CASE NO.:
Review Petition (civil) 44 of 2005

PETITIONER:
Bihar Finance Service H.C. Coop. Soc. Ltd

RESPONDENT:
Gautam Goswami & Ors

DATE OF JUDGMENT: 05/03/2008

BENCH:
S.B. Sinha & Harjit Singh Bedi

JUDGMENT:
J U D G M E N T

CONTEMPT PETITION (C) NO. 44 OF 2005
IN
CIVIL APPEAL NO. 1357 OF 2003

S.B. SINHA, J :

1. This contempt proceeding has a chequered history. Petitioner is a cooperative society. It intended to have a plot for construction of houses for its members.

A requisition was made for acquisition of land for the said purpose on their own behalf before the State on or about 3.07.1973.

2. Land acquisition proceedings were initiated pursuant thereto. A notification under Section 4 of the Land Acquisition Act, 1894 was issued. The owners of the land filed objections under Section 5A of the Act. Overruling the said objection, the proceedings were continued. A declaration under Section 6 of the Act was issued followed by an award. In the said proceedings, 59.94 acres of land was acquired. Petitioner \026 Society deposited the entire amount of compensation.

Several writ applications came to be filed before the Patna High Court questioning the said proceedings.

3. The said writ petitions were allowed by the High Court stating:

"40. For the reasons aforementioned in considered opinion, all the writ applications are fit to be allowed and the impugned declaration under Section 6 of the Act vide notification dated 16/18.03.1983 as contained in Annexure \026 2 in C.W.J.C. No. 2755 of 1988 is fit to be quashed. The case, however, has to be remitted to the respondents State Government for further proceeding in the matter of inquiry under Section 40 of the Act and Rule 4 of the aforementioned Rules and under the Act for inquiry under Section 5A of the Act until objections filed by the petitioners in accordance with law."

4. However, on an appeal preferred thereagainst, this Court in Shyam Nandan Prasad and Others v. State of Bihar and others (since reported in (1993) 4 SCC 255), while clarifying the law operating in the field stated that where such a requisition is made on the part of a Company which a cooperative society is, Part VII of the Land Acquisition Act, 1894 shall

apply. This Court in its judgment invoked the principle of 'individualized justice' directing:

"22. Having thus clarified the law governing the field, we would open doors for streams of equities and discretions to enter in the exercise of power by the High Court under Article 226 of the Constitution. As observed earlier, we are of the view that the High Court should not have upset the notification under Section 6 of the Act as a whole and should have individualised justice vis-a-vis each writ petitioner before it, having regard to the equities interplaying in each case and to the regulation of its discretion keeping in view host of other factors which weigh with the High Court to deny, grant or mould relief even when illegalities in procedure keep staring. Thus for the view afore-expressed, we allow these appeals, set aside the impugned orders of the High Court and remit all these matters back to it with the request that though it may take them up as a batch, it may give individual attention to each case, view the illegalities pointed out by the writ petitioner in their right perspective having regard to the time factor and confine the relief, if due, to him separately. We shall not be taken to have controlled the discretion of the High Court in administering individualised justice and amongst others it may, with the cooperation of the Society and of the State Government, as also the writ petitioners examine the possibility of an equitable solution so that the fist of law and the discretion of the court do not hurt unbearably. We thus remit the matters to the High Court without any order as to costs."

The High Court pursuant to the said direction had passed an order dated 20.06.2001 directing release of 12.9603 acres of land. Claims in respect of the rest of the lands were rejected and the District Magistrate Patna was directed to identify the lands and deliver possession thereof to the petitioner \026 society, if necessary, after the demolition of the constructions made thereon.

In the meanwhile, several transactions were made. Several constructions, some of which were totally illegal, came up in some portions of the acquired lands.

One Ashish Sahkari Grih Nirman Samiti preferred an appeal thereagainst before this Court upon obtaining special leave being Civil Appeal No. 1357 of 2003. By a judgment and order dated 18.08.2004, this Court further released 17.68 acres of land in favour of various contenders directing:

"The remaining available land, shall be allotted to the Bihar State Finance Service House Construction Cooperative Society for whose benefit the acquisition of land was made.

This Society is liable to pay compensation amount as may be determined by competent authorities/ courts in respect of the land to be allotted to them as stated above.

The Collector or the authorized officer shall complete the acquisition proceedings in all respects and hand over possession to the parties in

terms afore-stated within a period of four months from today.

The impugned order of the High Court shall stand modified to the extent indicated above. In all ther respects, the impugned order shall remain undisturbed.

This order does not preclude the competent authority (Patna Regional Development Authority) to proceed in accordance with law with regard to the constructions already made, if they are not in accordance with law. Further, the construction to be made in the area to be allotted, as stated above, by the parties shall be in accordance with the planned development after obtaining necessary permissions from the competent authorities. The appeals are disposed of in the above terms."

5. Allegedly, the said order was not complied with.

6. Although the Patna Regional Development Authority (PRDA) was not a party to the appeal, it was called upon to proceed in accordance with law as regards constructions already made in violation of the extant statute. It was furthermore directed that the constructions in the areas be allowed to be made only in terms of the development plan and upon obtaining necessary permission from the competent authorities. PRDA or other authorities of the State of Bihar allegedly did not comply with the said directions. Several new constructions were made in total disregard of the statutory provisions.

7. When the time granted by this Court in the aforementioned order expired, a notice was issued. An affidavit was affirmed by one Shri Sudhir Kumar, the then Collector of Patna, stating:

"The field survey work was completed in the presence of Secretary and Chairman of applicant's society.
It is relevant to mention here that the delivery of possession was given (u/s 16 of L.A. Act) on 49.4525 Acres, the Hon'ble Apex Court exempted 12.68 Acres in favour of appellants for road and house sites and 5.00 acres in favour of appellants cum Land Owners. The possession is to be restored in favour of applicant Society on (49.4545-17.68) i.e. 31.7725 Acres.
20. On the spot, the Hon. Secretary, Bihar Finance Services Housing Cooperative Societies Mr. Arun Kumar Sinha and Chairman, Mr. S.P. Tiwari were asked to receive re-possession of 22.12 acres vacant land. They refused to take possession and asked to hand over the entire land in a single block at a time, after demolishing the entire building existing on it."

8. A direction was issued on 7.04.2006 by this Court issuing notice to the PRDA.

9. The total area of the lands acquired for the petitioner \026 society, as noticed hereinbefore, was 59.94 acres of land. According to the petitioner, although it was entitled to be given possession of about 31.7725 acres of land, possession of, however, only 9.99 acres was delivered to it.

10. An affidavit was also filed by PRDA on 10.07.2006 assuring this Court that it would carry out each and every direction of this Court.

However, when the matter came up before this Court on 28.08.2006, this Court recorded:

"Mr. Rakesh Dwivedi, learned senior counsel for the State made statement at the bar that responsible officer of the concerned department would be writing a letter to the petitioner offering certain lands to him which are lying vacant. Let it be so done within two weeks from today.

It may be mentioned that in the letter, area of land which will be offered, shall also be enumerated."

However, the said assurance allegedly was also not acted upon.

On 2/3.02.2007, possession of an area of 5.91775 acres of land was handed over to the petitioner \026 society.

A controversy, however, was raised that the petitioner \026 society was only entitled to 18.8124 acres of land.

11. We may notice that keeping in view the controversy between the parties, a survey was directed to be conducted by an order dated 30.08.2007 stating:

"Mr. Ashok Dubey, Executive Engineer, Patna Municipal Corporation together with Mr.Rajesh Kumar, ADLAO shall visit the lands in question and, if necessary, appoint a competent surveyor to find out the extent of the lands in respect of which possession had not been handed over to the Petitioner-Society together with other requisite details.

For the aforementioned purpose, Mr. Rakesh Dwivedi, learned senior counsel appearing on behalf of the State of Bihar has handed over a compilation of the documents, inter alia, consisting of the Notification under Section (4) of the Land Acquisition Act and declaration under Section (6) thereof as also the judgment passed by the Patna High Court from time to time and also the judgment passed by this Court so as to ascertain the area which is required to be handed over in favour of the petitioner-Society.

Mr.Srivastava, learned senior counsel appearing on behalf of the petitioner-Society states that Mr. S.P.Tewary, President, Bihar Finance Housing Cooperative Society shall render all cooperation to the aforementioned officers.

Mr.Ashok Kumar Dubey and Mr. Rajesh Kumar together with Mr.S.P.Tewary may visit the lands in question within ten days from date.

After identification of the lands, the aforementioned two officers shall also hear Mr. Tewary, who may produce all the requisite documents for the purpose of finding out as to the exact extent of the lands which was required to be handed over by the alleged contemnor in favour of the petitioner-Society.

Patna Municipal Corporation, which is the successor of the Patna Regional Development Authority, shall initiate proceedings, if not already initiated as against the persons who had

made encroachment or who had not constructed the building in terms of the Patna Development Authority Act and/or the Rules framed thereunder.

Mr.Ashok Kumar Dubey and Mr.Rajesh Kumar shall file a report to this Court within six weeks."

12. Pursuant to the said order, a survey was conducted wherein it was recorded:

"9. After taking into consideration the areas released by the Hon'ble Patna High Court in CWJC No. 2755/1988 etc. etc. dated 20.06.2001 (as contained in paragraph 34) and this Hon'ble Court in Civil Appeal No. 1357/2003 dated 18.08.2004, the petitioner Society is entitled to possession of 18.26695 acres. The balance area of 7.22019 acres is required to be given to it."

It was further stated:

"12. Pursuant to the Survey and review of the plots released by the Hon'ble Patna High Court and this Hon'ble Court and appraisal of the plots which were handed over to the petitioner society, 26 plots can be considered for carving out the land which could be handed over the petitioner society. These are plot nos. 108, 173, 185, 186, 187, 188, 189, 201, 204, 205, 206, 209, 216, 217, 221, 224, 226, 227, 228, 229, 231, 234, 237, 238, 240 and 246. Out of these plots, an area of 7.22019 acres can be carved out and handed over to the petitioner society, in full compliance of the directions of this Hon'ble Court."

13. From a perusal of the said survey report, it is evident that 25.4871 acres of land were to be handed over to the petitioner. Such lands were to be handed over upon demolition of the structures of the plot numbers mentioned in paragraph 12 thereof. Tidy nature of the development of the area is also accepted.

14. Mr. Rakesh Dwivedi, learned senior counsel appearing on behalf of the State of Bihar submitted that the aforementioned survey report would solve the entire dispute and if the same is acted upon, no dis-satisfaction would be caused to any of the parties.

15. Mr. A.K. Srivastava, learned senior counsel appearing on behalf of the petitioner, however, would draw our attention to Sr. No. 4 of the Chart contained in the report which reads as under:

Case No.
Name of Party
Plot No.
Area
Area
Date of purchase
Remarks
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4.
CWJC
93/84
Pharmaceutical
Co. Op. House
Consl.
220
part
2.82
Acres
22K,4D
2.82.000
0.69374
1/5/78
&
2/8/78
Purchased
by
Society
22K &
4D by
members
directly"

16. The learned counsel contends that plot No. 220 belonging to the Pharmaceutical Cooperative Housing Construction which was the writ petitioner before the Patna High Court in Writ Petition no. 93 of 1984 was the owner of 24 acres of land. However, by mistake, apart from the land to which it was found entitled to, viz., 22 K, 4 D, it had wrongly been mentioned that it was further entitled to an area of 2.82 acres, which is evidently a mistake.

17. Mr. Nagendra Rai, learned senior counsel appearing on behalf of the impleaded parties, on the other hand, would raise a contention that having regard to the fact that the declaration issued under Section 6 of the Act was set aside by the Patna High Court as far back as in the year 1990 and the applicants having raised constructions over small areas, they would suffer irreparable injuries if the judgment of this Court is directed to be implemented. It was contended that the members of the petitioner \026 Society are owners of houses and some of them have moved out of Patna and in particular, Jharkhand after its creation.

18. The judgment and order of the Patna High Court setting aside the declaration under Section 6 of the Act was set aside by this Court. It issued certain directions. Such directions were issued not only in presence of the State of Bihar but also in presence of those who had objected to the acquisition proceedings and filed writ applications before the Patna High Court. The claim made by each one of them had been taken into consideration. If the applicants are purchasers of lands pendent lite which was subject matter of different proceedings before the Patna High Court as also this Court, they are also bound thereby.

It is difficult to accept the contention of the learned counsel that, in view of the change in the situation, viz., creation of the State of Jharkhand, some of the members ceased to be the members of the society itself. Bifurcation of the State of Bihar has nothing to do with continuation of the membership of the society which is an independent juristic person.

19. Lands have been acquired in terms of the proceedings. Validity of the

said proceedings has been upheld by this Court. The amount of compensation has been deposited. Awards have been made. The court can at this stage neither go behind the awards nor various orders passed by this Court.

20. PRDA is a statutory authority. It has been created by a statute. It was responsible for planned development of the city. For the said purpose, it was under a statutory obligation to grant sanction of plans for construction of buildings. If somebody has made constructions without obtaining any sanction, he must face the consequences therefor.

It is, having regard to the purport and object for which such Acts are enacted, idle to contend that no action should be taken against them only because they have constructed their houses long back. Such statutes also subserve promotion and protection of ecology which is one of the foremost needs of the society.

In Bombay Dyeing & Mfg. Co. Ltd. vs. Bombay Environmental Action Group & Ors. (2006) 3 SCC 434, this Court observed:

"\005The development of the doctrine of sustainable development indeed is a welcome feature but while emphasizing the need of ecological impact, a delicate balance between it and the necessity for development must be struck. Whereas it is not possible to ignore inter-generational interest, it is also not possible to ignore the dire need which the society urgently requires."

Almost a similar question came up for consideration before this Court in M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu and Others [(1999) 6 SCC 464] wherein this Court upon considering the question from various angles directed:

"82. We direct as under:
1 . Blocks 1, 2 and 4 of the underground shopping complex shall be dismantled and demolished and on these places the park shall be restored to its original shape.
2 . In Block 3 partition walls and if necessary columns in the upper basement shall be removed and this upper basement shall be converted into a parking lot. Flooring should be laid at the lower basement level built to be used as a parking lot. Ramp shall be constructed adjacent to Block 3 to go to upper and lower basement levels for the purpose of parking of vehicles. Further to make Block 3 functional as a separate unit walls shall be constructed between Block 2 and Block 3 and also Block 3 and Block 4.
3 . Dismantling and demolishing of these structures in Blocks 1, 2 and 4 and putting Block 3 into operation for parking shall be done by the Mahapalika at its own cost. Necessary services like sanitation, electricity etc. in Block 3 shall be provided by the Mahapalika.
4 . The Mahapalika shall be responsible for maintaining the park and Block 3 for parking purposes in a proper and efficient manner.
5 . M.I. Builders Pvt. Ltd., the appellant, is divested of any right, title or interest in the structure built by it under or over the park. It shall have no claim whatsoever against the Mahapalika or against any other person or authority.
6 . Block 3 shall vest in the Mahapalika free from all encumbrances. Licence of M.I. Builders to

enter into the park and the structure built therein is cancelled of which possession is restored to the Mahapalika with immediate effect. No obstruction or hindrance shall be caused to the Mahapalika by anyone in discharge of its functions as directed by this order.
7 . Restoration of the park and operation of Block 3 for parking purposes shall be completed by the Mahapalika within a period of 12 months from today and the report filed in the Registry of this Court."

21. Parameters of the jurisdiction of this Court under the Contempt of Courts Act, 1970 are well-settled. { See Maruti Udyog Limited v. Mahinder C. Mehta and Ors. [2007 (11) SCALE 750] }

While dealing with such an application, the court is concerned primarily with :

(i) whether the order passed by it has attained finality or not;
(ii) whether the same is complied with or not.

22. While exercising the said jurisdiction this court does not intend to reopen the issues which could have been raised in the original proceeding nor shall it embark upon other questions including the plea of equities which could fall for consideration only in the original proceedings. The court is not concerned with as to whether the original order was right or wrong. The court must not take a different view or traverse beyond the same. It cannot ordinarily give an additional direction or delete a direction issued. In short, it will not do anything which would amount to exercise of its review jurisdiction. [See Director of Education, Uttaranchal and others v. Ved Prakash Joshi and others AIR 2005 SC 3200 and K.G. Derasari and Another v. Union of India and Others (2001) 10 SCC 496].

23. This Court while exercising its jurisdiction under the Contempt of Courts Act or Article 129 of the Constitution of India must strive to give effect to the directions issued by this Court. When the claim of the parties had been adjudicated upon and has attained finality, it is not open for any party to go behind the said orders and seek to take away and/ or truncate the effect thereof. [See T.R. Dhananjaya v. J. Vasudevan (1995) 5 SCC 619]

24. In Prithawi Nath Ram v. State of Jharkhand and Others (2004) 7 SCC 261], this Court held:
"5. While dealing with an application for contempt, the court is really concerned with the question whether the earlier decision which has received its finality had been complied with or not. It would not be permissible for a court to examine the correctness of the earlier decision which had not been assailed and to take a view different than what was taken in the earlier decision.
It was furthermore observed:

"6. On the question of impossibility to carry out the direction, the views expressed in T.R. Dhananjaya v. J. Vasudevan need to be noted. It was held that when the claim inter se had been adjudicated and had attained finality, it is not open to the respondent to go behind the orders and truncate the effect thereof by hovering over the rules to get around the result, to legitimise legal alibi to circumvent the order passed by a court."

Moreover undertakings had been given by the respondents before this Court from time to time. What they have done or intend to do is only the

compliance thereof. The petitioner had to wait for a long time to get the fruits of requisition made by it for acquisition of land. The lands were acquired in 1983 on the basis of the requisition made by it in 1973.

We, therefore, are not in a position to accede to the contention of Mr. Rai.

25. So far as submission of Mr. Srivastava that a clerical or typographical error has crept in the judgment of the Patna High Court is concerned, we are of the opinion that it is not for this court to direct any correction therein.

For the aforementioned purpose, an appropriate application may be filed before the Patna High Court. The High Court alone would be entitled to rectify the mistake committed by it, if any. Either the State of Bihar or the applicants who are the beneficiaries of this order may file an appropriate application therefor. If and when such an application is filed, the High Court, we are sure, would pass an appropriate order in terms of the well known principle actus curiae neminem gravabit.

In the event, the High Court thinks it fit and proper to rectify the mistake, if any, indisputably the said area shall also be allotted to the petitioner.

26. The functions of the PRDA are now being carried out by Patna Municipal Corporation. The statutory authority, thus, keeping in view the purport and object for which it has been created, in our opinion, must take appropriate action in accordance with law. As indicated hereinbefore, PRDA, the predecessor of Patna Municipal Corporation has given assurance before this Court. We hope it shall implement the same as expeditiously as possible.

27. The petition is disposed of accordingly with the aforementioned directions and observations.