

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17785 of 2014

With

I.A. No.7841 of 2014

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Wakil Ahmad @ Md. Wakil Ahmad, son of Late Abdul Barkat, resident of Ward No. 15, Quraishi Mohalla, P.S.- Aurangabad (Town), District- Aurangabad (Bihar).

.... Petitioner/s

Versus

1. The Nagar Parishad, Aurangabad through its Executive Officer, District- Aurangabad.
2. Executive Officer, Nagar Parishad, Aurangabad, District - Aurangabad.
3. Sikandar Hayat, son of Md. Nasimuddin, resident of Quraishi Mohalla, P.S. - Aurangabad (Town), District - Aurangabad.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shambhu Sharan Singh
Mr. Shakib Ayaz

For the Respondent/s : Mr. Surendra Prasad Singh

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

4 10-02-2015 Mr. Shambhu Sharan Singh, learned counsel for the petitioner and Mr. Surendra Prasad Singh, learned counsel for the respondent- Nagar Parishad, Aurangabad in the district of Aurangabad are in attendance and have been heard.

The facts are not in dispute and the petitioner is the *Khatiyani Raiyat* of a piece of land bearing plot no.912 of khata no.156 situated in Quraishi Mohalla, Ward No.15 in the district of Aurangabad admeasuring 8 dhurs. The petitioner is charged with the construction of a double-storied house without obtaining necessary sanction from the Municipal authorities and it is the charge of the Nagar Parishad that despite notices having been served on the petitioner requiring him to explain the



circumstances, he has defied the notices and continued to make construction. It is in such circumstances that the notices impugned in the present proceedings at Annexures-6 and 7 series dated 5.7.2013, 22.10.2013 and 12.9.2014 have been issued imposing a fine of Rs.1,00,000 (one lac) and requiring the petitioner to demolish the illegal construction within 15 days.

I have heard learned counsel for the parties and perused the records.

No doubt section 315 of the Bihar Municipal Act, 2007 (hereinafter referred to as 'the Act') vests the municipal authorities with the statutory power to demolish any unauthorized construction of permanent nature which is said to have been constructed in contravention or breach or deviation of the bye-laws but such order can only be passed upon adjudication. It is manifest from the records that no such adjudication has taken place so as to determine whether the alleged constructions are in breach of the bye-laws or are worthy of condonation. In fact it is on account of the alleged defiance of the petitioner to respond to the notices impugned in this writ petition that orders of penalty and demolition has been passed.



It is in consideration of such circumstances that this Court directed the petitioner to file an appropriate application for post-facto sanction before the Executive Officer, Nagar Parishad, Aurangabad along with a map duly sanctioned by certified architect for consideration. A supplementary affidavit has been filed enclosing the sanctioned map by a registered architect as well as the application filed before the Executive Officer, Nagar Parishad, Aurangabad on 4.2.2015 for his consideration and for grant of post-facto sanction.

In view of the circumstances discussed and considering that the petitioner has already applied before the Executive Officer, Nagar Parishad, Aurangabad for post-facto sanction of his house which consists of ground floor plus two floors, in the opinion of this Court, the matter requires to be adjudicated by the Executive Officer, Nagar Parishad, Aurangabad in the backdrop of the provisions of 'the Act' and the Municipal bye-laws, after giving an opportunity of hearing to the petitioner.

For the reasons aforementioned, the notices impugned in this writ petition placed at Annexures 6 and 7 series dated 5.7.2013, 22.10.2013 and 12.9.2014 are set aside. The Executive Officer, Nagar Parishad, Aurangabad is directed

to consider the application of the petitioner for post-facto sanction and pass appropriate orders thereon after giving an opportunity of hearing to the petitioner to defend his construction and which order may be passed within three months from the date of receipt/production of a copy of this order.

The petitioner shall appear before the Executive Office, Nagar Parishad, Aurangabad along with a copy of this order on or before 16.2.2015 and whereafter he shall proceed to dispose of the matter in the light of the stipulations made hereinabove.

The writ petition is allowed with the direction aforementioned. The interlocutory application stands disposed of.

(Jyoti Saran, J)

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