

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9215 of 2011

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Brij Lal Kedia S/o Late Thakur Prasad Kedia R/o Ambedkar Chowk, Ward No. 21,
P.S.- Gopalganj, Town and Distt.- Gopalganj

.... Petitioner/s

Versus

1. The State of Bihar
2. The District Magistrate, Gopalganj
3. The Sub-Divisional, Magistrate, Gopalganj
4. The Additional Collector, Gopalganj
5. The Police Inspector-Cum-Officer-In-Charge, Gopalganj Police Station
6. Mr. Bhim Prasad then Executive Officer, Nagar Parishad, Gopalganj
7. The Executive Officer, Nagar Parishad, Gopalganj
8. Amin, Nagar Parsihad, Gopalganj
9. Mr. Chandra Bhusan Singh S/o not known R/o Ambedkar Chowk, P.S.-
Gopalganj, then President, Gopalganj, Nagar Parsihad

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Y.V. Giri, Sr. Advocate
Mr. Ranjan Kumar Srivastava, Advocate
For the Nagar Parishad: Mr. Ravi Bhushan Verma, Advocate
For the private respondent: Mr. Raju Giri, Advocate
For the State : Mr. Deepak Sahay Jamuar, AC to AAG-6

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 28-08-2015

Heard Mr. Y.V. Giri, learned senior counsel appearing on
behalf of the petitioner, Mr. Ravi Bhushan Verma for the Nagar
Parishad Gopalganj and Mr. Raju Giri appearing for the respondent
no. 9.

Although the petitioner initially filed this writ petition
seeking a direction in the nature of mandamus commanding the
respondent authorities of the Nagar Parishad at Gopalganj to approve
the rectification application so submitted by the petitioner on
10.5.2005, a copy of which is present at Annexure-1 to the writ
petition whereby the petitioner has sought modification in the



dimensions of the ground floor house which in terms of the approved sanction map admeasures 79' x 20' ½" and by the rectification application the dimensions are sought to be modified to 85' x 19' ½". It is the grievance of the petitioner that this application has remained pending and in the meanwhile the petitioner decided to add two more floors to his house for which he made an application in the prescribed format along with a revised map and which was duly approved by the Nagar Parishad on 04.10.2008, a copy of which is placed at Annexure-3.

While the matter rested at this stage and since no action was taken on the application of the petitioner for modification of his dimensions insofar as it related to the ground floor construction, that he moved this Court through the present application and while the matter was pending consideration that a show cause notice was issued on 12.5.2011 by the Executive Officer of Nagar Parishad, Gopalganj requiring the petitioner to show cause as to why he should not be proceeded under Sections 315, 317, 323 and 324 of the Bihar Municipal Act, 2007 (hereinafter referred to as 'the Act') for the alleged deviations made by him in contravention of the sanctioned map. A copy of the show cause notice dated 12.5.2011 is placed on record vide Annexure-12 to the supplementary affidavit which was responded to by the petitioner on 19.5.2011 vide Annexure-13 in which the petitioner explained that he had filed an application for



rectification of the deviations on 10.5.2005 and which has remained pending with the Municipality and in between he has made further constructions on second and third floor after obtaining due sanction on the proposed construction. It is the case of the petitioner that the Executive Officer without considering the circumstances reflecting from the reply passed an order dated 8.6.2011 whereby a penalty of Rs. 5,25,000/- has been imposed in purported exercise of power vested under Section 315 of 'the Act' for alleged deviations in the constructions. The said order is sought to be questioned by filing an interlocutory application bearing I.A. No. 4257 of 2011 and considering that the order is in the sequence of events beginning from the application filed by the petitioner seeking modification of his ground floor construction that the prayer is allowed and the petitioner is permitted to question the order of penalty dated 08.6.2011 present at Annexure-11 in the present application.

Mr. Y.V. Giri, learned senior counsel has appeared for the petitioner to submit that even when the application of the petitioner for rectification remained pending with the Municipality that without disposing of the same, the order impugned has been passed and even when the Executive Officer admits to the pendency of the rectification application dated 10.5.2005 as manifest from his letter dated 7.6.2010 present at Annexure-10. He thus submits that until the prayer made by the petitioner seeking modification in the dimensions of the ground



floor constructions are disposed of there can be no case of deviation warranting an order of penalty. Although Mr. Giri endeavoured to submit that the present dispute is an outcome of an inter party dispute in between the petitioner and the private respondent who held the post of the Chairman of the Nagar Parishad at the stage of issuance of notice but in my opinion those would not be very relevant in the nature of the order which this Court proposes to pass.

Mr. Ravi Bhushan Verma, learned counsel appearing for the Municipality has defended the actions including the impugned order imposing the penalty relying upon paragraph-6 of the counter affidavit filed on behalf of the Municipality to submit that admittedly the petitioners have exceeded on the dimensions and whereas the map was passed for construction to an extent of 1481 sq. feet but it has been exceeded by the petitioner to 1763 sq. feet and even the measurement carried out by the District Magistrate under the orders of this Court, a copy of which is placed along with the second supplementary affidavit supports the extended constructions. He thus submits that there is no error in the order passed by the Executive Officer in saddling penalty on the petitioner for alleged deviations.

Mr. Raju Giri, learned counsel appearing on behalf of the private respondent while contesting the prayer made by the petitioner has submitted that since admittedly the petitioner has exceeded on his constructions, there is no case for any indulgence.



I have heard learned counsel for the parties and I have perused the record. The petitioner admits to the deviations on the ground floor constructions. An application has been filed by him for modification in dimensions on 10.5.2005 but has remained pending which is also admitted by the Executive Officer himself in his letter dated 07.6.2010 present at Annexure-10. I am surprised as to how once the Executive Officer admits to the pendency of the application dated 10.5.2005 he could yet proceed to pass an order of penalty without disposing of the application. Even more surprising is that although the petitioner is being questioned to deviations on the ground floor constructions but the respondent Municipality has proceeded further to sanction his second and third floor constructions as late as on 04.10.2008. The Municipality very fairly admits to this position in the counter affidavit at paragraph-6 where it is specifically stated that upon notice issued to the petitioner for constructions on the second and third floor, he submitted his application along with required fee and the map which has been approved on 04.10.2008. The issue is whether in these circumstances, the Municipality could yet proceed to question the petitioner on the ground floor constructions. However, the matter remains pending for a decision on the application dated 10.5.2005 and it is for the municipality to pass a final order on the same. Suffice it to say at this juncture that in these admitted circumstances, there was no occasion for the Executive Officer to

issue any show cause notice to the petitioner or to pass an order of penalty even when the rectification application remained pending. These uncontested circumstances would only render the order imposing penalty dated 08.6.2011 passed by the Executive Officer present at Annexure-11 illegal and which cannot be upheld.

For the reasons discussed, the order dated 08.6.2011 impugned at Annexure-11 passed by the Executive Officer is quashed and set aside. The writ petition is allowed. The matter is remitted to the Executive Officer, Nagar Parishad, Gopalganj to consider the application filed by the petitioner seeking approval to his deviation made at the ground floor and which would be considered on its own merit and disposed of in accordance with law after giving an opportunity to the petitioner as well as the complainant i.e. the private respondent herein.

S.Sb/-

(Jyoti Saran, J)

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