

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 140 of 2016

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Sanjay Kumar Sinha, Son of Dharmendra Prasad Singh, Resident of 601, Radhe Krishna Apartment, R. K. Bhattacharya Road, P.S. Gandhi Maidan, District- Patna.
Partner of M/s Nutan Construction Hariom Apartment, Exhibition Road, Patna.

.... Petitioner/s

Versus

1. Patna Municipal Corporation, through the Municipal Commissioner, Maurya Lok Complex, Patna.
2. The Municipal Commissioner, Patna Municipal Corporation, Maurya Lok Complex, Patna.
3. The Chairman, Municipal Building Tribunal-1 Water Tower Building, behind Patna High Court, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Krishna Chandra, Advocate
For the PMC : Mr. Prasoon Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 22-02-2017

Heard learned counsel for the petitioner and Mr.
Prasoon Kumar, learned counsel for the Patna Municipal
Corporation.

The petitioner has moved the Court for quashing of
order dated 27.11.2014 passed by the respondent no. 2 in Vigilance
Case No. 165A of 2013 as well as the Appellate order dated
24.11.2015 passed by the Municipal Building Tribunal (hereinafter
referred to as the 'Tribunal') in Appeal No. 120 of 2014, by which



the order dated 27.11.2014 has been modified.

Learned counsel for the petitioner, at the very outset, submitted that though initially in the Vigilance case, there was a direction to demolish all construction beyond the 3rd floor and also for leaving of offset on the front and right side (West Side) of building for road widening, but in the appeal, the same was modified to the extent that the 4th floor was allowed to be retained, upon the petitioner seeking condonation for the same whereas, any construction on the terrace of the 4th floor was to be demolished and setback of 3.04 meter land on the front side and 1.04 meter on the right side was to be left for road widening. Learned counsel submitted that the same was in view of a proposed Master Plan for Patna and in which the width of the road was likely to be extended. Learned counsel submitted that as per the final approved Master Plan, the width of the road remains the same, as is existing and, thus, the said requirement may be waived and further, as land is available, if in future the same is required, the petitioner shall not object to it being taken for road widening. Learned counsel further submitted that though before the Tribunal, he has undertaken to demolish the construction on the terrace of the 4th floor, but in view of the statute providing construction of a structure in the shape of a '*Barsati*', he may be permitted to submit a revised plan, which may be considered



by the Patna Municipal Corporation.

Learned counsel appearing for the Patna Municipal Corporation submitted that though the petitioner has been shifting his stand before various forums, but fairly submitted that whatever is permissible under the statute, the petitioner may get the benefit of the same, in accordance with law and the prescribed procedure.

Having considered the submissions of learned counsel for the parties and taking into account the facts and circumstances of the case, the writ petition stands disposed off on the agreed terms that the petitioner shall submit a revised plan, within two weeks from today, along with a copy of this order, to the Patna Municipal Corporation for retaining the structure on the terrace of the 4th floor, or for making it in the shape of a '*Barsati*'. The petitioner may also apply for retaining of the toilet in view of the fact that it is a public utility. Further, as per the undertaking of the petitioner himself, the said structure shall neither be used for any commercial purpose nor sold and shall be for the use of only the residents of the building. Once such a petition is filed, the same shall be considered by the Patna Municipal Corporation and appropriate orders passed, within the statutory period as may have been prescribed. As far as the requirement to leave further land as offset is concerned, the same shall not be insisted in view of the undertaking given by the petitioner



that if in future, there is any change in the Master Plan, he shall not oppose the acquisition of land for such purpose.

(Ahsanuddin Amanullah, J.)

P. Kumar

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