

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.892 of 2017

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1. Md. Azad Son of Md. Abdul Moin Resident of Village- Khetari, P.S. - Ara Town District- Bhojpur.
 2. Zohara Khatoon Wife of Md. Javed Resident of Village- Bhaluhipur, P.S.- Ara Town, District- Bhojpur.
 3. Md. Shahabuddin Son of late Md. Islam Resident of Village- Bhaluhipur, P.S.- Ara Town, District- Bhojpur.
 4. Md. Javed Son of Md. Muslim Resident of Village- Bhaluhipur, P.S.- Ara Town, District- Bhojpur.
 5. Sama Khatoon Wife of Md. Aftab Alam Resident of Village- Bhaluhipur, P.S.- Ara Town, District- Bhojpur at Ara.
 6. Md. Aftab Alam Son of Md. Muslim Resident of Village- Bhaluhipur, P.S.- Ara Town, District- Bhojpur.

.... Petitioner/s

Versus

1. The State of Bihar through its Chief Secretary, Bihar, Patna.
2. The Principal Secretary, Urban Development and Housing Department, Bihar, Patna.
3. The Joint Secretary, Urban Development and Housing Department, Govt. of Bihar, Patna.
4. The Collector Bhojpur, Arrah.
5. The Arrah Municipal Corporation through its Municipal Commissioner, Arrah Municipal Corporation, Arrah, District- Bhojpur.
6. The Municipal Commissioner, Arrah Municipal Corporation, Arrah.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Md. Ataul Haque, Advocate
For the Ara Municipal Corporation	:	Mr. Lalit Kishore, PAAG-1 with Mr. Bishwa Bibhuti Kumar Singh, Advocate
For the State	:	Mr. AC to AAG-6

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 17-07-2017

Heard learned counsel for the petitioners, learned counsel for the State and Mr. Lalit Kishore, learned P.A.A.G.-1 along with Mr. Bishwa Bibhuti Kumar Singh, learned counsel for the respondents no. 5 and 6.

2. In terms of order dated 30.06.2017, Mr. Pramod Kumar, the Municipal Commissioner, Ara Municipal Corporation is also present.

3. An affidavit has been filed in terms of the last order on behalf of respondents no. 5 and 6, affirmed by the Municipal Commissioner, in which the order contained in Memo No. 1887 dated 10.07.2017 discloses that the petitioners have been allotted shops measuring 10' X10' in the complex being constructed under the aegis of BUIDCO in the town of Ara. The Municipal Commissioner informed the Court that this was pursuant to the decision taken by the Empowered Standing Committee of Ara Municipal Corporation.

4. In view of the aforesaid, the writ petitioners having been allotted shops by the Ara Municipal Corporation, nothing remains to be adjudicated in the present writ application and accordingly the same stands disposed off.

5. Before parting, this Court would record its



appreciation of both counsel for the Ara Municipal Corporation and the Municipal Commissioner, Ara Municipal Corporation with regard to action taken by them.

6. The Court was further informed by the Municipal Commissioner that the complex is a big complex and work at plinth level has already been completed and thus it is expected that within six months, shops in question would be ready for handing over to the petitioners.

7. The Court hopes and trusts that the work shall be expedited so that at the earliest, the petitioners are handed over the said shops.

8. With regard to the apprehension of learned counsel for the Ara Municipal Corporation that others who have not moved the Court till date may claim parity with the petitioners and this would lead to a situation where the Ara Municipal Corporation shall be hard pressed and not in a position to deliver, this Court makes it clear that since the petitioners had moved the Court and had also not taken back their money, their case stands on a separate footing as it will be presumed in law that the persons not being aggrieved by the decision of the Ara Municipal Corporation with regard to the shops not being constructed and given to them at the site initially proposed and also not having moved before the authority, including the High Court, the



order of the Ara Municipal Corporation in case of present petitioners shall neither create any equity in favour of nor confer any right upon the persons who had not moved before the Court even though they may have been similarly situated at the relevant point of time in the year 2011-12, as they shall be presumed in law to be satisfied with and reconciled to their position and are further estopped from agitating their grievance at this belated stage. Even otherwise, ‘fence sitters’ cannot take the benefit of an order passed in the case of persons who were vigilant of their cause and had moved the Court within a reasonable period.

9. Furthermore, the decision in the present case is limited to the present petitioners and has been passed in the peculiar facts and circumstances of this case only and shall not create any further liability on the Ara Municipal Corporation with regard to any other person as a precedence in future.

10. Personal appearance of the Municipal Commissioner, Ara Municipal Corporation stands dispensed with.

(Ahsanuddin Amanullah, J)

Anjani/-

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