

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7548 of 2014

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1. Kishore Kumar Agrawal, son of Late Dwarka Prasad Agrawal, resident of 25, Kasturba Path, Police Station- Sri Krishnapuri, District- Patna
 2. Santosh Kumar son of late Surendra Prasad Jaiswal Managing Director, Sri S.S.Babe Private Limited, 201, Kamta Kutir Apartment, Nageshwar Colony, Boring Road, Police Station- Sri Krishnapuri, District- Patna

.... Petitioners

Versus

1. The State of Bihar through the Registrar, Cooperative Department, Bihar, Patna
2. The Registrar, Cooperative Societies, Bihar, Patna
3. Abhiyanta Grih Nirman Sahkari Samity Ltd. through its Secretary, Vijay Nagar, Rash Bihari Path, Patna 800016
4. The Secretary, Abhiyanta Grih Nirman Sahkari Samity Ltd., A-3, Vijay Nagar, Rash Bihari Path, Rukunpura, Patna- 800014
5. Sri Rabindra Thakur, Secretary, Abhiyanta Grih Nirman Sahkari Samity Ltd., A-3, Vijay Nagar, Rash Bihari Path, Rukunpura, Patna- 800014

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Shravan Kumar, Sr. Advocate
Mr. Dinesh Maharaj, Advocate
For the State : Mr. Wasi Ahmad Khan, AC to SC-25
For respondent nos. 3 to 5: Mr. Arun Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 25-06-2018

Heard learned counsel for the petitioners, learned counsel for the State and learned counsel for the respondent-society.

2. The petitioners confine their prayer in the writ petition



for setting aside the order dated 13.02.2014/10.03.2014 passed by the learned Registrar Co-operative Societies whereby and whereunder he has held that the sanction accorded by the respondent society for construction of G+3 building to the petitioners on his plot no. A/6 at Vijay Nagar, Mauja- Rukanpura, Thana No.- 18 Rupaspur, Khata No. 85, Khesra No. 368 is itself illegal and irregular.

3. Mr. Shravan Kumar, learned Senior Advocate for the petitioners submitted that the dispute before the Registrar was not in respect of the construction upto G+3 storey. The only dispute raised by the society was in respect of the fourth floor constructed by the petitioners on the plot in question. The learned Registrar had also issued show-cause notice to the petitioners only in respect of illegality in construction of the 4th floor. However, while passing the impugned order, he has held that even sanction granted by the society for construction of a building upto G+3 storeys is illegal and irregular. He submitted that the learned Registrar went beyond the pleadings and passed an order against the petitioners even without affording any opportunity of hearing to them.

4. Learned counsel appearing for the respondent-society and learned counsel for the State also admit that the dispute before the learned Registrar was in respect of the illegality committed by



the petitioners in construction of the 4th floor which was without valid sanction of the society.

5. I have heard learned counsel for the parties and carefully perused the record.

6. From the pleadings of the respondent society, it would be evident that the petitioner no. 1 is a member of the Abhiyanta Grih Nirman Sahkari Samittee. The Society allotted him a plot of 2253 square feet. He entered into a development agreement with petitioner no. 2 for construction of G+4 building vide agreement dated 06.06.2011. He submitted a map of G+3 building duly approved by the registered architect of Patna Municipal Corporation, namely, Ranjay having licence no. 26/09-10 whereafter as per approval, the society granted him no objection certificate for construction upto G+3. The society raised no objection till construction upto G+3 was erected but when further construction was raised the society filed Misc. Case No. 222 of 2012 in the court of Registrar raising a dispute in respect of illegal construction of 4th floor for which notices were issued to the petitioners.

7. On the other hand, the case of the petitioner no. 1 is that since respondent no. 5 had prayed the learned Registrar to restrain the petitioners from construction of 4th floor and had



admitted that construction upto G+3 was as per the bye-laws of the society, there was no reason for the learned Registrar to hold the entire construction including construction upto G+3 to be illegal specially when no notice in this regard was ever issued to the petitioners.

8. It is needless to state that when a dispute is brought before a court/tribunal or an authority, the parties to the proceeding have a right to know the nature of the dispute. The court/tribunal or authority would give its findings only on the issues framed or questions with which the parties have been noticed. It cannot give its findings on an issue which has never been brought to the notice of the contesting parties.

9. Here, in the present case, admittedly the dispute brought before the learned Registrar was for adjudication in respect of the illegal construction made by the petitioners of 4th floor. The show-cause notice was issued to him only in respect of his construction of 4th floor. However, while deciding the issue, the learned Registrar has given a finding that the entire construction was illegal and even the construction upto G+3 storey was illegal and irregular.

10. Since the order impugned has been passed without affording any opportunity of hearing to the petitioners, the same



cannot be sustained.

11. Accordingly, the order impugned dated 13.02.2014/10.03.2014 passed by the learned Registrar in Misc. Case No.222 of 2012 is set aside. The matter is remanded back to the learned Registrar to give a clear notice to the petitioners regarding the illegalities committed in construction of the building and, only after hearing the parties, he shall pass appropriate order in accordance with law.

12. Since the matter is quite old, the learned Registrar is directed to decide the issue within four months from the date of receipt/production of a copy of this order.

13. With the aforesaid observations and directions, the writ petition is disposed of.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03.07.2018
Transmission Date	NA

