

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17413 of 2016

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1. Gopal Giri son of Late Ram Nath Giri, The Karta of the HUF
 2. Ritesh Kumar Giri son of Sri Gopal Giri
 3. Smita Kumar Giri wife of Ritesh Kumar Giri
- All Resident of Flat No.303, Amar Villa Apartment, Road No.1, New Patliputra Colony, P.S. Patliputra, District Patna.

.... Petitioners

Versus

1. The State of Bihar through the Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
2. The Divisional Commissioner, Patna Division, Patna.
3. The Patna Municipal Corporation, Patna through its Municipal Commissioner.
4. The Commissioner, Patna Municipal Corporation, Patna.
5. M/s Saket housing Ltd. a Company incorporated under the Companies Act, 1956, having its office at B-11, Bansal Tower, R.K. Battacharya Road, P.S. Gandhi Maidan, Town and District Patna through its Managing Director Sri Sudarshan Kumar Bansal.

.... Respondents

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Appearance :

For the Petitioners	:	Mr. Y. V. Giri, Senior Advocate Mr. Arjun Kumar, Advocate
For the State	:	Mr. Syed Hussain Majeed, A.C. to S.C.6
For P.M.C.	:	Mr. Prasoon Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 28-11-2016

Heard learned counsel for the parties.

The petitioners have moved this Court being aggrieved by his premises being sealed by the Patna Municipal Corporation (hereinafter referred to as the 'Corporation') on 24.07.2016.

The petitioners have three registered deeds of sale dated 14.10.2009 in their favour by the builder, in Santosha Complex (hereinafter referred to as the



‘Complex’), situated at Bandar Bagicha, P.S. Kotwali, in the district of Patna, on the ground floor, for a total area of 4000 sq. ft. The issue with regard to there being large scale deviations from the original sanctioned plan in construction of the Complex, had come to this Court in C.W.J.C. No.7904 of 2003, L.P.A. No.902 of 2003 and finally travelled to the Hon’ble Supreme Court, where ultimately by judgment and order dated 7th May, 2013 in Civil Appeal No.5470 of 2004, there was a direction that all unauthorized construction shall be demolished and compliance was directed to be submitted to the Hon’ble Supreme Court by the Chief Secretary and Director General of Police. Thereafter, some of the owners of the flats situated on the upper floors of the Complex, which were directed to be demolished, moved before the Hon’ble Supreme Court in Writ Petition (Civil) No.337 of 2013 in which, pursuant to various orders, after measurement being done in presence of the parties and under the supervision of Hon’ble Mr. Justice S.N. Jha, who was appointed as the Commissioner to go into the factual aspect of determining the area which was to be demolished, the exercise, as far as those writ petitioners before the Hon’ble Supreme court is concerned, is being



taken to its logical conclusion. However, with regard to the other deviations which had also to be removed, as per original orders of the High Court and confirmed by the Hon'ble Supreme Court in Civil Appeal No.5470 of 2004, in the ground floor, which the petitioners had bought, it was found that the area held by the petitioners was in excess of the sanctioned area and even in the measurement done pursuant to the exercise relating to Writ Petition (Civil) No.337 of 2013, it was found that the built-up area which was in the possession of the petitioners, was far in excess of the 330.15 sq. mtrs. which was sanctioned, and beyond which there was specific direction from the Hon'ble Supreme Court for demolition. In terms of the same, the Corporation has sealed the premises of the petitioners, as the same is admittedly beyond the sanctioned area and also the mezzanine floor, which is part and parcel of the ground floor, and access to which is through the premises of the petitioners, has been held to be deviation for which even condonation has been refused by the Hon'ble Supreme Court, and thus, the same has now to be removed. This action of sealing by the Corporation has given cause of action to the petitioners to move this Court in the present

writ application.

Mr. Y.V. Giri, learned Senior counsel assisted by Mr. Arjun Kumar, learned counsel appearing for the petitioners submitted that the petitioners were not party in any of the proceedings and thus, any action against them, without due and proper hearing, is unwarranted. He further submitted that even as per the orders of the Hon'ble Supreme Court in Writ Petition (Civil) No.337 of 2013, the direction was only with regard to the flats in the top three floors of the Complex and that exercise has also been done, but the same does not contemplate any action as far as the ground floor of the building is concerned, which has been bought by the petitioners for due consideration. It was submitted that even the Corporation has not objected to such sale, inasmuch as, pursuant to the same, after creation of holdings the same have been mutated in the name of the petitioners and they are also paying tax. Learned counsel submitted that, at best, the excess area which has been sold to the petitioners can be converted into open area, as per the original sanctioned and approved plan, but the entire premises, which includes the area which legally belongs to the petitioners, could not have been sealed in such an





arbitrary manner. Learned counsel further submitted that the petitioners having bought the premises through registered sale deeds, are entitled to the benefit of such purchase and the same having been sealed, is prejudicial to their interest. It was further submitted that after the premises being vacated by the erstwhile tenants, the same was leased to a new tenant, but because of the act of the Corporation of sealing the premises, the said tenant had also moved out causing pecuniary loss the petitioners, which cannot be justified. It was finally submitted that the sealing of the premises is wholly without jurisdiction and illegal and if at all the builders had sold area which was beyond the legally permissible limit, they should be permitted to raise claim against the builder, who should compensate them.

Mr. Prasoon Sinha, learned counsel for the Corporation submitted that the action of the Corporation is in accordance with law, especially in compliance of the directions of the Hon'ble Supreme Court, which have attained finality. Learned counsel submitted that once the finding has come that in the ground floor, which is claimed by the petitioners, the built-up area in their possession is beyond the permissible limit, such deviation and excess



construction has to be removed/demolished and the petitioners cannot be permitted to retain the same or use it for any purpose. It was submitted that notice was sent to the petitioners informing them of the order of the Hon'ble Supreme Court in Writ Petition (Civil) No.337 of 2013 and the exercise relating to measurement was done in the presence of all concerned, including the petitioners, which is mentioned in the report, which also discloses the details of measurement with regard to the ground floor, belonging to the petitioners. Learned counsel submitted that the exercise of removing the mezzanine floor, which has access through the premises held by the petitioners, has to be done in a manner which does not cause structural damage to the whole structure, which has to be undergone after consulting the professionals involved in the field, but the same, in any view of the matter, cannot be permitted to continue, which shall be directly against the mandate of the order of the Hon'ble Supreme Court. It was submitted that in view of the controversy, where admittedly the petitioners were in possession of an area in excess of what could have been legally constructed and transferred by the builder, in terms of the sanctioned plan and which has been directed to be



demolished by specific order of the Hon'ble Supreme Court, the exercise to seal the premises was necessary as an interim measure, so that the mezzanine floor as well as the excess area on the ground floor, which has been enclosed by walls and is in the occupation of the petitioners, can be restored to its original condition which, as per the sanctioned map, had to be left vacant/open.

Having considered the rival contentions, the Court is of the opinion that the petitioners cannot claim, as a matter of right, for being allowed to remain in possession and utilize the premises which is beyond the sanctioned plan for the Complex. The matter having been decided against the builders by this Court and taken up by them before the Hon'ble Supreme Court in the year 2004 itself, any subsequent development shall clearly be covered by the principle of *lis pendens* and whatever transfers were made subsequent to that, by the builders, in favour of the petitioners, cannot confer any better right and title upon the petitioners than what was held by the builders. In the present case, right throughout, it has been held and approved by Hon'ble Supreme Court that beyond the sanctioned map of the building, including the ground floor, any construction or



deviation made was to be removed/demolished. Thus, it is held that the entitlement of the petitioners shall be only to the extent of the area for which the sanctioned map has been approved. Having held that, the Court would now dwell with what should be the next step in the background of the aforesaid position, as well as the orders of the Hon'ble Supreme Court. The contention of the petitioners that they were not party before any of the Courts and thus, in effect, the plea being that they cannot be prejudicially affected by such orders, cannot be sustained. As stated earlier, the petitioners have moved into the shoes of the builders only in the year 2009, and much before that, in various proceedings, the matter had attained finality, and in which the builder was a party. Thus, such issue having been decided by the competent Courts right till the Hon'ble Supreme Court, the petitioners cannot have a valid ground to object that they were not party in such litigations. However, the petitioners having bought the premises, at least have the right to the area which was sanctioned, and for which there has been no objection even from the Corporation and which could also not have been objected to, as there is no controversy relating to the same. This area has to be carved out/demarcated, from



the total ground floor area which is held by the petitioners, to which may also be attached the mezzanine floor. The seal of the premises of the petitioners, as per the stand of the learned counsel for the Corporation, includes the mezzanine floor, for the reason, that the entrance to the same is common and only through the ground floor premises claimed by the petitioners. However, learned counsel for the petitioners submitted that both the premises can be sealed separately as the entrance to the mezzanine floor is separate, without there being any connection with the ground floor premises belonging to the petitioners.

Be that as it may, in the considered opinion of the Court, the issue has to be sorted out expeditiously, for the reason, that the petitioners are at least entitled to the fruitful enjoyment of the area which they have bought and which is legal in the eyes of law. Thus, the Court is unable to sustain the act of sealing the premises, which cannot be justified in the facts and circumstances of the present case, as the same has, admittedly, been done without first undertaking the exercise of demarcation of the excess area, moreso, in view of the fact that there is no pleading on behalf of the Corporation that the petitioners either avoided

or resisted in getting the demarcation done.



For the reasons aforesaid, the Court directs that the seal of the premises in question shall be opened, subject to the condition that it shall not be used for any purpose till the time the Corporation, in the presence of the petitioners or their representatives, gets the area demarcated and takes appropriate steps in order to comply with the order of the Hon'ble Supreme Court passed in various proceedings relating to the Complex. The Court may also observe that if the Corporation finds, upon technical advise, that the demolition of the mezzanine floor may be an issue, as an interim measure, at least the floor can be permanently sealed, so that it cannot be utilized, and with regard to the ground floor, after demarcating the portion in terms of the sanctioned map, the permissible area as per the sanctioned plan shall be allowed to be enclosed by the petitioners and they shall be entitled to deal with the same, as per their desire, for any purpose which may be legal and permissible. The features of the remaining area shall be restored in the original condition strictly as per the sanctioned map.

The exercise be completed within a period of three months from the date of production of a copy of this

order before the respondent no.4. The unsealing of the premises shall also done within 24 hours of the order being served on respondent no.4. The Court makes it clear that it has not expressed its opinion on the merits of the matter and the exercise to be undertaken shall be strictly in terms of the sanctioned map, in accordance with law, in the presence of the parties. The petitioners shall be at liberty to move the appropriate forum against the builders, in accordance with law, for recovery of the amount paid by them for the area in excess of the sanctioned plan sold to them, by the builders and also adequate compensation.

(Ahsanuddin Amanullah, J)

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