

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7111 of 2014

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Tarkeshwar Prasad, son of Late Achche Lal Chaudhary, resident of Mohalla-Khudanager, Police Station - Chhatauni, District - East Champaran.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Urban Development Housing, New Secretariat, Patna.
2. The District Magistrate, East Champaran, Motihari.
3. The Sub Divisional Officer, Motihari Sadar, East Champaran.
4. The Executive Officer, Motihari Nagar Parishad, Motihari, East Champaran.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Dilip Kumar Tondon
For the Respondent-State	:	Mr. Santosh Kumar Jha, GP-3
For the Nagar Parishad	:	Mr. Raghwanand

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 29-06-2015

Heard Mr. Dilip Kumar Tondon, learned counsel appearing for the petitioner, learned counsel for the State and Mr. Raghwanand, learned counsel appearing for the Nagar Parishad, Motihari, East Champaran.

The petitioner has questioned the order dated 30.5.2012 passed by the District Judge, East Champaran at Motihari in Misc. Appeal No.5 of 2012, whereby the appeal preferred by the petitioner under section 143 of the Bihar Municipal Act, 2007 (hereinafter referred to as 'the Act') has been dismissed on grounds of maintainability and even a restoration application filed by the petitioner giving rise to Misc. Case No.22 of 2012 was also dismissed consequently.

I have heard learned counsel for the parties and I have perused the materials on record.

The petitioner had earlier approached this Court in CWJC No.6061 of 2010 questioning the assessment order passed by the Nagar Parishad, Motihari and considering that the petitioner had filed statutory application for review under section 141 of 'the Act' that the writ petition was disposed of with a direction to the Executive Officer, Nagar Parishad, Motihari to dispose of the objection in accordance with law. It is pursuant to the order of this Court in CWJC No.6061 of 2010 that the objection filed by the petitioner has been disposed of by the Executive Officer, Nagar Parishad, Motihari vide order passed on 5.3.2012, a copy of which is placed at Annexure-2. The petitioner being aggrieved by the dismissal of the objection petition by the Executive Officer, Nagar Parishad, Motihari under sections 141 and 142 of 'the Act' preferred statutory appeal before the District Judge, East Champaran at Motihari under section 143 of 'the Act' and which has been dismissed as not maintainable by the impugned order dated 30.5.2012 passed in Misc. Appeal No. 5 of 2012. The petitioner on a mistaken legal advice preferred restoration application which has also been dismissed, inter alia, on ground that the appeal has been rejected on maintainability.



Perusal of the impugned order dated 30.5.2012 passed by the District Judge, East Champaran at Motihari in Misc. Appeal No.5 of 2012 manifests that the District Judge on a complete misconception of the legal position has termed the order passed by the Executive Officer, Nagar Parishad, Motihari dated 5.3.2012 to be an executive order when in fact the order has been passed in exercise of powers vested in the Executive Officer under section 142 of 'the Act' and which is appealable before the District Judge under section 143 of 'the Act'. The petitioner very rightly had invoked the appellate jurisdiction vested in the District Judge under section 143 of 'the Act' and which has been dismissed by the District Judge on misconception of law. The order is unsustainable. The District Judge, East Champaran is mandated under section 143 of 'the Act' to consider the miscellaneous appeal bearing Misc. Appeal No.5 of 2012 preferred by the petitioner questioning the order dated 5.3.2012 passed by the Executive Officer, Nagar Parishad, Motihari in purported exercise of powers vested in him under section 142 of 'the Act' and dispose of the same in accordance with law and after hearing the contesting parties including the petitioner.

For the reasons aforementioned the order dated 30.5.2012 passed by the District Judge, East Champaran at

Motihari in Misc. Appeal No.5 of 2012 cannot be upheld and is accordingly set aside and the matter is remitted back to the District Judge, East Champaran at Motihari for consideration and disposal afresh in accordance with law and after opportunity of hearing to the petitioner and the Municipality.

The writ petition is allowed.

(Jyoti Saran, J)

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