

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2735 of 2015

Bindeshwari Prasad Singh, son of Late Bangali Singh. Resident of Village- Dumari, P.O. & Police Station- Sahpur Patori, District- Samastipur. At Present- B-152 Budha Colony, Police Station Budha Colony, District Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Registrar, Cooperative, Government of Bihar, Patna.
2. The Registrar, Cooperative, Government of Bihar, Patna.
3. The Deputy Registrar, Cooperative, Government of Bihar, Patna.
4. The Buddha Sahakari Grih Nirman Samitee, through its Secretary, Lok Prakash Singh, Resident of 301 Aatma Smiriti, Buddha Colony, Patna.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Shrawan Kumar, Sr. Advocate with
Mr. Dinesh Maharaj
For the Respondent/s : Mr. Vinnay Kirti Singh, GA-3
For Private Respondent No.4 : Mr. Shashi Kant Kumar

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 10-02-2016

Heard Mr. Shrawan Kumar, learned senior counsel appearing for the petitioner, learned counsel for the State and Mr. Shashi Kant Kumar, learned counsel appearing for the respondent no.4, the Housing Society.

The petitioner is aggrieved by the order dated 5.12.2014 passed by the Deputy Registrar, Cooperative Societies, Patna Division, Patna respondent no.3 in Miscellaneous Case No.17 of 2014, whereby the Deputy Registrar while rejecting the prayer of the petitioner for vacating stay on the construction, has put a restraint on the petitioner from making any further construction.

While issuing such directives the Deputy Registrar has referred to the order passed by this Court in CWJC No.8152 of 2013 (Narendra Mishra vs. The State of Bihar).

Mr. Shrawan Kumar, learned senior counsel appearing for the petitioner with reference to the impugned order confirming the restraint on the construction of building project by the petitioner has submitted that it is a presumptuous opinion of the Deputy Registrar that the petitioner may utilize the building in question for commercial use. It is submitted that even when there is neither any violation by the petitioner in adhering with the map so sanctioned by the Patna Municipal Corporation nor any violation has been taken note of that the Deputy Registrar has permanently restrained the petitioner from making constructions.

Following the notice issued that the Society has appeared through counsel, Mr. Shashi Kant Kumar and who has submitted that since the petitioner has constructed a multi-storied building and which construction further violates the agreement present at Annexure-1 which prohibits that built up area should not exceed 50% of the area of the plot that the order has been passed on the complaint filed by the society.

I have heard learned counsel for the parties and I have perused the records.



The limited ground on which the petitioner has been restrained from making construction is that he would be using the building in question for commercial use and the sole basis for such opinion expressed by the Deputy Registrar is because the building consists of ground+ 4 floors and there are 14 flats which, according to the Deputy Registrar, is for commercial usage. The order takes note of the written statement filed by the petitioner before the Deputy Registrar in which he has categorically stated that the building would be used only for residential purposes and that it would never be put to commercial use in future yet it is the structure of the building which has led the Deputy Registrar to believe that it would be put to commercial use. According to Mr. Kumar, learned senior counsel appearing for the petitioner, the map for the building stands sanctioned and approved by the Municipal Corporation and which statement of the petitioner has not been contested by the respondent society. A specific statement to such effect is made by the petitioner in paragraph 9 of the affidavit filed before the Deputy Registrar, a copy of which is present at Annexure.3. Even before this Court although Mr. Shashi Kant Kumar initially chose to question the construction on grounds that the multi-storied building is not permitted on such plots but he failed to substantiate the same with reference to the Bye-laws. Mr.

Shashi Kant Kumar next refers to Clause P(3) (d) of the agreement present at Annexure-1 to submit that the petitioner has exceeded 50% built up area on the plot but again there is nothing on record to substantiate such allegation. In fact these are also not the issues which fall for consideration before the Deputy Registrar rather the only issue was whether the building is to be put up for commercial use.

In my opinion the order of the Deputy Registrar, Cooperative Societies in putting restraint is only on presumption and assumption and which cannot be a foundation to affect the right vested in the petitioner under the allotment made by the Society as well as the sanction accorded by the Corporation.

The writ petition is allowed. The order passed by the Deputy Registrar, Cooperative Societies dated 5.12.2014 in Miscellaneous Case No.17 of 2014 is set aside.

(Jyoti Saran, J)

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