

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 269 of 2016

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Rajesh Jain S/o Sri Moti Lal Jain, Resident of Ward No. 38, Jain Mandir Lane, P.S. Kotwali, Town and District Bhagalpur.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary-cum-Commissioner, Department of Urban Development Govt. of Bihar, Patna.
2. The Bhagalpur Municipal Corporation, through the Commissioner, Bhagalpur.
3. The Commissioner, Bhagalpur Municipal Corporation, Bhagalpur.
4. The District Magistrate, Bhagalpur.
5. The Inspector General of Police, Bhagalpur.
6. The Deputy Inspector General of Police, Bhagalpur.
7. The Senior Superintendent of Police, Bhagalpur.
8. Sunita Devi Santhalia Wife of Ratan Santhalia R/o Marwari Tola Lane, P.S. Kotwali, Town and District Bhagalpur.
9. Ratan Kumar Santhalia, Son of Late Saytyanarayan Santhalia R/o Marwari Tola Lane, P.S. Kotwali, Town and District Bhagalpur.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Gautam Kejriwal, Advocate
For the State	:	Mr. Aditya Nath Jha, A.C. to S.C. 18
For the Respondent No. 3	:	Mr. Manoj Kumar Sinha, Advocate
For the Respondent No. 8 and 9	:	Mr. N. K. Malhotra, Sr. Advocate
		Mr. Binod Kumar Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 31-01-2017

Heard learned counsel for the parties.

The petitioner has moved the Court for a direction to the respondents, especially respondent no. 3, to take action for removal of illegal construction by respondents no. 8 and 9, in light of his decision dated 17.08.2015 contained in Memo No. 3023/Bha.Na.Ni.

The matter relates to alleged violation in the construction of a multi storied apartment by the respondents no. 8



and 9 in the town of Bhagalpur. When the construction was in progress, the petitioner had approached the respondent no. 2 making complaint that the same was in violation of the sanctioned plan in the year 2012. Pursuant to the same, a notice was sent to the respondent no. 8 in which there was a direction to stop the illegal construction. Thereafter, finally, the matter, which was pending before the respondent no. 2, was disposed off by the order impugned in which it has been stated that on the right and rear side of the building, there was deviation in set-back and accordingly, it was directed that as per the law, the condonation fee may be given with regard to the portion for which condonation is permissible and the rest should be removed. When the same remained unimplemented, the petitioner moved this Court in the present writ application.

Learned counsel for the petitioner submitted that initially when he had made the complaint in the year 2012, there was a direction to stop further construction and without taking permission to commence construction, the respondents no. 8 and 9 have proceeded to complete the building. He submitted that the respondent Corporation was also not taking interest in the matter and, thus, he had to repeatedly file application under the Right to Information Act to know the status of his complaint. He submitted that even after the order has been passed for removal of the



construction, which is illegal and beyond the condonable limit, the same has remained unimplemented on the ground.

Learned counsel for the respondents raised a preliminary objection submitting that the petitioner has not moved the Court with clean hands for the reason that he is alleging that there is no permission/sanction for building the 5th floor but the sanction has already been accorded in the year 2012 and such fact was known to the petitioner as it was furnished by the Municipal Corporation on his application under the Right to Information Act. He further submitted that no notice was given to him prior to passing of the order impugned and, thus, he was denied the opportunity to explain his position and satisfy the authorities that he was acting within the four-corners of the law and whatever deviation may have been there, the same was either condonable or could be explained. He submitted that being aggrieved by the said order, he has moved before the Municipal Building Tribunal, South Division, Patna in Appeal No. 2(S) of 2016, which is pending. He further submitted that the said appeal is not being heard as the Tribunal is lacking in quorum. He further submitted that he has land on the rear side which can be given to satisfy the requirement of set-back.

At this stage, the Court called upon the parties to take a stand as to whether, for the ends of justice, if a fresh hearing is



given with actual spot verification and measurement to be done in the presence of the parties, they would be agreeable to a consent order. The parties have readily agreed for the same.

In view of the aforesaid, without taking cognizance or going into the merits, either on facts or law, the writ petition is disposed off in the following terms:

The petitioner as well as the respondents no. 8 and 9 will appear before the respondent no. 3 on 6th February, 2017, either personally or through their authorized representative. The respondent no. 3 shall fix a date for actual spot measurement of the premises in question. The date and time having been fixed, it would be open to the parties to be present and also have their Amin in addition to that of the Corporation during the measurement. The same being done, the respondent no. 3 shall give opportunity of hearing to all concerned and then pass a reasoned order. The entire exercise of actual measurement will be videographed so as to prevent controversy by any party to be raised later on. The respondent no. 3 shall pass final orders latest by 27th February, 2017. The proceeding shall be restricted to hearing the petitioner and the respondents no. 8 and 9. It goes without saying that the order being passed with consent of the parties, they shall cooperate in the proceeding and upon failure to do so, the respondent no. 3 shall proceed to finally



decide the matter within the time frame fixed. In case of non cooperation by any party, the same shall also amount to breach of undertaking before the Court entailing appropriate action. Once an order is passed, the parties are required to act in terms of the order and the respondent no. 3 is equally responsible for implementing the order.

As a consequence of the order passed hereinabove, the impugned order dated 17.08.2015 is set aside so as to give a free hand, both to the respondent no. 3 to pass a fresh order and also a fair opportunity to all concerned to present their case.

It also goes without saying that the order impugned, which is the subject matter of Appeal No. 02(S) of 2016, having been set aside, the appeal has become infructuous. Accordingly, the respondents no. 8 and 9 shall file a petition for withdrawal of the appeal within one week from today.

The Court has considered the explanation of respondent no. 3 and in view of the apology tendered, does not propose to pass any order on the said issue. His personal appearance is also dispensed with.

(Ahsanuddin Amanullah, J.)

P. Kumar

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