

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5989 of 2015

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M/s Lotus Nikko Hotel, through its Manager Mr. Sachida Nand Dixit, S/o Sri Gorakh Dixit at Bodh Gaya, Near Archeological Museum, Bodh Gaya, District- Gaya.

.... Petitioner/s

Versus

1. The State of Bihar through the District Magistrate, Gaya, District- Gaya.
2. The Deputy Development Commissioner, Gaya, District- Gaya.
3. The Executive Officer, Nagar Panchayat, Bodh Gaya, District- Gaya.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bidhanesh Misra
For the Respondent/s : Mr. Sanat Kr. Mishra, AC to AAG-8
For the Nagar Panchayat : Mr. Amar Nath Singh

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

3 05-05-2015 Heard Mr. Bidhanesh Mishra, learned counsel appearing on behalf of the petitioner, Mr. Amar Nath Singh, learned counsel appearing for the Nagar Panchayat, Bodh Gaya and Mr. Sanat Kumar Mishra, learned Assisting Counsel to Additional Advocate General No.8 for the State.

The petitioner is aggrieved by the order dated 4.4.2015 passed by the Executive Officer, Nagar Panchayat, Bodh Gaya in Case No.06 of 2011 placed at Annexure-1 to the writ petition, whereby the petitioner has been found deviating from the sanction map to indulge in construction which, according to the Executive Officer, is in violation of the Municipal Bye-laws.

By the order impugned the petitioner has been



directed to demolish/remove the illegal constructions within a week failing which it would be demolished with the help of the administration within 15 days of its communication. The order is dated 4.4.2015 and apprehending demolition that the petitioner is before this Court.

Section 323 (3) of the Bihar Municipal Act, 2007 (hereinafter referred to as 'the Act') enables a person aggrieved by an order passed by the Chief Municipal Officer which term includes the Executive Officer, Nagar Panchayat under section 2(21) of 'the Act', to prefer an appeal before the Municipal Building Tribunal constituted under section 329 of 'the Act' and sub-section (4) thereof further enables the person aggrieved to pray for interim relief.

Though the limitation prescribed under section 323(3) of 'the Act' has since expired but considering that the petitioner has moved this Court within the period of limitation, in my opinion, that would not be an issue to deprive the petitioner of the lawful recourse.

In the circumstances discussed and in view of the alternative remedy of appeal available to the petitioner under section 323(3) of 'the Act' this writ petition is disposed of with a liberty to the petitioner to exhaust the alternative remedy of

appeal so available to him and it goes without saying that any such appeal being filed by the petitioner within four weeks from today, if accompanied with a petition for condonation of delay shall be considered and disposed of on its own merits in accordance with law after hearing the contesting parties, bearing in mind the pendency of the matter before this Court.

In view of the statutory provisions underlying sub-section (4) of section 323 of 'the Act' the petitioner shall be at liberty to pray for interim relief and which shall be considered and disposed of on its own merits.

Considering the nature of the order impugned at Annexure-1 and the apprehension of the petitioner on the issue of demolition, the Executive Officer, Nagar Panchayat, Bodh Gaya is directed to maintain status quo in the meanwhile.

(Jyoti Saran, J)

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