IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.450 of 2011

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Sujata Hotel Private Limited through its Director, Harsh Kochar, son of Late Purushottam Kumar Kochar, Sujata Hotel Pvt. Ltd. R. Block, Patna, P.S.- Sachivalaya, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar through Commissioner-cum-Principal Secretary, Urban Development Department, New Secretariat, Patna.
2. The Patna Municipal Corporation through its Municipal Commissioner, Patna Municipal Corporation, Budha Marg, Patna
3. The Municipal Commissioner, Patna Municipal Corporation, Budha Marg, Patna
4. The Executive Officer, New Capital Circle, Harding Road, Patna Municipal Corporation, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : None

For the State : Mr. Sanjay Kumar, A.C. to GP-7

For the Corporation : Mr. Ranjeet Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 30-01-2018

Despite repeated calls, no body appears on behalf of the petitioner.

2. Heard Mr. Sanjay Kumar, learned A.C. to G.P.7 and Mr. Ranjeet Kumar, learned counsel appearing for the Patna Municipal Corporation and perused the record.

3. The prayer of the petitioner in para-1 is as under :-

> "1. That in this writ petition, the petitioner challenges and disputes the bill for the period IV 1995-96 to IV 2010-11 of Holding No.21, Circle

> No. 238, whereby and whereunder the Bill of Rs.33,23,657/- (Thirty three lakhs twenty three thousand six hundred and fifty seven only) has been raised and pursuant thereto a Demand Notice u/s 205 of 1952 Act has been issued for the period IV 93-94 to IV 2010-11 making a demand of Rs. 30,00,135.56 (Thirty lacs one hundred thirty five rupees and fifty six paise) after deducting a sum of Rs. 13,69,972/- (Thirteen lacs sixty nine thousand nine hundred seventy two) and the petitioner also challenges and disputes the bill for the period I-st 2002-2003 to III-rd 2005-2006 of Holding No.21A, Circle No. 238 whereby and whereunder the Bill of Rs.1,61,124/- (One lakh sixty one thousand one hundred twenty four) has been raised after deducting Rs.59,340/- (Fifty nine thousand three hundred forty) and grant of other consequential reliefs to which the petitioner is entitled in law."

4. It would be manifest from perusal of the writ petition that the grievance of the petitioner is mainly with respect to assessment order passed by the Executive Officer of the Municipal Corporation pursuant to which demand notice has been raised for the period 1995-96 to 2010-11 of Holding No.21, Circle No. 238 and for the period 2002-03 to 2005-06 of Holding No.21A, Circle No. 238.

5. It would further be manifest that Holding Nos. 21 and

21A are owned by Sujata Hotel Private Limited, a private limited company incorporated under the Indian Companies Act, 1956.

6. The building in question is a six floor building. The contention of the petitioner is that since the date of creation of the two separate holdings no.21 and 21A, municipal taxes have been paid upto 2010-11 in respect of Holding No.21 and in respect of Holding No.21A also, self-assessment of the extended floor was made and accordingly tax was paid till 2005-06. Besides that, on demand, adhoc payment of tax has also been made.

7. The further case of the petitioner is that the Executive Officer cannot sit in judgment over the order of quasi judicial nature passed by his predecessor in his office. According to the petitioner, it has already been decided in 1993 in a quasi judicial proceeding after enquiry that the said Holding No.21 is located on R-Block Road, which comes under the category of other Road, which was unchallenged by the authorities and accepted that the proceeding cannot be reopened applying the principle of estoppel without establishing mistake/fraud/misrepresentation, which is a precondition for reopening and onus lies upon the respondents to establish the same.

8. On the other hand, the contention of the respondents is that since the building is situated on Principal Main Road, i.e. Veer

Chand Patel Path, which extended from Harding Road to Veer Chand Patel Path, Demand Notice of Rs.33,23,657/- has been raised for Holding No.21 and Rs.1,61,124/- for Holding No.21A.

9. The further contention of the respondents is that subsequent to the filing of the writ petition 07.01.2011, the petitioner had challenged the assessment order by way of filing an appeal before the Municipal Commissioner vide Appeal Case No.18 of 2012. The said appeal has been dismissed by the appellate authority vide order dated 26.12.2011.

10. By way of an interlocutory application, vide I.A. No. 6953 of 2012, the petitioner has sought leave to challenge the appellate order dated 26.12.2011 also in the present writ petition.

11. Regard being had to the fact that the order passed by the Executive Officer of the Municipal Corporation pursuant to which demand notice was issued was already challenged by the petitioner before the appellate authority and the appellate authority has already dismissed the appeal vide order dated 26.12.2011, I am not inclined to entertain the present writ petition. The writ petition is dismissed.

12. Since the interlocutory application filed by the petitioner has neither been pressed nor allowed by this Court till date, the same is also dismissed.

13. However, the petitioner would be at liberty to challenge

the appellate order dated 26.12.2011 before the appropriate forum/ court in accordance with law.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	05-02-2018
Transmission Date	