

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8337 of 2015

=====

Kalawati Devi, wife of Uday Shankar Singh, resident of Mohalla- Jagdeo Path,
Sidhart Nagar, Ara Garden, Lohiya Nagar, Patna.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Department of Revenue and Land Reforms,
Government of Bihar, Patna.
3. The District Magistrate, Patna.
4. The Land Reforms Deputy Collector, Danapur, Patna.
5. The Circle Officer, Danapur, Patna.

..... Respondent 1st Set.

6. The Patna Municipal Corporation through its Chief Municipal Commissioner,
Patna.
7. The Chief Municipal Commissioner, Patna Municipal Corporation, Patna.
8. The Municipal Commissioner, Patna Municipal Corporation, Patna.

.... Respondents 2nd set.

=====

Appearance :

For the Petitioner/s	:	Mr. Ashutosh Ranjan Pandey
For the Respondent-State	:	Mr. Ajay, GA-12
For the Corporation	:	Mr. Sanjay Prakash Verma

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 29-06-2015

Heard Mr. Ashutosh Ranjan Pandey, learned
counsel appearing on behalf of the petitioner and Mr. Sanjay
Prakash Verma, learned counsel appearing for the Patna
Municipal Corporation.

The petitioner has questioned a notice dated
30.5.2015 issued by the Patna Municipal Corporation seeking to
enforce an order passed in Vigilance Case No.63A of 2002
whereunder the petitioner was found to have deviated from her
building plan to encroach upon a public road.



Although this writ petition was filed by the petitioner claiming that neither any notice nor opportunity of hearing was granted to her in the vigilance case but this fact is apparently not correct. In fact in a proceeding initiated against one Sushila Devi Saraf on a complaint made by the husband of the petitioner namely Uday Shankar Singh charging her of deviating from the building plan it was found that even the petitioner had deviated and thus an order was passed in the vigilance case so initiated at the instance of the petitioner bearing Vigilance Case No.15B of 2002 which also included a direction to the petitioner to remove the encroachment and which order was appealed against by the present petitioner in Appeal No.17 of 2002 before the Appellate Tribunal, Patna on the same and similar ground of absence of notice and opportunity of hearing. The Tribunal vide order passed on 16.4.2003 found merits in the contention advanced by the petitioner and remitted the matter for reconsideration before the Municipal Commissioner with a clear stipulation that since the order was passed in the presence of the petitioner hence no fresh summons would be issued for her appearance and that the petitioner would appear before the Vice Chairman of the erstwhile Patna Regional Development Authority (hereinafter referred to as 'the PRDA') on 12.5.2003 whereafter



the matter would be disposed of in accordance with law. A copy of the said order is placed at Annexure-H/1 to the counter affidavit filed on behalf of the Corporation. Annexure-G to the counter affidavit manifests that upon remand of the matter the Vice-Chairman, PRDA (since repealed) registered a separate case giving rise to Vigilance Case No.63A of 2002 and required the petitioner to respond to the show cause which was duly submitted by the petitioner. The order 31.5.2006 passed in Vigilance Case No.63A of 2002 present at Annexure-H shows that the petitioner after registering her appearance and filing show cause abandoned the proceedings. It is in these circumstances that the Vice-Chairman of the since repealed PRDA vide order passed on 31.5.2006 ordered for the removal of encroachment made by this petitioner. This order was never questioned by the petitioner who was well aware of the proceedings. It is only thereafter and when the matter was deliberated upon before the Bihar Legislative Council that the matter was re-considered at the stage of the Municipal Commissioner since in the meanwhile PRDA had been repealed and replaced by the Bihar Municipal Act, 2007 (hereinafter referred to as 'the Act').

That the Municipal Commissioner in consideration of the circumstances existing and in view of the order passed in



Vigilance Case No.63A of 2002 dated 31.5.2006 issued notice dated 30.5.2015 impugned at Annexure-3 and being aggrieved the petitioner is before this Court complaining that the same has been passed without notice and without opportunity of hearing. Though subsequently while responding to the counter affidavit the petitioner at paragraph 6 has regretted and sought apology for making incorrect statement, inter alia on grounds of absence of proper information and that the court proceedings was being managed by her husband.

Be that as it may, the fact remains that it is on the appeal preferred by the petitioner before the Appellate Tribunal bearing Appeal No.17 of 2002 that the matter was remitted to the Vice-Chairman of the repealed PRDA for re-consideration of the charge of encroachment against the petitioner after opportunity of hearing and whereafter a fresh Vigilance Case No.63A of 2002 was registered. The petitioner filed her show cause but after a few days abandoned the proceedings resulting in removal of encroachment. This order has never been questioned before any forum and in the circumstances the notice in question issued by the Town Commissioner dated 30.5.2015 impugned at Annexure-3 would not suffer from any infirmity for it has been issued only in consequence of the order dated 31.5.2006 passed by the Vice-

Chairman in Vigilance Case No.63A of 2002 present at Annexure-H.

Although it is sought to be strenuously argued by Mr. Pandey that the findings of the Vice-Chairman in Vigilance Case No.63A of 2002 is contrary to the facts apparent on record but there is nothing on record to support such contention. On the contrary the abandonment of the proceeding initiated at the instance of the present petitioner herself resulting in vigilance Case No.63A of 2002 is drawn against the petitioner who never chose to contest the same.

In the circumstances, this Court is not persuaded to grant indulgence to the issues raised in the writ petition and which is accordingly dismissed.

(Jyoti Saran, J)

SKPathak/-

U			
---	--	--	--