IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19248 of 2013

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1.Faiyaz Ali Kazimi S/o Sri Sayed Ali Sajid
2.Rifat Bano W/o Faiyaz Ali Kazimi, Both R/o Gulzarbagh, behind Gate of Alamganj Police Station, Ashok Raj Path, P.S- Alamganj, District- Patna

.... Petitioner/s

Versus

1. The Patna Municipal Corporation through its Executive Officer, Patna City Circle, Patna
2. The Minicipal Commissioner, The Patna Municipal Corporation, Patna
3. The Executive Officer, Patna City Circle, Patna
4. The Region Tax Collector, Patna City Circle, Patna
5. Prem Shankar yadav S/o Late Lala yadav, R/o Mohalla-Gurhatta, Rai Jay Krishna Road, P.S-Khajekalan, District-Patna
6. Anil Kumar Mathur, S/o Late Vishwanath Sahay, Mohalla-Char Minar Apartment, 1st Floor, Rajendra Nagar, P.S-Kadamkuan, District-Patna.

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Satish Kumar Sinha.
For the Respondent/s : Mr. Sanjay Prakash Verma.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

3 12-04-2016 Heard Mr. Satish Kumar Sinha, learned counsel appearing for the petitioner and Mr. Sanjay Prakash Verma, learned counsel appearing for the Patna Municipal Corporation.

In the nature of order which this court proposes to pass it would not require a notice to the private respondents.

The petitioner is aggrieved by the order dated 29.08.2013 passed by the Additional Municipal Commissioner, Patna, Municipal Corporation in Appeal Case no. 01 of 2013 whereby he has upheld the opinion recorded by the Public Information Officer cum Executive Officer bearing Memo No. 89

dated 08.02.2010 whereby the holding no. 73A/67A (old) and 73 (New) recorded in the tax assessment register during the period 1978-79 and 1995-96 has been deleted. Mr. Sinha learned counsel appearing on behalf of the petitioner besides questioning the order on its merits has also questioned the jurisdiction of the Executive Officer to pass such order while discharging the functions under the Right to Information Act 2005.(hereinafter referred to as 'the Act'.)

Facts of the case briefly stated leading to the impugned order as it reflects from the writ petition is that an information was sought by the respondent no. 5 under the provisions of 'the Act' as to the creation of holding no. 73A/(old) and 73(New) under circle no. 117 Mohalla Kari Tikiya Toli, P.S. Khajekalan, district Patna.

The matter was inquired by the Executive Officer and notice was issued to the petitioner on 20.07.2009 a copy of which is placed at annexure-7 to the writ petition requiring him to physically identify the holding in question which stood recorded in their name. The petitioners failed to support the entry in the tax assessment register nor did respond to the notice.

In the circumstances the Executive Officer vide order bearing memo no.89 dated 08.02.2010 proceeded to order for deletion of the holding. The petitioners being aggrieved first preferred a writ petition in this court giving rise to CWJC No. 2301 of 2012 which was disposed of with liberty to the petitioner to exhaust the alternative remedy to them. A copy of such order is annexed at Annexure-1. A statutory appeal was thus filed giving rise to Mutation Appeal no. 1 of 2013 and which has been dismissed vide impugned order dated 29.08.2013 by the Additional Municipal Commissioner Patna, *inter alia* on grounds that the Holding no.73A/67A (old) and 73 (new) is not physically existent. It was also mentioned that although the appellants claim possession over the holding on the basis of Oral Hibbanama but there was nothing on record to support a transfer of property in their name since no documents was produced to support any such transfer as well as the date of such transfer. It is mentioned by the Additional Municipal Commissioner that despite numerous opportunities being given to the appellants to physically identify the holding and support their claim by authentic documents but they failed to do so. In these circumstances and in absence of evidence that the order impugned has been passed which in my opinion suffers from no infirmity warranting any indulgence.

Mr. Sinha learned counsel appearing for the petitioner has submitted that a title suit is pending between the petitioner and respondent no.6 giving rise to Title Suit no. 432 of 1989. In the peculiarity of the dispute where the holding in question has been failed to be identified by the petitioners either by supporting documents or by physically identification and taking into note the pendency of the Title Suit No. 432 of 1989, I am of the opinion that the order impugned is warranting no interference. The petitioner, if so advised and in case he succeeds before the civil court in the pending suit then he shall be at liberty to approach the Municipal Authorities accordingly.

The writ petition is accordingly disposed of.

(Jyoti Saran, J)

siddharth/Deepika-

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