courtkutchehry.com

Company : Sol Infotech Pvt. Ltd.

Website : www.courtkutchehry.com

Printed For :

Date : 24/08/2025

Vyas Muni Gupta Vs Ranchi Regional Development Authority and Others

Court: Jharkhand High Court

Date of Decision: Jan. 29, 2002

Acts Referred: Bihar Regional Development Authorities Act, 1981 â€" Section 35, 37, 37(5)

Hon'ble Judges: M.Y. Eqbal, J

Bench: Single Bench

Advocate: Ritu Kumar, V.N. Shahdeo, R.K. Singh and R.K. Gupta, for the Appellant; A.K. Singh, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

M.Y. Eqbal, J.
In this writ application the petitioner has prayed for appropriate order restraining the respondent-RRDA from demolishing

the residential building standing on RS Plot No. 660 under Khata No. 120 of village Kathargonda, District Ranchi.

2. The petitioner''s case is that the land comprised within RS Plot No. 660 is the ancestral property of the petitioner and after partition it was

allotted in the share of the petitioner. In 1989 the petitioner submitted a plan alongwith requisite fee in the office of the respondents for obtaining

sanction for construction of building, which was registered as B.S. case No. 282/89. It is stated that in spite of fulfilling all the conditions for

sanction of plan, the respondents did not pass any order and accordingly the petitioner gave notice as required under the law and constructed a

house according to the plan. In 1996 a general notice was published in the newspaper dated 29.5.96 for demolition of those houses which were

constructed without obtaining legal sanction. The petitioner''s case is that on enquiry he came to know that an exparte order was passed on

23.9.95 against the petitioner in UC Case No. 104/89. The petitioner filed Misc. Appeal No. 33/96 against the aforesaid order and the appeal is

pending before the Tribunal Petitioner''s further case is that another B.S. Case No. 567/96 was initiated against him and he submitted all the

relevant papers but no order has been passed.

3. The respondents'' case in the counter affidavit is that the petitioner had submitted a building plan, vide B.C. Case No. 282/89 on 17.4.89 for

construction of house in RS Plot No. 660. The said building plan was examined but in the meantime the petitioner started construction of proposed

house in the said plot without approval of the authority and as such. UC Case No. 104/89 was initiated against the petitioner. The respondents

thereafter examined the building plan and the petitioner was informed, vide letter dated 3.8.89, to rectify the map as there were some errors

because the plan was not as per the provisions of Building Bye-laws. It is stated that the petitioner neither replied the above said letter nor

corrected the map and as such, the application was rejected vide letter No. 1300 dated 22.6.1991. It is further stated that in U.C. Case No.

104/89 it was reported that the construction of the house was completed upto roof level and the plot comes under ""public open space"" as per the

Master Plan. As such, demolition order u/s 54(1) was passed by the Court of Vice Chairman on 29.4.91. The petitioner alongwith other legal heirs

again submitted a building plan application, vide B.C. Case No. 567/96 on 12.6.96 by suppressing the fact that he has already constructed a

building on the same plot. The said application was rejected, vide B.C. Case No. 567/96 on 19.6.96. The case of the respondents, therefore, is

that the construction of building by the petitioner is illegal and, therefore, the respondents rightly decided to demolish all such unauthorised

constructions.

4. In reply to the counter affidavit, the petitioner has denied and disputed the allegations made by the respondent that the land in question comes

within the ""public open space"". It is stated that in B.C. Case No. 567/96 the authorities of the respondent-RRDA, after due inspection, submitted a

report holding that the plot in question is situated in residential space. The petitioner further stated that it was only on 3.6.96 the petitioner was

served with a notice informing him that the building plan submitted in the year. 1989 was rejected.

5. Before appreciating the rival cases of the parties I would first like to refer the relevant provisions of the Bihar Regional Development Authority

Act. 1981 (Bihar Act 40 of 1982). Chapter 6 deals with the development of land and building. Section 30 provides that no person shall institute or

change the house on any land or carry out development on any land without obtaining permission in writing from the authority. Section 31 deals

with the owner''s obligation while dealing with the land for the building sites. Section 32 speaks about the lay out plan. Relevant provision is Section

35 of the said Act which provides that no person shall erect or commence to erect any building or make any addition or alteration to any building

except with the previous sanction of the Vice Chairman and in accordance with the provisions of this Chapter and the regulations made under the

Act. Section 36 provides that any person who intends to make any addition or alteration, shall apply for sanction by giving notice in writing to the

Vice Chairman In the manner prescribed by the regulation. Every such notice shall be accompanied by a plan and other documents and also

requisite fee. Section 37 empowers the Vice Chairman to sanction or refuse to sanction the plan for construction of the building. For better

appreciation Section 37 of the said Act is quoted hereinbelow:

37. Sanction or refusal of application for erection of a building or addition or alteration thereto.--(1) The Vice-Chairman shall sanction the

erection of a building or addition or alteration thereto if such erection of the building or addition or alteration thereto would not contravene any

provision of this Act or any regulation made thereunder.

(2) If the proposed erection, alteration would be in contravention of any provision of this Act, or any regulation made in this behalf or under any

other law, sanction of the plan shall be refused.

(3) The Vice-Chairman shall communicate the sanction to the person who has given the notice, and where he refuses the sanction he shall record a

brief statement of his reasons for such refusal and communicate the refusal along with the reasons thereof to the person who has given the notice.

(4) The sanction or refusal as aforesaid shall be communicated in such manner as may be specified in the regulation made in this behalf.

(5) If at the expiration of a period of 4 months application u/s 36 has been made to the Vice-Chairman, no order in writing has been passed by the

Vice-Chairman and no notice of the order passed by the Vice-Chairman in this connection has been sent to the applicant, the applicant shall give a

notice under registered post intimating that sanction shall be presumed if nothing to the contrary is received or notified in respect of his application

within 30 days from the date of receipt of the notice.

6. From bare perusal of the aforesaid provision it is manifest that if the Vice-Chairman refuses to accord sanction, he shall record a brief statement

of his reasons for such refusal and communicate the refusal along with the reasons thereof to the person concerned. Sub-section (5) of Section 37

fur- ther provides that if no order in writing is passed by the Vice-Chairman within a period of 4 months from the date of the application an no

refusal is communicated to the person concerned then the person concerned or applicant shall give a notice under registered post intimating that

sanction shall be presumed if nothing, to the contrary, Is received or notified within 30 days from the date of receipt of notice. In other words,

according to this provision if an application together with plan and requisite fee is submitted by the applicant for the grant of sanction then it is

obligatory on the part of the Vice-Chairman to dispose of the application within 4 months and if the Vice-Chairman decides to refuse sanction, he

shall record a brief statement of his reasons and communicate the refusal to the applicant within 4 months. If no order of sanction or refusal is

communicated or received by the applicant then the applicant shall give a notice to the Vice- Chairman to the effect that sanction shall be presumed

if nothing, to the contrary, is received or notified within 30 days from the date of receipt of notice.

7. In the case of Uma Shyam Parivar Trust Qulla House and another v. The State of Bihar and another reported in 1990 PLJR 503 a Division

Bench of the Patna High Court held that the provision of Sub-section (5) of Section 37 of the said Act is mandatory in nature. Their Lordships held

:

35. Sub-section (5) of Section 37 of the said Act, therefore, authorises a person to raise a presumption that, if, after the receipt of the notice, the

authority does not notify to the contrary meaning thereby refusing to accord sanction In terms of Section 37(2) of the said Act, he may proceed to

erect; or re-erect or make addition or alteration in the building as if the plan has been sanctioned. Thus, Section 37(5) raises a legal fiction as a

result whereof the plan, although not expressly sanctioned, would be deemed to have been sanctioned.

8. The intention of the Legislature while enacting this provision is clear that the Authority must act with promptitude. A person who intends to''

erect a building or make some addition or alteration to the existing building should ordinarily be permitted to do so if the plan submitted by him for

sanction is in accordance with the provisions of the Act and the regulation framed thereunder. The time fixed under the said provision is for the

purpose of giving sufficient opportunity to the Authority to scrutinise the said plan or to make enquiries with regard to the ownership of the

property and also the compliance of the requirements of the Act and the bye-laws. In the event of failure of the Vice-Chairman to refuse sanction

of the plan, the applicant has got statutory right to issue a notice of 30 days intimating that the sanction shall be presumed if nothing is received or

notified to the contrary in respect of his application.

9. Coming back to the instant case it is the specific case of the petitioner that in 1989 when the order granting or refusing sanction of the plan was

not communicated by the Vice-Chairman within 4 months then the petitioner sent a statutory notice informing about the deemed sanction and,

thereafter he started construction of the house in question. On the other and the respondents'' case is that on receipt of the application for sanction

in 1989 and enquiry was made and it was found that the plot comes under the public open space and, as such, demolition order was passed on

29.4.91.

10. In order to find out as to whether the respondent-RRDA complied the statutory requirement of law while refusing to grant sanction of the plan

in 1989, It would be useful to look into the records of B.C. Case No. 282/89. It appears from the records of B.C. Case No. 282/89 that on

28.12.88 an application together with affidavit, Indemnity bond and plan was submitted by the petitioner for grant of sanction. The said ap-

plication was registered as B.C. Case No. 282/89. On 1.8.89 the concerned clerk put a note in the following terms :--

Abedak se key plan R.S. Map kanke road or dam ko bina rukabat dene kay liya suchit kiya ja sakta hai karan aspas public open space hai.

Sd/-

1.8.89.

11. Another note was given on 2.8.89 in the following words :--

Abedak ko suchit kiya ja sakta hai.

Sd/-

2.8.89.

Then again on 2.8.89 the following notes were given :--

Kirpaya suchit karen;

1. Asthal nirikshan nahi karaya gaya hai.

2. Key plan R.S. Map main kanke road aur dam ko darshate huai jama karen.

Sd/-

2.8.89.

12. There is no document on the record to show that the notice was actually sent and served upon the applicant asking him to rectify the defect or

submit documents. However, after two years i.e. on 27.5.91 and 5.6.91 a note sheet was placed before the Vice-Chairman for rejecting the

application. On the basis of that note sheet the Vice-Chairman passed the following order on 22.6.91:--

Prarup anumodnarth

Sd/-

22.6.91.

13. It is, therefore, clear that the respondent-Authority totally violated the provisions of Section 37 of the said Act in rejecting the application

inasmuch as neither the Vice Chairman recorded reasons in writing for the said refusal nor such refusal together with the reasons was

communicated to the applicant. Curiously enough the respondent-RRDA has annexed a copy of the letter dated 22.6.91 as annexure B to the

counter affidavit stating that a letter was issued to the applicant informing him that his application was rejected. From perusal of annexure D it

appears that the said notice was served on the petitioner on 3.6.96.

14. From perusal of annexure 1 to the writ application it appears that in 1996 the respondent-Authority published a general notice in the

newspaper, namely,'' Prabhat Khabar'' on 29.5.96 informing the public in general that any building constructed without obtaining sanction of plan

may be demolished. However, it was further notified that if any person has constructed a building or structure without obtaining sanction of plan,

then he may apply for sanction of plan and his plan may be sanctioned on payment of compounding fee. It appears that pursuant to that notice the

petitioner submitted a fresh application together with plan for obtaining sanction. The said application was registered as B.C. Case No. 567/96.

15. I have the occasion to go through the records of B.C. Case No. 567/96. It appears that on 21.7.96 a report was submitted by the officer of

the legal section that the case of the petitioner for giving post facto sanction on payment of compounding fee, may be considered. On 28.2.97 a

further report was submitted to the effect that the land of the petitioner falls beyond 250 from the Kanke Dam and it is a residential area. The note-

sheet dated 28.2.97 is quoted hereinbelow :--

l-v- ds izfrfnu ns[kk tk; A muds vuqlkj dkds MSe ls izLrkfor lykV Hkkx 250&0** ls vf/kd ;kus 275&0** gS A tcfd 250&0** rd gh ifCyd

vksisu Lis"k iMrk gS vkSj mlds ckn vkoklh; {ks= gS A

g-&vLi""V

28-2-97

16. On 30.12.98 a further report was placed by the authority of RRDA which is quoted hereinbelow:--

u-fu-

i=kad ^^d** vkSj ^^[k** ij vkosnd dk vkosnd dk vkosnu i= fn- 13-11-98 vkSj fnukad 2-6-96 ds nSfud izHkkr [kcj esa izkf/kdkj dh

^^lkoZtfud lwpuk dk vkoyksdu djuk pkgsaxs A vukf/kÃ¯Â¿Â½r Hkou fuekZ.k dh ?kVuksÃ¯Â¿Â½kj LohÃ¯Â¿Â½r dEikmUM Qh tek djus ds ckn LohÃ¯Â¿Â½r nsus

gsrq lkoZtfud lwpuk fn;k x;k gS A

vkosnd }kjk mlh lkoZtfud lwpuk ds Ã¯Â¿Â½e esa uDlk tek fd;k x;k gS uDlk dh tkap iwoZ lgk;d vfHk;ark Jh valkjh }kjk fd;k x;k gS vkSj :-

12@172@& dEikmf.Max ''kqYd tek djus ij LohÃ¯Â¿Â½rh ij fopkj djus gsrq vuqla"kk dh xbZ gS A i`""V & 2 ds vuq"kalk ds vkyksd esa fopkjkFkZ

miLFkkfir A

g-&vLi""V

30-12-98

17. On 18.1.99 the Vice Chairman directed the concerned officer to discuss the matter and explain the actual position. The concerned officer then

gave the following note on 14.7.99 :--

mik/;{k]

LFky fujh{k.k fd;k x;k A LFky ij cus Hkou ds ihNs ,oa lkeus Hkkx ds lsV cSaad ekud ds vuqlkj lgh ugha gS A lkFk gh ;w-lh dsl ua-

104@89 ,oa ;w-lh- dsl ua- 142@93 izfrosfnr gS A

vr% uDlk[kkfjt fd;k tk ldrk gS A

g-&vLi""V

14-7-99

It appears that on the basis of that report the Vice-Chairman passed the following order on 16.7.99 :--

lEink ink-

izk:i vuqeksnukFkZ A

g-&vLi""V]

16-7-1999

18. From perusal of the note-sheets quoted hereinabove, it is, therefore, clear as to how the Vice Chairman exercising statutory power under the

Act has proceeded in the matter and rejected the application without giving any opportunity of hearing to the petitioner. From perusal of the

records it lias also come in light as to how the statutory authorities discharge their statutory functions and deal with the matter particularly the matter

relating to sanction of plan and disposal of applications filed by the citizens.

19. As noticed above, u/s 37 of the said Act a public authority is required to carry out the public duty within the stipulated time. In other words,

the Vice Chairman who is a statutory functionary, on receipt of application, is required to decide the matter one way or the other within the time

fixed under the said provision but instead of complying with the statutory requirements strictly, the Vice Chairman merely approves and

disapproves the note-sheets/reports submitted by the officers concerned, and that too without giving any opportunity of hearing if the reports

submitted against the applicant. This is high time this court should issue direction to the Statutory Authority to act within the four corners of the said

Act specially in the matter of disposal of applications.

20. As noticed above, the only authority who is required to act in terms of the provisions of the said Act is the Vice Chairman and nobody else.

The time stipulated u/s 37 of the said Act is imperative in character as non-disposal of the application for sanction of the plan entails a consequence

to the effect that the owner of the land may presume that such sanction has been granted and notice of such presumption can be served upon the

authority by the applicant. The Vice Chairman is required to act strictly in accordance with the provisions of Section 37 of the said Act, regulation

and bye-laws for the time being in force in the matter of disposal of applications for grant of sanction. The Vice Chairman is not supposed to

exercise his discretion contrary to the said provisions, regulation and bye-laws. The Vice-Chairman is also not supposed to exercise his discretion

on the basis of executive instructions unless the provisions, regulations and bye-laws are amended or modified. The Vice Chairman must bear in

mind that he is exercising statutory duty conferred upon him while dealing with the application for grant of sanction of plan for construction of

building.

21. So far the instant case is concerned. In my considered opinion the Vice Chairman has failed to exercise his statutory duty while rejecting the

application for grant of sanction applied for in B.C Case No. 567/96. The Vice Chairman merely acted on the basis of note sheets placed before

him and there is total non-application of mind by the Vice-Chairman in disposing of B.C. Case No. 567/96.

22. It is well settled principle of law that Juridical decisions are made according to law while administrative decisions emanates from administrative

policy. Quasi judicial decisions are also administrative decisions but they are subject to some measures of judicial procedures such as rule of

natural justice. It is equally well settled law that even the administrative decisions must be supported by reasons where such decisions adversely

affect any vested right of a person or involves civil consequences. It is, therefore, necessary for the Vice Chairman to re-consider the case of the

petitioner and to pass a fresh order in B.C. Case No. 567/96 after giving reasonable opportunity of hearing.

23. For all these reasons this writ application is allowed and the impugned order of the Vice-Chairman rejecting the application of the petitioner in

B.C. Case No. 567/96 is set aside. The matter is remitted back to the Vice Chairman to pass fresh order in B.C. Case 567/96 after giving

reasonable opportunity of hearing to the petitioner. The Vice Chairman is also directed to dispose of such application by strictly following the law

and the procedures provided under the said Act, regulation and the bye-law without being influenced by any executive Instruction unless those

instructions are brought in the Act, Regulation or the bye-laws.