

Jharkhand High Court

Ragini Prasad And Ors. vs Ranchi Regional Development ... on 11 February, 2004

Equivalent citations: 2004 (1) JCR 616 Jhr

Author: R Merathia

Bench: R Merathia

JUDGMENT R.K. Merathia, J.

1. Heard the parties.

2. Petitioners have prayed for a direction upon the respondents to release the sanctioned map in terms of Section 37 of the Regional Development Authority Act, 1981 (the Act for short), and Clause 7.2 of the Ranchi Planning Standards & Building Bye-Laws, 2002 (the Bye-laws for short), and for other reliefs.

3. The case of the petitioners is as follows. For constructing a multistoried building, a plan was submitted before respondent No. 3 along with requisite fee on 27.2.2003, which was registered as B.C. Case No. 294 of 2003. On the expiry of four months, the petitioners sent a notice by registered post on 28th June, 2003 in terms of Section 37 of the Act and Clause 7.2 of the Bye-Laws. Again a notice under the said provisions was sent after expiry of one month on 11.8.2003. When no response was received, a notice dated 11.8.2003 was again sent.

On 5.1.2004 from a general notice issued in the newspapers, the petitioners learnt that a letter dated 27.11.2003 has been issued to the petitioners for rectifying the defects in the map and demanding the drainage plan. In order to avoid litigation, the petitioners submitted a representation along with the drainage plan. In these circumstances, the petitioners claim that the Map submitted by them should be presumed to have been sanctioned under Section 37 of the Act and 7.2 of the Bye-Laws. It is, therefore, prayed that the authorities be directed to release the sanctioned Map to enable the petitioners to start the construction work.

4. Learned counsel for the respondents submitted that the 'means of access'/ the street is less than six meters in width and therefore the plan submitted by the petitioners is not in terms of Clause 18.6 (iii) of the Bye-Laws. Learned counsel further submitted that the plan can be presumed to have been sanctioned if there is no defect in the same. Clause 7.2 of the Bye-Laws provides that subject to the condition mentioned in the Bye-Laws, nothing shall be construed to authorize any person to do anything in contravention of or against any other regulations, bye-laws or ordinances operating on the site of work.

Mr. Singh sought to explain the delay in responding to the petitioners' application for sanction of Map by saying that till October, 2003 the Vice Chairman was entrusted with other offices also and only after an order was passed by this Court in a Public Interest Litigation, a full time Vice Chairman started functioning. He further submitted that now when the petitioners have responded to the notice dated 27.11.2003 (Annexure-A) they have waived their rights under Section 37 of the Act.

5. The explanation of Mr. Singh regarding the delay in response, cannot be accepted. It is not the case of the respondents that the office of RRDA was closed/ locked up to October, 2003, and that no plan was sanctioned between February, 2003 when the petitioners submitted its Map, up to November, 2003 when Annexure-A dated 27.11.2003 was issued. They clearly and deliberately neglected to respond to the map submitted by the petitioners inspite of the notice dated 28.6.2003 issued under Section 37 of the Act. Even when a final notice was issued on 11.8.2003, the respondents pointed out the defects after about 3 months on 27.11.2003. Regarding functioning of the respondents, less said is better. This Court finds that in the instant case the respondents have not taken steps with promptitude and have shown utter negligence in discharge of their public duties.

The contention of Mr. Singh that the petitioners have waived their right under Section 37, also cannot be accepted in view of paragraph 42 of the judgment, reported in 1990 (I) PLJR 503, *Uma Shyam Parivar Trust v. State of Bihar*

6. However, while adopting observations and reasoning given in paragraphs 48, 63 and 64 of the judgment in *Uma Shayam Parivar Trust (Supra)*, and in view of the order which I intend to pass on the main issue, this Court is not inclined to hold that the plan submitted by the petitioners would be presumed to have been sanctioned, in the facts and circumstances of this case.

7. In the notice dated 27.11.2003 (Annexure-A), it is said that while examining the plan of the petitioners, it was found that the 'means of access'/street is less than six meters in width after excluding the width for drain, and that the drainage plan has not been shown in terms of Clause 18.2 of the Bye-Laws, and therefore, the petitioners were required to submit an amended plan within 30 days, failing which the plan submitted by the petitioners would be rejected.

8. Section 2 (n) of the Act defines 'means of access.' 'Street' has been defined in Clause 2.74 of the Bye-Laws. The drains are not included either within the 'means of access' or the 'street'. In the National Building Code of India, the definition of 'street' includes 'a drain.' While adopting the said definition of 'street' given in the National Building Code of India, the 'drain' has been omitted in the definition of 'street' given in Clause 2.74 of the relevant Bye-Laws. Reliance on Clause 17.4 of the Bye-Laws by the petitioner, which provides that for any matter not specifically prescribed and defined by the Bye-Laws. National Building Code of India shall be referred, is misplaced in view of clear omission of the word 'drains' in the definition of 'street' given in Clause 2.74.

Clause 18.6 of the Bye-Laws prescribed about the 'means of access'. Clause (iii) of Clause 18.6 of the Bye-Laws provides that the building of more than 11.40 meters height shall have a minimum existing means of access of 6.0 meters width. In my opinion, it is necessary that a drain should exist for the entire street. If it is not there, it should be made. Therefore, the 'existing means of access' should be deemed to exclude the width of existing or future drain. The width and depth of a drain may be different in different streets. The drain is covered in such a manner that it can be cleaned from time to time. Keeping in view the purpose of a drain in the street, it cannot be said that the width of the drain(s) in a street should also be added in the width of the 'street/means of access'. The 'means of access' is not only for the regular movement of traffic but also for the emergency

purposes. Even if, it is assumed that the definition of 'street' includes drain(s), the drain(s) cannot be said to be a 'means of access'. Drains are means of drainage. Therefore, I am of a considered view that the width of the drain(s) of the street cannot be said to be a 'means of access'. The minimum width of the street is to be measured after excluding the width of the drain(s).

9. In the case on hand, the height of the building plan submitted by the petitioners is more than 11.40 meters and therefore the 'means of access' must be minimum six meters in width. A drain of a building, going to the main drain, is separate from the drain meant for the entire street. Therefore, the submission of the drainage plan showing the proposed drain from the proposed building to the existing drain at the end of one of the corners of the street cannot be said to serve the purpose of a drain of the entire street.

10. The parties submitted at the bar that there is no drain(s) in the street in question. From the drainage plan submitted by the petitioners also, it appears that there is no drain(s) in the street in question. If that is so, the respondents are directed to take steps for providing drain(s) in the street in terms of chapter III of the Act, without any delay. The width of such drain should be excluded from the width of the street, and if the petitioners or other persons submit their plans on that basis, the same should be considered in accordance with law.

11. In the result, it is held that the width of an existing/proposed drain(s) has to be excluded while measuring the width of a 'street/means of access'. This writ petition is disposed of with the aforesaid findings, observations and directions.