

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3702 of 2016

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Mithilesh Kumar, son of Late Sakaldeep Narayan Singh, resident of Flat No. - 104, Aranya Balbhadra Apartment, East Boring Canal Road, P.S. - Budha Colony, District - Patna.

.... Petitioner

Versus

1. The State of Bihar.
2. Principal Secretary, Urban Development Department, Govt. of Bihar.
3. Commissioner, Patna Municipal Corporation.
4. District Magistrate, Patna.
5. Director General of Police, Bihar, Patna.
6. Chandra Shekhar Prasad Singh son of Late Balbhadra Prasad Singh resident of Flat No. - 101-104, Aranya Karuna Apartment, East Boring Canal Road, P.S. - Budha Colony, District : Patna. (Land owner).
7. Ajay Kumar son of Late N.K. Sharma Road No. - 22, Plot No. - 154, Near New Park, S.K. Nagar, Patna (Builder).
8. Ratna Ojha W/o Sri Suman Ojha, resident of Flat No. - 402, East Boring Canal Road, P.S. - Buddha Colony, District - Patna.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Shambhu Sharan Singh, Advocate
For the Respondent-PMC : Mr. Sanjay Prakash Verma, Advocate
For the Respondent-State : Mr. Indeshwar Prasad Mandal, AC to GA-3.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 26-06-2018

In the instant writ petition, the petitioner has confined his prayer for directing the respondent authorities to implement the order dated 14.07.2006 as passed by the then Vice Chairman of the Patna Regional Development Authority (for short 'PRDA') whereby and whereunder the concerned Executive Engineer was directed to remove the generator set within a period of one week and to furnish a compliance report to the Court in as much as the order has been



dismissed by the Municipal Building Tribunal (for short 'tribunal') on 03.08.2006 and the subsequent writ petition being CWJC No.11533 of 2006 has also been dismissed for want of prosecution.

2. The petitioner is said to have purchased a flat bearing Flat No.-104 in Aranya Balbhadra Apartment, East Boring Canal Road, P.S.-Buddha Colony, Patna. The respondent nos. 8 and 9 installed a generator set near Bihar State Electricity Board transformer and just below the petitioner's flat on the first floor causes serious noise pollution and safety concern. In this regard, he had made a written complaint before the then Vice Chairman, PRDA on 09.07.2005. Pursuant to the said complaint, the then Vice Chairman, PRDA after registering the written complaint filed by the petitioner as Complaint Case No.4A/2006 referred the matter to the Bihar State Pollution Control Board. Vide its letter dated 23.08.2005 submitted its detail report to the PRDA and the then Vice Chairman, PRDA vide its order dated 28.04.2006 issued notice to the land owner and the builder to appear and file their respective show cause. Subsequently, vide order dated 14.07.2006, he directed the land owner and builder of the Aranya Balbhadra Apartment to remove the generator set in question within a period of one week from the date of the order. Being dissatisfied by the order dated 14.07.2006, the respondent no.8 challenged the said order by filing an appeal



before the Appellate Tribunal vide Appeal No.46 of 2006. The Appellate Tribunal also dismissed the appeal vide order dated 03.08.2006. The respondent no.6 being dissatisfied with the order dated 03.08.2006 passed in Appeal No.46 of 2006 by the Appellate Tribunal invoked writ jurisdiction of this Court vide C.W.J.C. No.11533 of 2006 challenging the aforesaid order dated 03.08.2006. The said writ petition was also dismissed for want of prosecution.

3. Learned counsel for the petitioner submitted that after passing of the aforesaid order, official respondents sat tight over the matter. The petitioner had filed several representations in the nature of complaint to various authorities but all his efforts went in vein.

4. Despite valid service of notice to the private respondent nos. 6 to 8, they have neither appeared in person nor are being represented through advocate.

5. Mr. Shambhu Sharan Singh, learned counsel for the petitioner submitted that even though the then Vice Chairman of the PRDA had directed the Executive Engineer concerned to remove the generator set within a period of one week and furnish a compliance report, till date no action has been taken by the respondent-Patna Municipal Corporation in this regard.

6. A counter affidavit has been filed on behalf of the



Commissioner, Patna Municipal Corporation (respondent no.3). Paragraphs 7, 8, 12 and 22 of the said counter affidavit read as under:-

“7. That in this connection it is humbly submitted that a team of Engineers in the New Capital Circle (North), Patna Municipal Corporation, Patna (Herein after referred to as PMC) visited the spot on 30.03.2017 and inspected the building/ apartment namely Aranya Balbhadra Apartment situated at East Boring Canal Road, Patna.

8. That during the course of inspection it is found that in the north-west corner of the duly constructed two blocks of the apartment, generator set near the transformer is still lying there and has not been removed yet. After spot inspection and verification, a joint report has been prepared and submitted by the concerned engineers of the New Capital Circle of the PMC vide letter no.319C dated 31.03.2017 with regard to present and correct position.

12. That it may also be necessary to submit that as the illegal installation of generator set, existed near the transformer is highly dangerous in nature for the resident of the apartment as such for removal of the same, vide letter no.972 dated 03.05.2006, necessary communication was made to the Officer in Charge of Budha Colony Police Station with a request to take steps for removal of the same.



Further request is made in this regard to the Senior Superintendent of Police, Patna to direct the concerned police station to take steps for removal of generator set near the transformer to another place.

22. That it may further be respectfully submitted that vide letter no.3443 dated 06.04.2017, the Municipal Commissioner, PMC communicated a letter to the Senior Superintendent of Police, Patna with a request to direct the Station House Officer of the Budha Colony Police Station to take necessary steps for removal of unauthorized installation of generator set near the transformer at the earliest.”

7. Learned counsel appearing for the Patna Municipal Corporation submitted that pursuant to the letter written by Municipal Commissioner, if no action has been taken so far, the Municipal Commissioner would certainly take action for removal of the generator set from the site where it is installed, as it is unsafe for the residents of the apartment.

8. Learned counsel for the State submitted that if any request has been made, the authorities would certainly provide necessary assistance for removing the generator set in compliance with the order passed by the then Vice Chairman, PRDA.

9. It is unfortunate that an order passed by the authority vested with statutory power for removal of generator set



installed in an apartment just near the transformer, which the respondents themselves admit may be dangerous to life of the residents of the apartment has not been complied till date. They are sitting tight over the matter which gives an impression that they are waiting for some accident to take place first.

10. Keeping in mind the sensitivity of the matter, the writ petition is disposed of with a direction to the Municipal Commissioner, Patna to ensure compliance of the order dated 14.07.2006 passed by the then Vice-Chairman of the PRDA as early as possible, preferably within six weeks from the date of receipt/production of a copy of the order to the Patna Municipal Corporation in removal of the generator set from the site it is installed. The District Magistrate, Patna and the Senior Superintendent of Police, Patna are also directed to provide necessary assistance.

(Ashwani Kumar Singh, J.)

Sanjeet/Sneha

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.06.2018
Transmission Date	NA

