

Case Note: Enquiry - Construction of Flats--Without septic tank facilities affecting the environment--Faulty planning and architect--District Magistrate found the fact true in the enquiry--Construction of these buildings deprecated--Direction issued to District Magistrate to place the report and the record to Council of Architects for enquiry--The Council of Architects only valid statutory authority to examine the matter.

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IN THE HIGH COURT OF PATNA

CWJC No. 12239 of 2003

Decided On: 08.07.2004

Brajesh Sharan Sharma

Vs.

The Patna Regional Development Authority and Ors.

Hon'ble Judges:

Ravi S. Dhavan, C.J. and Shashank Kr. Singh, J.

ORDER

Ravi S. Dhavan, C.J. and Shashank Kr. Singh, J.

1. The Court will not repeat how the issues came to be examined upon an inquiry by the District Magistrate, Patna. Thus, let the order of 25 June 2004 be reproduced :

"Even before the Court could issue notice counsel for the PRDA seems to be explaining away the situation to the High Court. Having taken instructions during the lunch recess, now it is accepted in fact, as indicated by counsel for the PRDA itself that whereas the complex of the buildings in context was meant to contain a septic tank for each building, it has now been learnt that a septic tank has not been provided.

No wonder the petitioner seems to be seriously aggrieved so also the neighbours in the neighbourhood of this area that all the filth and sewerage seems to be spilling all over the locality. Even before the petitioner could present the submissions, the PRDA is accepting that whereas the sanction was provided for only four buildings the fifth building is under an issue for compounding. This is a strange argument on behalf of PRDA. The petitioner contends that the fifth multi storey is in fact on an access road, the drive-way. The petitioner has presented the record of objections before the PRDA.

The PRDA would be well advised to read the case of M.I. Builders PH. Ltd., v. Radhey Shyam Sahu and Ors., AIR 1999 S.C. 2468, wherein the Supreme Court in no uncertain terms lays down that illegalities in urban planning are incurable. The

wordings of the Supreme Court are "builder is not an innocent player in this murky deal...." The Supreme Court also observed that "primary concern of the Court is to eliminate the negative impact (..) will have on environmental conditions in the area of the congestion that will aggravate on account of the increased traffic and people visiting the complex." This question will need to be answered.

The PRDA is virtually accepting the situation that something has gone wrong. But the acceptance only comes when the petition comes to the High Court. What was being done all these times? If the septic tanks are not there and the sewerage is spilling all over the area who will take the responsibility of the epidemic which may explode any day more so with rains coming in. If there is break out of cholera, typhoid and diarrhea, the responsibility will lie entirely and solely on the PRDA.

Again where did all the money go meant for plans to clean up the river Ganga under the Ganga Action Plan. If the entire filth and sewerage is going straight into the Ganga who will take the responsibility of the pollution of the river Ganges, which was made a subject of a special plan by the Government of India. The Ganga Project Division, Bihar Rajya Jal Parishad has entered appearance in the case.

Politics and corruption present situation of violations in urban planning norms. Sewerage and sullage is one aspect of the matter. The builder raj is another.

Thus, this is not a case which will be decided on counter affidavits and rejoinder affidavits. On a certiorari let the record in original in these matters be placed before the Court forthwith and deposited with the Registrar General and anything which needs to be explained then any one who is connected with these buildings the authorities, the government not excluded may offer their defence thereafter. The Respondents are to answer the writ petition within ten days.

Notice on the writ petition issues on those who have not been served. Steps by registered post and dasti may be taken by Monday next. Affidavits are to be filed by the heads of the departments or local authorities.

Consequently, with violations in planning norms being virtually accepted by PRDA, this Court now calls upon the District Magistrate, Patna to make a preliminary inquiry and survey the areas, in context, and certify the aberrations, irregularities and illegalities on which the writ petition draws attentions to. Apart from examining sanctions the District Magistrate will report on the environmental hazard in the context of this matter.

Put up after ten days.

The records filed by the PRDA have been requested for by the District Magistrate, Patna and, thus, have been delivered.

Let a copy of this order be issued to the District Magistrate, Patna, by the Registrar General.

2. The District Magistrate has submitted his report. The content of the report virtually reads like exploding dynamite. It shows what goes on in Patna by erring builders and

while the Prime Minister issues a statement on his concern at Indian cities becoming a living hell, those who structure cities make a hell out of it. In reality the Prime Minister's statement sums up the situation. The Prime Minister's statement is reproduced :

"A striking feature of development in our country has been the rapid increase in urbanization. There are now more than 30 cities with a population of more than one million. The rapid and unplanned growth of these cities has contributed to increased urban pollution, crime and absence of the required infrastructure like access to drinking water, sanitation, roads, footpaths for pedestrians and public spaces, parks and greenery is making life in urban India a living hell for many. Most of the responsibility for this rests with States and Municipal Governments. It will be our effort to give special attention to policies that can encourage-urban development and urban renewal. We will actively seek public-private partnership in building urban infrastructure in a planned manner."Prime Minister's broadcast to the nation, June 2004.

3. No sooner the District Magistrate's report was placed at the bar everybody seems to be readily accepting the situation which in any case is unusual. The Court has never heard that a development authority and a State Department will accept the report that what has happened is wrong. Both the Patna Regional Development Authority (in short, the PRDA) and the State Urban Department seem to be on the run and accept that the building regulations have been violated with impunity on every conceivable aspect whether it is lack of septic tanks, discharge of sewerage lack of fire prevention facilities, set backs norms, lack of parking, height etc.

4. What will the PRDA inquire into? Will it go and re-measure and then ask the builders or the owners to knock down buildings to follow in line with what can be sanctioned? But then, who passed the plan? Who submitted the plan? What was the quid pro quo for passing an illegal plan? it has to be recorded in as much nakedness as the facts of the report are before the Court. This partnership to build an illegal Patna is based on what sort of relations between the authorities who permit and those who get away with structuring an illegal structure? Is it corruption? There is a violation of set backs. There is a violation of projections, heightwise or widthwise. There is a violation of discharge of sewerage and sullage; insanitation inviting disease.

5. Who will take the responsibility if an epidemic breaks out? The Court has already shown concern in its earlier order.

6. Rightly the Prime Minister's speech to the nation said that "....life in urban India a hell for many....." Only those who suffer the absence of a civic city feel the truth of the Prime Minister's speech.

7. This is a clear case of you scratch my back and I will scratch yours between the PRDA, the builder and the State urban department. The niceties of seminars showing concern on good municipal governance, is mere a party talk amongst socialites looking at London, Singapore, Bonn, Sydney and recall the towns of the Raj days. Everyone does not live on a Safdarjanj Road, Aurangjeb Road. The reality of today's town is what the Prime Minister has reflected upon.

8. This is a rare case where somebody has come to complain on the reality of the situation. If any neighbour complains about the illegalities of neighbourhood urban planning, he is as good as shot. His survival in the locality is difficult. There is another hell which is being made for such a civic minded citizen. Such matters should be brought to the notice of the Prime Minister's Secretariat. This Court appreciates his speech.

9. Now another scandal has emerged. The PRDA, the Court is informed, does not have an architect. Side by side the government also acknowledges that the Urban Planning Department also does not have an architect.

10. The Constitution of India talks of "spatial planning." "Integration" is a concept of space. These expressions occur in Article 243 ZD with a purpose. Nothing unplanned can be constructed at least after the Constitution was amended (73rd & 74th amendment). Integration is nothing but planning on the planning board of an architect not a hotch potch of an erring builder who only survives on sharp practices for making a fast buck and the builder gone. He has done the damage to the habitat. The remedial and "renewal" measures are the Prime Minister's worry and concern.

11. Then who designs and constructs the buildings which are coming up in Bihar? Is this an architect's job or engineer's job?

If the engineering profession has caused the urban mess which has gone on in Patna and other towns of Bihar (other cities of the nation not excluded), then there is a presumption that norms and standards have not been laid down so as to control the occupation of engineers. Do engineers have a statutory registration? Does this mean that unlike the doctors or the architects the engineers do not have a Council? The doctors have the Indian Medical Council. The architects have the Council of Architecture. Are engineers without a statutory body which ought to control their vocation or profession? Who will take the responsibility of the aberrations in planning urban habitats which violate the sanctity of constitutional norms on spatial integrated development and planning (Article 243ZD). Is habital planning and building design not the function of an architect? Bihar does not have any architect within the Government nor the Development Authority at Patna.

12. For regulating the engineering profession, the Consulting. Engineers Association of India had prepared a draft bill in 1989 and a revised bill recently. The Engineering Council of India, a newly set up registered society having a membership of major engineering professional societies/associations, including Consulting Engineers Association of India is in the process of drafting a Bill to be sent to the government for registration of professional engineers and consulting engineers organisations. A discussion amongst the engineers, reveals that there is a void in registration of individual engineers. But the consortium of engineers have more interest to seek a registration system at the international level so that the export of engineering service by consultancy organisation or otherwise is not hindered due to the non-availability of an internationally accepted registration system for professional engineers. These concerns have been discussed among the engineers who are true to their calling or profession. Engineering Council of India-web page.

13. Unregistered engineers have acted as architects. Buildings were engineered but architected beyond the law and in violation of it. Both the engineers and architects must remain within their confines. Why not have a nationally accepted registration of the Code of conduct and functions of engineers first, leaving International waters to be crossed later? This must also be a concern within the engineers guild.

14. The PRDA authority and the State Urban Department say they would like to inquire into this matter of grave illegalities pointed out so glaringly in the District Magistrate's report. What aspect would they like to inquire into? The issue is not only of a building No. 5, as it is indicated to the Court. It is also about building Nos. 2, 3 & 4. Building No. 1 has come on a drive way. Now that the residents in the locality are threatened by bad hygiene, a spilling septic tank with all the human excrete enveloping them, the only question is how did all this happen under the nose of PRDA, the State Urban Department and in this capital city?

15. The District Magistrate's report in print and photographs has now become a public document so readily accepted by everyone at the Bar, appearing in this case.

16. If this is the state of affairs then this matter has to be examined by experts only and the experts are not available in Patna or Bihar. Where does the Court go? The District Magistrate has done his job. All that the Court can require him is that he may provide his report on a compact disc (CD).

17. The only authority which can examine such aberration is the statutory authority which is the architect of all architects, the Architects Act, 1972, (Act No. 20 of 1972), is the body which constitutes the Council of Architects. It controls the manner in which the architects will function. It notices the qualifications, the standard of architectural education, the professional conduct and, perhaps, for those who work unprofessionally. to knock off their licence.

18. The Council of Architecture, thus, is the only valid statutory authority which can examine this matter.

19. The District Magistrate may cause his report and the supplement material to be produced on a CD. The Registrar General will cause, the record of this court as also the record submitted by the PRDA, to be put on a CD. It is understood that all, the PRDA and the Urban Development Department, Government of Bihar, and their Counsel present, have consented that this report and the record will be sent by the District Magistrate, Patna to the Council of Architecture, who will inquire threadbare on every building, which is the subject matter of violations of law, in this matter before the Court.

20. The material will be sent by the District Magistrate to the Council of the Architecture within one week. A report that it has been sent be filed with the Registrar General before next Friday.

21. The Council of Architecture, the court expects, if possible, will generate a report within one month of the receipt of the material including the spot inspection and survey of the area itself at Patna. The memoranda of expenditure of travel of its investigation team from its headquarters to Patna and back and the cost of generating

the report shall be borne by the PRDA, delivered in advance within a week on the estimates being indicated by the Council of Architecture. This cost will be shared half and half between the PRDA and the State of Bihar. The estimated expenditure will be delivered to the District Magistrate.

22. The District Magistrate Dr. Goswami, IAS, is hereby appointed the Commissioner by the High Court to coordinate this inquiry. Any let or hindrance in the discharge of his functions in carrying out this commission will invite consequences.

23. List for orders as indicated.

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