

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4540 of 2015

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1. The Apurva Awas Yojna Pvt. Ltd. Patna through its Director Smt. Sabitri Devi @ Sabitri Singh Head Office APURVA Radha Complex, S.K. Puri, Boring Road, Patna- 01, P.S.- Krishna Puri, Dist.- Patna
 2. Smt. Sabitri Devi @ Sabitri Singh, W/o Sri Ramjee Singh, Resident of Bihta, P.S.- Bihta, District- Patna at present Apurva Radha Complex, S.K. Puri, Boaring Road, Patna- 1, P.S.- Krishna Puri, District- Patna

.... Petitioners

Versus

1. The State of Bihar
2. The Principal Secretary, Urban Development, Govt. of Bihar, Patna
3. The Khagaul Nagar Parishad, Khagaul, District- Patna through its Executive Officer.
4. The Executive Officer, Khagaul Nagar Parishad, Khagaul, District- Patna
5. The Chairman, Municipal Building Tribunal, Patna
6. The Om Prakash Srivastava S/o Late Babu Lal Prasad, Resident of Ashiana Nagar, P.S.- Rajeev Nagar, District- Patna, presently Secretary of D.D. Co-operative Housing Society Committee Ltd., Boaring Road, Patna
7. Sri Haribansh Narain Pandey S/o Baidyanath Pandey, Resident of C-13, Jagat Ambika Apartment, Brahm Ashthani Road, Sheikhpura, P.S.- Shastri Nagar, District- Patna.
8. D. D. Co-operative Housing Society Committee Ltd. through its Secretary Om Prakash Shrivastava son of late Babulal Prasad, r/o Boring Road, P.S.- S. K. Puri, District- Patna.
9. Fahimuddin Ahmad Khan son of late Moinnuddin Ahmad Khan, r/o Egal Apartment Rajapurpul, Mainpura, P.O.- Mainpura, District- Patna.

.... Respondents

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Appearance :

For the Petitioner/s :	Mr. Bindhyachal Singh, Advocate
	Mr. Satya Prakash, Advocate
	Mr. Manish Prakash, Advocate
For the State :	Mr. Arun Kumar Sinha, AC to GP 24



For respondent nos. 3 & 4 : Mr. Abhya Kumar, Advocate
Mr. R. C. Singh, Advocate

For respondent nos. 6 & 8 : Mr. Rajesh Kumar Singh, Advocate
Mr. Ranvijay Narain Singh, Advocate
Mr. Dharmendra Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 03-01-2018

This writ petition has been filed against the order dated 15.09.2014 passed in Appeal No. 04 of 2012 by the Municipal Building Tribunal, Patna (for short 'Tribunal') whereby the appeal preferred by the petitioners against the order dated 11.01.2012 passed by the Executive Officer, Nagar Parishad, Khagual, Patna by which building construction work order no. 250 B dated 12.07.2009 was cancelled due to violation of clause 11.1 of the Modified Building By-laws and the petitioners were directed to forthwith stop the construction work and file show-cause as to why the illegal construction be not demolished has been dismissed.

2. The facts of the case, in brief, are that the petitioners submitted Plan Case No. 17 of 2009 before the Nagar Parishad, Khagual with regard to construction of multi-storeyed building in Mauza- Mustafapur District- Patna. The Executive Officer, Nagar Parishad, Khagual issued office order no. 250 B dated 12.07.2009 by which plan submitted by the petitioners was sanctioned under



the terms and conditions mentioned therein. After obtaining sanction, construction work of the building was commenced. However, on 08.08.2011, respondent no.7 filed a complaint before the Executive Officer, Nagar Parishad, Khagual under Section 323 of the Bihar Municipal Act, 2007 in the aforesaid Plan Case No. 17 of 2009 whereby allegations were made that the petitioners got plans sanctioned by submitting wrong details of lands. It was stated in the complaint that respondent no. 7 Haribansh Narain Pandey and two others namely Smt. Krishna Pandey and Sri Laxmi Narain Pandey are the owners of plot no. 221, which was also shown in the application filed by the petitioners as their land pursuant to which plan was sanctioned. After receipt of the complaint, the Executive Officer, Nagar Parishad, Khagual vide Letter No. 565 dated 08.08.2011 issued notice to the petitioner no. 2 and directed her to produce the documents in order to establish ownership of plot no.221. In the light of above notice, the petitioner no. 2 filed written reply on 13.10.2011 before the Executive Officer stating therein that due to typing error plots no. 221, 223 and 233 were also included while submitting application for sanction of plan and building plan was sanctioned. She submitted that no construction has been made on those three plots rather construction has been made only over plots no. 230, 231, and 234. It was further stated



that actually complainant Haribansh Narain Pandey has also no title over plot no. 221 and a Title Suit No. 9 of 1991 was pending before the learned Munsif, Danapur and during the pendency of the aforesaid Title Suit No. 9 of 1991, the D.D. Co-operative Housing Society Ltd had sold plot no. 221 in favour of the complainant. Hence, there is cloud on the title of the complainant with respect to plot no. 221. It was also stated that there was neither any fraud nor any concealment on the part of the petitioners and the complaint has been filed only because the complainant is on inimical terms and litigations are going on for the land appertaining to plot no. 221.

3. In the meantime, on 13.10.2011, the respondent no. 6 filed an objection stating therein that part land of plot no.230 admeasuring 16.5 decimal belongs to D.D. Co-operative Housing Society Ltd over which construction was being made illegally. On such objection having been raised, the petitioner no. 2 was asked to file her reply. Soon thereafter, on 10.11.2011, respondent no. 9 filed another objection alleging therein that the petitioners were raising illegal construction over plot nos. 230 and 234 and ultimately, vide order dated 11.01.2012, the Executive Officer, Nagar Parishad, Khagual ordered to cancel office order no. 250 B dated 12.07.2009 and directed the petitioners to forthwith stop



ongoing construction. He also directed the petitioners to file show-cause as to why illegally partly constructed building be not demolished in exercise of powers conferred under clause (1) of Section 323 of the Building Municipal Act, 2007.

4. The aforestated order dated 11.01.2012 was challenged by the petitioner no. 1 before the Tribunal. Vide its order dated 15.09.2014, the Tribunal after hearing the parties dismissed the appeal and upheld the orders passed by the Executive Officer, Nagar Parishad, Khagual.

5. Being aggrieved by the aforesaid order dated 15.09.2014 passed by the Tribunal, the petitioners have filed the present writ petition before this Court.

6. Mr. Bindhyachal Singh, learned counsel for the petitioners submitted that the allegations made in the complaint petition filed by the private respondents are malicious in nature. He submitted that petitioner no. 1 is a Company incorporated under the Indian Companies Act, 1956 whereas petitioner no. 2 is one of its directors. The petitioner Company is in construction works by way of development of raiyati lands obtained from raiyats either through sale deeds or lease deeds and after development of the said lands, developed areas are sold in favour of interested persons. The Company purchased part areas of lands of khata no. 165, plot no.



230 area 3027.5 sq. feet, khata no. 178, plot no. 231 area 183.0 sq. feet, khata no. 191, plot no. 234 area 192.0 sq. feet. The Company also purchased lands of part area of plot no. 230 through registered sale deed dated 16.03.2012 from D.D. Co-operative Housing Society Ltd. It also obtained part area of plot no. 234 and part area of plot no. 230 vide agreement dated 11.04.2005 executed by the land holders. Thus, it came in peaceful possession of total 13 kathas equal to 40.5 decimals of lands of plot nos. 230 (part), 231 (part) and 234(part) on the basis of deeds executed by land holders. The petitioner no. 1 applied for sanction of map through petitioner no. 2 for construction of building on the aforesaid acquired lands and the Executive Officer, Nagar Parishad, Khagaul issued letter no. 250 B dated 12.07.2009 by which plan was sanctioned. He submitted that from perusal of the sanctioned plan map showing key plan, site plan and location plan by the Executive Officer, Nagar Parishad Khagaul, it will be clear that in key plan plot nos. 234, 231 and 230 have been shown as applicant's plots on which construction had to be made whereas from perusal of site plan it would be clear that authority concerned had sanctioned for the construction of the building on the applicant's plot nos. 234, 231 and 230 and the construction has been developed on these plots only in accordance with regulations and no violation of any rule or regulation



regarding construction of building has been made. He submitted that false allegations were made regarding obtaining sanction plan by playing fraud upon the authorities. He submitted that the petitioners had admitted that reference of plot nos. 221, 223 and 233 in the building plan was simply a *bona fide* typing error. He submitted that the order passed by the Tribunal cannot be sustained in view of the fact that it failed to appreciate that the Executive Officer, Nagar Parishad Khagual had passed the order dated 11.01.2012 in complete violation of principle of natural justice, as no notice was ever issued to the petitioner no. 1 and the petitioner no. 2 was noticed only in respect of title over plot no. 221. He submitted that the findings of the Tribunal are perverse, as documents submitted by the complainants could have been adjudicated upon only in a properly instituted title suit. He further contended that no physical verification of the ongoing construction was ever made and the contention of the petitioners that the construction was confined to three plots only belonging to the Company was never verified. He contended that the order is also bad on equity, as the petitioners were proceeding with raising the construction only after having obtained valid building sanction plan. He submitted that no opportunity regarding proposed action of cancellation of sanction accorded was ever given to the



petitioners.

7. On the other hand, Mr. Abhay Kumar, learned counsel for respondent nos. 3 and 4 submitted that the contention of the petitioners that inclusion of plots no. 221, 223 and 233 is a typing mistake cannot be believed in view of the fact that those plot numbers were deliberately written by pen and, as such, it cannot be said as typing error. He submitted that for construction of building maps are being passed considering the vacant and constructed area both, as vacant area is required to be left in view of the building bye-laws. As the petitioners obtained sanction order by playing fraud, it cannot be said that the construction is in accordance with law. He submitted that ample opportunity was given to the petitioners for replying the objections raised by respondent nos. 6, 8 and 9 and it would be evident from perusal of the record that on the request made on behalf of the petitioners, adjournments were granted and after hearing the parties, the order was passed by the Executive Officer. He contended that the issue in the present case is not for deviation in construction rather the issue is that the building plan was itself wrongly obtained by supplying false facts. Hence, no physical inquiry of construction was necessitated.

8. Mr. Rajesh Singh, learned counsel appearing on behalf of respondent nos. 6 and 8 submitted that 16.5 decimal lands



appertaining to plot no. 230 is owned by respondent nos. 6 and 8. The petitioners deliberately furnished wrong information to Nagar Parishad in this regard. He submitted that the petitioners were given full opportunity to be heard in Plan Case No. 17 of 2009. They were noticed on 08.08.2011. They appeared and filed their written reply on 13.10.2011 in which they admitted that due to typing mistake plan was sanctioned on plot nos. 221, 223 and 233. The respondent no. 8 also appeared in the said Plan Case No. 17 of 2009 on 13.10.2011 and filed its objections mentioning specifically therein that the land appertaining to plot no. 230 belongs to D.D. Co-operative Housing Society Ltd. He submitted that the Nagar Parishad after hearing the parties came to a definite conclusion that the petitioners had got building plan sanctioned on disputed plots without submitting land possession certificate or rent receipts of the plots. The Nagar Parishad had noticed that the petitioners admitted that plot nos. 221, 223 and 233 did not belong to them but they did not submit revised plan before the Patna Municipal Corporation. The Nagar Parishad also noticed several other major illegalities and passed order dated 11.01.2012 in the aforesaid Plan Case No. 17 of 2009 by which building construction work order no. 250 B dated 12.07.2009 was cancelled in terms of clause 11.1 of the Modified Building Bye-laws.



9. I have heard learned counsel for the parties and perused the original record, which was summoned by this court, vide order dated 14.11.2017.

10. The proceeding against the petitioners had been initiated on the basis of written objection of respondent no. 7 Haribansh Narain Pandey. On receipt of the objection, the Executive Officer, Nagar Parishad, Khagual issued notice only to the petitioner no. 2 and directed her to produce documents in order to establish ownership of plot no. 221. In the light of the above notice, the petitioner no. 2 filed her written reply before the Executive Officer. In the meantime, respondent no. 6 also filed another objection stating therein that part land of plot no. 230 admeasuring 16.5 decimal belongs to D.D. Co-operative Housing Society Ltd. Soon thereafter, respondent no. 9 Fahimuddin Ahmad Khan filed another objection alleging therein that the petitioners were raising illegal construction over their plot nos. 230 and 234. The petitioner no. 2 contested the matter by filing replies and also produced certain documents in support of her contention. It would be manifest from perusal of the record that no notice was ever issued to petitioner no. 1 who was a necessary party. There is no dispute to the fact that the petitioner no. 1 is a Company incorporated under the Indian Companies Act, 1956. A company is



a separate legal entity as distinct from its members, therefore, it is separate at law from its shareholders, directors, promoters etc. and as such is conferred with rights and is subject to certain duties and obligations. As the plan was sanctioned in the name of the Company through its director, the Company was a necessary party and without issuing any notice to the Company and affording it any opportunity, the order of cancellation of sanction of building plan has been passed. Such being the position, the Tribunal ought to have interfered with the order passed by the Executive Officer.

11. Furthermore, once a building plan had been sanctioned, it was not open to the respondents to cancel or revoke the said sanction unless it was demonstrated that the same was secured by playing fraud or misrepresentation. In case of allegations of fraud or misrepresentation also, the sanction plan could not have been cancelled without giving opportunity to the petitioner in whose favour sanction had been ordered by the authority. It is well settled in law that where exercise of powers result in civil consequences to the citizen unless the statute specifically rules out the application, the principle of natural justice would be applicable.

12. In the instant case, no doubt show-cause notice was served upon the petitioner no. 2, but the said show-cause notice is



silent about cancellation of sanction order of building plan. The fundamental principle behind the serving of show-cause notice is to make the noticee understand not only the precise case set up against him, which he has to meet but also the nature of the action, which is proposed to be taken against him so that noticee may be able to take a defence that the proposed action is not warranted in the given case. Even if, the defaults complained of is not satisfactorily explained, the principle of natural justice would require an opportunity against the proposed action. This issue finds support from the decisions rendered by the Supreme Court in **Gorkha Security Services vs. Govt. (NCT of Delhi) [(2014) 9 SCC 105]** and **Oryx Fisheries Pvt.Ltd vs. Union of India & Ors [(2010) 13 SCC 427]**. Thus, in absence of ouster of application of principle of natural justice in the statute and in absence of any notice to the petitioners regarding the proposed action, the impugned order cancelling the sanction of building plan cannot be sustained.

13. In view of the discussions made above, I set aside the order dated 15.09.2014 passed in Appeal No. 04 of 2012 by the Tribunal and the order dated 11.01.2012 passed by the Executive Officer, Nagar Parishad, Khagual.

14. However, I may make it clear that in case the petitioners are found to have obtained sanction order of building



plan by practicing fraud or misrepresentation, it will be open to the Executive Officer, Nagar Parishad, Khagaul to proceed against them only after giving an opportunity of hearing in accordance with law.

15. In the result, the writ petition is allowed.
16. There shall be no order as to costs.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.01.2018
Transmission Date	NA

