

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.500 of 2016

In

LPA 1485 of 2016

1. 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 Tribunal, Situated at Near Miller High School, P.S.- Kotwali, District- Patna through its Chairman.
2. The Chairman, Municipal Tribunal, Situated at Near Miller High School, P.S.- Kotwali, District- Patna.
3. The Members, Municipal Tribunal, Situated at Near Miller High School, P.S.- Kotwali, District- Patna.
4. The Patna Municipal Corporation, Mauryalok Complex, Dakbunglow Road, P.S.- Kotwali, District- Patna through its Municipal Commissioner.
5. The Municipal Commissioner, Patna Municipal Corporation, Mauryalok Complex, Dakbunglow Road, P.S.- Kotwali, District- Patna.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Binod Kumar Sinha, Adv

For the Respondent/s : Mr. Prasoon Sinha, Adv

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL ORDER

(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

9 25-07-2017

Heard learned counsel for the parties.

2. The present review application has been filed for review of the judgment dated 27.10.2016 passed in L.P. A. NO. 1485 of 2016, whereby and whereunder, the Division Bench by



judgment dated 27.10.2016 has dismissed the appeal filed by the review petitioner.

3. The review-petitioner had filed writ petition being C.W.J.C. No. 4051 of 2015, which was dismissed by the learned Single Judge by order dated 05.07.2016. Assailing that order, L.P.A. No. 1485 of 2016 was preferred by the review-petitioner, which was also dismissed on 27.10.2016, and thereafter the present review petition has been filed.

4. Briefly stated the case of the review-petitioner is that it is a private limited company of which one Shashi Bhusan Sinha, is the Managing Director. The review-petitioner being the developer/builder entered into registered development agreement with one Pradeep Kumar Srivastava and Arvind Kumar Maldahiyar with respect to Plot No. 19 on 20.04.2007, and Krishna Kumar Sinha and Dheeraj Kumar Sinha on 13.11.2007 for Plot No. 20. The total area of Plot Nos. 19 and 20 which is situated in Mohalla Kidwaipuri is 1072.92 Square Metre. These lands belonged to Postal Co-operative House Construction Society Ltd. and were allotted to them by the said society.

5. The review-petitioner got a map sanctioned from the Patna Municipal Corporation dated 23.03.2009 for construction of B+G+6 floors residential apartment. However, subsequently a



revised sanctioned plan for construction of a guest house in place of residential apartment was submitted with a fresh map of B+G+7 floors for guest house which was sanctioned on 23.05.2009. It is further case of the review-petitioner that there was no bar under the Municipal Building Bye Laws for construction of a guest house over the land of a co-operative society. It is further case of the review-petitioner that a fresh revised map was passed and approved on 23.05.2009, by the Municipal Commissioner for B+G+7. The revised map of review-petitioner was sanctioned and he was directed to deposit amount of Rs. 3,04,769/-(i.e. Three lacs, Four thousand, Seven Hundred Sixty Nine) a pre-condition for revised map and aforesaid amount was deposited on 22.02.2010. The review-petitioner has further stated that No Objection clearance for revised map of seven floor was obtained from Airport Authority as also from the Postal Co-operative House Construction Society Ltd.

6. After approval of revised map, petitioner started making construction. In the meanwhile, a Public Interest Litigation bearing **C.W.J.C.No.8152 of 2013 (Narendra Mishra Versus State of Bihar & Ors)** came to be filed before this Court complaining 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 had 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 ongoing constructions were inspected including the construction in question and that had led to institution of Vigilance Case No. 139A of 2013.

7. The officials of the Patna Municipal Corporation visited the site, inspected and measured the construction on 03.10.2013 and submitted inspection report about the building to the Municipal Commissioner and on the said site inspection report one Vigilance Case No. 139A/13 was instituted against the building and show cause notice was given to him with respect to alleged deviation in the construction. The review-petitioner appeared in the vigilance case and filed his show cause. The Municipal Commissioner after hearing the parties by order dated 10.07.2014 directed the review-petitioner to demolish the 7th and 8th floor, and also directed the review-petitioner to restore the original character of he building in its residential form. The order of Municipal Commissioner contained 12 directions which consciously violates the order passed in C.W.J.C No. 8152 of



2013 Narenda Mishra (supra). The revised map as well as approval was questioned and the same has been alleged of being forged and ante dated document leading to institution of police case. The review-petitioner was not entitled for deviation in the nature of the building without obtaining consent from the Society and since the alleged construction is based on forged revised map as such whatever has been deviation in the building, it is found contrary to the original sanctioned plan of 23.03.2009, for the residential apartment consisting of B+G+6 should be demolished as per the stand taken by the opposite parties. The plan sanctioned for residential apartment cannot be converted into a hotel until any such communication has been received from the Registrar granting such permission.

8. After hearing both the parties, the writ Court recorded a finding that the land allotted by the Postal Co-operative House Construction Society Ltd. for residential purpose cannot be converted into a multi storeyed apartment nor its nature can be converted from residential to commercial activities. The writ court further held that the direction of the Division Bench as contained in the order dated 10.05.2013 was fully applicable in the case of review-petitioner also. The writ Court held that the building in question was neither occupied nor had become operational on



10.05.2013 when the Division Bench proceeded to issue regulatory direction accompanied with restrain order and the said directive is fully applicable in the case of the petitioner also. The writ court has held that a sanction accorded by the Registrar, Co-operative Society for a plot allotted for residential purpose by Housing Society for residential purpose would neither be utilized for construction of multi storeyed apartment nor could be converted into commercial house.

9. The writ court finally concluded that the order of Municipal Commissioner dated 10.07.2014, which was impugned before the writ Court as well as order dated 16.02.2015 passed by the Municipal Building Tribunal, whereby and whereunder, a revised map sanctioned by the predecessor on 23.05.2009, was held to be illegal and the review petitioner was directed to carry out the demolitions of the construction found to be in deviation from the map sanctioned on 23.03.2009, and restore the residential character of the building, do not suffer from any infirmity and were in consonance with the direction issued by the Division Bench in the case of Narendra Mishra (supra), and dismissed the writ petition of review petitioner.

10. Against the order of the writ court, the review petitioner preferred L.P.A. No. 1485 of 2016, which was heard by



Division Bench of this Court and was dismissed on 27.10.2016.

11. Aggrieved by the order passed in L.P.A. affirming the order of writ Court, the review-petitioner has filed this review petition for review of the order dated 27.10.2016 passed in L.P.A. No. 1485 of 2016. The review-petitioner in present review petition is raising the same issue which were raised before the writ Court and the Division Bench, and in the garb of review petition wants rehearing of the matter, which is not permissible under the limited scope of review petition. Reference in this connection may be made to the judgment of the Apex Court in the case of ***Sasi (Dead) through Legal Representatives vs Aravindakshan Nair and others reported in (2017) 4 Supreme Court Cases 692***, which is quoted hereinbelow:-

8. In *Parsion Devi v. Sumitri Devi* (1997) 8 SCC 715, the Court after referring to *Thungabhadra Industries Ltd. AIR 1964 S.C. 1372*, *Meera Bhanja v. Nirmala Kumari Choudhury* (1995) 1 SCC 170 and *Aribam Tuleshwar Sharma v. Aribam Pishak Sharma* (1979) 4 SCC 389, held thus:

"9. Under Order 47 Rule 1 CPC, a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise



of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected". A review petition, it must be remembered, has a limited purpose and cannot be allowed to be "an appeal in disguise".

12. Lastly, Mr. Y.V.Giri, learned Senior Counsel appearing for the review-petitioner submitted that the judgment of the learned Single Judge as well as the appellate court is based upon interim order that was passed by a Division Bench of this Court in a Public Interest Litigation **(C.W.J.C. No. 8152 of 2013 : Narendra Mishra Vs. State of Bihar & ors.)**. However, the said Public Interest Litigation was closed vide judgment dated 23.6.2015, thus, the interim order which was passed earlier in that case was not at all in existence in view of, closure of the Public Interest Litigation when the matter was finally being considered and decided by the learned Single Judge on 5.7.2016.

13. In the aforesaid background, it is urged that the learned Single Judge as well as appellate court have erred in placing the reliance upon the interim order passed in this case whereas the fact was that the said Public Interest Litigation was also closed vide Annexure 13.

14. Now the question for consideration would be as to



whether any direction given in the Public Interest Litigation vanishes from the scene when the Public Interest Litigation is ultimately closed after the purpose of filing it attains finality. Learned counsel for the review-petitioner has placed reliance upon a decision of Apex Court rendered in **State of Assam Vs. Barak Upatyaka D.U. Karmachari Sanstha [(2009) 5 Supreme Court Cases 694]**. It is contended that the Apex Court has held in the aforesaid decision that a precedent is a judicial decision containing a principle, which forms an authoritative element termed as *ratio decidendi*. An interim order which does not finally and conclusively decide an issue cannot be a precedent. He also places reliance upon a decision of the Apex Court rendered in **Amarjeet Singh and others versus Devi Ratan and others [(2010) 1 Supreme Court Cases 417]** to show that the interim order is not a final order to be passed in the case and if the writ petition is ultimately dismissed, the interim order stands nullified automatically.

15. However, in our view those decisions would not come in help of the petitioner. The C.W.J.C. No. 8152 of 2013 was filed as a Public Interest Litigation and there is of course an authoritative element in the order concerned as directions were given to the Municipal Corporation to act in particular manner in



the given circumstances. This order was passed after considering the statutory provisions and interpreting it. Though the said case was closed vide Annexure 13 but it is not a case that the Public Interest Litigation is dismissed. The Court while closing the Public Interest Litigation has also observed 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.

We, accordingly, close the writ petition, taking note of the fact that the building, which the writ petitioner was complaining of, has been substantially demolished.”

15. Thus, in our opinion, the closure of the case does not mean that the earlier directions given to the Patna Municipal Corporation which was acted upon by it were wiped out from the scene and the Patna Municipal Corporation was required, accordingly, to undo the entire thing which was done in compliance of interim direction. Of course before passing of the



final order by the learned Single Judge in C.W.J.C. No. 4051 of 2015 , the said Public Interest Litigation was closed but at the time of passing of the orders by the Patna Municipal Corporation as well as the Municipal Building Tribunal, the said Public Interest Litigation was still pending.

16. Thus, in our view, there is no merit in this review petition, which is, accordingly, dismissed.

(Dr. Ravi Ranjan, J)

(S. Kumar, J)

Ranjan/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

