

(2004) 03 PAT CK 0092

Patna High Court

Case No: C.W.J.C. No. 3298 of 2004

Vijay Vasayyan

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision: March 18, 2004

Acts Referred:

- Constitution of India, 1950 - Article 243ZD

Citation: (2005) 3 PLJR 358

Hon'ble Judges: Ravi S. Dhavan, C.J; Shashank Kr. Singh, J

Bench: Division Bench

Advocate: Rakesh Kumar Sinha, for the Appellant; N. Lall, District Magistrate and The Subdivisional Officer, Samastipur, V.N. Sinha and Ajatshattu, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

1. Two hundred twenty one villagers had petitioned the district administration that in their village Chhatauna the conforming use of a dedicated road is being obstructed by building a Panchayat Bhawan. There is no issue on facts that the Panchayat Bhawan was coming on an area on record identified as a "dagger". There is no issue on record that on the survey map, the area was a dedicated road. There is no issue on record that during consolidation proceedings the survey map had identified this particular area as a road. Once there is no issue that the conforming use of the land is road then it is clear that nothing will come on it as the purpose of the road has been dedicated for use of passage and no other. This is settled law in the classic case of the Supreme Court, Municipal Board, Manglaur Vs. Sri Mahadeoji Maharaj, followed by a case in State of Uttar Pradesh Vs. Ata Mohd. The Supreme Court held as a aid memoir for the district administration to keep in mind that vacant spaces on either side of the metalled road and between the two drains or the stretches between dedicates street alignment is a conforming use dedicated for the

road or a public street or highway and there can be no encroachment upon it. There cannot be any legitimate expectation in urban planning that conforming uses of land will be changed, the Supreme Court held [Ghaziabad Development Authority and State of U.P. Vs. Delhi Auto and General Finance Pvt. Ltd. and Maha Maya General Finance Co. Ltd. and another](#), Then, subsequently on the matter of the discipline in urban planning the Supreme Court explained why there has to be a regimented discipline to protect conforming spaces and ensure spatial integrated planning. Parks, public streets, set backs of buildings and control on construction both horizontally and vertically. [M.I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu and Others](#). Then, not to be unnoticed and specifically to be paid attention to particularly by the administration are the provisions of the Constitution which the administration conveniently ignores because it has not educated itself to it. Twenty five years of suppression of local self government, even after the amendments were made to the Constitution of India, the State administration would not look into chapters IX & IXA (Panchayats and Municipalities). Specific attention be had to Article 243ZD. The District Planning Committee will particularly have regard to matters of "common interest". The road is a matter of common interest for the village in the present context. Then the Constitution makes it an obligation that while preparing plans, the draft development plans particularly with regard to matters of common interest due attention will be paid to "spatial planning" and the planning will be so prepared that it will be within "the concept of the integrated development of infrastructure". The antithesis of spatial planning and integration, is constriction. It is anti-Constitution. Whatever space was permitted as a conforming use of land even one inch cannot see the reduction of it nor the constriction of it and there can be no construction on it. The Constitution of India puts an obligation on the district administration or the State Government to ensure that wherever development plans are taking place it will be a spatial integrated planning and development. Spaces may be spread out wide and open, but not constricted. If constriction is done it will be violation of the Constitution. The court emphasizes that this is not a matter of violation of law, which it is, but the violation of Constitution.

2. There will yet be a place for the bureaucracy to guide this third tier of government in its new found freedom after the last election and the first tenure is midway and has yet to run out. There will be a temptation in politics, power and misplaced politics to destroy conforming uses of lands. Open spaces like roads, spaces beyond street alignment protected for future widening of the street, for taking in underground facilities of a modern habitat-drainage, sewers, cables, electricity, telephone cables, fiber optic communication cable, gas distribution pipes, traffic communication cables, water supply pipes, fire hydrant water supply etc. The, parks, play grounds, and open grounds are conforming uses of land which cannot be touched.

3. Hereinafter, will lie a very new found mandatory obligation on the administration to guide the Panchayat Samitees, Nagar Panchayats, Municipalities, Zila Parishads

and City Corporations. The conforming uses of lands are to be protected. The obligation comes from the Constitution, the Bible of all laws.

4. In the circumstances, from the records and the survey maps what has been done in the present case is admittedly wrong, illegal and anti Constitution. A faint explanation was being attempted to be given on behalf of the District Magistrate that the road is wide enough. At least the District Magistrate was honest with the court in saying that he was not aware of Article 243ZD of the Constitution nor was he aware about the concept of spatial planning as is given in the article, in context.

5. This Panchayat Bhawan, which has been constructed was violating the conforming use of the land is to be demolished. Thereafter, giving the due set back beyond the conforming use of the road, the District Magistrate may guide the Panchayat on where this Panchayat Bhawan should be.

6. Thus, the petition is allowed. Let a copy of this order be sent to every District Magistrate in Bihar to be distributed this order for the guidance of every Panchayat Samitee, Nagar Panchayat, Zila Parishad, Municipality, and City Corporation.