

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3290 of 2003

=====

Birendra Tiwary, son of late Nanhak Tiwary, resident of 24/H-3, Mandir Marg, West Anand Puri, Off Boring Canal Road, P.S. Shri Krishna Puri, Town and District-Patna.

.... Petitioner/s

Versus

1. The Patna Regional Development Authority (constituted under Section 3 of the Bihar Regional Development Authority Act, 1981) Maurya Lok Complex, Dak Bunglow Road, Patna through its Vice-Chairman.
2. The Vice-Chairman, Patna Regional Development Authority, Maurya Lok Complex, Dak Bunglow Road, Patna
3. The Assistant Engineer, Patna Regional Development Authority Maurya Lok Complex, Dak Bunglow Road, Patna
4. The Junior Engineer, Patna Regional Development Authority, Maurya Lok Complex, Dak Bunglow Road, Patna
5. The Patna Municipal Corporation, Buddha Marg, Patna through its Municipal Commissioner.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Vijay Krishna Tripathi, Advocate.

For the Respondent/s : Mr. Sanjay Prakash Verma, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 24-04-2015

Heard the parties.

2. Earlier, on the request of learned counsel for the Municipal Corporation vide order dated 13.4.2015 this case was adjourned for filing counter affidavit but no counter affidavit has been till date.

3. Learned counsel for the Municipal Corporation submits that order of this Court has already been communicated to the Corporation.

4. In this view of the matter, this Court has no option but to dispose of the matter on the basis of the material available on

record.

5. The case of the petitioner is that his father had purchased 1 Katha of land appertaining to Tauzi No.5133, Plant No.164, Khesra No.2370, Thana No.2 at Village Manpura, Sadar Patna and on the said land his father had constructed a house. On the complain of his neighbour a Vigilance Case was initiated. So much so he has also filed building map for post facto sanction. In vigilance case the Vice Chairman of the Patna Regional Development Authority directed for measurement of the land and in the measurement it was found that petitioner was in illegal possession of 35.3 Sq. meters of land and in subsequent measurement a report was furnished that petitioner has not occupied any excess of land.

6. The Vice Chairman on the basis of the first measurement has directed the petitioner to file an affidavit explaining about the possession of excess land. When the petitioner did not file any affidavit, the plan case which the petitioner has filed, was rejected and building was declared un-authorised and direction was given for demolition of the building. Appeal was filed without success.

7. Learned counsel for the petitioner submits that there are four reports and all the reports are conflicting to each other. So much so even if he is in occupation of excess land at best

demolition can only be made for excess portion of structure and portion in excess will be carved out in turn it has to be examined whether the building has been constructed according to by-laws or he has violated the same. If any portion falls beyond set off areas authority will pass the order. Municipal Corporation did not co-operate by filing the counter affidavit

8. In such view of the matter, for the ends of justice this Court directs that there should a fresh measurement in presence of petitioner after giving him due notice and if it is found that petitioner is within 1 Katha of land which has been purchased by his father then the authority will be obliged to revive his plan case and pass necessary order in the matter and it is found that the petitioner is in excess of land than in that circumstances the excess land should carved out, thereafter the authority will examine whether the petitioner has constructed the house following the building by-laws. Even if it is found that the petitioner has violated the building by-laws it is directed to make necessary removal of the structure in accordance with law.

9. With the aforesaid observation and direction this writ petition is disposed of.

Vinay/-

(Shivaji Pandey, J)

U			
---	--	--	--