

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1918 of 2015

In

Civil Writ Jurisdiction Case No. 13728 of 2014

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Nepali Singh @ Jitendra Singh

.... Appellant/s

Versus

The Patna Municipal Corporation & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Jagjit Roshan

For Patna Municipal Corpn. : Mr. Prasoon Sinha

For respondent No.6 : Mr. Md. Khurshid Alam

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

and

HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

7 20-12-2016 Heard learned counsel for the appellant and learned counsel for the Patna Municipal Corporation as also learned counsel for respondent No.6.

In our order dated 01.12.2016 after examining the facts of the matter and considering the judgment and order dated 02.12.2014 under appeal of the learned single Judge of this Court, it was noted that the conclusion of the learned single Judge was based upon the reason that there were concurrent findings of fact regarding violation by the petitioner and in fact the Architect himself had appeared before the Tribunal to submit that though the map was in tune with the Municipal Bye-laws but the petitioner while making construction has gone beyond that, which is in



contravention of the Municipal Bye-laws. For the said reason, the learned single Judge has dismissed the writ petition holding that there was no infirmity in the order dated 30.05.2014 of the Municipal Building Tribunal passed in Appeal No. 1 of 2013 warranting interference.

We, accordingly, held in our order dated 01.12.2016 that upon hearing learned counsels for the parties, we were also of the view that the impugned order did not call for any interference. The matter was, thereafter, adjourned upon the contention of learned counsel for the appellant that in terms of Section 371 of the Bihar Municipal Act, 2007, there is a provision to permit compounding and realization of such fine or penalty as prescribed under the Act or Rules or Regulations, if deviation is to the extent of the permitted limit and it was submitted that the entire structure may not be demolished but only the deviation beyond the permitted extent may be ordered to be demolished, for which the appellant was ready to pay the penalty as prescribed.

A supplementary counter affidavit has been filed on behalf of the Patna Municipal Corporation in which it is stated that a report was submitted by the team of Engineers of the Patna Municipal Corporation mentioning therein, inter alia, that the construction was made by the appellant in complete



violation/deviation of the revised sanctioned plan/map and further it was mentioned therein that the earlier map submitted by the appellant before the PRDA was refused sanction and a revised map was submitted on behalf of the Architect which was sanctioned on the condition that the old construction by the appellant over the land in question would be demolished and on the same place/area the new construction was sanctioned/accorded by the authorities concerned with specific provision for parking space indicated in the sanctioned map, but in the parking space left/shown in the revised map, a room, kitchen, bathroom and garage were constructed by the appellant without demolishing the building, as mentioned/shown in the sanctioned map and thereby additional construction was made on the area shown/left in the sanctioned plan for parking space which is not permissible for condonation.

Learned counsels for the parties refer to By Law 76 of the Bihar Building Bye-Laws, 2014.

We find that in view of the nature of deviation made by the appellant the same cannot be compounded as it comes under several clauses of By Law 76, which prohibits compounding of such deviation.

In the aforesaid view of the matter the appeal, being



devoid of merit, is accordingly dismissed.

The interim order passed on 19.11.2016 stands vacated.

(Ramesh Kumar Datta, J)

V.P.Sinha/-

(Arun Kumar, J)

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