

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7940 of 2015

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Anurag Krishna Sinha

..... Petitioner/s

Versus

The State of Bihar & Anr

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sunil Kumar, Sr. Advocate
Mr. Subodh Kumar & Ravi Verma

For the Respondent/s : Mr. Lalit Kishore, PAAG

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

2 22-05-2015

This Writ Petition is filed challenging the constitutional validity of the “Smt. Radhika Sinha Institute and Sachchidanand Sinha Library (Requisition & Management) Act, 2015.”

Late Sachchidanand Sinha was the first President of the Constituent Assembly. His contribution to the making of Constitution, in co-ordination with Dr. Rajendra Prasad, the first President of India, is too well known. Incidentally, both the towering personalities hail from the State of Bihar.

Smt. Radhika Sinha, wife of Dr. Sachchidanand Sinha is said to be the daughter of a Barrister from Lahore. Way back in 1924, she sold her assets and with the sale proceeds constructed a library on a land given by the then Secretary to the Government. The personal collection of books of about ten thousand volumes, made by Dr. Sachchidanand Sinha and various other books have been kept in the library and ever since then it is functioning. The library is being run by a Trust, constituted under a deed. In the recent past, the Government of India is said to have allotted funds of Rs. One crore for construction and maintenance

of an auditorium.

It is stated that on 24.11.1955, the Government of Bihar entered into an agreement with the Trust with the sole purpose of seeking permission of the trust to permit the use of the Trust for implementation of the governmental scheme of Library reorganization. In the process, certain financial arrangement is also made. Clause 11 of the agreement provides that in the event of any breach of the agreement by the Trustees, the Government shall have the discretion to stop all further grants. It is also important to note that in the 1st clause of the agreement the State Government recognized the ownership and management of the land, building and structures, furnitures and fixtures, books and periodicals and other properties and assets as vested in the Trust.

In 1983, an Ordinance was issued for taking over the Library. That became the subject matter of the proceedings before this Court as well as before the Supreme Court and in meanwhile, the Ordinance itself lapsed.

The present Act has been enacted with an objective “to provide provision for requisition, transfer and better management and development of Srimati Radhika Sinha Institute and Sachchidanad Sinha Library, Patna and for matters connected and incidental thereto.” Section 3 thereof provides for vesting of the entire Library and its assets in the State Government, from the date of commencement of the Act. In Section 7 it is stated that if any question arises for the payment of compensation for the ‘acquisition’ of the scheduled institution, and its right, title and interest, the State Government may pay only maximum one rupee after examining the claims. The Act is challenged by raising several grounds of fact and law.

We have heard Sri Sunil Kumar, learned Sr.



Advocate for the petitioner and Mr. Lalit Kishore, learned Principal Addl. Advocate General at some length on the question of admission and interim order. Since the matter involves important question of law, we admit the Writ Petition.

We are conscious of the fact that an Act cannot be stayed or suspended unless any extra-ordinary circumstance exist, and the Act must be presumed to be valid, till it is held to be otherwise. In this case, we find fairly strong grounds on the legal aspect in favour of the petitioner, at least prima facie. The Act is not clear as to whether it proposes to 'acquire' or 'requisition' the property. The nomenclature of the Act provides with the legislative intent to "requisition" the property, whereas Section 7 of the Act speaks of acquisition. The substantial difference between two concepts is too well known. Requisition can only be for a temporary purpose, whereas acquisition will result in transfer of ownership, for consideration. The Constitution was amended changing the right to property from fundamental to constitutional right. Article 300 of the Constitution provides that no property shall be taken over by the State except by paying compensation. The Act in its present form, violates Article 300 of the Constitution.

Further, it is difficult to fit the legislative exercise into any specific entry under List II of Schedule 7 of the Constitution. The Act virtually results in taking over private property without any compensation.

On facts, we find that the Library was constructed with the personal funds of the wife of Dr. Sachchidanand Sinha way back in 1924, and as late as in the year 1955, the Government of Bihar acknowledged the right, title, and ownership on the land, building, books and fixtures of the library in the trustees. The



same cannot be made to vest in the State without providing the adequate compensation or other measures. The relation between the State and the Trust is governed by an agreement. If the endeavour of the State is to ensure that the Library is to be properly maintained, necessary measures can certainly to be taken. We prima facie find that the legislative power used to commit the breach of an agreement, to which the State is a party. The Act, in a way results in insult to the legacy of the great personality. The composition of the Trust would speak about the greatness of the Trust. The Trustees included Former Chief Justice of India, Judges of this Court and Eminent Persons of great reputation.

We, therefore, suspend the operation of the Act as an interim measure subject however to the conditions that –

- (a) The Trust shall not alienate or create third party interest vis-à-vis the property;
- (b) Inventory of all the books and furnitures shall be prepared and be submitted to this Court on or before the next date of hearing; and,
- (c) The accounts of the Trust for the past two years, duly audited by a Chartered Accountant shall be placed before this Court.

Post after Summer Vacation.

(L. Narasimha Reddy,CJ)

(Sudhir Singh, J)

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