

## IN THE HIGH COURT OF JUDICATURE AT PATNA

### Civil Writ Jurisdiction Case No.19275 of 2015

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1. B. N. Singh, Son of Late Ram Chandra Singh, R/o Bihta, P.S.- Bihta, District- Patna.
  2. Binod Kumar Bhutoria, Son of Late Chandarmal Bhutoria, R/o 304 Chandandeep Apartment, P.S. Rupaspur, District Patna.

.... .... Petitioner/s

Versus

1. The Patna Municipal Corporation, through its Municipal Commissioner, Patna Municipal Corporation, Maurya Lok, Patna.
2. The Municipal Commissioner, Patna Municipal Corporation, Maurya Lok, Patna.
3. Ajay Kumar Srivastava, Son of Late Rabindra Prasad, R/o Flat No. 401.
4. Bina Sinha, W/o Sri Pranay Kumar, Owner and R/o Flat No.202.
5. Smt. Nirmala Singh, Wife of Dr. S.D. Singh, Owner and R/o Flat No. 204.
6. Sri Awadhesh Chandra Ambastha @ A.C. Ambastha,, Son of Late Satish Chandra Ambastha, Owner and R/o Flat No. 101.

All are residents of Chandan Villa Apartment, Arrah Garden Road, Off Bailey Road, P.S. - Danapur, District- Patna.

7. The State of Bihar, through the Principal Secretary, Urban Development Department, Government of Bihar, Patna.

.... .... Respondent/s

With

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### Civil Writ Jurisdiction Case No. 7230 of 2010

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1. Binod Kumar Sinha, S/O Late Triloki Nath, R/O 104, Chandan Deep Apartment, Bailey Road, P.O.- B.V.College, P.S.-Danapur, District- Patna.
2. Smt. Sharda Kumari, W/O Sushil Kumar, R/O 401, Chandan Deep Apartment, Bailey Road, P.O.- B.V.College, P.S.- Danapur, District- Patna.
3. Sunil Kumar, S/O Sri Kamta Prasad Gupta, R/O 404, Chandan Deep Apartment, Baily Road, P.O.- B.V.College, P.S.- Danapur, District- Patna.
4. Ranjit Kumar Thakur, S/O Mahesh Thakur, R/O 402, Chandan Deep Apartment, Baily Road, P.O.- B.V. College, P.S.- Danapur, District- Patna.
5. Ajit Kumar, S/O Late Dr. Suresh Kumar Verma, R/O 201, Chandan Deep Apartment, Baily Road, P.O.- B.V. College, P.S.- Danapur, District- Patna.
6. Pradeep Kumar Gupta, S/O Late Tarni Prasad, R/O 203, Chandan Deep Apartment, Baily Road, P.O.- B.V. College, P.S.- Danapur, District- Patna.
7. Surendra Prasad Gupta, S/O Late Tarni Prasad, R/O 204, Chandan Deep Apartment, Baily Road, P.O.- B.V. College, P.S.- Danapur, District- Patna.
8. Mithilesh Kumar Singh, S/O Sri Prajesh Kumar Singh, R/O 202, Chandan Deep Apartment, Baily Road, P.O.- B.V.College, P.S.- Danapur, District- Patna.
9. Gauri Shankar Prasad, S/O Late Chaturbhuj Sahay, R/O 303, Chandan Mahal Apartment, Baily Road, P.O.- B.V.College, P.S.- Danapur, District- Patna.
10. Nawal Kishore Verma, S/O Late Krishna Ballabh Sahay, R/O 404, Chandan Mahal Apartment, Baily Road, P.O.- B.V. College, P.S.- Danapur, District- Patna.
11. Neeraj Kumar Sinha, S/O Prem Mohan, R/O 202, Chandan Mahal Apartment,

Baily Road, P.O.- B.V.College, P.S.- Danapur, District- Patna.

12. Baidyanath Prasad Mishra, S/O Late Bishundeo Mishra, R/O 302, Chandan Mahal Apartment, Bailey Road, P.O.- B.V. College, P.S.- Danapur, District- Patna.

.... .... Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Bihar, Patna.
2. The Patna Municipal Corporation, Maurya Lok, P.S.- Kotwali, District- Patna, through its Commissioner.
3. The Commissioner, Patna Municipal Corporation, Maurya Lok, P.S.- Kotwali, District- Patna.
4. The Vigilance Officer, Patna Municipal Corporation, Maurya Lok, P.S.- Kotwali, District- Patna.
5. The District Magistrate, Patna.
6. Sri Mohan Lal Bhutoria, S/O Late Chandarmal Bhutoria.
7. Sri Manna Lal Bhutoria, S/O Late Chandarmal Bhutoria.
8. Sri Bimal Singh Bhutoria, S/O Late Chandarmal Bhutoria.
9. Sri Binod Kumar Bhutoria, S/O Late Chandarmal Bhutoria.
10. Sri Amod Kumar Bhutoria, S/O Late Chandarmal Bhutoria.

No.6 to 10 are original land owner and are R/O Chandan Deep Apartment, Near Jagdeo Path, Baily Road, P.O. - B.V. College, P.S.- Danapur, District- Patna.

11. M/S Splendid Developers Pvt. Ltd., registered under the Companies Act, 1956, through its Director Sri A.K. Deepak having its Office at E/111, P.C. Colony, Kankarbag, Patna.
12. Sri A.K. Deepak, S/O Sri S.R.P. Verma Director, M/S Splendid Developers, Pvt. Ltd., R/O E/111, P.C. Colony, Kankarbag, Patna.
13. Sri Pravin Kumar, S/O Sri Narayan Yadav, Director, M/S Splendid Developers Pvt. Ltd., R/O Village- Kharhat, P.O. & P.S.- Fulmallik, District- Begusarai.
14. Sri Satyanand Sambuddha, S/O Sri Narayan Yadav, Director, M/S Splendid Developers Pvt. Ltd., R/O Village- Kharhat, P.O. & P.S.- Fulmallik, District- Begusarai.
15. Sri Brajnandan Singh, S/O Late Ram Chandra Singh, Director, M/S Splendid Developers Pvt. Ltd., R/O B.N. Apartment, Lohia Nagar, Kankarbag, Patna.
16. Chandan Villa Apartment Flat Owners and Residents Association through its Secretary A.K.Shrivastava, R/O 401, Chandan Villa Apartment, Baily Road, P.O.- B.V. College, P.S.- Danapur, District- Patna.

.... .... Respondent/s

**Appearance :**

**(In CWJC No. 19275 of 2015)**

|                                |   |                                                                                     |
|--------------------------------|---|-------------------------------------------------------------------------------------|
| For the Petitioner/s           | : | Mr. Dinu Kumar<br>Mr. Arvind Kumar Sharma<br>Mr. Rajesh Kumar Singh<br>Mr. Ritu Raj |
| For the Respondent-State       | : | Mr. Partha Sarthi, GA-11                                                            |
| For the Respondent Corporation | : | Mr. Prasoon Sinha                                                                   |
| For the Respondents 3 to 6     | : | Mr. Diwakar Upadhyay                                                                |
| For the Intervener             | : | Mr. Sandeep Kumar<br>Mr. Kumar Vikram                                               |

(In CWJC No. 7230 of 2010)

For the Petitioner/s : Mr. Mahesh Narain Parbat, Sr. Adv. with  
Mr. Praveen Prabhakar  
For the Respondent-State : Mr. Kamal Kr. Sinha, AC to AAG-2  
For the Respondent- Corporation : Mr. Prasoon Sinha

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**CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN**

**ORAL JUDGMENT**

**Date: 21-01-2016**

Heard Mr. Dinu Kumar, learned counsel appearing for the petitioner in CWJC No.19275 of 2015 and Mr. Mahesh Narain Parbat, learned senior counsel appearing for the petitioners in CWJC No.7230 of 2010, learned counsel appearing for the State in the respective writ petitions, learned counsel for the Corporation, counsel for the private respondents in the respective writ petitions and counsel for the interveners in CWJC No.19275 of 2015.

With the consent of the parties the two writ petitions have been heard analogous and are being disposed of by a common judgment at the stage of admission itself.

The Petitioner in CWJC No.19275 of 2015 prays:

- (i) For quashing the order dated 12.10.2015 passed by Chairman, Appellate Tribunal, Municipal Building Tribunal-I in Appeal Case No.11/2012 as contained in Annexure-6 by which appeal has been dismissed and order dated 08.10.2007 and 28.02.2008 as contained in Annexure-4 passed by Municipal Commissioner, Patna in Vigilance Case No.613A/2006 has been approved.

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- (ii) For quashing the order dated 14.03.2012 passed by the Municipal Commissioner in Vigilance Case No.613A/2006 as contained in Annexure-5 by which direction was issued to close the commercial premises after taking assistance of the police and Magistrate and the amount which would incur in demolishing the illegal construction and commercial area shall be recovered, after holding without approval of the competent authority, residential building has been completed into commercial building and the petitioner no.1 has failed to carry out the order dated 8.10.2007 and 28.02.2008 as contained in Annexure-4 passed in Vigilance Case No.613A/2006.
- (iii) For quashing the order dated 08.10.2007 passed by the Municipal Commissioner, Patna Municipal Corporation in Vigilance Case No.613A/2006 by which it was decided that without the sanction of the competent authority approved residential map has been converted into commercial use accordingly direction is being issued to close the commercial premises and it was further direction was given to get the main map are approved for using commercial purposes as per the new master plan.
- iv) For quashing the order dated 28.02.2008 passed by the

Municipal Commissioner, Patna Municipal Corporation in Vigilance Case No.613A/2006 as contained in Annexure-4 by which direction has been given to take assistance to police or Magistrate for closing the commercial area which has been illegally constructed after deviation.

- v) For directing the respondents not to give effect of the order as contained in Annexures 4, 5 and 6 in any manner changing the structure of the buildings which is the subject matter in Vigilance Case No.613A/2006.
- (vi) For necessary relief/reliefs, order/orders, direction/directions for which the petitioners will be entitled in the law as well as in the facts of the case.

The petitioner in CWJC No.7230 of 2010 prays:

- (a) To issue a writ of certiorari for quashing the order dated 8.10.2007 (Annexure-4) issued by the then Commissioner, Patna Regional Development Authority (now known as the Commissioner, Patna Municipal Corporation) to the extent through which the private respondent nos.6 to 15 (land owners and developers) were given liberty to submit revised map, if they want to use the premises in question for commercial purposes.
- b) To issue a writ of mandamus, commanding the official

respondents, specially respondents 2 to 5, to discharge their legal obligation to follow their own other decision and direction given in the said order dated 8.10.2007 in its word and spirit and to close the shops at once, running in the premises in question in illegal manner.

- (c) To issue a further writ of mandamus, commanding the official respondents, specially respondent nos.2 to 5, to demolish those structures of premises in question which have been constructed in illegal and arbitrary manner, in violation of map sanctioned by them.
- d) To issue a further writ of mandamus, commanding the official respondents, specially respondent nos.2 to 5, to prohibit the land owners and developers (private respondent nos.6 to 15) from using premises in question for commercial purposes in any manner and not allow them to open new shops in it.
- e) To any other relief or reliefs for which the petitioner may be found entitled to.

For the sake of convenience I shall be referring to the pleadings in CWJC No.19275 of 2015 unless clarified with specific reference to the other writ petition.

The petitioners are the land owner and the builder who

have entered into a development agreement for construction of apartments namely Chandan Mahal, Chandandeep and Chandan Villa.

For expressing my opinion on the issue raised it would be necessary to briefly enumerate the sequence of events. The matter in hand relates to alleged irregularities committed by the builders/land owners in utilizing the common area available on the ground floor of the apartments situated at Ara Garden Road, Bailey Road, Patna known as Chandan Mahal and Chandandeep Apartments. The residents being aggrieved by the action of the builders in converting the common area available on the ground-floor of these apartments approached this Court in CWJC No.6494 of 2006 raising grievance against the inaction of the Municipal Commissioner of not taking cognizance of the complaint lodged by them charging the owners/builders/developers of utilizing the ground-floor parking area in the apartments in question leading to inconvenience to the residents. It was their complaint that although the attention of the Vice-Chairman, Patna Regional Development Authority (hereinafter referred to as the 'PRDA') was invited vide petition dated 31.1.2006 with a request to initiate a vigilance case but had no effect. While the matter remained pending consideration before this Court that the Bihar Regional Development Authority



Act was repealed and replaced by the Bihar Municipal Act, 2007 (hereinafter referred to as 'the Act') and the Patna Municipal Corporation stepped into the shoes of the erstwhile 'PRDA'. The Municipal Commissioner, Patna Municipal Corporation registered his appearance through counsel and assured that he shall consider the complaint of the residents in the backdrop of a report obtained in this regard. The writ petition was accordingly disposed of vide Annexure-R/2 of the counter affidavit of the private respondent.

The complaint filed by the residents was registered giving rise to Vigilance Case No.613A of 2006 and the Municipal Commissioner vide order passed on 8.10.2007 in consideration of the complaint passed the following interim orders:

- (a) If the map was approved as residential then without obtaining sanction from the competent authority the premises cannot be put to commercial use. The owners/builders/developers were directed to immediately close the shops operating in the apartments; and
- (b) The owners/builders/developers were granted permission to file an appropriate application together with a revised map in case they intended to convert the project for commercial use (Annexure-4).



It is the second part of the order which aggrieved the residents of the apartment and led to filing of CWJC No.7230 of 2010. The matter was heard and this Court while issuing notice to the owners/builders/developers vide order passed on 15.11.2011 directed the Municipal Commissioner, Patna to maintain status-quo as regarding the consideration of the claim of the land owners/builders for conversion of the premises from residential to commercial.

It is needful to mention here that the Commissioner has registered his appearance through counsel and a counter affidavit has also been filed in the said writ petition in which it was stated that the Vigilance Case No.613A of 2006 is yet pending consideration before the Commissioner. Even while the said writ petition arising from CWJC No.7230 of 2010 remained pending for consideration before this Court and the Municipal Commissioner was directed to maintain status-quo in the proceedings in the vigilance case in so far as the consideration of prayer of builders/developers regarding conversion of the open area of ground-floor from residential to commercial is concerned yet the Municipal Commissioner proceeded with the matter as is manifest from the order-sheet impugned at Annexure-4 to CWJC no.19275 of 2015 and ultimately on 14.3.2012 the Municipal Commissioner in consideration of the order dated 6.4.2011 passed by



a Bench of this Court in CWJC No.6494 of 2006 and completely ignoring the order of status-quo passed by this Court on 15.11.2011 in CWJC No.7230 of 2010 proceeded to dispose of the vigilance case in the light of a fact finding report submitted by the Engineer dated 29.11.2011 to hold the conversion made by the builders/developers as illegal. The land owners/developers were directed to close the commercial establishment within thirty days of the order or to demolish the same failing which the same would be carried out by the Corporation with the administrative support of the State, for which the cost would have to be borne by them.

The order dated 14.3.2012 passed by the Municipal Commissioner in Vigilance Case No.613A of 2006 was questioned by the petitioners before the Municipal Building Tribunal in Appeal Case No.11 of 2012 and has been affirmed by the impugned order passed on 12.10.2015 and being aggrieved the land owners/builders are before this Court in CWJC No.19275 of 2015.

A very short argument has been advanced by Mr. Dinu Kumar to question the entire proceedings. He submitted that even when this Court vide order passed on 15.11.2011 in CWJC No.7230 of 2010 has directed the Municipal Commissioner to maintain status-quo on the claim of the land owners/developers for conversion of area in question from residential to commercial use yet he has



proceeded with the vigilance case in contravention of the order of status-quo to reject the claim as also to direct for demolition of the constructions. He submits that the attention of not only the Commissioner but also the Municipal Building Tribunal was invited but has been ignored by either of the two statutory authorities.

Although the writ petition bearing CWJC No.19275 of 2015 was filed on 16.12.2015 and has been considered on several dates but no counter affidavit has been filed by the Corporation responding to the issues raised. It is in consideration of the fact that the two petitioners herein derive their strength from the interim order dated 15.11.2011 passed in CWJC No.7230 of 2010 that this Court directed the said case to be put up along with and since the contesting parties in the two writ petitions are represented by their respective counsel hence the matters have been considered analogous and with the consent of the parties have been heard at this stage with a view to their final disposal.

The sequence of events has been elaborately discussed hereinabove. Mr. Parbat, learned senior counsel representing the residents of the apartments in question has argued that once the entire area of apartments in question stands sold and registered in favour of the residents, neither the land owners nor the builders can enter into any fresh transaction in relation to any part of area which



already stands registered including the open area available for the residents of the apartments. He submits that such attempt by the owners/builders would amount to a re-sale of the portion of apartment which is already sold. According to Mr. Parbat, any sale of flat not only includes the built up area of the flat but also accompanies the use of common area available on the ground-floor as well as the terrace including stair case etc. and thus once the land owners/developers have got a map sanctioned by earmarking the area in favour of the allottees any attempt to curtail the use of common area by conversion of its use into commercial, would not only prejudice the residents but would also be a fraud on the residents for they have made payment for its use. He submits that the builders/land owners cannot be permitted to indulge in unjustful gains at the cost of the residents. He submits that even before the matter could be adjudicated by the Municipal Commissioner as to whether at all the common area available in the apartments could be converted into commercial use in the backdrop of the issues so raised by the residents, an order was passed by the Municipal Commissioner to direct the land owners/builders to submit a revised plan for conversion of the common area from residential use to a commercial area and which is the foundation for the other writ petition arising from CWJC No.7230 of 2010.



Mr. Dinu Kumar appearing for the owners/builders has submitted that it was in consideration of the issues so raised which also stands noted in the order passed in the said writ petition on 15.11.2011 that the Municipal Commissioner was directed to maintain status-quo in the vigilance case but not only the vigilance case proceeded to result in the order dated 14.3.2012 even the issue framed by the Municipal Commissioner on 8.10.2007 has not been answered. It is also the argument of Mr. Dinu Kumar that the spot enquiry report relied upon by the Municipal Commissioner dated 29.11.2011 was not even supplied to the land owners/builders.

I have heard learned counsel for the parties and perused the records. It is rather surprising that even when the attention of the Municipal Commissioner and the Municipal Building Tribunal was drawn by the petitioners in CWJC No.19275 of 2015 to the interim order dated 15.11.2011 yet the import of the interim order was neither appreciated by the Municipal Commissioner nor the Municipal Building Tribunal. This single aspect of the matter has rendered the orders impugned, a nullity. Law is very well settled and any order passed by Subordinate Court, Tribunal or Statutory Authority which is in contravention of an interim order passed by a Superior Court is held a nullity and reference in this regard is made to the judgments of this Court and the Apex Court reported in **1982**

**PLJR 376 (Nawal Kishore Pd. Sinha vs. State of Bihar), (1995) 6 SCC 50 (Surjit Singh Vs. Harbans Singh), (2010)11 SCC 557(Manohar Lal vs.Ugrasen) and 2014(2) PLJR SC 286 (Union of India Vs. Ashok Kumar Aggarwal).**

Adverting next to the issue raised in CWJC No.7230 of 2010, this Court is satisfied that the second direction present in the order dated 8.10.2007 passed by the Municipal Commissioner directing the land owners/builders to submit a revised plan for conversion of the parking area available in the apartments in question to commercial use is contrary to the direction no.1 whereby he has held that until such time that a permission is granted by the competent authority for such conversion, no portion of the common area being utilized for residential purposes can be converted to commercial use. In fact until such time that the contest whether the land owners/developers can be granted permission to convert the parking area available in respective apartments to commercial use, is finally concluded, an order directing them to file an application with revised map is pre-empting such adjudication and cannot be upheld.

For the reasons so given, the second direction present in the order dated 8.10.2007 whereunder the Municipal Commissioner has directed the land owners/builders to file a conversion plan with revised map is held unsustainable and is accordingly set aside and



since the order dated 14.3.2012 disposing of the vigilance case is in contravention of the interim order passed by this Court in CWJC No.7230 of 2010 hence the same also cannot be upheld in the light of the law settled as illustrated hereinabove and is accordingly set aside and for the same reason the order passed by the Municipal Building Tribunal in Appeal Case No.11 of 2012 is rendered unsustainable and is accordingly set aside.

The Vigilance Case No.613A of 2006 is remitted back to the Municipal Commissioner, Patna Municipal Corporation for its consideration and disposal afresh, in accordance with law and after opportunity of hearing to the contesting parties. Since the order reflects that a reliance is placed upon a spot enquiry report dated 29.11.2011 prepared by the Engineers of the Corporation, hence let a copy thereof be handed over to the contesting parties for giving their opinion.

The petitioners in CWJC 7230 of 2010 as well as the petitioners in CWJC No.19275 of 2015 shall appear through their respective counsel before the Commissioner, Patna Municipal Corporation and cooperate in disposal of the matters.

Considering that the vigilance case remains pending since 2006 and considering that it involves the interest of residents of the apartments as directed above the contesting parties in the two

writ petitions should appear before the Commissioner on 1<sup>st</sup> of February, 2016 along with a copy of this order and when the Commissioner, Patna Municipal Corporation would proceed for disposal of the case in accordance with law without giving any adjournment to any of the parties. An expeditious disposal preferably within a period of three months from the date of receipt/production of a copy of this order would be appreciated.

The two writ petitions are allowed with the observation/direction aforementioned.

**(Jyoti Saran, J)**

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