

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1485 of 2016

IN

Civil Writ Jurisdiction Case No. 4051 of 2015

M/s Tirupati Homes Pvt. Ltd., through its Managing Director, Shri Shashi Bhushan Sinha, having its office at Arvina Apartment, Nageshwar Colony, P.S. Budha Colony District, Patna

..... Appellant/Petitioner

Versus

1. The Municipal Building Tribunal, situated at near Miller High School, P.S.- Kotwali, District- Patna through its Chairman
2. The Chairman, Municipal Building Tribunal situated at Near Miller High School, P.S. Kotwali, District- Patna
3. The Members, Municipal Building Tribunal situated at Near Miller High School, P.S. Kotwali, and District- Patna
4. The Patna Municipal Corporation, Maurya Lok Complex, Dak Bungalow Road, P.S. Kotwali, District-Patna through its Municipal Commissioner
5. The Municipal Commissioner, Patna Municipal Corporation Maurya Lok Complex, Dak Bungalow Road, P.S.- Kotwali, District- Patna

.... Respondents/Respondents

Appearance :

For the Appellants : Mr. Y. V. Giri, Senior Advocate,
Mr. Binod Kumar Sinha, Advocate

For the Respondents : Mr. Prasoon Sinha, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE DR. JUSTICE RAVI RANJAN

CAV JUDGMENT

(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

Date: 27.10.2016

Heard learned Counsel appearing for the parties.

The appellant-writ petitioner has preferred this intra-court appeal assailing the judgment and order, dated 05.07.2016, passed in C.W.J.C. No. 4051 of 2015, by a learned single Judge of this Court, finding no infirmity in the order, dated 16.02.2015, passed by the Municipal Building Tribunal as well as the order dated 10.07.2014 passed by the Municipal Commissioner in Vigilance Case No. 139A/2014 which was affirmed by the Tribunal.

The appellant-writ petitioner's case is that he entered into a development agreement with certain members of the Post and Telegraph, Government Employees Cooperative Housing Construction Society (hereinafter referred to as "the Society") with respect to the Plot Nos. 19 and 20, situated in Mohalla Kidwaipuri in the town and district of Patna, having a total area of 1072.98 square meters, for the purpose of construction of a multi storied residential apartment. Subsequently, sanction was obtained from the Patna Municipal Corporation (hereinafter referred to as "the Corporation"), for construction of a residential apartment consisting of a Basement, Ground Floor and 6 Floors above the ground floor. However, the appellant claims that, having changed



their opinion regarding the usage of the building, as it wanted to construct a guest house, a revised plan, for a structure consisting of a Basement, Ground Floor and seven Floors above it, was submitted, and was approved by the competent authority of the Corporation vide Annexure 1 to the writ petition. The appellant also claims to have obtained no objection certificate from the Airport Authority of India for a construction up to 34.22 meters from ground level and also claims that the land owners have also obtained no objection certificate for revised construction from the Society. However, certain inspection was made on 03.10.2013 by a team of engineers of the Corporation and a report was submitted finding deviation from the approved plan for which Vigilance Case No.139A/2013 was initiated. The appellant appeared and filed his reply to show cause notice. However, the Municipal Commissioner, after hearing the parties, vide order dated 10.7.2014 (Annexure 6 to the writ petition), directed the appellant to demolish the 7th and 8th Floors and also to restore the original character of building in its residential form. The order was assailed by preferring appeal before the Building Tribunal, but that was also dismissed. Hence, writ petition was filed.

It was urged by filling counter affidavit on behalf of



the Corporation that the very veracity of the revised map as well as its approval was in question as the charge was that appellants had forged and ante-dated the documents which even led to institution of a police case. Actually, three first information reports have been lodged against the writ petitioner being (i) Buddha Colony P.s. Case No. 231 of 2013, (ii) Buddha Colony P.S. Case No. 238 of 2014 and (iii) Buddha Colony P.S. Case No. 288 of 2014.

As per the Corporation, the appellant - writ petitioner was not entitled for conversion in the nature of the building, without obtaining proper permission from the Society and, since the construction has been founded on a forged revised map, the deviation in the building, which is found contrary to the original sanction plan, passed on 23.03.2009, for a residential apartment, is fit to be demolished. It is stated in the counter affidavit that the plan sanctioned for a residential apartment cannot be converted into hotel until any communication is received from the Registrar, Cooperative Society granting such permission which is found in conformity with the Building Bye Laws.

Learned single Judge, after hearing the parties in detail and after considering the direction given by a Division Bench in



C.W.J.C. No. 8152 of 2013 (**Narendra Mishra Vs. The State of Bihar & Ors.**) specially the orders dated 10.05.2013, 02.07.2013 and 19.09.2013, has come to the conclusion that neither the building byelaws nor the Hire Purchase Agreement permit the allottee to convert the usage of the plot from residential to commercial purpose and, as such, no objection certificate granted by the society appended at Annexure 4 and 4/A has been held to be illegal as there is nothing on record to show that the Registrar, Cooperative Societies has granted any permission to the petitioner for converting the usage of the plot from residential to commercial. Thus, the conclusion drawn by the Municipal Commissioner, holding that alleged sanction to the revised map by his predecessor was illegal, has directed the petitioner to carry out the demolitions of the constructions, found to be in deviation in the sanctioned map and its affirmation by the Tribunal, suffers from no infirmity rather that is in tune with the directive given by the Division Bench in **Narendra Mishra** (supra).

Mr. Y.V.Giri, learned Senior Counsel, appearing on behalf of the appellant-writ petitioner, has vehemently argued that since the construction was almost complete and, as only certain finishing works are still required to be done, the directive issued



by the Division Bench in **Narendra Mishra** (supra) would not be applicable in the case of the appellant, specially when the revised plan was sanctioned by the predecessor of the Municipal Commissioner. It is urged that the Municipal Commissioner cannot sit in appeal of the decision given by his predecessor. It is also contended that subsequently, after the required no objection certificates were granted by the Airport Authority as well as the Society, the entire procedure was complete and writ petitioner's building was constructed after investing huge amount. It was contended that in view of the positive certificates and sanction granted by all the competent authorities, the order for demolition of building and conversion to its original residential form would render serious financial consequence upon the appellant and, thus, the equity demands that the building, which was constructed after proper sanction, should be spared. The appellant-writ petitioner, relying on Appendix M of the building byelaws, has submitted that there is a provision of construction of guest house in the residential zone. He had tried to justify that the building constructed would be a guest house and not a hotel as being portrayed by the Corporation.

Per contra, learned counsel appearing for the



Corporation, has submitted that the sanction of revised plan itself is in question which would be apparent from the order passed by the Municipal Commissioner, as there were clear indications of forging the orders, for which first information reports have also been lodged. It is further submitted that even the stand of the appellant by stating that the building is in the nature of a guest house, is a mischievous attempt by it to seek benefit under Appendix-M of the bye laws, whereas the fact is that a fully equipped multi-storied hotel has been constructed, and not a guest house.

The learned single Judge, in the judgment impugned, has noted that, to canvass its contention that the building in question is not a guest house rather is a fully equipped hotel, learned counsel for the Corporation has filed a supplementary counter affidavit enclosing the information down-loaded from the website appended as Annexure -G, H and I thereof, which clearly indicate that a fully equipped hotel in the name and style 'Hotel Samarpan' has been constructed. It is disclosed that Samarpan Nesh Inn is Patna's newest and most fashionable lifestyle hotel with a fresh and modern approach to hospitality. Guest and visitors will enjoy exceptional accommodation together with



exclusive dining and bar venues, as well as events and banqueting spaces, operating with leading technology that blends sophistication and modern international style and rich culture of Patna. It offers 54 contemporary style bedrooms including luxurious executive suits etc. It is urged that even the revised permission does not grant approval for a hotel and, mere approval by the Municipal Commissioner on its own would not suffice the legal requirement unless the agreement, entered between the Cooperative Society and the landlords, and the byelaws of the society grant such permission. That apart, under the direction of a Division Bench given in **Narendra Mishra** (supra), Municipal Commissioner was duly bound to act.

Learned single Judge has formed following issues for adjudication of the *lis* between the parties:

“(a) Whether the case of the petitioner is covered by the order dated 10.5.2013 passed by the Division Bench in the case of **Narendra Mishra** (supra) or is excluded therefrom?

(b) Whether the grant of permission to the revised plan by the Corporation on 23.5.2009 is valid and would permit the petitioner to use the building for commercial purpose?

(c) Whether the Hire Purchase Agreement entered in between the society and the land owners as well as the sale deed executed thereunder gives any right to the land owners to make commercial usage of the plots in question?

(d) Whether the order passed by the Commissioner as affirmed by the Tribunal suffers from any perversity and warrants any interference, and

(e) Whether the petitioner has tried to mislead this Court?"

It is admitted position that vide order dated 10.05.2013, a Division Bench of this Court in **Narendra Mishra** (supra) had given certain direction which stands quoted in the impugned decision, however, for the better appreciation, the same is extracted and reproduced as under:

“We are satisfied that at some point of time a beginning has to be made for enforcement of the Municipal laws which as we observed the other day in another Public Interest Litigation are not artefacts to be kept in the museum of the statute book or the archives of the Corporation. We therefore direct that till further orders no apartment complex or multistoried building can be



constructed beyond 11 meters and upto 15 meters in height unless the entire stretch and length of road in front abutting the building is uniformly and throughout 20 feet in width.

..... The Registrar Co-operative Societies shall survey all Co-operative Housing Societies and ensure with the assistance of the Secretary, Urban Development, District Magistrate, Senior Superintendent of Police and the Officer-in-Charge of the concerned Police Station that no apartment complex is permitted to be made in a Co-operative Housing Society except in terms of the conditions of Land Acquisition made by the government and the bye-laws of the Housing Society including the width of the road. Violations shall be reported by the Registrar to the State government for appropriate action in terms of the conditions of Land Acquisition. If all such constructions are not stopped immediately and are permitted to continue despite our order, and it is brought to our attention, the officers shall be collectively and individually answerable for willfully flouting the orders of the Court.

.....The distinction between a residential area and non-residential/commercial area has been completely rendered otiose. Free construction of non-residential/commercial buildings and



non-residential activities in residential areas continues unabated, with new activities being started every day and the authorities turning a blind eye to the same if not actually encouraging it by sanctioning plans contrary to permitted land useWe therefore direct that till further orders commencing from today the Corporation and the Registrar Co-operative Societies shall ensure that no new commercial construction or commercial/ non-residential activity is allowed to start fresh on a residential plot in view of Section 338 and 342 of the Act. This shall include not only proposed constructions but also all on going constructions/ finishing where commercial/ non-residential activity has actually not commenced before today.....The Corporation shall not issue occupancy certificate under Section 327 of the Act to any such building/ commercial/non-residential construction on a residential plot. The State Electricity Board shall not grant non-residential connection on a residential plot being used contrary to permitted land use.....Only such commercial and non-residential constructions which are already occupied and fully operational stand excluded from our orders at present. The State Electricity Board

shall not energise supply to all such non-residential constructions/ user of residential plots being used contrary to permitted land use.....Non-residential user for such purposes shall mean and include as provided under Section 338 of the Act Commercial shops/ Departmental stores, Eateries, Banks, Schools/Coaching Institutes, Hostels, Hotels, Wedding Halls (excluding those established according to permissible land use), Petrol pumps, Commercial godowns, and Hospitals/Nursing homes but shall exclude Clinical consultation chambers. This is only illustrative and not exhaustive

It is evident from above that the Registrar Co-operative Societies was directed to survey all the Cooperative Housing Societies with the assistance of the Secretary, Urban Development, District Magistrate, Senior Superintendent of Police and the Officer-in-Charge of the concerned Police Station, to ensure that till further order, no apartment complex or multi storied building is permitted to be made in a Co-operative Housing Society, except in terms and the conditions of Land Acquisition made by the government, and the bye-laws of the Housing Society.



It has further been made clear that order would be applicable not only for proposed construction, but also on all on-going constructions/finishing where commercial/non-residential activity has actually not commenced before the date of the order. Only such commercial and non-residential construction were spared, which at that time, were already occupied and fully operational. On 02.07.2013, the Division Bench has further noticed that the Registrar of Cooperative Societies had already passed the order, dated 24.2.2009, in Appeal Case No. 75 of 2007 (Nandan Cooperative Housing Construction Society Ltd. through its Secretary vs. Sumitra Shukla), setting aside the order of the Joint Registrar, directing the Co-operative Housing Society to give no-objection, to facilitate the obtaining of loan for construction of apartment complex on a residential plot, holding that construction in the Housing Co-operative Society was not permissible as no permission for construction of multi storied apartment could be granted, if that would vitally affect drainage, sanitation and other civic amenities, and the very purpose of Society shall be put to great inconvenience. The Division Bench held that the order of the Registrar of Co-operative Societies is an order *in-rem*, in so far the question of law with regard to construction of multi storied



apartments in a Housing Cooperative Society is concerned. The learned Single Judge, thus, has correctly, placing reliance upon the aforesaid directive of the Division Bench, has held that, as per such direction, not only the Commissioner was required to make an enquiry, rather, the Registrar of the Cooperative Society was also required to do so, and held that, neither a multi-storied apartment can be erected upon a plot of the Society for residential purpose, nor could it can be converted from residential to commercial unless the Hire Purchase Agreement, the sale deed executed, and the bye laws permit such conversion. The obligation of an allottee does not stop there rather, even if such stipulations are found mention in the agreements, the sale deed, and the bye laws, yet the sanction of the Registrar, Cooperative Department would be a mandatory condition as opined by the Division Bench in **Narendra Mishra** (supra). It has also been held that there is absolutely no confusion on this factual position that the building in question was neither occupied nor had become operational on 10.5.2013 when the Division Bench proceeded to issue the regulatory directions accompanied with restraint orders. The learned single Judge, after noticing the decision of the Supreme Court rendered in **New India Cooperative Housing Society Limited versus Municipal Corporation of**

Greater Mumbai and Another [(2008) 9 SCC 694], has held that mere approval to a revised plan by the Corporation alone would not be sufficient for conversion of the usage of the plot until such time that no objection certificate is obtained from the society. Learned Single Judge has also noticed that the Hire Purchase Agreement, which has been brought on record, clearly stipulates in paragraph No.12 that the construction in question is only to be used for the residential purpose and no other use. The sale deeds executed thereupon, which have been brought as Annexure S/1 and S/2, also provide at paragraph 3 that the terms and conditions present in the agreement would bound the transferee. The bye laws of the society also shows that it refers to residential complexes only and it has been held that until a sanction was accorded by the Registrar, Cooperative Society, a plot allotted for residential purpose by a Housing Cooperative Society for residential purpose could neither be utilized for construction of a multi-storied apartment nor could it be converted for commercial use. Even no objection certificate relied by the appellant, brought as Annexure-4 and 4/A, clearly mentions at paragraphs 1 and 3, that development on the plots in question is to be made strictly in terms of the transfer deeds. The no objection certificate issued by the Society though at paragraph 2



does grant permission for residential- cum- commercial use, but that also would have to abide by the Hire Purchase agreement, sale deed as well as the statutory requirements as explained in directives of the Division Bench in **Narendra Mishra** (supra). It has been noticed that transfer deeds binds the transferee to the Hire Purchase Agreement and, the Hire Purchase Agreement debars the usage of the plot for any purpose other than residential purpose. It has also been noticed that no objection certificates have been held to be illegal by the Deputy Registrar, vide the orders contained in Annexure 7 and 7A to the reply, filed by the petitioner before the Tribunal, which has been placed on record being appended to a supplementary affidavit and the aforesaid orders have also attained finality as the appellant-writ petitioner has not questioned it before a superior forum.

Mr. Giri, as a last resort, has submitted that guest house cannot be held to be a commercial activity rather it can be constructed in residential zone as per the Appendix M to the byelaws of the Corporation. So far as the orders passed by the Division Bench are concerned, it has been urged that they are by way of interim measure and, no final order to that effect has been passed by the Division Bench at the time of closing the matter,

therefore, the moment writ petition is closed the interim order should be considered to have evaporated.

However, we do not find any force in such submission made on behalf of the appellant. Several orders are passed and directions are issued in a long drawn public interest litigation but, ultimately the same has to be closed after directions have been carried out, however, that would not mean that whatever was held on earlier occasions would evaporate. It is not a case that no merit was found in the public interest litigation and, thus, the same was dismissed, rather, after long deliberation and after passing several directions and orders, the public interest litigation, after looking into sufficient compliance by the respondents, may have been closed but it cannot be understood that the earlier directions and the decisions contained in the earlier orders would stand nullified thereafter. It appears from the order, dated 23.6.2015, that the writ petition was closed after taking note of the fact that the building, which the concerned writ petitioner was complaining of, has been substantially demolished. However it has also been stated in the preceding paragraph as under:

“It hardly needs any mention that the
Municipal Corporation is not only vested with



the power, but also is endowed with the duty, to ensure that the constructions do not take place, contrary to the bye laws framed by it. We reiterate the same and observe that the same amounts of vigilance, as was exhibited, vis-à-vis the building in question, shall be continued in respect of all other structures, which have already come up or may come up, in the limits of the Patna Municipal Corporation. "

Thus, in our considered opinion, the views expressed earlier stand accepted and ratified.

Accordingly, since we do not find any merit warranting interference in the judgment under appeal, the appeal is dismissed. However, there shall be no order as to costs.

(Dr. Ravi Ranjan, J.)

I.A. Ansari, CJ : I agree

(I.A. Ansari, CJ)

Spd/-

AFR/NAFR	NAFR
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