

(2014) 07 JH CK 0042

Jharkhand High Court

Case No: W.P. (PIL) No. 6608 of 2013

Shukdev Prasad Sahu

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision: July 21, 2014

Hon'ble Judges: Amitav Kumar Gupta, J

Bench: Single Bench

Advocate: Mahesh Tewari and P.K. Mukhopdhyay, Advocate for the Appellant; Rajesh Shankar, Advocate for the Respondent

Judgement

Amitav Kumar Gupta, J.

The instant writ petition(Public Interest Litigation) has been filed for issuance of appropriate writ directing and commanding upon the respondents to construct Badgunda Khurd Panchayat Bhawan at village Badgunda Khurd itself and to restrain the respondents from constructing the aforesaid Panchayat Bhawan at village Badgunda Kala, Tola Dhab under Khata no. 81, plot no. 799.

2. The fact exposed in the present petition is that the State Government has decided to construct Panchayat Bhawan in all Panchayat H.Q of all districts of Jharkhand under the B.R.G.F. Fund and in view of the policy decision the Chief Secretary, Jharkhand and Principal Secretary, Rural Development Department, Jharkhand issued order through Video conference to the Deputy Commissioner, Giridih on 29.01.2011 whereupon the Deputy Commissioner, Giridih issued orders vide memo no. 31/Zila Yojna dated 01.02.2011 to all the Block Development Officers of District Giridih (Annexure-1). It is stated that from the said order it is evident that Panchayat Bhawan is to be constructed only in the H.Q of the village of the concerned Gram Panchayat in coordination with the Mukhiya Ward Samitee by selecting the place of construction of such Panchayat Bhawan. As per Annexure-2 the Deputy Commissioner, Giridih has fixed Panchayat H.Q. of Badgunda Khurd Gram Panchayat at village Badgunda Khurd itself and it was notified in the District Gazette on 28.04.2010. Whereafter several meetings were held in presence of Block

Development Officer at village Badgunda Khurd for selection of the site for construction of the aforesaid Panchayat Bhawan and land was made available under Khata no. 83, Plot no. 731 and information was sent by the villagers to the Deputy Commissioner, Giridih on 15.07.2013. Thereafter, the Deputy Development Commissioner, Giridih directed the Block Development Officer, Giridih to convene a Gram Sabha for selection of the site on the available Government land, in village Badgunda Khurd and the Block Development Officer directed the Mukhiya/Panchayat Sevak to organise a meeting on 01.08.2013 vide memo no. 1622 dated 24.07.2013 (Annexure-3). It is averred that when the meeting was to be held on 01.08.2013 at village Badgunda Khurd the Deputy Commissioner directed the B.D.O. on telephone, to hold Aam Sabha in place of Gram Sabha for selecting the place for construction of the Panchayat Bhawan and the B.D.O. vide memo no. 1670 dated 30.07.2013 issued necessary direction to the Mukhiya/Panchayat Sevak of the said Panchayat (Annexure-4). On 01.08.2013 Aam Sabha was held for the aforesaid purpose but the Sub-Divisional Officer being fully aware that as per the Government decision Panchayat Bhawan has to be constructed only in the Panchayat H.Q at village Badgunda Khurd, wrongly and illegally decided to construct the Panchayat Bhawan of village Badgunda Khurd at village Badgunda Kala, Tola Dhab through illegal voting/counting of villagers without taking into account that there was no procedure prescribed in the Government Circular and the same was published in the news paper "Hindustan" (Annexure-5). The B.D.O. had informed about the matter to the Deputy Commissioner, Giridih vide letter dated 18.08.2013. (Annexure-6) and the Deputy Commissioner, Giridih had referred the matter to the Deputy Development Commissioner, Giridih for necessary action who had forwarded the same to the District Panchayat Raj Officer, Giridih who suggested the place of construction of Badgunda Khurd Panchayat Bhawan under Khata no. 81, Plot no. 799. The petitioner sought information under R.T.I. Act, 2005 and he was supplied with the office order passed by the respondents. Upon recommendation of the D.P.R.O the Deputy Commissioner, Giridih has approved the construction of Panchayat Bhawan of Badgunda Khurd Gram Panchayat at village Badgunda Kala (Annexure-7 series). When the petitioner along with 113 villagers had represented before the Deputy Commissioner, Giridih and other respondents on 25.09.2013 expressing their grievance against the aforesaid decision for constructing the Panchayat Bhawan at village Badgunda Kala instead of Badgunda Khurd which was in violation of the Government Circular.

3. On the above facts the petitioner has sought direction upon the respondents to construct Panchayat Bhawan at village Badgunda Khurd in accordance with the direction of the Chief Secretary and the Notification issued by the Deputy Commissioner, Giridih. It is urged that the respondents are bound to construct the Panchayat Bhawan at Badgunda Khurd itself which has highest population of 1459 villagers amongst all the eight revenue villages under Badgunda Gram Panchayat and the respondents have no justification for construction of the Panchayat Bhawan

at village Badgunda Kala, Tola Dhab which is in violation of the norms and circulars of the Government of Jharkhand, which does not prescribe recommendation of Aam Sabha, but mandates that meeting of Gram Sabha be convened and in view of the violation of the Government decision the respondents should be restrained from constructing Panchayat Bhawan at Badgunda Kala, Tola Dhab and the said act is illegal as Badgunda Kala, Tola Dhab is not the Panchayat H.Q. as shown in the district Gazette. Moreover, the said village has less population of 897 villagers only. The respondents being the creatures of the Statute are bound to act squarely within the parameter of the Statute and the deviation from the direction of the Government is against the policy and Rules of Law which deserves interference of this Court keeping in view of the interest of the public.

4. Learned counsel for the petitioner has also submitted that B.D.O. has made false averments in the counter affidavit by stating that the land under Khata no. 83, Plot no. 371, of area 1.80 acres is a forest land where Panchayat Bhawan cannot be constructed but the fact is that suitable land was available under Khata no. 83, Plot No. 731 of area 1.80 acres which is not a forest land and the Divisional Forest Officer in the information provided under the R.T.I. Act has stated that the land under Khata no. 83, Plot no. 371 of Area 0.06 acres is a forest land and the filing of false statement by the B.D.O.s by mentioning Plot no. 371 instead of 731 is an act for which the respondents should be prosecuted.

5. On the other hand, learned counsel for the respondents no. 4 to 8 has referred to para 6 of the counter affidavit and submitted that the present Public Interest Litigation is in fact a Personal Interest Litigation filed by the petitioner to gain political mileage as he wants to influence the people of village Badgunda Khurd for his own political gains. It is submitted that construction of the Panchayat Bhawan has been started at Badgunda Kala, Tola Dhab as per the guidelines and wishes of the people of the Panchayat. It is admitted by the respondents that no doubt they are legally bound to construct Panchayat Bhawan at Panchayat Head Quarter village but as per the direction of the Chief Secretary of the Jharkhand if any dispute arise in the selection of the site for construction of Panchayat Bhawan in Panchayat Head Quarters then the matter/issue will be decided by the Aam Sabha of the said Gram Panchayat and the aforesaid direction has been circulated by the Deputy Commissioner, Giridih vide memo no. 01.02.2011.

6. It is stated by the counsel for the respondents that the respondents decided to construct Badgundakhurd Panchayat Bhawan at village Badgundakala, tola Dhab under Khata no. 81, Plot no. 799 as per the decision of the Aam Sabha of Badgundakhurd Panchayat dated 01.08.2013 and at the said place under construction Panchayat Bhawan is adjacent to Dabgundakhurd and it is in the middle of the entire Panchayat and situated by the side of the main road of the locality and connects maximum number of villagers and in fact there is no violation of the norms and circular of Government of Jharkhand. The same is being done in

the interest of public at large on the consensus of the Aam Sabha of the concerned Panchayat which is apparent from the Resolution of the Aam Sabha. It is also submitted that the imputation regarding swearing of false affidavit giving wrong description of the land is incorrect as the same is a typographical error. In support of the same he has filed letter no. 1240 addressed to Block Development Officer, Giridih along with Check Slip wherein Plot number has been mentioned as 735 of Khata no. 83 having an area of 30.50 acres and the said statement was not been intentionally rather it had occurred due to typographical error.

7. Learned counsel has drawn our attention towards the Resolution of the Aam Sabha and has submitted that it would be evident that Aam Sabha was convened in presence of S.D.O. and there is clear recital that earlier Gram Sabha was convened with respect to the selection of the site for the Panchayat Bhawan and there was a dispute and accordingly, Aam Sabha was convened. In the said Aam Sabha three plots of land were identified, namely, Plot no. 735 under khata no. 83 having an area 0.15 acres which had trench of the forest department. The other plot nos. 1027, 1028 and 1029 having an area of 14 decimals was offered by the petitioner for the purpose of construction of the Panchayat Bhawan which could have been made available on donation by the petitioner and Plot no. 799 having an area of 16.25 acres is as gairmazrua Khas. Some of the members of the Aam Sabha informed that there was some Government land available at Badgunda khurd. Due to the differences in the Aam Sabha held on 01.08.2013, in the presence of the S.D.O. it was resolved that for reaching a consensus amongst the villagers for selection of the site on either of the two plots i.e. Plot no. 799 having an area of 16.25 acres and Plot no. 731 and it was unanimously decided to select the site on the basis of the votes; that 208 votes were cast in favour of Plot no. 799 and 170 votes were cast in favour of Plot no. 731. Thus, considering that the majority votes were in support of construction of the Panchayat Bhawan at Plot no. 799. It was resolved to keep the construction going on at Plot no. 799 and in fact there is no violation of the provision or circular of the Government.

8. Learned counsel for the respondents has also submitted that earlier a writ of the same nature was filed vide W.P(PIL) NO. 3848/2013 (Annexure-A to the counter affidavit) where this Court has laid down in explicit terms "where construction is to be made is the policy decision of the high ranking officers of the State, this Court will be slow in replacing the policy decision even though a better option is available. We are not in search of better policy decision."

9. Learned counsel for the respondents has also argued that construction has been started on the selected site and in support of which he has filed the photographs at Annexure-E. It is submitted that in view of the said position of law the writ petition is misconceived as there is no violation of the Government Circular and there is no material on record for passing a restraint order in the facts and circumstances of the case.

10. Heard learned counsel for the parties and gone through the materials on record.

11. It is apparent from the order of the Deputy Commissioner, Giridih passed in view of the direction given by the Chief Secretary, Jharkhand that there is clear recital that selection of the site for the construction of Panchayat Bhawan at Panchayat Head Quarter shall be made in coordination with the Mukhiya and Gram Samitee but it has been specifically stated that in case of dispute regarding the selection of site, the Aam Sabha shall be convened and with the general consensus the site shall be selected for the construction of the Panchayat Bhawan. As per the resolution which is on record it is evident that there was a dispute earlier in the Gram Sabha regarding the selection of the site and the petitioner had also offered his land; that due to the dispute an Aam Sabha was convened which has not been denied even by the petitioner and in the said Aam Sabha a consensus was reached as there was a dispute with respect to two sites, by adopting a democratic process for selecting the site on the basis of casting of votes was evolved and accordingly, the site at which the present construction is going on received the maximum number of votes i.e. 208 votes where as second plot had received 170 votes and 379 members of the Aam Sabha are the signatories to the resolution. Thus, as per the majority decision of Aam Sabha, decision was taken to construct Badgunda Khurd Panchayat Bhawan at village Badgunda Kala, Tola Dhab under Khata no. 81, Plot no. 799. The photographs annexed with the counter affidavit show that construction has reached the plinth level and the said Panchayat Bhawan has been constructed on the site on Khata no. 81, Plot no. 799 at village Badgunda Kala, Tola Dhab on the basis of the consensus of the members of the Aam Sabha.

12. In view of the discussions made above we find that there is no violation in the policy decision of the Government for the construction of the Panchayat Bhawan at village Badgunda Kala which is accessible to majority of the villagers.

13. In the result, we do not find any reason to entertain the present Public Interest Litigation and the same is hereby dismissed.