

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8500 of 2014

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1. Smt. Asha Devi W/o Sri Sajan Kumar Dalmia resident of Nageshwar Colony, Bakerganj, P.S. PIRBAHORE, District - Patna At Present residing at 228A, Sahdeo Mahto Marg, Sri Krishnapuri, P.S. Sri Krishnapuri, District - Patna

.... Petitioner/s

Versus

1. The Patna Municipal Corporation, Budh Marg, P.S. Kotwali, District - Patna through its Commissioner cum Chief Executive Officer
2. Commissioner cum Chief Executive Officer, Patna Municipal Corporation, Maurya Lok Complex, P.S. Kotwali District Patna
3. Executive Officer, New Capital Division, Patna Municipal Corporation, Harding Road, P.S. Sachiwalaya, District - Patna
4. Smt. Sunita Devi W/o Sri Rajesh Kumar Dalmia resident of Nageshwar Colony, Bakerganj, P.S. Pirbahore, District - Patna At Present residing at 228A, Sahdeo Mahto Marg, Sri Krishnapuri, P.S. Sri Krishnapuri, District - Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Raj Shekhar, Adv.

For the P.M.C. : Mr. Ranjeet Kumar Pandey, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 15-10-2015

Heard Mr. Raj Shekhar, learned counsel for the petitioner and Mr. Ranjeet Kumar Pandey learned counsel for the Patna Municipal Corporation.

The petitioner came before this Court praying for a writ in the nature of mandamus commanding the respondent authorities of the Patna Municipal Corporation including the Municipal Commissioner and the Executive Officer, New Capital Division to ensure compliance of the judgment and order passed by the learned Additional District Judge F.T.C.II, Patna in Misc. Appeal no. 49 of

2006 whereby the assessment made by the Commissioner-cum-Chief Executive Officer, Patna Municipal Corporation in Assessment Appeal No. 3927 of 1996 was set aside.

Mr. Shekhar, learned counsel for the petitioner with reference to the judgment and order of the learned Additional District Judge placed at Annexure-3 of the writ petition submits that even when the court below has held that the petitioner has been voluntarily paying the rent as per his assessment and that the building in question is situated on a link road and not on the main road yet despite the order having passed on 15.6.2011, no fresh assessment has been made by the authorities of the Patna Municipal Corporation in the light of the issues settled by the learned Additional District Judge. It is in these circumstances and in absence of due compliance of the order of the Additional District Judge in exercise of appeal powers vested under Section 143 of the Bihar Municipal Act, 2007 that the petitioner filed the present writ petition.

A counter affidavit has been filed on behalf of the respondents which is rather evasive to say the least. Although wild allegations have been made against the petitioner of being a defaulter which again is contrary to the records but very conveniently the Executive Officer has evaded to answer why he has not acted in pursuance of the order passed by the Appellate Court rather has proceeded to respond to the



writ petition as if the order of the Appellate Court is non-existent. It is the specific claim of the petitioner with reference to the submission made in the counter affidavit that the figure so arrived at by the respondent is again on the premise that the building in question is situated on the main road which is contrary to the finding of the Appellate Court who has held that the building is situated on a link road. It is stated that by making such submission, the Corporation has tried to overreach the finding of the Appellate Court.

Mr. Pandey, learned counsel for the Corporation though vigorously tried to contest the submission of Mr. Shekhar but in view of the eloquent circumstances where indisputably there is no assessment by the Corporation in the light of the judgment and order passed by the Appellate Court, the stand taken by the respondents in their counter affidavit is only taken to be rejected.

The writ petition is allowed with a direction to the authorities of the Patna Municipal Corporation including the Municipal Commissioner and the Executive Officer, New Capital Division, to ensure compliance of the judgment and order passed by the Additional District Judge in Misc. Appeal No.49 of 2006 and pass a fresh assessment order in the light of the findings so made in the judgment and thereafter raise a demand after adjusting the amount already paid by the petitioner.

The petitioner would appear before the Municipal Commissioner along with the copy of this order on or before 29.10.2015 and when the Municipal Commissioner either by himself or by a person duly authorized would carry out the assessment in accordance with law and after hearing the petitioner.

(Jyoti Saran, J)

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