

IN THE HIGH COURT OF JUDICATURE AT PATNA

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. Buddha Colony, District- Patna

.... Petitioner/s

Versus

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

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Y.V.Giri, Sr. Advocate
Mr. Binod Kumar Sinha, Adv.
For the Respondent/s : Mr. Prasoon Sinha, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

C.A.V. JUDGMENT

Date: 05-07-2016

The petitioner prays for issuance of a writ in the nature of certiorari for quashing the order dated 16.2.2015 passed by the Municipal Building Tribunal hereinafter referred to as 'the Tribunal') in Appeal No.35 of 2014 whereby the appeal has been dismissed and the order dated 10.7.2014 passed by the Municipal Commissioner in Vigilance Case No. 139A of 2013 has been affirmed, copy of the orders are impugned at Annexures 6 and 7 respectively.

Facts of the case briefly stated is that the petitioner entered into a development agreement with Pradip Kumar Srivastava, Arbind



Kumar Maldahiyar, Krishna Kumar Sinha and Dhiraj Kumar Sinha for development of Plot Nos. 19 and 20 situated at Mohalla-Kidwaipuri in the town and district of Patna having an area of 1072.98 square meters. Under the agreement the petitioner was to construct a multi storied residential apartment. Following the development agreement, the petitioner obtained sanction from the respondent-Patna Municipal Corporation (hereinafter referred to as 'the Corporation') vide Plan No. P/Mahuli-PRN-8-458/08 on 23.3.2009 for construction of a residential apartment consisting of Basement +Ground Floor+6 Floors. Since in between, the petitioner had a change of opinion as regarding the usage of the building that he claims to have submitted a revised map for construction of a guest house consisting of Basement +Ground Floor+7 Floors and which revised plan is stated to have been approved by the competent authority of the Corporation on 23.5.2009, a copy of which is placed at Annexure-1 and bears the signature of the Commissioner as well. According to the petitioner he was directed to make a deposit of Rs. 3,04,769/- for sanction of the revised plan which was accordingly deposited. A copy of the revised plan is present at Annexure-2. The petitioner has obtained no objection certificate from the Airport Authority of India for a construction upto 34.22 meters from ground level and which is present at Annexure-3 and is dated 6.3.2014. The



petitioner also claims that the land owners namely Arbind Kumar Maldahiyar and Pradip Kumar Srivastava have also obtained no objection certificate for the revised constructions from the Post and Telegraph, Government Employees Cooperative Housing Construction Society (hereinafter referred to as 'the Society') from whom they had obtained allotment. Copies of such certificate is present at Annexures-4 and 4/A respectively and is in respect of Plot Nos. 20 and 19 respectively. The sanction is for the construction of a residential- cum- Commercial building and is dated 21.3.2007 and 15.10.2007 respectively. It is the case of the petitioner that while the work was progressing on the project that a team of Engineers of the Corporation visited, inspected and measured the construction work on 3.10.2013 and submitted their report to the Commissioner reporting deviations and which led to institution of a Vigilance Case No. 139A of 2013. A copy of the Inspection Report has been enclosed at Annexure-5. The petitioner appeared in the vigilance case pursuant to the notice received and filed his show cause. The respondent Commissioner after hearing the parties has by the order dated 10.7.2014 impugned at Annexure-6 while directing the petitioner to demolish the 7th and 8th Floors has also directed the petitioner to restore the original character of the building in its residential form. The order of the Commissioner contains 12 directions which is



primarily founded on the orders of this court passed in C.W.J.C.No.8152 of 2013 (**Narendra Mishra Vs. State**) and the Commissioner finding deviations in the building by construction of two additional floors as well as being dissatisfied with the conversion in the nature of the building from residential to commercial, has accordingly directed the petitioner to ensure conformity with the map sanctioned on 23.3.2009 and restore the character of the building until the Registrar, Cooperative Society grants approval for such conversion and whereafter any such request would be considered. The order also restrains the petitioner from creating any third party interest, directs the Electrical Company to disconnect the electrical connection, orders for institution of a police case, directs the District Sub-Registrar, Patna not to allow registration of any part of the building and also directs the local Police Station to ensure that no further constructions are made and if the petitioner violates the orders then for registering a police case against him. The order passed by the Commissioner impugned at Annexure-6 has been affirmed by the Tribunal vide Annexure-7 and the petitioner being aggrieved is before this Court.

A counter affidavit had been filed which practically reiterates the position as reflecting from the order of the Commissioner. The petitioner has been charged with committing forgery and of



consciously violating the orders passed in the case of **Narendra Mishra** (supra). The revised map as well as its approval has been questioned on its veracity and has been charged as being forged and ante dated documents leading to institution of a police case. As per the counter affidavit, the petitioner was neither entitled for conversion in the nature of the building without obtaining permission from the society and since the alleged constructions is founded on a forged revised map hence whatsoever has been the deviations in the building which is found contrary to the original sanction plan passed on 23.3.2009 for a residential apartment consisting of Basement +Ground Floor + 6 Floors should be demolished. As per the counter affidavit a plan sanctioned for a residential apartment cannot be converted in a hotel until such time any communication is received from the Registrar, Cooperative Society granting such permission which is found in conformity with the Building Bye Laws.

Mr. Y.V. Giri, learned Senior Counsel has appeared for the petitioner while the Corporation is represented by Mr. Prasoon Sinha.

Mr. Giri learned Senior Counsel while reiterating the facts enumerated in the writ petition as already noted hereinabove has with reference to Annexure-1 submitted that the revised plan submitted by the petitioner, a copy of which is present at Annexure-2 and is dated 24.5.2009 has been sanctioned by the Municipal Commissioner for



construction of a guest house consisting of Basement +Ground Floor+7 Floors as per the stipulations present at Appendix-M which according to Mr. Giri grants permission for any such conversion. He has referred to the clearance given by the Airport Authority of India in respect of height as well as the no objection certificate granted by the Society present at Annexures 3 and 4 series to argue that the petitioner has abided by the statutory requirements. In reference to the enquiry report present at Annexure-5, he submits that it contains factual errors. It is submitted that although this inspection was carried out on 3.10.2013 while the no objection certificate granted by the Cooperative Society is dated 21.3.2007 and 15.10.2007. According to Mr. Giri, though the report entirely rests upon the directions issued by this Court in the case of **Narendra Mishra** (supra) but these directions have come much later than the constructions undertaken by the petitioner. He submits that though the restraint order is dated 10.5.2013 as manifest from Annexure-8 and is in respect of any 'on going' as well as 'new constructions' but according to Mr. Giri the building in question was complete and thus the directions issued by the Division Bench would not cover the case of the petitioner. Questioning the order of the Commissioner he submits that it is on mere change in office that there is a shifting opinion and while the predecessor in the office of the commissioner on the same set of facts



had granted the permission to convert the nature of the building, the present incumbent is not willing to accept the approval. It is the further the argument of Mr. Giri that the issues raised in the show cause filed by the petitioner has not been considered by the Commissioner who has unilaterally proceeded to pass the directions impugned. According to learned Senior Counsel, the order of the Commissioner is perverse and once a plan is sanctioned by an authority competent to do so, it cannot be cancelled by drawing a vigilance case. According to learned counsel, a proceeding for cancellation of a map is entirely distinct to a proceeding of a vigilance case initiated under Section 319. It is submitted that the judgments noted in the order of the Commissioner are on mechanical application and have no relevance to the issue involved since in the present case the building has been constructed after obtaining a sanction. Mr. Giri learned Senior Counsel has referred to the Memo of Appeal present at Annexure-S to the supplementary affidavit to submit that none of the grounds raised by the petitioner in the memo of appeal has been dealt with by the Tribunal while rejecting the appeal.

Mr. Giri in responding to the order of the Deputy Registrar, Cooperative societies passed in Misc. Case No. 60 of 2014, a copy of which is present at Annexure-7 at page 272 to the memo of appeal enclosed at Annexure-S to the supplementary affidavit has submitted



that apart from the fact that the order of the Registrar is without jurisdiction even otherwise it is not the foundation for the impugned orders. Learned counsel has tried to support the case of the petitioner by submitting that most of the plots in the Post and Telegraphs Colony belonging to the society in question have been converted to commercial houses and thus the issue ought to be considered with the pragmatic approach. It is the submission of Mr. Giri that while passing through the Mohalla Kidwaipuri one can see shops situated in either side of the road and which has become a part of the colony. It is the submission of Mr. Giri that Appendix-M does permit a conversion and since the construction have been made on a valid sanction hence no illegality can be attached to the same. According to learned counsel, the very premise for initiating the proceeding is incorrect. He submits that except for some asbestos construction, there is no permanent fixtures on the 8th floor and the building is completely in tune with the revised map. Mr. Giri has relied upon the judgment of this Court reported in **1997(2)PLJR 847 (Ram Nath Arora Vs. State)** to submit that a demolition should only be resorted to in extreme circumstances and not where the construction rests on a valid sanctioned plan.

With reference paragraphs 26 and 27 of the judgment of this Court reported in **2014(3)PLJR 246 (P.S. Group Realty Ltd. Vs.**



Patna Municipal Corporation) he submits that no such proceeding for cancellation as required under Clause 11.1 of the modified Building Bye Laws has been initiated in the present case. In reference to a judgment reported in **2015(4)PLJR 366 (M/s Niagree Builder and Developers Pvt. Vs. State)** and with particular reference to paras 27 to 36 of the judgment it is submitted that the present case is fit for a remand to the authorities to reconsider the issue in changed circumstances.

Being critical of the opinion of the order of the Municipal Commissioner in recording a different opinion than his predecessor on the same set of facts, learned counsel while submitting that it was impermissible, has referred to the judgment of this Court reported in 1984 BBCJ page 636 (**M/s Bhimraj Madan Lal Vs. The State of Bihar & Another**) paragraphs 3, 15 and 16.

In support of his contention that the order passed by the Commissioner as affirmed by the Tribunal is perverse since it has ignored relevant materials, learned counsel has relied upon a judgment of this Court reported in **2015(4)PLJR 41 (Sushil Kumar Vs. State)**. Concluding his argument it is submitted that in the circumstances where the colony is brimming with commercial activity and since sanction is granted by the Airport Authority of India even if the same is post facto, the matter would require a fresh consideration.



Mr. Prasoon Sinha learned counsel appearing for the Corporation has contested the arguments advanced by Mr. Giri to submit that the petitioner is perpetual defaulter and has been violating the legal prescriptions, the directions of the Corporation as well as of this Court with impunity. He submits that the writ petition suffers from suppression of material fact as the petitioner has not disclosed several important aspects of the matter and thus the writ petition is fit to be dismissed on the sole ground that the petitioner has not approached this Court with clean hands. According to Mr. Sinha no less than three F.I.Rs have been instituted against the petitioner for repeated violations. According to Mr. Sinha apart from the vigilance case at hand, the following criminal cases have been instituted against the petitioner:-

- (a) Buddha Colony P.S. Case No.231 of 2013 which was stated to have been instituted on 25.9.2013.
- (b) Buddha Colony P.S. Case No. 238 of 2014 instituted on 13.8.2014 and
- (c) Buddha Colony P.S. Case No.288 of 2014 instituted on 1.10.2015.

According to Mr. Sinha the institution of such number of cases by itself is demonstrative of the conduct of the petitioner who has less respect for the rule of law. According to Mr. Sinha the stand of the



petitioner as advanced by Mr. Giri that the order passed in the case of **Narendra Mishra** (supra) on 10.5.2013 would not apply to the case of the petitioner for the reason that the guest house was complete, is a false statement. He submits that even the stand of the petitioner that the building is in the nature of a guest house, is a mischievous attempt by the petitioner to seek benefit under Appendix-M of the bye laws when the fact is that a fully equipped multi-storied hotel has been constructed by the petitioner and not a guest house and which is impermissible under 'the Act' as well as by the bye laws. Learned counsel has next referred to the rejoinder filed by the petitioner and with reference to the statement present in paragraphs 15 and 16 it is argued that while on one hand it is the stand of the petitioner that the building was complete on the date of passing of the order dated 10.5.2013 in the case of **Narendra Mishra**(supra), on the other hand it is the own admission of the petitioner in the paragraphs under reference that interior work was being carried out meaning thereby, the building was incomplete. Mr. Sinha has also relied upon certain photographs present at page 162 in support of his argument that the building was incomplete since the photographs bears a date 29.9.2014.

Mr. Sinha again taken to this Court to the various orders passed by the Division Bench in the case of **Narendra Mishra** (supra) to



submit that the Division Bench has very clearly directed that any constructions on a land obtained from a cooperative society has to be strictly adhering to the stipulations present in the deed of transfer as well as the bye-laws of the society. According to Mr. Sinha the constructions in question are violative of not only the stipulations present in the transfer deed but also the bye laws of the society which do not permit any such conversion and for which Mr. Sinha has referred to copy of the Hire Purchase Agreement and the Sale Deeds brought on record by the petitioner vide Annexure-S, S/1 and S/2 of the supplementary affidavit filed on 28.1.2016. To canvass his contentions that the building in question is not a guest house rather is a fully equipped hotel, Mr. Sinha has filed a supplementary counter affidavit enclosing the information down loaded from the website present at Annexures-G,H and I thereof.

In response to the foundation for the contest i.e. the sanction to the revised plan present at Annexure-1 is concerned, it is the argument of Mr. Sinha that even the said permission does not allow the petitioner to indulge in commercial activity and use the building for the said purpose except for increase in height in floors. Mr. Sinha has next referred to the order passed by the Commissioner impugned at Annexure-6 and with reference to the findings present at page 32 onwards he submits that the illegality in the approval to the revised



map stands discussed by the Commissioner which includes collusiveness of the officials of the Corporation and which is now a subject matter of a criminal case. He submits that even the revised permission does not grant approval for a hotel. Mr. Sinha in reference to the judgment of the Supreme Court reported in **(2008) 9 SCC 694 (New India Corporation Housing Society Ltd. Vs. Municipal Corporation of Greater Mumbai)** submits that even if Annexure-1 is taken on its face value though the same has been since set aside, a mere approval by the Commissioner on its own would not suffice the legal requirements unless the agreement entered in between the Cooperative Society and the landowners and the bye- laws of the Society grants any such permission. Mr. Sinha has referred to the bye laws of the society present at Annexure-E of the counter affidavit filed by the respondents to the supplementary affidavit to submit that the bye laws do not permit a commercial house and even if the society has the powers to grant such permission but unless such permission is granted the building cannot be put to commercial use. It was submitted by Mr. Sinha that since an attempt has been made by the petitioner to mislead this Court by giving a distorted picture, the petitioner is not worthy of any indulgence and the writ petition is fit to be dismissed on this score. Learned counsel has referred to the following judgments of the Supreme Court on the proposition.

**(a) (2010) 2 SCC 114 (Dalip Singh versus State of
Uttar Pradesh and Others)**

**(b) (2013) 11 SCC 531 (Bhaskar Laxman Jadhav and
Others versus Karamveer Kakasaheb Wagh
Education Society and others)**

**(c) (2008) 9 SCC 694 (New India Cooperative Housing
Society Limited versus Municipal Corporation of
Greater Mumbai and Another)**

Concluding his arguments Mr. Sinha has referred to the judgment of the Supreme Court reported in **(1984) 2 SCC 488 (Bishnu Ram Borah and another versus Parag Saikia and Others)** to submit that the directions contained in the various orders passed by the Division Bench in the case of **Narendra Mishra** (supra) has a binding effect on residents as well as the petitioner and similar placed persons.

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

The undisputed facts in the preset case is that initially plan bearing Plan Case No. P/Mahauli-PRN-8-458/08 was submitted by the petitioner before the respondent Commissioner on 23.3.2009 for construction of a multi-storied residential apartment consisting of



Basement +Ground Floor+6 Floor after entering into a registered development agreement with the land owners on 13.11.2007 which was approved by the Corporation. Barely 2 months thereafter that a revised map was submitted at Annexure-2 for construction of a guest house consisting of a Basement+ Ground Floor +7 Floors which has been approved under the orders of the Commissioner on 23.5.2009. Following the approval to the revised map that the petitioner starting constructions and while during the process that a Public Interest Litigation bearing C.W.J.C.No.8152 of 2013 (**Narendra Mishra Versus State**) came to be filed before this Court complaining of mushroom growth of multi storied complexes in the town and district of Patna which according to the said writ petitioner, was in utter violation of the municipal laws. The Division Bench in seisen of the Public Interest Litigation has passed several orders of restraint as well as to regulate the constructions and it is in the light of the different orders passed in the case of **Narendra Mishra** (supra) by the Division Bench that the on going constructions were inspected inclusive of the construction in question and which led to institution of Vigilance Case No. 139A of 2013. The Municipal Commissioner on going through the records of the case has found the constructions to be in deviation of the orders passed by the Division Bench and has accordingly issued certain directions which has been upheld by the Municipal Building

Tribunal in appeal.

These facts are not in dispute and on consideration of the lengthy arguments advanced by Mr. Giri to support the case of the petitioner and Mr. Prasoon Sinha learned counsel representing the Corporation to contest the same, I am of the opinion that the contest basically revolves around the following issues:

- (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?

For recording my conclusions on the issues taken note of, I deem it necessary to reproduce the relevant directions of the Division

Bench issued in the case of **Narendra Mishra** (supra) which would have a strong bearing on the contest.

Order dated 10.05.2013:-“.....

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 use..... We 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.....”

The directions issued by the Division Bench in the order dated 10.5.2013 stands reiterated in the order dated 2.7.2013 and the relevant extract thereof is reproduced hereinabove.

Order dated 2.7.2013:-“.....

The counter affidavit filed on behalf of the Registrar of Cooperative Societies encloses an order passed by him on 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 dated 23.7.2007 directing the Co-operative Housing Society to give no-objection to facilitate the obtaining of loan for

constructing an apartment complex on a residential plot allotted in a Co-operative Housing Society, it was held that construction of apartment complex on a residential plot in the Housing Co-operative Society was not permissible. Construction had to be in accordance with the bye laws of the Society under which only a residential house was permissible. No permission for construction of multi storied apartment could be given in a Housing Cooperative Society because it would vitally affect drainage, sanitation and other civic amenities to the extent that the Society may be capable to provide and may have planned for. The very purpose of the Society shall be put to great inconvenience. The mere sanction of the plan by P.R.D.A. cannot be justification to permit such construction.

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 view and reasoning of the Registrar finds full support from a Division Bench judgment of the Bombay High Court in AIR 1989 Bombay 392 (Kaarvenagar Sahakari Griha Rachana Sanstha Maryadit, Pune vs. State of Maharashtra).....

.....
The judgement of the Bombay High Court has been affirmed by the Supreme Court in (2000) 9 SCC 295 (State of Maharashtra v. Kaarvenagar Sahakari Griha Rachana Sanstha Maryadit, Pune).

.....The team shall physically survey each Housing Co-operative Society independently of its own with regard to all ongoing construction of apartment complexes and commercial/non-residential constructions or preparation for commencement of commercial/non-residential user of residential plots contrary to the terms on which the State Government may have acquired lands for the Society and the constructions permissible under the registered bye laws of the Society. The team shall take photographs of all such structures from all four sides on the date of inspection so that clandestine construction in connivance does not continue.....The Registrar Cooperatives shall submit a report to us in tabular form with regard to each Housing Society with defaulting plot

numbers. Commercial/ non- residential user for the purpose shall mean and include as explained by us, “Commercial shops, Departmental stores, Eateries, Banks, Schools/Coaching institutes, Hospitals, 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.

We hold and direct that no such construction and fresh usage shall be allowed permissible in a Housing Co-operative Society. The Registrar will strictly enforce our order dated 10.5.2013.....”

Order dated 19.9.2013:-“

In our order dated 2.7.2013 we had noticed the order of the Registrar himself in Appeal case no. 75/06 [Nandan Co-operative Housing Construction Society Ltd. v. Sumitra Shukla] and the decision in AIR 1989 Bombay 392 [Kaarvenagar Shakari Grih Rachana Sansthan Maryadit, Pune v. State of Maharashtra] affirmed in [2000] 9 SCC 295 [State of Maharashtra v. Kaarvenagar Shakari Grih Rachana Sansthan Maryadit, Pune]. We have completely prohibited construction of multi-storied apartment complex and commercial/non-residential constructions on plots allotted to members by the Society for construction of a residential house. The order was to be complied with by the Registrar Co-operative Societies.We require the Registrar Co-operative Societies to file an affidavit if our order has been strictly enforced by him and all offending constructions stopped. If despite intimation, the concerned S.H.O. has paid no heed to it that also shall be brought to our attention.”

(Emphasis supplied by me)

The order passed by the Division Bench on 9.10.2013, a copy of which is present at Annexure-B/2 to the counter affidavit of the respondent records the assurance of the Registrar, Cooperative Society to enforce the directions issued by the Division Bench. The division bench was informed by the Registrar, Cooperative Societies

that a letter dated 1.10.2013 has been addressed to the Municipal Commissioner, the District Magistrate and the Senior Superintendent of Police seeking assistance in enforcement of the orders passed in the writ proceedings in so far as it relates to Housing Cooperative Societies and the Bench issued the following orders to the authorities.

“

We require the Registrar Co-operative Societies to file an affidavit if our order has been strictly enforced by him and all offending constructions stopped. If despite intimation, the concerned S.H.O. has paid no heed to it that also shall be brought to our attention. We direct the District Magistrate, Patna, the Municipal Commissioner, Patna, the Senior Superintendent of Police, Patna, in presence of City S.P. who is present in person, that the communication of the Registrar dated 1.10.2013 shall be strictly enforced by them in letter and spirit as from 10.5.2013 in every Housing Co-operative Society which has allotted plots to its members in so far as construction of multi storied apartments, non-residential/commercial user by shops, Departmental stores, Eateries, Banks, Schools/Coaching institutes, Hospitals, Hotels, Wedding Halls (excluding those established according to permissible land use) Petrol pumps, Commercial Godowns, and Hospitals/Nursing Homes (excluding Clinical consultation Chambers) is concerned. Any failure to do so on part of the District Magistrate, the Municipal Commissioner, Patna, the Senior Superintendent of Police, the City S.P. or SHO of the concerned Police Station shall be taken seriously and the concerned proceeded with appropriately under the law.

.....”

I have consciously reproduced the relevant extract of the various orders passed by the Division Bench in the case of **Narendra Mishra** (supra) in so far as it relates to the Housing Cooperative Societies and which reflects that in so far as a land allotted by a



Housing Cooperative Society for residential purposes is concerned, neither a multi-storied apartment can be erected thereon nor its usage can be converted from residential to commercial unless the Hire Purchase Agreement, the sale deed executed as well as the bye laws does permit such conversion. The obligation of an allottee does not stop here rather even if any such stipulations find 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 since the objects and the purpose for which the land was acquired for cooperative societies again would be a relevant consideration.

While the discussion continues on the import of the directions passed by the Division Bench I would also consider the rival contentions of the parties for recording my opinion whether the case of the petitioner would be covered by the directions of the Division Bench contained in the order dated 10.5.2013. While it is the stand of the petitioner that his case is not covered by the directions present in the order dated 10.5.2013 since the building was already complete on that day, on the other hand such argument has been contested by Mr. Sinha in reference to the stand taken by the petitioner in their rejoinder to the supplementary counter affidavit present at paragraphs 15 and 16 of the rejoinder to the counter affidavit which admits that



interior work was being carried out as also the photographs enclosed with the counter affidavit at pages 162-163 which are dated 29.9.2014. In my opinion, this Court would not be required to go into any deep discussion to hold that the case of the petitioner was fully covered by the directions of the Division bench present in the order dated 10.5.2013 where the Division Bench has clearly held that the orders would not only cover 'the proposed constructions' but also all 'on going constructions/finishing work' where 'commercial/ non residential activity' has actually not commenced before the date of the order. In fact, the Division Bench has further gone ahead to clarify that only such commercial or non residential constructions which are already occupied and fully operational, which would stand excluded from the directions for the present.

The order of the Division Bench as to its applicability is absolutely clear and leaves no room for any confusion. Clearly, it is only such commercial and non residential constructions which have become fully operational before the date of order i.e. 10.5.2013, which have been kept out side the purview of the order but certainly not the commercial constructions which have not become fully operational. In so far as the contest in hand is concerned, claim is set up inter alia on grounds that the building was complete on 10.5.2013. Now even if the assertion of the petitioner is accepted for the moment



yet that by itself would not be enough for claiming an exclusion from the directives of the Division Bench present in the order dated 10.5.2013. It is manifest from the statement present in the writ petition as well as the rejoinder referred to by Mr. Sinha that the petitioner's claim for seeking an exclusion from the applicability of the order dated 10.5.2013 is only on grounds that the building was complete. In fact, the petitioner himself has admitted in the rejoinder that the interior work was being carried out and which is also the position reported by the inspection team in the report dated 3.10.2013 present at Annexure-5 which reads that finishing work was being carried out in the building. It is not the case of the petitioner that the guest house was fully operational on the date of the order passed by the Division Bench i.e. 10.5.2013. 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.

In view of the admitted factual position discussed hereinabove, the petitioner cannot escape the directives present in the order of the Division Bench passed in the case of **Narendra Mishra** (supra) on 10.5.2013 and the subsequent orders passed in the proceedings. Indisputably the building in question had not become fully operational



in view of the admission of the petitioner himself as well as the report of the inspecting team present at Annexure-5. The petitioner thus was under a duty to abide by the directives of the division bench but the documents on records shows that even when the building in question was not made operational on the date of the order passed on 10.5.2013 and thus the restraint order covered the case of the petitioner yet the construction/finishing activity continued and the building has been made operational lately which position stands confirmed from the documents enclosed in the supplementary counter affidavit filed on behalf of the respondent Nos. 4 and 5 on 9.2.2016.

The foundation for the relief claimed by the petitioner rests on the sanction order passed by the Commissioner on 23.5.2009 to the revised map present at Annexure-1 whereby with reference to Appendix-M, the petitioner has been permitted to convert the usage of the plot in question from residential to a guest house. The judgment of the Supreme Court relied upon by Mr. Sinha rendered in the case of **New India Cooperative Housing Society Ltd** (supra) clearly holds that a 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. In the present case the Hire Purchase Agreement has been brought on record by the petitioner through supplementary affidavit filed on 28.1.2016



and which in paragraph 12 clearly provides that the construction in question is only to be used for the residential purpose and no other use. The sale deed executed thereupon present at Annexures-S/1 and S/2 also provides at paragraph 3 that the terms and conditions present in the agreement would bound the transferee.

The bye laws of the society have also been brought on record by the respondents in their counter affidavit filed in response to the supplementary affidavit at Annexure-E and paragraph 3(e) thereof again refers to residential complexes. The documents referred to binds the parties and clearly demonstrates that until such time that no objection certificate is issued by the society which is duly ratified by the Registrar, Cooperative Societies in the light of the directives issued by the Division Bench in the case of **Narendra Mishra** (supra) the petitioner could not have put the building to commercial usage. The relevant extracts of the directives of the Division Bench reproduced hereinabove confirm that until such time that 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 be converted to commercial use. The no objection certificate relied upon by Mr. Giri present at Annexure-4 and 4A at paragraphs 1 and 3 very clearly mentions that the



development on the plots in question is to be made strictly in terms of the transfer deed dated 26.11.1992 in so far as Plot No. 20 is concerned and 28.12.1992 in so far as plot No. 19 is concerned. The no objection certificate issued by the Society though at paragraph 2 does grant permission for residential- cum- commercial use but which also has to abide by the Hire Purchase agreement, sale deed as well as the statutory requirements as explained in directives of the Division Bench.

While the transfer deeds dated 28.12.1992 and 26.11.1992 executed in relation to plot nos. 19 and 20 respectively referred to in the no objection certificate present at Annexure-4 and 4/A binds the transferee to the Hire Purchase Agreement, the Hire Purchase Agreement debars the usage of the plot for any purpose other than residential purpose.

In the aforesaid view of the matter, the no objection certificate relied upon by Mr. Giri placed at Annexure 4 and 4/A respectively does not come to the aid of the petitioner. Apart there from, the said no objection certificate(s) have been held to be illegal by the Deputy Registrar vide the order present at Annexure-7 and 7A to the show cause filed by the petitioner before the Tribunal, copies of which has been placed on record vide supplementary affidavit filed on 10.12.2015 and which orders have attained finality on not being

questioned by the petitioner before a superior forum.

In the circumstances discussed where the Hire Purchase Agreement, the transfer deed(s) and the bye laws do not permit the allottee to convert the usage of the plot from residential to commercial coupled with the fact that the no objection certificate granted by the society present at Annexures 4 and 4/A has since been held illegal and there is nothing on record to show that the Registrar, Cooperative Societies has granted any such permission to the petitioner for converting the usage of the plot from residential to commercial in the light of the orders passed by the Division Bench in the case of **Narendra Mishra** (supra), in my opinion the conclusion drawn by the Municipal Commissioner in the order impugned dated 10.7.2014 present at Annexure- 6 whereby the sanction to the revised map by his predecessor in office on 23.5.2009 has been held illegal and the petitioner has been asked to carry out the demolitions of the constructions found to be in deviation of the map sanctioned on 23.3.2009 as well in requiring the petitioner to restore the character of the building to residential until such time that approval is granted by the Registrar, Cooperative Societies, which opinion of the Commissioner stands affirmed by the Tribunal suffers from no infirmity rather is in tune with the directive issued by the Division Bench in the case of **Narendra Mishra** (supra).



Although Mr. Giri had laboured hard to seek a remand of the matter to the Commissioner for reconsideration of the matter in the changed circumstances but I find that this stipulation is present in the order of the Commissioner himself since the Municipal Commissioner has clearly held that the conversion of the usage of the plot from residential to commercial would be considered only upon receiving a sanction from the Registrar, Cooperative Societies in this regard.

In view of the discussions above, the reliance by Mr. Giri on Appendix- M in order to justify the constructions in question becomes thoroughly misconceived for where the Hire Purchase Agreement, the transfer deeds and the bye laws do not allow any such conversion, until such time that a sanction is accorded by the Registrar, Cooperative Society permitting such usage in view of the regulatory orders issued by the Division Bench in the case of **Narendra Mishra** (supra), the petitioner can seek no relief by hiding behind Appendix M or in trying to justify that the building is a guest house and not a hotel. The order of the Commissioner in the circumstances discussed suffers from no perversity requiring any interference.

Coming to the last issue raised by Mr. Sinha regarding suppression of fact by the petitioner, in my opinion, since according to understanding of the petitioner a mere completion of the building was sufficient to take him away from the applicability of the order

dated 10.5.2013 passed by the Division Bench in the case of **Narendra Mishra** (supra), which may not be the correct legal position but nonetheless since it is perception carried by the petitioner hence I am not persuaded to record any conclusion on the said issue.

The issues are answered accordingly and in result, the writ petition is dismissed but without any orders as to cost.

(Jyoti Saran, J.)

Bibhash/-

AFR	
CAV DATE	
Uploading Date	11-05-2016
Transmission Date	