2003 informed the petitioner that the part of the plot No. 1133 is residential and part of the said plot is open space.

4. Respondents filed a counter-affidavit stating, inter alia, that the Master Plan of Ranchi town was prepared after complying all the statutory provisions provided under the Bihar Regional Development Authority Act, 1981 and the said Master Plan was duly published and it was approved by the State Government. In the said Master Plan, the plot in question has been earmarked as 'partly open space, partly residential, partly affected by the road'. No objection whatsoever was raised by the petitioner or its predecessor-in-interest and, therefore, the nature of the land shown in the Master Plan cannot be changed. Respondents denied the existence of building and the said plot and it is stated that since the predecessor-in-interest never raised any objection as provided under Section 21 of the Bihar Regional Development Authority Act, they cannot challenge the existing Master Plan.

5. In reply to the counter-affidavit, petitioner has given detail history of the land and the building existing therein. According to the petitioner, that building over the land commonly known as 'Gol Kothi' was constructed more than 50 years back sometime in 1935 and the processor-in-interest of the petitioner let out the said building together with land to the Office of the District Soil Conservation, Govt. of Bihar now Jharkhand on a rent of Rs. 500/- per month. A proceeding for fixation of fair rent was also filed which was contested by the District Soil Conservation Office

and rent controller fixed the fair rent of the building premises at the rate of Rs. 24,316/- per month. Against the order of fixation of fair rent, the Department filed an appeal before the Deputy Commissioner which is still pending. It is further stated that the predecessor-in-interest of the petitioner and petitioner also have been paying holding taxes and other taxes in respect of building premises for the last 50 years and, therefore, it is absolutely false to allege that no building exists on the said land. Petitioner has annexed various orders passed by different Courts including Alipore Court, Kolkata as far back as in 1978 in Probate Case No. 88/1978 giving permission to the beneficiary to sell the land and the building existing therein.

6. I have heard Mr. R. Krishna, learned counsel appearing for the petitioner and Mr. A.K. Singh, learned counsel appearing for the respondent R.R.D.A.

7. The main question that falls for consideration is whether the land together with building as shown in all the revenue records can be earmarked as open space in the revised Master Plan prepared in the year 1983.

8. Admitted facts as appear from various affidavits which have not been controverted by the respondent R.R.D.A., are that in a portion of Plot No. 1133 there is a building known as 'Gol kothi' which was constructed as far back as in 1935 by the predecessor-in-interest of the petitioner. The said building together with land measuring an area of 1.48 acres was leased out to the erstwhile Govt. of Bihar now State of Jharkhand for the purpose of running District Soil Conservation Office. It has also not been disputed that the fair rent was fixed in respect of the said building and the rent was enhanced from Rs. 500/- to Rs. 24,316/- by the order of Sub-divisional Officer, Ranchi. It has also not been disputed that the name of the predecessor-in-interest of the petitioner was mutated in respect of the said building and the Ranchi Municipality now Municipal Corporation has been realizing rent and tax in respect of the said building since 1935. It has also come on record that the land together with building measuring an area of 1.48 acres out of Plot No. 1133 was bequeathed by the rightful owner Smt Kamla Rani Roy in favour of the charitable trust in the year 1973 by virtue of registered will which was probated in the year 1976. It further appears that a proceeding under the Urban Land

(Ceiling and Regulation) Act, 1976 in respect of the entire plot was initiated and on application filed by the trust the competent authority after hearing the parties dropped the proceeding by order dated 3.5.1989 in respect of the land and building in question in favour of the trust in terms of order dated 3.5.1989 passed in U.L.C. Case Nos. 93, 143, 149 of 1976. A copy of the order has been annexed as Annexure -3, to the writ petition.

9. In the case of *Atia Mohammadi Begum v. State of U.P. and Ors.*, reported in (1993) 2 SCC 546, a similar question arose before the Supreme Court. When the Urban Land (Ceiling and Regulation) Act, came into force the land was recorded in the revenue record as for the purpose of agriculture. When the Master Plan for Aligarh was made on February, 1980 the land in question was shown therein for a purpose other than agriculture. The appellant on the basis of Master Plan claimed exclusion of the land from the ambit of 'urban land' under Section 2(o) of the said Act. Their Lordships held that in the Master Plan nature of the land cannot be changed. Their Lordships observed that if the land has been specified in the Masterplan existing at the time of commencement of the Act, for a purpose other than agriculture, then the land shall not be deemed to be mainly used for the purpose of agriculture by virtue of the Explanation (C) of Section 2 of the Act. Just as the holder of the land cannot by his subsequent actions reduce the area of the vacant land in excess of the ceiling limit, the authorities too cannot by any subsequent action increase the area of the excess vacant land by a similar action.

10. Curiously enough, the building known as 'gol kothi' is existing on plot No. 1133 where the Government is running the office of Soil Conservation but in the counter affidavit filed by the respondents, it has been denied about the existence of building in the said plot and that statement is true to the information of the deponent derived from the record. In view of the existence of the building, the respondent authority in the impugned order dated 29.11.2003 rightly reported that the plot in question is earmarked partly for residential and partly for open space. In no circumstances the building in question together with land appertaining thereto can be declared as open space. In any view of the matter the land and the building can not be earmarked as open space, that too without giving personal notice or opportunity of hearing to the land owner.

11. Section 21 of the Bihar Regional Development Authority Act, 1981, specifically provides that before preparing any plan finally and submitting it to the State Government for approval the authority shall prepare a draft plan and publish it by making a copy thereof available for inspection, and publishing a notice in such form and manner as may be prescribed by rules made in this behalf inviting objections and suggestions from any person with respect of the draft plan before such date as may be specified in the notice, not being earlier than four months from the publication of the notice.

Sub-section (2) of Section 21 of the said Act, make it obligatory upon the authority to give adequate opportunity to the concerned persons of being heard and after considering the suggestions, objections and representations, if any, modify the draft plan, if necessary, and submit it to the State Government approval.

12. Except the averments made in the counter affidavit by the respondent-RRDA nothing has been brought on record to show the compliance of the mandatory provisions of the Act, and the Rules before the plan was approved by the Government.

13. Considering the aforesaid provisions of the Act, and the Rules, I have no doubt in my mind in holding that the petitioner is entitled to develop the building, namely, 'gol kothi' which is in existence since 1935 and has been occupies by Soil Conservation Department for running its office.

14. For the aforesaid reasons, this writ application is allowed and it is held that respondent-authority cannot refuse to sanction the plan for development of the existing building and the land appertaining thereto.