

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA**

O.A. No. 17/2014/PB/10/EZ

**SANJAY SINHA
VS
STATE OF BIHAR & ORS**

CORAM: Hon'ble Mr. Justice S.P.Wangdi, Judicial Member
Hon'ble Prof. (Dr.) P. C. Mishra, Expert Member

PRESENT:

Applicant	: Mr. Rahul Ganguly, Advocate
Respondent No. 1 & 4	: Mr. R.N.Das, Sr. Advocate Mr. Binod Kumar Gupta, Advocate Ms. Aishwarya Rajyashree, Advocate
Respondent No. 2	: Mr. Kumar Ravish, Advocate
Respondent No. 5	: Mr. Prasun Sinha, Advocate Mrs. Arpita Chowdhury, Advocate
Respondent No. 6	: Mr. Gora Chand Roy Chowdhury, Advocate
Respondent No. 7	: Mr. Ashok Prasad, Advocate proxy of Mr. Surendra Kumar, Advocate
Respondent No. 13	: Mr. Anumoy Bosu, Advocate
Respondent No.17	: Mr. Somnath Roy Chowdhury, Advocate

Date & Remarks	Orders of the Tribunal
<p>Item No. 6 16 September, 2016.</p>	<p>Affidavit has been filed on behalf of the State of Bihar, Respondents No. 1 & 4, in compliance to our order dated 12.8.2016 by Mr. B.K.Gupta, Ld. Govt. Counsel. It is stated that copies have been served on the other side.</p> <p>The affidavit is ordered to be taken on record.</p> <p>Mr. Somnath Roy Chowdhury, Ld. Adv. for added Respondent No. 17 prays for leave to file affidavit on</p>

behalf of the said respondent.

The prayer is allowed. The affidavit is ordered to be taken on record. Mr. Roy Chowdhury shall ensure that copies are served on the other side by 19.9.2016.

In the affidavit filed by the Govt. of Bihar, it is averred that a special task force has been constituted vide Memo dt. 545 dated 7.9.2016 by the Urban Development and Housing Deptt., Govt. of Bihar, Cost of Rs. 25,000/- has been deposited in favour of the Member Secretary, SEIAA, Bihar in compliance of the order of the Tribunal, report in tabular form has been prepared on the basis of information collected from the Urban Local Bodies (ULBs) on the issue of Environmental Clearance for construction of buildings with built up area of 20,000 Sq. meter and above within the territorial jurisdiction of those ULBs under Bye Law No. 5(6)(iv) under the Bihar Building Bye-laws, 2014 and that finalisation of Patna Master Plan is under active consideration for which Patna Metropolitan Planning Committee has been approved before which the draft

Patna Master plan, 2031 shall be placed for consideration and approval.

We have perused the affidavit and the annexures filed with it and we find that information furnished in annexure-C with regard to requirement of EC is rather vague inasmuch as, except for two Municipalities, particulars of only those buildings with covered area below 20,000 sq. meters have been furnished. It is not comprehensive. Information of buildings with covered area more than 20,000 sq. meters have not been furnished.

The notification No. 618 UD&HD dated 15.9.2016 constituting the Patna Metropolitan Planning Committee filed as annexure-E, is rather curious inasmuch as we find that although the Committee is chaired by the Hon'ble Minister of the Deptt. of Urban Development and Housing, the rest, other than the EX-officio and nominated members, are such that their expertise on the subject appear to be grossly questionable. It is not understood as to how such a body can approve a vital document like Master

Plan for the city of Patna which is not only the capital of the State of Bihar but also one of the premier cities of the country. It may not be out of place to mention here that the city lies on the bank of river Ganges and is, therefore, environmentally sensitive requiring persons with knowledge which is not only technical but also scientific in carrying out the responsibility which the committee has been charged with.

In view of this, we expect the Govt. of Bihar, Respondents No. 1 and 4, to review the notification and appoint persons of eminence having knowledge in the field as members of such premier committee. The committee should not be made a repository for rehabilitation of political elements.

Decision in this regard shall be conveyed to us on or before the next date.

Mr. Rahul Ganguly, Ld. Advocate for the applicant has pointed out to us that under the EIA Notification, 2006, in clause 1.1 of Appendix II in particular, under the heading "Land Environment", the necessity of

approved Master Plan/Development Plan of an area is a mandatory requirement before making any significant alteration to the existing land use. He submits that despite our order dated 30.7.2014 followed by order dated 22.9.2014 and series of orders thereafter, illegal constructions are continuing not only on the river front of the city of Patna but also beyond Patna Protection Wall and within the city in the absence of an approved Master Plan. It is, therefore, his prayer that the order of injunction which is confined only to the Ganga river front of Patna city should be extended to other areas also in view of expansion of the city proposed by the State Government.

Mr. Kumar Ravish, Ld. Advocate for SEIAA, Bihar, Respondent No. 2, admits that constructions have been going on in the manner stated by the Id. advocate for the applicant in view of the provision as contained in Sec. 2(91) of the Bihar Municipal Act, 2007 whereby the term "Development Plan/Master Plan" has been defined as "draft Development Plan/Master Plan and

the final Development Plan/Master Plan prepared under the Bihar Municipal Act, 2007”.

Mr. R.N.Das, Ld. Sr. Counsel appearing for the State of Bihar assisted by Mr. B.K.Gupta, Ld. Counsel and Mr. Hari Shankar, Assistant Town Planner, submits that the “Development Plan” has also been defined in the Bihar Urban Planning and Development Act, 2012 under Sec. 2(xvi) thereof as a plan for development or redevelopment or improvement of an area within the jurisdiction of a Planning Authority and includes a Regional Development Plan etc. etc. The meaning of the term “Development Plan/Master Plan” under the Bihar Municipal Act, 2007 is for the purpose of said Act and is quite distinct from the meaning that is provided under the Bihar Urban Planning and Development Act, 2012. It is his submission that in view of the meaning provided under the latter Act on the term “Development plan” there has been no infraction committed by the State of Bihar.

Mr. B.K.Gupta, Ld. Govt. Counsel assisting Mr.

R.N.Das, Ld. Sr. Counsel also points out the overriding provision under Section 113 of the Bihar Urban Planning and Development Act, 2012 which prescribes that the provisions of the said Act shall have effect notwithstanding anything inconsistent therewith contained in any other law. According to the Ld. counsel, by this, it meant that the provisions of the latter Act would supersede the provisions of the former Act i.e. Bihar Municipal Act, 2007, and, therefore, the definition of 'Development Plan' under sub-section (xvi) of Sec. 2 of the Act would prevail.

Upon consideration of the submissions and on perusal of the provisions of the two Acts we respectfully differ with the interpretation that is sought to be given by the Ld. Sr. Counsel for the State of Bihar. In the first instance, there cannot be two laws on the same subject. It is trite that the golden rule of interpretation of statute is that ordinary meaning should be given to the words appearing in the statutes. The object of Bihar Urban Planning and Development

Act, 2012 as would appear from its preamble is to make provision for promotion of planned growth and development of urban areas and such rural areas having potential of urbanization and regulation thereof including land use in these areas of State of Bihar. On the other hand, the object of the Bihar Municipal Act, 2007 is stated to be to consolidate and amend the laws relating to the municipal governments in the State of Bihar in conformity with the provisions of the Constitution of India based on the principles of participation in, and decentralization, autonomy and accountability of urban self-government at various levels, so on and so forth.

As would appear from the objects of the two Acts, the Bihar Urban Planning and Development Act, 2012 is a general law making provisions for promotion of planned growth of various areas in the State whereas the Bihar Municipal Act, 2007 obviously appears to be a special law making specific provision as to how the planned growth should take place. Therefore, in our

considered opinion, the provisions of the two Acts are quite distinct and are rather complementary and certainly not contradictory or inconsistent with each other. It, therefore, cannot be said that the provision of the Bihar Municipal Act, 2007 stands superseded by the Bihar Urban Planning and Development Act, 2012. If such a view is to be taken, it would be inconsistent with the object of the two statutes. In any case, we do not find any inconsistencies in the two provisions, viz., Sec. 2(xvi) of the 2012 Act and Sec. 2(91) of the 2007 Act. While Sec. 2(xvi) broadly defines what “Development Plan” means, which would be quite natural considering the general nature of the Act reflecting legislative policy for planned development, Sec. 2(91) of the Municipal Act, 2007 is specific in defining the words “Development Plan/Master Plan”. The submission of the Ld. Sr. Counsel for the State of Bihar on this count, therefore, does not appear to have any merit.

Having held so, we may now move on to the submissions of Mr. Rahul Ganguly, Ld. Adv. for the

applicant with regard to the mandatory nature of the provision of EIA Notification, 2006 and Appendix II appended thereto referred to by him. We are inclined to agree with his contention that the notification is mandatory. We have arrived at the conclusion in view of the fact that the EIA Notification 2006 of which Appendix II is a part has been issued by the MOEF & CC, Govt. of India in exercise of its power conferred under sub-rule (3) of Rule 5 of Environment (Protection) Rules, 1986.

We may reproduce the relevant provision of Appendix II hereunder :-

“1.1 Will the existing land use get significantly altered from the project that is not consistent with the surroundings? (Proposed land use must conform to the approved Master Plan/Development Plan of the area. Change of land use if any and the statutory approval from the competent authority be submitted). Attach Maps of (i) site location, (ii) surrounding features of the proposed site (within 5000 meters) and (iii) the site (indicating levels & contours) to appropriate scales. If not available attach only conceptual plans.”

As would appear from the above, clause 1.1. under the head “Land Environment” clearly mandates that the proposed land use must conform to the “**approved Master Plan/Development Plan**” (emphasis supplied). Clearly, therefore, Sec. 2(91) of Bihar Municipal Act appears to be inconsistent with clause 1.1 referred to above. For the sake of convenience, Sec. 2(91) of Bihar Municipal Act, 2007 is reproduced below :-

“2(91) .. “Development Plan/Master Plan” means the draft Development Plan/Master Plan and the final Development Plan/Master Plan prepared under this Act.”

In our considered opinion, therefore, the above provision which categorically brings within its fold even “the draft Plan/Master Plan” to define “Development Plan/Master Plan” under the Bihar Municipal Act, 2007, is inconsistent with Appendix II of MOEF Notification of 2006. This, in our view, would render the above not only *otiose* but also inconsistent and in conflict with the MOEF Notification, 2006. We, therefore, would expect the State Govt. to consider as to whether the provision

should be amended or not.

In the admitted position that the Patna Master Plan has not yet been approved and that approved Master Plan is a mandatory requirement under the MOEF Notification referred to earlier in respect of constructions with built up area of 20,000 sq. meters or more, any such construction carried out in the absence of such a Master Plan or in pursuance of any permission granted by any authority would be illegal. We, therefore, direct that, further to our orders dated 30.07.2014 and 22.09.2014, all constructions in the city of Patna and in the areas where the city is proposed to be expanded requiring EC for project 8(a) under Schedule I of EIA Notification, 2006, shall be stopped forthwith until the Master Plan is finally approved. This, of course, is with the rider that the Committee constituted by Notification No. 618 UD&HD dated 15.9.2016 shall be reconstituted by inducting competent persons as its members. We shall expect action to be taken on this by the State of Bihar within a period of six weeks. An affidavit of compliance shall be filed on or before the next date with advance copies on the other side.

	<p>List on 4.11.2016.</p> <p>.....</p> <p>Justice S.P.Wangdi, JM</p> <p>.....</p> <p>Prof. (Dr.) P. C. Mishra, EM</p>
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