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C.A.No. 1357 OF 2003

ITEM No.102 (PH)

Court No. 4

SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No. 1357 of 2003

ASHISH SAHKARI GRIH NIRMAN SAMITI Appellant (s)

VERSUS

STATE OF BIHAR & ORS. Respondent (s)
(With office report)

With C.A.Nos. 1360, 1361, 1362, 1363, 1365, 1366, 1367-73 of 2003

Civil Appeal Nos.1358-1359 of 2003
(With office report)

S.L.P.(C)Nos.22605-22606 of 2003

Date : 17/08/2004 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SHIVARAJ V. PATIL
HON'BLE MR. JUSTICE B.N. SRIKRISHNA

For Petitioner (s)

In CA 1357/2003:Mr. Raju Ramachandran, Sr.Adv.
Mr. T. Mahipal, Adv.
Mr. Pradeep Misra,Adv.

In CA 1360/2003:Mr. Vijay Hansaria,Sr.Adv.
Mr. T. Mahipal, Adv.
Mr. Pradeep Misra,Adv.

In CA 1363/2003:Mr. Ranjit Kumar,Sr.Adv.
Mr. Navin Prakash,Adv.
Mr. Anurag Sharma,Adv.

In CA 1361/2003:Mr. G.L. Sanghi, Sr.Adv.
Mr. U.U. Lalit, Sr.Adv.
Mr. Jitendra Singh Bhasin, Adv.
Mr. Himanshu Shekhar,Adv.

..2/-

In CA 1365/2003:Mr. Santosh Kumar,Adv.
Mr. Chandra Kanta Nayak,Adv.
Mr. Rakesh K. Sharma,Adv.

In CA 1366/2003:Mr. R.S. Dvivedi,Adv.
Mr. Sudarsh Menon,Adv.

In CA 1367-73/2003:Mr. B.S. Jain,Adv.
Mr. Ajay Veer Singh,Adv.
Mr. Goodwill Indeevar,Adv.

In CA 1358-59/2003:Mr. G.C. Bharuka,Sr.Adv.
Mr. R.S. Dvivedi,Adv.
Mr. Ajay Choudhary,Adv.

In CA 1362/2003:Mr. R.S. Dvivedi,Adv.
Mr. K.L. Taneja,Adv.

In SLP 22605-06/03:Mr. A.P. Sahay, Adv.
Mr. Kuldeep Singh,Adv.

For Respondent (s) Ms. Sunita R. Singh, Adv.
Statefor Mr. B.B. Singh,Adv.

BiharState Fin.Mr. Ashok K. Srivastava,Sr.Adv.
Ser.House Constn.Mr. Ravi Shankar Prasad,Adv.
Coop. SocietyMr. Sujit Kumar Sinha,Adv.
Mr. Abhay Prakash Sahay,Adv.
for Mr. P.R. Ramasesh,Adv.

Mr. S. Chandrasekhar,Adv.

Mr. S.N. Misra, Sr.Adv.
Md. Kazim Sher, Adv.
Mr. N.S. Bisht,Adv.

Mr. R.S. Dvivedi,Adv.
Mr. K.L. Taneja,Adv.

Ex-parte

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UPON hearing counsel the Court made the following
O R D E R

Mr. G.L. Sanghi, learned Senior counsel for the appellant started his arguments at 12.35 p.m. and had not concluded till 4.00 p.m. when the Court rose for the day. The matters remained part-heard.

Sarita (Shelly Sengupta)
Court Master

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ITEM No.101 (PH)	Court No. 4	SECTION XVII
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CORAM & APPEARANCE : AS ABOVE.

Date : 18/08/2004 These matters were called on for hearing today.

Mr. G.L. Sanghi, learned Senior counsel for the appellant resumed his arguments at 10.35 a.m. and concluded at 10.45 a.m. Then, Mr. Ranjit Kumar, learned Senior counsel, Mr. R.S. Dvivedi, learned counsel, Mr. Ravi Shankar Prasad, learned Senior counsel, Mr. A.K. Srivastava, learned Senior counsel and Mr. B.S. Jain, learned counsel made their submissions till 11.15 a.m. The civil appeals and the special leave petitions are disposed of in terms of the signed order .

Sarita (Shelly Sengupta)
Court Master

(Signed order is placed on the file)
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1357 OF 2003

Ashish Sahkari Grih Nirman Samiti ... Appellant

Versus

State of Bihar & Ors. ... Respondents

With

(C.A. Nos. 1358-59, 1360, 1361, 1362, 1363,
1365, 1366, 1367-73 of 2003 and SLP (C)
Nos. 22605-22606/2003)

O R D E R

C.A. Nos. 1358-59, 1360, 1361, 1362, 1363, 1365, 1366, 1367-73 of 2003

In the first round, when these matters came up for hearing before this Court, this Court, having regard to the fact situation and dealing with the legal contentions, disposed of the matters in terms of paragraph 22 of the judgment in Shyam Nandan Prasad & Ors. Vs. State of Bihar & Ors. [(1993) 4 SCC 255]. Paragraph 22 of the said judgment reads thus:-

"22.Having thus clarified the law governing the field, we would open doors for streams of equi

ties and discretions to enter in the exercise of power by the High Court under Article 226 of the Constitution. As observed earlier, we are of the view that the High Court should not have upset the notification under Section 6 of the Act as a whole and should have individualized justice vis-à-vis each writ petitioner before it, having regard to the equities interplaying in each case and to the regulation of its discretion keeping in view host of other factors which weigh with the High Court to deny, grant or mould relief even when illegalities in procedure keep staring. Thus, for the view afore-expressed, we allow these appeals, set aside the impugned orders of the High Court and remit all these matters back to it with the request that though it may take them up as a batch, it may give individual attention to each case, view the ill egalities pointed out by the writ petitioner in their right perspective having regard to the time factor and confine the relief, if due, to him separately. We shall not be taken to have controlled the discretion of the High Court in administering individualized justice and amongst others it may, with the cooperation of the Society and of the State Government, as also the writ petitioners examine the possibility of an equitable solution so that the fist of law and the discretion of the court do not hurt unbearably. We thus remit the matters to the High Court without any order as to costs."

When the matters went back to the High Court, the High Court passed the impugned judgment in the light of paragraph 22 of the judgment afore-mentioned. The parties, not being satisfied with the impugned judgment, are before us in these appeals.

We have heard learned counsel for the parties at length.

In view of the specific directions given in paragraph 22 of the impugned judgment afore-mentioned, it is clear that the High Court was to dispose of the matters broadly keeping in view the equities in regard to each individual, having regard to the irregularities pointed out and the legal position stated in the said judgment. The High Court, in the impugned judgment, has made that exercise of adjusting the equities. In doing so, the High Court could not satisfy all the parties. That is how the matters are before us.

Having had the benefit of hearing learned counsel for the parties at length, looking to the facts and circumstances of the case, the long drawn litigation, and taking note of the purpose viz. construction of residential houses, we are of the view that these are matters where the controversies and disputes need to be settled by making equitable adjustment for 'individualized justice'.

Learned counsel for the parties in following appeals:

1.C.A. No. 1357/2003Ashish Sahkari Grih Nirman Samiti vs. State of Bihar

2.C.A. No. 1363/2003Shrishti Kumari Devi & Ors. Vs. State of Bihar

3.C.A. No. 1360/2003Vinod Kumar Singh & Ors. Vs. State of Bihar

4.C.A. No. 1365/2003Mangalam Grih Nirman Samiti Ltd. Vs. State of Bihar

5.C.A. Nos. 1358-59/2003Fulmati Devi & Anr. State of Bihar

after due consideration and taking instructions from their clients, submitted that an area of 12.68 acres in all, including the land meant for roads, should be left to the appellants in these appeals. The individual appellants and the members of the societies in these appeals shall adjust this land of 12.68 acres in the following manner:

1.In C.A. No. 1357/2003:
Ashish Sahkari Grih Nirman Samiti12.28 acres
This 12.28 acres includes the land required by 26+8 members of the Society who have filed separate appeals:

a)In C.A. No. 1363/03:1.9 acres
(26 appellants)

b)In C.A. No. 1360/03:0.6 acres
(8 appellants)

2. In C.A. No. 1365/2003:
5 members of Mangalam Sahkari
Grih Nirman Samiti Ltd. 00.32 acres

3. In C.A. No. 1358/2003:
Appellant Fulmati Devi 00.04 acres

4. In C.A. NO. 1359/2003
Appellant Bachchan Prasad
Sharma 00.04 acres

Total 12.68 acres

Less the area (approx.) to be made
available for road:

- a) By appellant in C.A.
No. 1357/02 : 2.50 acres
- b) By appellant in C.A.
No. 1365/03 : 0.10

-02.60 acres

----- Actual area for construction
of houses: 10.08 acres

We accept and order accordingly subject to these appellants paying compensation to the extent of 12.68 acres of land as may be determined by the competent authorities/courts.

As far as the appellants-land owners are concerned, we think it is just and appropriate to allow them to retain totally 5 acres. These appellants are:

1. C.A. No. 1361/03 Madhusudan Yadav & Ors. Vs.
State of Bihar

2. C.A. NO. 1362/03 Pandhu Yadav & Anr. Vs. State
of Bihar

3. C.A. No. 1366/03 Gulam Sarful Haque vs. State
of Bihar

4. C.A. Nos. 1367-73/03 Yamuna Yadav & Anr. Vs. State
of Bihar

The appellants in these four appeals shall be allotted land out of the 5 acres of land proportionate to the extent of their lands under acquisition. The Collector shall distribute the 5 acres of land on this basis but while doing so, the lands on which constructions are already made, as far as possible, shall be allotted to the concerned appellants subject to the condition that such constructions do not affect the planned development. However, the Collector is at liberty to make any marginal adjustments in making such allotment to the appellants in these four appeals but subject to not exceeding the extent of 5 acres of land totally. These appellants shall be entitled for a compensation amount as may be determined by the competent authorities/courts only to the extent of the land after deducting 5 acres of land.

The remaining available land, out of the acquired land, shall be allotted to the Bihar State Finance Service House Construction Cooperative Society for whose benefit the acquisition of land was made.

This Society is liable to pay compensation amount as may be determined by competent authorities/courts in respect of the land to be allotted to them as stated above.

The Collector or the authorized officer shall complete the acquisition proceedings in all respects and hand over possession to the parties in terms afore-stated within a period of four months from today.

The impugned order of the High Court shall stand modified to the extent indicated above. In all other respects, the impugned order shall remain undisturbed.

This order does not preclude the competent authority (Patna Regional Development Authority) to proceed in accordance with law with regard to the constructions already made, if they are not in accordance with law. Further, the constructions to be made in the area to be allotted, as stated above, by the parties shall be in accordance with the planned development after obtaining necessary permissions from the competent authorities.

The appeals are disposed of in the above terms.

SLP (C) Nos. 22605-22606/2003:

In view of the disposal of the civil appeals, the special leave petitions also stand disposed of.

.....J.
[Shivaraj V. Patil]

.....J.
[B.N. Srikrishna]

New Delhi
August 18, 2004.