(2010) 05 JH CK 0044

Jharkhand High Court

Case No: None

Sayeeda Khatoon and Shamim Ahmad Khan @ Md. Shamim Khan		APPELLANT
	Vs	
The State of Jharkhand and Others		RESPONDENT

Date of Decision: May 18, 2010

Citation: (2010) 1 DMC 15

Hon'ble Judges: Amareshswar Sahay, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Amareshwar Sahay, J.
Heard the parties.

2. The petitioners are aggrieved by order as contained in Annexure-6 dated 03.03.2010, passed by the Vice Chairman, Ranchi Regional Development Authority in Building Plan Case No. 185 of 2008 rejecting their objection against the sanction of building plan for construction of multi storied building over the Plot Nos. 563 and 558, situated in Village - Bariatu in the District of Ranchi.

3. The petitioner No. 1 - Sayeeda Khatoon is the daughter of Late Nayazuddin Khan whereas the respondent No. 4 Faiyaz Khan is her brother. According to the petitioner No. 1 - Sayeeda Khatoon, she has share in the Plot No. 558 which was purchased by her father by a registered Deed of Sale and after his death, she is also entitled to have her share in the said Plot, but her brother - Respondent No. 4, entered into an agreement with the respondent No. 8 i.e. Ummu Construction for construction of a multi storied building over the said Plot without her consent and permission and got the building plan sanctioned wrongly and illegally.

4. According to petitioner no, 2 - Shamlm Ahmad Khan @ Md. Shamim Khan, he is the absolute owner of Plot No. 563 measuring an area of 4 Kathas 8 Chhatak, which was purchased by him by a registered Deed of Sale on 30.05.1991 from Respondent No. 5 - Khatiza Khatoon andothers. The land purchased by him was also mutatedin his nameand he was paying the rent regularly but the respondent Nos. 4 to 7 filed an application for sanction of plan for construction of multi storied building over the said Plot measuring an area of 19 Katha 8 Chhatak including that portion of land which has been purchased by him i.e. over an area of 4 Katha 8 Chhatak without his consent and the building plan has wrongly been sanctioned vide B.C. Case No. 185 of 2008.

5. As it appears from the pleadings of the parties that a building plan for construction of multi storied building over the aforesaid two Plot Nos. 558 and 563 was submitted by and/or on behalf of the respondent Nos. 4 to 8. The petitioner No. 1 is claiming share in Plot No. 558 whereas, the petitioner No. 2 is claiming a portion of Plot No. 563 by way of purchase.

6. The joint application made for permission to construct multi storied building over Plot Nos. 558 and 563 was registered as B.C. Case No. 185/2008 and the building plan was sanctioned on 15th April, 2008 by the Ranchi Regional Development Authority.

7. As it appears that the petitioners made a complaint against such sanction of building plan by the Ranchi Regional Development Authority before its Chairman on 04.07.2009 complaining that the building plan has wrongly and illegally been sanctioned.

8. The petitioner No. 1 also submitted her complaint before Hon''ble the Governor and it appears that one of the Advisers of the Governor, took cognizance of the complaint and made by the petitioner No. 1 and at his instance, the Ranchi Regional Development Authority sought to make an enquiry into the complaint of the petitioner. The Estate Officer of Ranchi Regional Development Authority was directed by the Vice Chairman to make enquiry andsubmit report after an spot verification.

9. In compliance thereof, the Estate Officer submitted his enquiry report and thereby, for the reasons stated in the enquiry report, he recommended for cancellation of the building plan, which was sanctioned vide B.C. Case No. 185/2008 holding that the building plan was wrongly sanctioned since a civil suit with regard to Plot No. 563 was pending in the Civil Court being Title Suit No. 64 of 2007 and further that the application for sanction of building plan was submitted by Faiyaz Khan with his signature and with L.T.I. of three other persons but the name of those persons not mentioned who had put their thumb impressions in the application.

10. The grievance of the petitioner is that the Vice Chairman, Ranchi Regional Development Authority, by his impugned order as contained in Annexure-6 dated03.03.2010, without even considering the enquiry report submitted by the Estate Officer and without even noticing the facts stated in the enquiry report, has illegally

rejected the objection of the petitioner, by totally ignoring the report submitted by the Estate Officer. It is submitted that when the enquiry was directed to be made, in order to verify as to whether the building plan was sanctioned rightly or wrongly in B.C. Case No. 185/2008 and when it was found by the Estate Officer that the same was wrongly sanctioned, then it was incumbent upon the Vice Chairman to consider that enquiry report and then he ought to have passed an appropriate order. He could not have totally ignored the said report.

11. On the other hand, the learned Counsels appearing for the respondent Nos. 4 to 7 and8, have submitted that the petitioner No. 1 has no concern, right, title or interest over the Plot No. 558 since the same was purchased by Nayazuddin Khan, the father of the petitioner No. 1 and Respondent No. 4 by a registered Sale Deed and he made (sic) gift of the said property in favour of the respondent No. 4 - Faiyaz Khan with respect to the Plot No. 558 and after the oral gift, the said land was mutatedin his name and, therefore, the petitioner No. 1 has no right, title or interest over the said property and consequently, she has no business to make any objection against the sanction of building plan.

12. So far the petitioner No. 2 - Shamim Ahmad Khan, it is submitted on behalf of the respondents that he gave a registered power of attorney in favour of the respondent No. 8 for making construction over the Plot No. 563 and, therefore, he could not have made any objection against the sanction of building plan over the Plot No. 563.

13. It further appears from the pleadings of the parties that a partition suit filed by the petitioner No. 1 against her brother - respondent No. 4 being the Partition Suit No. 140/2008 claiming her share in Plot No. 558 is also pending. Regarding Plot No. 563 also, it appears that the Title Suit No. 64/2007 filed at the instance of the petitioner No. 2, is also pending.

14. Without going into the merits and without expressing any opinion in the legality of the claim of either parties regarding their right, title and interest over the Plots in question as well as the objections raised by the petitioners against the sanction of building plan, I am of the view that once the Vice Chairman ordered an enquiry to be made by the Estate Officer and when he submitted his enquiry report, then it was incumbent upon the Vice Chairman to take into consideration the said enquiry report, while passing the impugned order rejecting the objection raised by the petitioner. In the impugned order, the Vice Chairman, Ranchi Regional Development Authority has not at all mentioned about the said enquiry report submitted by the Estate Officer of Ranchi Regional Development Authority. It was for the Ranchi Regional Development Authority either to acceptor reject the enquiry report of the Estate Officer but he was duty bound to consider the same while passing the final order on the objections raised by the petitioners.

15. For the reasons stated hereinabove, I hold that the impugned order dated 03.03.2010 as contained in Annexure-6, passed by the Vice Chairman, Ranchi Regional Development Authority suffers from serious infirmity and, therefore, the same cannot be

sustained.

16. Accordingly, this writ petition is allowed. The impugned order dated 03.03.2010 as contained in Annexure-6 passed by the Vice Chairman, Ranchi Regional Development Authority is hereby quashed and the matter is remitted back to the Vice Chairman, Ranchi Regional Development Authority to consider the objections of the petitioner afresh and pass appropriate reasoned order after taking into consideration the enquiry report and any other material already on record and after hearing all the parties concerned, within a period of eight weeks from the date of receipt/production of a copy of this order.

17. Till the matter is finally decided afresh by the Vice Chairman, Ranchi Regional Development Authority, no further construction over the Plot Nos. 558 and 563, situated in Village Bariatu, P.S. - Bariatu, District - Ranchi, pursuant to sanction of Building Plan in case No. 185/2008 shall be made.