

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18381 of 2015

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Prof. Mahasweta Ghosh, wife of Late Ranjan Narayan, resident of 304,
Shantikunj Apartments, T.N. Banarjee Road, P.S.- Gandhi Maidan, Patna.

.... Petitioner/s

Versus

1. The Patna Municipal Corporation, Dak Bungalow Road, Maurya Lok Complex, P.S.- Kotwali, Patna.
2. The Municipal Commissioner, Patna Municipal Corporation, Dak Bungalow Road, Maurya Lok Complex, P.S. Kotwali, Patna.
3. The Vigilance Officer, Patna Municipal Corporation, Dak Bungalow Road, Maurya Lok Complex, P.S.- Kotwali, Patna.
4. The Station House Officer (SHO), Gandhi Maidan Police Station, Patna.
5. Mr. Amit Kumar Agarwal, son of not known, at present residing at Flat No. 404, Shantikunj Apartments, T.N. Banarjee Road, P.S.- Gandhi Maidan, Patna.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Chandan Jha, Advocate
Mr. Kali Das Chatterjee, Sr. Advocate

For the P.M.C. : Mr. Sanjay Prakash Verma, Advocate

For the Respondent/s : Smt. Binita Singh, GP-31
Mr. Sudhanshu Shekhar, A.C. to G.P.-31

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

2 04-12-2015 The petitioner is aggrieved by some construction being undertaken by private respondent no. 5 which according to her is damaging her own Flat No. 304, Shantikunj Apartment, T.N. Bannerjee Road situated in the town and district of Patna. Whereas the petitioner stays in Flat No. 304 thereof, it is the complaint of the petitioner that the private respondent no. 5 is staying above her flat in Flat No. 404 and is engaged in such construction which is leading to seepage and damage to her flat.

Mr. Kalidas Chatterjee, learned senior counsel appearing for the petitioner with reference to Annexure-1 has submitted that

although complaint has been made before the Secretary of the Flat Owners Association but to no avail and then a representation was filed before the Town Commissioner which again remains pending and hence this writ petition.

Mr. Chatterjee, thus makes a limited prayer on behalf of the petitioner to issue appropriate direction to the Town Commissioner, Patna Municipal Corporation to consider the grievance of the petitioner and dispose of the same in accordance with law.

Mr. Sanjay Prakash Verma, while standing for the corporation also invites the attention of this Court to Paragraph-18 and 24 of the writ petition to submit that according to the petitioner herself the construction work has been stopped by the private respondent at the instance of the local police officials who also have advised the petitioner to seek her remedy before the appropriate forum.

Mr. Chatterjee, thus submits that on the advice of the local police officials that the petitioner has also represented before the corporation and hence, the Town Commissioner may be appropriately directed.

I have heard learned counsel for the parties and I have perused the record. Annexure-4 is in the form of a representation which does not satisfy the requirement of an application raising a dispute inasmuch as neither the factual details of the complaint nor

the details of the respondent no. 5 are mentioned therein.

Prima Facie, the issue raised by the petitioner stands covered under the provisions of the Bihar Apartment Ownership Act 2006. Annexure 4 is no more than in a nature of a representation and not in form of a statutory application seeking initiation of lawful proceedings so sought to be initiated against the respondent no. 5.

In the circumstances, the writ petition is disposed of with a liberty to the petitioner to file a comprehensive application satisfying the statutory requirements under the Bihar Apartment Ownership Act, 2006 by arraigning the private respondent as a party and also giving the factual details of the damages done by him and any such application being filed by the petitioner would be disposed of by the Municipal Commissioner, Patna Municipal Corporation in accordance with law and after giving an opportunity of hearing to the petitioner as well as the private respondent no. 5 herein. Considering the nature of the dispute as well as the fact that an interim relief for the time being has been provided to the petitioner at the instance of the local police officials, she shall have liberty to make a prayer for its continuation before the Town Commissioner, Patna.

(Jyoti Saran, J)

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