

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9063 of 2015

=====

Sunil Kumar Tiwary @ Sunil Tiwary, son of Late Rameshwar Tiwary, resident of Mohalla - Kalyani Cooperative, Beur, Police Station - Phulwarisharif, Town and District - Patna.

.... Petitioner/s

Versus

1. The Patna Municipal Corporation through the Municipal Commissioner.
2. The Municipal Commissioner, Patna Municipal Corporation.

Both having their offices at Maurya Lok Complex, Dakbunglow Road, Police Station - Kotwali, Town and District - Patna.

3. Ansuya Ransing Sahoo wife of Sri Priyadarshi Sahoo, resident of Flat No. 101, 'SHUBHAM APARTMENT', Anandpuri, Police Station - Srikrishnapuri, Town and District - Patna.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Rajiv Nayan Singh

For the Respondent/s : Mr. Sanjay Prakash Verma

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 04-11-2015

Heard Mr. Rajiv Nayan Singh, learned counsel appearing on behalf of the petitioner and Mr. Sanjay Prakash Verma, learned counsel appearing for the Patna Municipal Corporation.

The petitioner is aggrieved by the order dated 27.1.2015 passed by the Municipal Building Tribunal-I (hereinafter referred to as 'the Tribunal') in Appeal Case No.15 of 2012 whereby 'the Tribunal' has disposed of the appeal with a modification in the quantum of penalty as present in the order dated 4.7.2012 passed by the Municipal Commissioner, Patna Municipal Corporation in Vigilance Case No.61-B of 2012.



The facts are not too elaborate and briefly stated is that the petitioner is a developer/builder operating in the name and style of 'Nilam Developers Private Ltd.' having its office at Patna and is associated with the construction of 'Shubham Apartment' situated in Anandpuri in the town and district of Patna. A complaint was received by the Municipal Commissioner made at the instance of private respondent no.3 charging the petitioner of deviating from the sanctioned map by making construction on the ground floor as well as on the 5th floor in contravention of the map sanctioned by the Corporation. It is not in dispute rather admitted that the petitioner originally presented a map of building plan duly approved by the registered architect vide PRN-4-12/271/2010 on 22.5.2010 wherein he planned to construct an apartment consisting of ground + 3 floors. Subsequently a revised plan was presented by the petitioner vide Plan Case No.FF/ABP/EXT/G+3/PAT-307/2746 on 3.9.2011 for addition of 4th floor. As per the impugned order in neither of the two maps, there was any reflection of any construction on the ground-floor except the stair case and the lift and the remaining space was to be utilized for parking purposes. As per the complaint, the petitioner has not only constructed flats and shops on the ground-floor contrary to the sanctioned map as revised subsequently but has also made construction on the 5th floor.



The matter was heard by the Municipal Commissioner and vide order passed on 4.7.2012 the Municipal Commissioner considering the admission made by the petitioner regarding the construction complained of by the complainant on the ground floor and the 5th floor upheld the violation and while issuing direction for demolition of the flats and shops constructed on the ground floor as well as on the 5th floor also imposed a penalty of Rs.10,00,000/- (Ten lacs) for the said deviation as well as the deviation on the 4th floor in exercise of power vested under section 315 of the Bihar Municipal Act, 2007 (hereinafter referred to as 'the Act'). The petitioner being aggrieved preferred statutory appeal giving rise to Appeal Case No.15 of 2012 and even before 'the Tribunal' the petitioner gave an undertaking to demolish the 5th floor and also undertook to file an appropriate application before the Municipal Commissioner for grant of approval to the constructions made in the ground floor which, according to the petitioner, was within the parameters set out under the bye-laws. 'The Tribunal' after considering the facts available on record and taking note of the undertaking given by the petitioner and the admission of the petitioner upheld the order of the Municipal Commissioner requiring demolition of the construction made on the 5th floor as well as the constructions made on the ground floor but while

upholding the order to that extent, 'the Tribunal' modified the order of the Municipal Commissioner to the extent the penalty had been imposed which was reduced from Rs.10,00,000/- (Ten lacs) to Rs.1,00,000/- (one lac) for the alleged violation by the petitioner. The petitioner being aggrieved is before this Court.

Mr. Rajiv Nayan Singh, learned counsel appearing for the petitioner while admitting that the petitioner has no defence to the violations submits that no such undertaking was given by the petitioner to demolish before the statutory authorities. He further makes a request for re-measurement of the deviations so concluded by the statutory authorities.

Mr. Sanjay Prakash Verma, learned counsel appearing for the Corporation contesting the argument of Mr. Singh has submitted that in view of the admission of the petitioner so recorded in the impugned orders there is no reason to interfere with the conclusion drawn by the statutory authorities.

As I have observed hereinabove whether the petitioner gave any concession or not admittedly the constructions made on the ground floor and 5th floor are in violation of the map initially sanctioned on 22.5.2010 as revised vide revised plan dated 3.9.2011 for in neither of the two plans there is any construction mentioned on the ground floor or on the 5th floor except the stair case and the

lift. There are three violations noted by the Municipal Commissioner as approved by 'the Tribunal', namely:

- (a) The construction of flats and shops on the ground floor;
- (b) The deviations on the 4th floor; and
- (c) The construction of flats on the 5th floor.

The original map as well as the revised map enclosed by the petitioner at Annexures- 9 and 10 respectively do confirm to these violations.

In these uncontested circumstances I am not persuaded to interfere with the orders passed by the statutory authorities impugned in the writ petition. Having observed as such it is to be seen whether the petitioner by his action did subject himself to imposition of penalty.

No doubt the provisions of section 315 of 'the Act' confers jurisdiction on the statutory authorities for imposition of penalty but such imposition is not to be made in a mechanical manner rather there has to be a categorical finding by the authorities on the conduct of the person concerned warranting such imposition considering that the penalty ranges in between one lac and 10 lacs. Section 315 of 'the Act' while empowering the statutory authority to impose penalty does not bestow any unguided powers in him to



order as such rather under section 319 of 'the Act' casts an obligation upon the Chief Municipal Officer to afford an opportunity to the party concerned before passing any such order. No doubt even when the violation in the building plan stands confirmed from the maps sanctioned by the Municipal authority that by itself could not be sufficient to mechanically impose the penalty unless the party concerned is noticed as such by the Chief Municipal Officer and is given an opportunity to explain as to why he be not saddled with the imposition of penalty. Section 315 read with section 319 of 'the Act' leaves no room for confusion that a mandatory duty is cast upon the Municipal Commissioner to give an opportunity of hearing to the party concerned before passing any adverse order including an order of penalty. Thus even when an opportunity of hearing was given to the petitioner to respond to the alleged deviations, the impugned orders do not reflect any notice against a proposed penalty or any opportunity given to the petitioner to respond to proposed penalty. The petitioner has admittedly been saddled with the penalty without any opportunity to defend himself against such imposition.

The two orders nowhere discusses any reason for imposition of such penalty except that section 315 of 'the Act' provides as such. As I have already held that section 315 of 'the

Act' even while vesting power in the Chief Municipal Officer to impose penalty casts an obligation to arrive at such finding after opportunity of hearing to the petitioner. Since the order of the statutory authorities is silent as to the conduct of the petitioner which warranted imposition of penalty in my opinion in absence of any such finding in the impugned orders the petitioner certainly was not liable for any such penalty.

For the reasons so discussed hereinabove this Court even while refraining from interfering with the impugned orders passed by the statutory authorities is unable to uphold the penalty imposed on the petitioner and to that extent the orders impugned in this writ petition stand modified and the penalty imposed on the petitioner by the Chief Municipal Commissioner as modified by 'the Tribunal' is set aside.

The writ petition is allowed to the aforementioned extent.

(Jyoti Saran, J)

SKPathak/-

U			
---	--	--	--

NAFR