

IN THE HIGH COURT OF JUDICATURE AT PATN
Patna Sahib Infrastaructure and Developers Pvt. Ltd.

vs.

The Patna Municipal Corporation & Ors.

Civil Writ Jurisdiction Case No.2399 of 2019

05 July 2023

(Hon’ble Mr. Justice Rajiv Roy)

Issue for Consideration

Whether Patna Municipal Corporation has jurisdiction under the Bihar Municipal Act, 2007 to issue notices for stoppage/demolition of construction of a multi-functional complex undertaken on railway land, when it was duly approved by Rail Development Authority under Railways Act, 1989 and Rail Land Development Authority (Constitution) Rules, 2007?

Headnotes

Railways Act, 1989—Section 4A—Rail Land Development Authority (Constitution) Rules, 2007—Rule 2(e)—Bihar Municipal Act, 2007—Sections 324(1) and 323(1)—construction on land of Railway—Multi-Functional Complex was approved by railway authority/RLDA on the land of railway—Patna Municipal Corporation issued notices under the Act, 2007 alleging the violation of building bye-laws and also directed to stop/demolition of construction on ground of violation of its Sections 313 and 315.

Held: Clause 5(d) of Rules, 2007 envisages approval of plans by a committee constituting amongst other RLDA and Railway Administration—RLDA are empowered to develop the railway for its commercial use and accord approval of the drawings of MFCs—petitioner firm has acted strictly in lines with the directions issued by the Railways from time to time, under which the construction work took place—RLDA issued a completion certificate to the petitioner firm—admittedly, when the Railways have accorded approval, the construction has been carried out and the completion certificate also granted by it, ‘the PMC’ cannot arm twist the petitioner to get a map sanctioned by it when the entire formalities have been completed by the Railways and the construction was also done/completed under its eagle eyes—petitioner’s firm need to get a ‘no objection certificate’ from the local authorities, and the petitioner is duty bound to submit all the documents before ‘the PMC’ with requisite fees so that it can issue the necessary ‘no objection certificate’—all the previous notices issued by the respondent authorities to the petitioner firm quashed—with observations, writ petition disposed off.(Paras 46, 47, 50, 53, 54, 57, 58)

Case Law Cited

No specific case law cited

List of Acts

Rail Land Development Authority (Constitution) Rules, 2007; Railways Act, 1989;

Bihar Municipal Act, 2007.

List of Keywords

Construction; demolition; notices; approval of drawings; map; land of railway; Patna Municipal Corporation; violation of bye-laws; no objection certificate.

Case Arising From

From the notices issued to petitioner by Patna Municipal Corporation stopping the construction of Multi-Functional Complex on the land of railway.

Appearances for Parties

For the Petitioner: Mr. Y.V. Giri, Sr. Advocate; Mr. Ashish Giri, Advocate; Mr. Sumit Kumar Jha, Advocate; Mrs. Riya Giri, Advocate.

For the Railways: Mr. Anshay Bahadur Mathur, Advocate.

For the PMC: Mr. Prasoon Sinha, Advocate; Mr. Yashraj Bardhan, Advocate.

Headnotes Prepared by Reporter: - Abhas Chandra, Advocate.

Judgment/Order of the Hon’ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2399 of 2019

Patna Sahib Infrastruncture and Developers Pvt. Ltd. a company incorporated under the IndianCompanies act, 2013 having registered office at 5A-D, Chandi Vyapar Bhawan, Exhibition Road, Patna-800001 through one of its Director and authorised signatory Mr. Pratik Sinha aged about 47 years(Male),son of Sri pravin Kumar Sinha, resident ofM2/14 Road no. 10E, Rajendra Nagar, Patna-800016

... .. Petitioner/s

Versus

1. The Patna Municipal Corporation through the Municipal Commissioner and Ors through the Municipal commissioner, Maurya Lok complex, Buddha Marg,Patna-800001
2. The Municipal Commissioner cum Chief Municipal Officer,Patna Municipal Corporation, ,Maurya Lok complex, Buddha Marg,Patna-800001
3. The Executive Engineer, Patna city Division, Patna Municipal corporation,having office located at Meena Bazar, Shershah Path, Gulzarbagh , Patna 800007
4. The Police Inspector cum Officer In Charge, Chowk Police Station, Patna City Bihar
5. The Railway Land Development Authority, a Statutory Authority under Ministry of Railways, Having Office at Near safdarjang, Railway Station, motibagh-1 New Delhi-110021 represented through its Joint General Manager/S.D

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Y.V. Giri, Sr. Advocate with Mr. Ashish Giri, Advocate Mr. Sumit Kumar Jha, Advocate Mrs. Riya Giri, Advocate
For the Railways	:	Mr. Anshay Bahadur Mathur, Advocate
For the P.M.C.	:	Mr. Prasoon Sinha, Advocate with Mr. Yashraj Bardhan, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT

Date :- 05-07-2023

Heard Mr. Y.V. Giri, learned Senior Counsel
for the petitioner, Mr. Anshay Bahadur Mathur, learned Counsel
for the Railways as also Mr. Yashraj Bardhan, learned Counsel



appearing on behalf of the Patna Municipal Corporation. Later this Court also took assistance of Mr. Prasson Sinha, Retained Counsel for the Patna Municipal Corporation.

2. The present petition has been preferred for the following reliefs :-

i) to issue an appropriate writ /order/directions in the nature of certiorari for quashing the notice vide letter no. 706 dated 19.01.2019 issued under the signature of the Municipal Commissioner, Patna Municipal Corporation (henceforth for short 'the PMC') issued under sections 324(1) and 323(1) of the Bihar Municipal Act, 2007 by (henceforth for short 'the 2007 Act') which he has been directed to stop the construction of the multifunctional complex at Patna Sahib Railway Station till next order and further asked to reply as to why necessary action under section 323 of 'the 2007 Act' be not be taken for demolition of the said construction on ground of violation of its sections 313 & 315 (Annexure-5);

ii) to issue an appropriate writ /order/direction in the nature of certiorari for quashing the site verification report vide letter no. 19 dated 16.01.2019 by which it has been held that *prima facie* the construction made by the petitioner is in violation of Bihar Building Bye Laws



(Annexure- 5A);

iii) to issue an appropriate writ /order/direction in the nature of *certiorari* for quashing the letter no. 170 dated 19.01.2019 issued by the Police Inspector- cum- Officer In-charge, Chowk Police Station, Patna City by which in the light of notice no. 706 dated 19.01.2019, the petitioner has been directed to stop any further construction till next order (Annexure-6);

iv) to issue an appropriate writ /order/direction in the nature of *certiorari* for quashing the notice no. 26 dated 21.01.2019 issued under the signature of the Executive Engineer, Patna City Division, Patna Municipal Corporation, Patna by which in terms of notice no. 706 dated 19.01.2019, the petitioner has been directed to stop the construction work and to respond within 15 days before the Municipal Commissioner, Patna (Annexure-7);

v) to issue an appropriate interim/ex-parte interim order during the pendency of the writ petition allowing the petitioner to proceed with the development and construction of the multi-functional complex located at Patna Sahib Railway Station and prevent the respondent from taking any further coercive action.



3. The matrix of facts giving rise to the writ petition is/are as follows:-

4. As per the writ petitioner, the Parliament has enacted a law to consolidate and amend the law relating to the Railways called the Railways Act, 1989 (henceforth for short “the Central Act”).

5. Chapter-II A has been inserted in the said ‘Central Act’ by amendment Act, 47 of 2005 with effect from 30.08.2006 and in terms of section 4A therein, and the Central Government has been empowered to establish an authority by notification to be called the Rail Land Development Authority (henceforth for short “the RLDA”) to exercise the powers and discharge the functions conferred on it by or under this Act.

6. The Central Government thus constituted “the RLDA” in exercise of power under section 4A read with section 198 of ‘the Central Act’ vide notification dated 04.01.2007 called the Rail Land Development Authority (Constitution) Rules, 2007 (henceforth for short the “2007 Rules”).

7. In terms of Rule 2(e) of ‘the 2007 Rules’, “the RLDA” has been defined to mean Rail Land Development Authority established under section 4A of the Central Act.



8. Further, in terms of Rule 5 of “the 2007 Rules”, ‘the Authority’ is entrusted with the property by the Central Government for development of railway land as it may deem fit. Section 11 (d) read with (da) & Section 4D(2)(1) of ‘the Central Act’ empowers the Railway Administration for the purpose of constructing or maintaining a railway develop any railway land for commercial use.

9. Further, in terms of Rule 5(d) of ‘the Rules, 2007’, in relation to commercial development of site to the authority which is ‘the RLDA’, detailed plans for such developments is to be approved by a committee consisting of one Nodal Officer each from “the RLDA” and the railway administration.

10. Accordingly, ‘the RLDA’ decided for commercial developments/ developments of multi-functional complex (MFC) over a land area of approximately 4110.85 sq.m. of railway land at Patna Sahib Railway Station for which a competitive bidding process was initiated vide bid notice dated 15.07.2014.

11. M/s Balaji Infra Projects consortium (of Mr. Pratik Sinha, Mr. Pravin Kumar Sinha and Mrs. Renu Sinha) was the successful bidder and thus was issued the letter of



acceptances dated 22.10.2014 and revised letter of acceptance dated 18.03.2015 by 'the RLDA'. The said selected bidder in terms of the letter of acceptances promoted and incorporated the present petitioner to be the lessee and requested 'the RLDA' to accept him as the entity which shall undertake and perform the obligations and enjoy the rights as specified therein.

12. Accordingly, the lease agreement was entered into between 'the RLDA' and the petitioner on 12.01.2016 in terms of which it paid an amount of Rs. 1,03,05,095.00 towards the first installment of the lease premium as specified in the letter of acceptances. The total lease premium was Rs. 2,35,54,747.00 while the annual lease rent was Rs. 10,35,953.00 every year to be increased by 15% every 3 years. The lease period was for 44 years 2 months 6 days (i.e. upto 2060).

13. The petitioner thereafter proceeded with the construction of the MFC and invested (till the filing of the writ petition) approximately Rs. 20 Crores.

14. According to the petition, the petitioner also took loans from financial institutions to the tune of Rs. 11 Crores bearing the interest liability and has mortgaged the leasehold right of the property in question alongwith other non-



movable assets such as office and flat of the Director of the company.

15. Accordingly, the construction was done in terms of the designs as certified by the architect registered under the Bihar Municipal Act, 2007 which was in accordance with the requirement of the Bihar Building Bye Laws 2014/National Building Code and the drawings were duly approved by 'the RLDA' and also by the railway officers. One of the approved map is on record as illustration.

16. 'The RLDA' vide its letter dated 04.07.2018 has informed the petitioner that the revised drawings of parking was examined and approved by its competent authority.

17. While the petitioner was constructing the MFC in accordance with the approved drawing, it received a notice vide letter no. 706 dated 19.01.2019 by the Patna Municipal Corporation (henceforth for short 'the PMC') under the signature of its the Municipal Commissioner by which it was informed that the construction of the said MFC was in violation of sections 313 & 315 of 'the 2007 Act' and thus, notice under section 324(1) was issued with the direction to stop the construction till the next order with further direction to reply



as to why action of demolition of the same be not undertaken.

18. The notice was on the basis of a site inspection report vide letter no. 19 dated 16.01.2019 as per which, it was found that the construction of the work was on the land belonging to the Railways and the design has been approved by the railway architect as per the information given by the people there. However, no objection certificate for the construction was not shown on the site and hence, it was concluded that prima facie the construction was in violation of the Building Bye Laws.

19. The contention in the writ petition is that in the show cause notice and/or the inspection report, the respondents have not narrated on the regulation of the Bye Laws that had not been followed/violated or as to what has been the departure from the approved sanctioned map. In short, it was vague and the action was initiated only on the basis of surmises and conjectures without verifying any document regarding compliance of the requirement in law.

20. Further, in terms of the notice dated 19.01.2019, the respondent Police Inspector-cum-officer in-charge, Chowk Police Station, Patna City also issued a notice no. 170 dated 19.01.2019 directing it to stop the construction till



next order.

21. Similar notice to stop the work/ construction in terms of letter no. 706 dated 19.01.2019 was issued by the Executive Engineer, Patna city Division, 'of the PMC' vide letter no. 26 dated 21.01.2019.

22. As per the writ petition, the construction in question is on the land of the railway located at Patna Sahib Railway Station and it is 'the RLDA' which in terms of the Act as explained earlier, has been vested with the property for carrying out its development for commercial use and public amenities and is thus operational building of railway as notified by the Railway Board, Government of India, Ministry of Railway vide letter dated 26.07.2012.

23. Further, the multifunctional complex is an extension of the station building and is next to platform no.1 of Patna Sahib Railway Station to be used for daily amenities like daily needs items, medicine, luggage, book store, ATM, etc. for the passengers. The multifunctional complex is having a multilevel car parking facility of three floors having built-up area of approx 25000 sq.ft. for the use of train passengers and general public as per the instruction of 'the RLDA'.

24. Further, in terms of section 11 read with



Rule 5 of 'the 2007 Rules' and the Circular dated 26.07.2012, it is apparent that 'the RLDA' alone is the authority for the development/approval of plans and thus the approval of the same is not required from 'the PMC' The only requirement being that the map/design should be in accordance with the Bye Laws.

25. In the light of notices so issued, the petitioner represented before 'the RLDA' vide letter dated 21.01.2019 bringing to its notice the action being taken by the Patna Municipal Commissioner with request to take necessary steps.

26. 'The RLDA', in turn vide letter dated 24.01.2019 informed the petitioner that railway / RLDA officials are empowered to accord approval of the drawings for MFCs, developed by a certified architect of the concerned Municipal Corporation. It has also been certified that the drawings for MFC at Patna Sahib Railway Station are prepared by certified architect of 'the PMC', Sri Sachin Kumar (registration no. CA/2013/61209) in adherence to Bihar Building Bye Laws and subsequently these drawings were approved by competent railway/RLDA with a provisions of 15% extra parking facility and 18.30 meters access road on western side of MFC to satisfy



Bihar Building Bye Laws.

27. 'The respondent RLDA' vide letter dated 24.01.2019 also informed 'the PMC' regarding the same with a request to withdraw the notice issued by it to the petitioner so that the construction work can be completed.

28. However, as the damocles sword (of 'the PMC') was hanging over the petitioner, he has been forced to file the present writ petition.

29. Heard learned Counsels for the parties.

30. Mr. Y.V. Giri, learned Senior Counsel appearing for the petitioner has taken this Court to 'the 2007 Rules' with specific reference to para 5(d) which read as follows:-

“5(d) Where commercial development of site entrusted to the Authority under clause (ii) of sub-section (2) of section 4(D), involves construction or redevelopment or modifications to railway station building and/or yards, the detailed plans for such development shall be got approved by a Committee consisting of one nodal officer each from Authority and railway administration and the Central Government shall ask the railway administrations to nominate one nodal



officer for such purpose.”

31. He further took the Court to its para 27 (4) which again read as follows:

“27 (4) A committee appointed by the Board shall holistically scrutinize all schemes for commercial development of railway land, including aspects of safety, aesthetics vis-a-vis surroundings and user amenities.”

32. Mr. Giri also took this Court to the letter dated 24.01.2019 (Annexure 2 to the writ petition) issued by ‘the RLDA’ and addressed to the Municipal Commissioner, of ‘the PMC’ in which it was specifically stated that the Railways/ RLDA Officials are empowered to accord approval of the drawings. Further request was made to withdraw the notice issued.

33. He also took this Court to the supplementary affidavit which includes the completion certificate dated 26.07.2019 (Annexure 13). It is appropriate to incorporate the same too for the proper appreciation:



“No. RLDA/2010/Project/ MFC/ Patna Sahib

July 26, 2019

To.

*Patna Sahib Infrastructure & Developers Pvt. Ltd. 5A-D,
Chandi Vyapar Bhawan,
Exhibition Road,
Patna-800 001.*

*Subject: Completion Certificate for Development of
MultiFunctional Complex (MFC) at Patna Sahib Railway
Station.*

*Ref: (i) LOA No. RLDA/2010/ Project/ MFC/Patna Sahib
dated 18.03.2015*

*(ii) Lease Agreement no. RLDA/2016/LA/14 dated
12.01.2016.*

(iii) Your application no. nil dated 08.07.2019.

Completion Certificate

*With reference to your application dated
08.07.2019 it is hereby certified that completion plan No.
RLDA MFC PATNA SAHIB 01 OF 12 /CP to 12 OF 12/CP of
MFC Building at Patna Sahib Railway Station has been
checked as per the checklist and documentary evidences
submitted along with your application and is permitted for
commercial operation and sub- leasing subject to fulfillment
of terms and conditions laid down in the lease agreement. The*



completion certificate is hereby issued in terms of submittals and undertaking of the Lessee. However, in no event, the completion certificate amount to certification of conformity with the approved drawings, applicable laws or discharge the Lessee from its responsibility of complying with the requirement of the Lease Agreement, applicable laws and applicable permits.

(GS. Prasad)

Jt. General Manager/SD”

34. Mr. Giri as such submits that the development took place on the land of the Railways after approval of its authorities, who were competent to do the same, ‘the PMC’ had no role to play in the matter but it tried to put spoke in the wheels forcing the writ petitioner to knock the doors of the High Court.

35. The last submission of the learned Senior Counsel is that “the PMC’ demanded and is/are being paid the holding tax by the petitioner (Annexure 25 series to the supplementary affidavit) under protest.

36. He as such averred that in the aforesaid backdrop, the writ petition is fit to be allowed.

37. It is to be noted that a co-ordinate bench



of this Court vide an order dated 13.02.2019 while directing the respondents to file reply had given interim protection and it is important to incorporate the concluding part:-

“Let a counter affidavit on behalf of respondent Nos. 1, 2 & 3 as well as respondent No. 5 be filed within a period of three weeks from today.

Till then, the petitioner may carry on the remaining construction work at his own risk and subject to final decision in the writ application.

In the meantime, the Municipal Commissioner, Patna Municipal Corporation will not pass any consequential order.

Let the matter be listed on 7th of March, 2019.”

38. Pursuant thereto, the work continued and as per supplementary affidavit, completion certificate has also been issued by the Railways.

39. The respondent no. 5 (Railway Authority) also filed counter affidavit and supported the case of the writ petitioner and the paragraph 7 of its reply read as follows:

7. That the land in question is a Railway land as described in



the Section 2 (32A) of the railways Act. The Municipal Corporation under the provisions of the Section 100 of the Bihar Municipal Act, 2007 has been vested with the all public land not belonging to any government department or statutory body or corporation. The instant land indisputably belongs to the Railways and Railways has full authority over and ownership rights it and hence the provisions of the Section 11 of the Railways Act will apply on the said Railway Land.”

40. It is the contention of Mr. Mathur, learned counsel appearing for the Railways that it has the authority to develop the land, approve the drawings/map and the work having been done, completion certificate has already been issued. So far as the responsibility of obtaining other approvals/licenses/permissions are concerned, that lies with the developer as already clarified in letter dated 24.01.2019.

41. The learned Counsel appearing on behalf of ‘the PMC’ submitted that the petitioner jumped the ship and filed writ petition only on the notice issued by it instead of appearing and filing show cause. His contention is that no order was passed necessitating this writ petition. Thus, according to them, the writ petition being premature is fit to be dismissed.



42. The further submission is that as per section 314 of 'the 2007 Act', unless approved by the Competent Authority (of PMC), no construction work can be done within the jurisdiction of municipal area.

43. He further took this Court to para 17 of the reply which read as follows:

17. That it is submitted that if there is requirement of confirmation to local building bye-laws, the petitioner cannot abdicate its obligation to obtain sanction/permission/no objection from the Municipal Corporation.

44. The last submission is that acceptance of holding tax from the petitioner does not mean that a 'no objection certificate' is not required.

45. Having heard the learned Senior Counsel for the petitioner as also the learned counsel appearing on behalf of the Railways and 'the PMC' as also after perusing the documents/annexures on record, the Court finds force in the submissions put forward by the learned Senior Counsel for the petitioner.

46. 'The 2007 Rules' in Clause 5 (d) clearly envisages approval of plans by a committee constituting amongst other 'the RLDA' and the Railway Administration.



47. Further as per Clause 27(4), the Committee scrutinizes the schemes relating to the development/construction. Also, 'the RLDA' in its letter dated 24.01.2019 clarified that they are empowered to develop the railway for its commercial use and accord approval of the drawings of MFCs.

48. Further, it was also clarified in the said letter dated 24.01.2019 that the railway development of the MFC at Patna Sahib is being undertaken by the lessee as per the approved drawing (Annexure-11).

49. This Court took note of the letter dated 26.07.2019 issued by 'the RLDA' by which completion certificate has been issued to the petitioner firm (Annexure-13 to the supplementary affidavit).

50. This Court is thus fully convinced that the petitioner firm has acted strictly in lines with the directions issued by the Railways from time to time, under which the construction work took place.

51. The Court later also took assistance of Mr. Prasoon Sinha, learned Retained Counsel for 'the PMC' who (supporting the notice issued) made the following submissions :



(i) *rushing to Patna High Court on mere notice was premature as no order was passed;*

(ii) *acceptance of holding tax does not amount to approval;*

(iii) *in any case, the petitioner is duty bound to take 'no objection certificate from 'the PMC'.*

52. This Court accepts the last submission made by Mr. Prasoon Sinha, as the same is in the line with the letter dated 24.01.2019 (Annexure-11 to the writ petition) issued by 'the RLDA' to 'the PMC' and the paragraph -8 of the said letter states as follows:

"8. Further as per Railway Board Circular No. 2008LML/2/13 dated 26.07.2012 (Copy annexed in Annexure-1), MFCs building are covered U/S 11 of Railways Act, 1989 and Paragraph No-201 of Indian Railway Works Manual, 2000 and considered as "Operational Buildings" of Railways. Accordingly Railway/RLDA officials are empowered to accord approval of the drawings for MFCs, developed by a Certified Architect of the concerned Municipal Corporation in adherence to Local Building Bye Laws, however the responsibility of obtaining other



approvals/licenses/permissions lies with the developer.”

(underline mine)

53. Admittedly, when the Railways have accorded approval, the construction has been carried out and the completion certificate also granted by it, ‘the PMC’ cannot arm twist the petitioner to get a map sanctioned by it when the entire formalities have been completed by the Railways (as it was legally entitled to) and the construction was also done/completed under its eagle eyes.

54. However, in line with the letter dated 24.01.2019 issued by ‘the Railways’, it need to get a ‘no objection certificate’ from the local authorities, (in this case, ‘the PMC’) and the petitioner is duty bound to submit all the documents (issued by the Railways from time to time) before ‘the PMC’ with requisite fees so that it can issue the necessary ‘no objection certificate’

55. This Court thus directs the petitioner to approach ‘the PMC’ within four weeks from today with its application for grant of ‘no objection certificate’ alongwith all the supporting documents and requisites fee.

56. If the petitioner approaches ‘the PMC’ within four weeks from today for grant of ‘no objection



certificate’, ‘the PMC’ shall be duty bound to consider the same and take decision for grant of the ‘no objection certificate’ within a period of three months thereafter.

57. Since the petitioner firm has been directed to present its application alongwith relevant documents before ‘the PMC’ for the grant of ‘no objection certificate’ , all the previous notices issued by the respondent authorities to the petitioner firm stand quashed.

58. The writ petition is disposed of with the aforesaid observations.

(Rajiv Roy, J)

Jagdish/Neha/-

AFR/NAFR	AFR
CAV DATE	26.06.2023
Uploading Date	05.07.2023
Transmission Date	

