

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 17272 of 2016

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Divya Construction situated at Justice Mandal Path, New Punaichak, P.S.-
Shastrinagar, District- Patna, through its proprietor Sri Sanjay Kumar Mishra, S/o
Late Sarveshwar Mishra.

.... Petitioner/s

Versus

1. The Patna Municipal Corporation (PRDA Dissolved), Mauryalok Complex,
P.S.- Kotwali, Dak Bunglow Road, District- Patna through its Municipal
Commissioner.
2. The Municipal Corporation, the Patna Municipal Corporation (PRDA
Dissolved), Mauryalok Complex, P.S.- Kotwali, Dak Bunglow Road, District-
Patna.
3. The Vigilance Officer, Patna Municipal Corporation (PRDA Dissolved),
Mauryalok Complex, P.S.- Kotwali, Dak Bunglow Road, District- Patna.
4. The Executive Engineer, Nutan Rajdhani Pramandal (n) Patna Municipal
Corporation (PRDA Dissolved), Mauryalok Complex, P.S.- Kotwali, Dak
Bunglow Road, District- Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Binod Kumar Sinha, Advocate
For the PMC : Mr. Archana Palkar Khopde, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 17-07-2017

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

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

*“1. That this writ application is being
filed on behalf of the petitioner for issuance of*



writ of certiorari for quashing of calculation report dated 29.06.2016 and order dated 27.08.2016 passed in Vigilance Case No. 13B/2016 (as contained in Annexure-1 & 2) by which the Respondent No. 2 has directed to inform the petitioner to deposit a condonation fee of Rs. 1,30,000/- alongwith five times of the said amount as penalty and/or for issuance of any other writ/writs, order/orders, direction/directions as it may deem fit and proper to your Lordship."

3. The grievance of the petitioner is that while passing the order condoning deviation, the fee has been fixed as Rs. 1,29,317/- whereas the penalty has been fixed five times the compounding fee which comes to Rs. 6,46,585/-.

4. Learned counsel for the petitioner submitted that the said order cannot be sustained to the extent of levying of penalty five times the compounding fee for the reason that there is no such provision in the Bihar Municipal Act, 2007 (hereinafter referred to as the 'Act') or the Bihar Building Bye-laws, 2014. Learned counsel submitted that the authority having levied the compounding fee, should not have proceeded to impose penalty five times the compounding fee which is not only arbitrary but also without justification.

5. Learned counsel for the respondents drew the attention of the Court to Section 315 of the Act which clearly provides that the penalty under the Section relating to construction in



contravention breach or deviation of building bye-law shall be in addition to any other fine provided under the Act including fine for compounding as may be provided under Building Bye-law. Learned counsel submitted that the compounding has to be done in terms of the Building Bye-laws but the penalty is over and above and not depending on such compounding amount and only subject to a maximum ceiling of Rs. 10,00,000/-. Learned counsel submitted that in the present case, the amount has been quantified as Rs. 6,46,585/-, which is well within the jurisdiction and power of the competent authority in terms of Section 315 of the Act.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any merit in the present writ application. The Act being very clear, especially Section 315, gives ample power to the competent authority to impose penalty for construction in contravention, breach or deviation of the Building bye-law which may extend to Rs. 10,00,000/-. In the present case, the compounding amount of Rs. 1,29,317/-, is not in dispute. Once the petitioner accepts that there has been contravention leading to imposing of compounding fee, the competent authority has the jurisdiction and power to further impose penalty in terms of Section 315 of the Act. The same only puts a ceiling of Rs. 10,00,000/-, and in the present



case, the penalty has been fixed as Rs. 6,46,585/-. The quantum of the amount cannot be gone into in judicial review as it is the discretion of the authority. Under judicial review, the Court is only required to go into the competence, jurisdiction and power of the authority under law to impose such penalty.

7. In view of the discussions made hereinabove, the Court does not find any ground to interfere in the order impugned and accordingly, the writ petition stands dismissed.

(Ahsanuddin Amanullah, J.)

P. Kumar

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