

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18593 of 2010

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Ashok Kumar Sinha S/O Late Keshav Prasad Sinha R/O B/41, Jagat Bhawani
Apartment, Bailey Road, Near Officers Flat, P.S.- Kotwali, Distt.- Patna

.... Petitioner/s

Versus

1. The State of Bihar
2. The District Magistrate, Patna
3. The Sub-Divisional Officer, Patna
4. The Executive Engineer, Building Construction Department, Government of Bihar, Patliputra Division, Patna
5. The Assistant Engineer, Building Construction Department, Government of Bihar, Golghar, Patliputra Division, Patna
6. The Patna Municipal Corporation through Patna Municipal Commissioner, Patna
7. The Principal Secretary, Building Construction Department, Government of Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Tej Bahadur Singh, Sr. Advocate
Mr. B.P. Singh, Advocate

For the Respondent Nos. 1 to 5 & 7 : Ms. Bandana Singh, AC to SC 25

For the Respondent no.6 : Mr. Sanjay Prakash Verma, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 27-04-2015

The petitioner, a purchaser and owner of Flat No. B/41 of Jagat Bhawani Apartment, Bailey Road, situate near 60 Officers Govt. Flats, P.S.Kotwali, District Patna, has filed the present writ petition under Article 226 of the Constitution of India seeking a direction to the respondents not to close the approach road for the occupants of the aforesaid Jagat Bhawani Apartment for coming over the main Bailey Road.

2. Learned senior counsel appearing on behalf of the petitioner submitted that one Lalmuni Devi had purchased a piece of lands bearing Survey Plot Nos. 173 and 174 area 13 kathas situated north to 60 Officers Government Flat, Bailey Road, Patna through registered deeds of sale in the year 1946 and 1949 (hereinafter to be referred to as “the lands in question”). It is the case of the petitioner



that the aforesaid Lalmuni Devi entered into an agreement in the year 2005 with Jagat Developers Limited for construction of an apartment over the lands in question. Accordingly, a map was sanctioned by the Municipal Commissioner by order dated 07.11.2007 for G+4, which was subsequently revised and the map was sanctioned for G+5 on 14.06.2009. It is also the case of the petitioner that the road, which is the subject matter of controversy between the parties, was shown as approach road in the sanctioned plan.

3. The grievance of the petitioner in the present writ petition is that the respondent Executive Engineer and the respondent Assistant Engineer of Building Construction Department, Govt. of Bihar, Patna on certain extraneous consideration threatened the dwellers of Jagat Bhawani Apartment to close their approach road. In fact, some steps were taken by them for closing the approach road. Therefore, a prayer has been made that the respondents may be restrained from closing the approach road of the occupants of Jagat Bhawani Apartment constructed over the lands in question. According to the learned senior counsel for the petitioner, the whole action of the respondents are arbitrary and cannot be sustained in law.

4. The matter has been contested by the respondents. A detailed counter affidavit on behalf of the respondent nos. 4, 5 and 7 was filed on 6th February, 2015. Subsequently, a separate counter affidavit on behalf of the respondent nos. 1, 2 and 3 was also filed on 17.03.2015. In both the aforesaid counter affidavits, the stands taken by the aforesaid respondents are almost common and identical. A separate detailed counter affidavit has been filed on behalf of the respondent no.6 i.e. the Municipal Commissioner, Patna Municipal Corporation, Patna.

5. In the aforesaid two counter affidavits filed on behalf of the respondent nos. 1 to 3 and the respondent nos. 4, 5 and 7, it has



been stated that 60 Officers Govt. Flats campus comprises of 60 units of Officers Flats constructed about 50 years ago by the Building Construction Department over the lands owned by the Building Construction Department, Govt. of Bihar. It is the case of the aforesaid respondents that Jagat Bhawani Apartment stands on the lands situate north side behind the periphery of wall of aforesaid 60 Officers Govt. Flats. According to the respondents, there is no any approach road available on the southern side of that apartment and till today no permission/approval for construction of approach road at the disputed place has been granted by the Building Construction Department to any person or any organization. It has been asserted by the aforesaid respondents that there was no any gate and approach road available near the residence no.29/60 of the Officers Govt. Flats. The claim of the petitioner that there was a gate and approach road near residence no. 29/60 for the use of the land owner or the Flats owners of the apartment in question has been strongly refuted.

6. In the writ petition filed on behalf of the petitioner and in the counter affidavits filed on behalf of the respondents, there are allegations and counter allegations against each other about breaking of the wall by the Flat owners and closing of the approach road by the respondents. However, the respondents have specifically pointed out that sanction of map for construction of Jagat Bhawani Apartment by the then Patna Regional Development Authority, which has subsequently merged in Patna Municipal Corporation, was illegal and against the Buildings bye-Laws. It has also been pointed out that an FIR has been lodged against the occupants as also the Builder of the apartment in question, which gave rise to Kotwli P.S. Case No. 441 of 2010 dated 06.12.2010 which has been brought on record as Annexure-F to the counter affidavit filed on behalf of the respondent nos. 4, 5 and 7. Learned State Counsel submits that in the factual

matrixes of the case, no relief can be granted to the petitioner in the present writ petition.

7. As indicated earlier, a separate counter affidavit has been filed on behalf of the respondent no.6, Patna Municipal Corporation, Patna. In the aforesaid counter affidavit, it has been pointed out that in view of the petition filed by the Building Construction Department, Vigilance Case No. 26B of 2010 has been initiated and sanction of map for the Jagat Bhawani Apartment Vide Plan Case No. 55 of 2007 is the subject matter of scrutiny in that vigilance case. It has further been pointed out in the aforesaid counter affidavit that the petitioner by suppressing the material facts got the plan sanctioned for construction of the aforesaid apartment. According to the respondent no.6, sanction of map for construction of the apartment was contrary to the building bye-laws. The order dated 20.01.2015 passed in the aforesaid Vigilance Case No. 26B of 2010 has been brought on the record as Annexure-A to the counter affidavit filed on behalf of the respondent no.6.

8. From examination of the aforesaid order dated 20.01.2015 passed in Vigilance Case No. 26B of 2010, it appears that the Building Construction Department, Govt. of Bihar is the complainant. The aforesaid Lalmuni Devi, the original owner of the lands in question is the respondent/opposite party. However, neither the petitioner nor any other Flat owner is a party in the aforesaid vigilance case. It further appears that no final order has been passed in the aforesaid Vigilance case in view of pendency of the present writ petition.

9. After having heard the parties, this Court is of the opinion that the whole claim of the writ petitioner about the approach road through the disputed area would be dependant upon the final decision in the aforesaid vigilance case pending before the Municipal



Commissioner, Patna Municipal Corporation, Patna If the sanction of map of the apartment in question is held to be illegal and any consequential order is passed, then the claim raised on behalf of the petitioner in the present writ petition shall become redundant. However, if the respondent Municipal Commissioner comes to a conclusion that the building plan and sanction of map for construction of the apartment in question was valid and was passed by the competent authority, then certainly the flat owners will have to be given some approach road for coming over the main Bailey road. The right of easement of the flat owners cannot be obstructed but these are the issues of fact which are required to be gone into by the competent authority or the competent civil Court and that cannot be decided in a proceeding under Article 226 of the Constitution of India.

10. In the factual matrixes of the case, as noticed above, and in view of the admitted position of the parties that Vigilance Case No. 26B of 2010 is pending before the Municipal Commissioner of Patna Municipal Corporation, this Court is of the opinion that the petitioner in a representative capacity of all the Flat owners may be impleaded as party respondent/opposite party in the aforesaid vigilance case and he be given an opportunity of hearing before any final order is passed in the aforesaid Vigilance case. Admittedly, Jagat Bhawani Apartment has already been constructed and the petitioner and other flat owners have invested their earnings while purchasing their respective flats. Therefore, their view points is also required to be taken into consideration before any final order is passed in the aforesaid pending Vigilance case.

11. For the reasons recorded above, the present writ petition is disposed of with a direction to the respondent Municipal Commissioner of Patna Municipal Corporation to give an opportunity of hearing to the petitioner in a representative capacity on behalf of

all the flat owners and pass appropriate final order strictly in accordance with law after giving opportunity of hearing to all concerned. The parties shall be at liberty to raise all the issues in the aforesaid vigilance case which have been raised in the present proceeding. The petitioner is accordingly directed to appear along with a certified copy of the present order before the Municipal Commissioner of Patna Municipal Corporation within a period of three weeks from today so that he is given an opportunity of hearing in the aforesaid Vigilance case.

12. At this stage, it is relevant to mention here that when this matter was heard earlier by a Bench of this Court on 02.12.2010, some interim protection was granted to the petitioner and the respondents were restrained from making any construction of a nature affecting ingress and egress to the lands in question as per sanctioned plan. Therefore, it is directed that till the matter is finally disposed of in the aforesaid vigilance case by the respondent Municipal Commissioner, the aforesaid interim order dated 02.12.2010 shall continue.

13. The writ petition stands finally disposed of with the observations and directions made above.

14. It is clarified that observations made in the present judgment/order are only for the purposes of disposal of the present writ petition and the same shall not, in any way, prejudice the case of the parties in any future litigation or in the pending Vigilance case.

(Birendra Prasad Verma, J)

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