

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9460 of 2017

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Ganga Kumar Shrivastava, Son of Late Uma Charan Prasad, resident of Lane 1F, Sheo Puram, Vijaya Nagar, Ward No. 2, Bailey Road, Police Station- Rupaspur, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar through its Chief Secretary, Old Secretariat, Patna.
2. The Principal Secretary, Urban Development Department, Government of Bihar, Patna.
3. The Municipal Commissioner, Patna Municipal Corporation, Maurya Lok, Patna.
4. The Executive Officer, New Capital Circle, Patna Municipal Corporation, Patna.
5. The Executive Engineer, New Capital Circle, Patna Municipal Corporation, Patna.
6. The Assistant Engineer, New Capital Circle, Patna Municipal Corporation, Patna.
7. The Junior Engineer, New Capital Circle, Patna Municipal Corporation, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Krishna Chandra, Advocate
For the State	:	Mr. S. P. Singh, GA 3
For the PMC	:	Mr. Prabhakar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 13-09-2017

Heard learned counsel for the petitioner, State and Patna Municipal Corporation.

2. The petitioner has moved the Court for the following relief:

“ That the present writ application has been filed for issuance of appropriate writ/writs, order/orders, direction/directions to the



Respondent authorities specially the respondent No. 3 to 7 to bring down the height of cover of Chamber of drain, already laid down in lane No. 1, Shiv Puram, Vijay Nagar, Ward No. 2, Patna Municipal Corporation (hereinafter referred to as the P.M.C.) which has been constructed by the Agency of P.M.C., to such extent that rains water over the road; which is yet to be completed; may not enter the house of the petitioner and neighbouring house in the vicinity of Sheo PUram Area.”

3. On previous occasion, the Court has directed the authorities to file counter affidavit. However, on a plea raised by learned counsel for the Patna Municipal Corporation had also directed the petitioner to bring on record his sanctioned plan for the house constructed by him. Till date, the same has not been filed. However, learned counsel for the petitioner has fairly conceded before the Court that no sanction/approval has been given of any plan and still the building has been built. The explanation is that in the year 2002 itself a plan was submitted but no order has been passed. Further contention is that under the provisions of the modified Building Bye- Laws, if the authorities do not approve a plan, after 60 days, the same shall be deemed to have been passed. On a query of the Court, as to whether in terms of such provision, it was incumbent and mandatory on the part



of the petitioner to first give a notice in writing to the Patna Municipal Corporation and then if such notice went unheeded, after a certain period prescribed, there would be deemed sanctioning of the map, learned counsel for the petitioner stated that no such notice was given to the Patna Municipal Corporation. Thus, the admitted position is that the construction of the house of the petitioner has been without any sanctioned or approved plan by the competent authority.

4. In such background, the objection raised by learned counsel for the respondents, particularly the Patna Municipal Corporation, that the petitioner cannot assert his right which is based on an illegality, in the opinion of the Court, is both justified and fit to be sustained. The person moving the Court has to come with clean hands, meaning thereby, that for a right he asserts he has to demonstrate on his own showing that such right vests in him. In the present case, he is asserting his right that if the level of the road is higher than his plinth level of the house constructed by him, the water would flow inside his house, cannot be gone into for the reason that the house itself has not been built in accordance with law and in fact, as of today, is an unauthorized construction and even liable to be demolished. Thus, if the authorities were given an opportunity, they may have directed the petitioner to start at a certain plinth level which would have been at a higher level to the road being built by them.



When the authorities did not approve the plan and still the house has been built and the plinth level is quite low, the fault cannot be fastened on the authority and the petitioner has himself to blame as he has proceeded with constructing his house. Thus, on the ground that the petitioner himself has not come to the Court with clean hands and has claimed relief for a cause which itself is not legal, the Court would not interfere in its extraordinary, prerogative and discretionary writ jurisdiction under Article 226 of the Constitution of India.

5. For the reasons aforesaid, the writ petition stands dismissed.

6. However, the Court would not foreclose all avenues to the petitioner and if so desired by him, he may approach the appropriate forum, in accordance with law.

(Ahsanuddin Amanullah, J)

Anjani/-

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