

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.974 of 2018

In

Civil Writ Jurisdiction Case No.8880 of 2015

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M/s Gayatri Engicon Pvt. Ltd. through its Managing Director, Muni Lal Yadav, Son of Late Baishakhi Yadav, Resident of Flat No. 402, Shri Hari Apartment, Road, No. 10, East Patel Nagar, Police Station-Shashtri Nagar, District-Patna.

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary Department of Urban Development, Govt. of Bihar, Patna.
2. The Patna Municipal Corporation through its Commissioner Maurya Lok, Patna.
3. The Vigilance Officer, Patna Municipal Corporation Maurya Lok, Patna.
4. Smt. Meena Devi, Wife of Sri Ashok Kumar Singh, Resident of Road No.1/A, Mahesh Nagar, Police Station-Patliputra, District-Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Y.V. Giri, Sr. Advocate Mr. Pranav Kr., Advocate
For the State	:	Mr. Yogendra Prasad Sinha – AAG 7
For P.M.C.	:	Mr. Prasoon Sinha, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 13-08-2018

1. Feeling aggrieved and dissatisfied with the judgment and order passed by the learned Single Judge on 19.6.018, by which the learned Single Judge has dismissed the writ petition bearing C.W.J.C. No.8880 of 2015, the original petitioner has preferred the present Letters Patent Appeal under Clause10 of the Letters Patent.



2. The facts leading to the present Letters Patent Appeal, in nut shell, read as under:

2.1 That the appellant/original petitioner is a company engaged in building and developing plots for commercial purposes. The appellant company applied for construction of Bhagwat Kunj Apartment on plot No.1440 and 1441 situated at 1-A, Mahesh Nagar, Patna which was numbered as Plan Case No. P/Manpura-PRN-207/2009 and was sanctioned vide order dated 16.6.2009 for construction of a G+4 with a height of 14.40 metres from ground level. It was found that the petitioner constructed G+5 up to the height of 19.09 metres from the road. Subsequently, the private respondent No.4 filed a complaint before the Commissioner, Patna Municipal Corporation, alleging inter alia that the petitioner was constructing the building in question after obtaining the sanction fraudulently. It was submitted that though the total area of the land was only 373.421 square metres, it was wrongly shown as 492.071 square metres and by practising fraud, the appellant/original petitioner succeeded in getting the plan/map sanctioned for constructing a G+4 building. That the complaint was registered as Vigilance Case No.24B/2010. That after making a preliminary enquiry, the Municipal Commissioner, Patna Municipal Corporation, vide order dated 20th December, 2010



passed an interim order directing the original petitioner to stop the construction work forthwith as it has indulged in an unauthorized construction after deviating from the sanctioned plan and to file its explanation as to why the unauthorized construction be not demolished.

2.2 It appears that the Vigilance Officer, Patna Municipal Corporation, by Memo. No.719 dated 27.12.2010 informed the S.H.O., Pataliputra Police Station to stop the construction work being carried out by the petitioner as the same was found unauthorized, for which Vigilance Case No.24B/2010 was pending before the Patna Municipal Corporation. It appears that the petitioner preferred an appeal before the Tribunal against the aforesaid order dated 20th December, 2010 issued by the Vigilance Officer of the Patna Municipal Corporation. The Tribunal refused to interfere in the aforestated orders. Being aggrieved, the petitioner filed C.W.J.C. No.1286 of 2011 before this Court seeking quashing of the aforestated orders dated 20th December, 2010 and 27.12.2010. The said writ petition came to be disposed of by this Court with a direction to the petitioner to raise his grievances before the competent authority and the Commissioner, Patna Municipal Corporation was directed to pass a final order in the vigilance case within six weeks from the date of appearance



and filing objection by the petitioner. The petitioner failed to appear before the Municipal Commissioner. Therefore, the vigilance case came to be disposed of vide order dated 3.3.2012 directing the petitioner to demolish the deviations as pointed out in the order.

2.3 That the petitioner challenged the said order dated 3.3.2012 by filing a writ petition bearing C.W.J.C.No.1154 of 2012. The respondent No.4, original complainant, also filed a writ petition before this Court vide C.W.J.C. No.2736 of 2012 stating therein that the building raised by the petitioner is in violation of the sanctioned plan and the Building By-laws as the building raised is without any setback and whatever set back has been shown is a part of the lane.

2.4 That both the aforestated writ petitions were heard together and came to be disposed of by a common order dated 18.7.2012 with the observation that the petitioner of C.W.J.C. No.1154 of 2012 will be at liberty to apply for compounding within one month before the Commissioner, who shall consider the request and pass the final order in the matter in accordance with law in another one month. It was also further observed that the petitioner may raise construction in accordance with sanctioned map at his own risk, which would be subject to the order that may



be passed by the Commissioner considering the compounding of the deviation made by the petitioner. Similarly, the petitioner of C.W.J.C. No.2736 of 2012 was also given liberty to invite the attention of the Municipal Commissioner towards the illegalities which could not be noticed in the order dated 3.3.2012. Thereafter, the petitioner filed a representation before the Municipal Commissioner, Patna on 8.8.2017 as per the liberty reserved by this Court vide order dated 18.7.2012 in C.W.J.C. No.1154 of 2012.

2.5 Thereafter, after hearing the parties the Municipal Commissioner, Patna vide order dated 12th of April, 2014 passed in Vigilance Case No.24B/2010 directed the petitioner to demolish the 4th and 5th floor of the building in question and also directed the petitioner to correct the non-compoundable deviations and further directed the petitioner not to obstruct/encroach the private road of the apartment, which was being used by other residents of the locality.

3. Feeling aggrieved and dissatisfied with the aforestated order dated 12th of April, 2014 passed in Vigilance Case No.24B/2010, the petitioner filed a writ petition bearing C.W.J.C. No.9131 of 2014 which came to be disposed of by directing the petitioner to file an appeal before the Tribunal



bearing Appeal No.104 of 2014. The learned Tribunal, after hearing the parties, vide order dated 15.5.2015 confirmed the order dated 12th of April, 2014 passed in Vigilance Case No.24B/2010 passed by the Commissioner, Patna Municipal Corporation and dismissed the appeal.

4. Feeling aggrieved and dissatisfied with these orders passed by the Commissioner, Patna Municipal Corporation and the learned Tribunal, the petitioner preferred the writ petition before this Court bearing C.W.J.C. No.8880 of 2015.

4.1 That by a detailed, speaking order, the learned Single Judge has dismissed the said petition, which has given rise to the present Letters Patent Appeal.

5. We have heard Shri Y.V. Giri, learned Senior Counsel appearing on behalf of the original petitioner and Shri B.P. Sinha, learned Additional Advocate General for the State and Shri Prasoon Sinha, learned Advocate appearing on behalf of the Patna Municipal Corporation.

5.1 Shri Giri appearing on behalf of the appellant herein has reiterated what was submitted before the learned Single Judge. Shri Giri has vehemently submitted that the impugned order passed by the learned Single Judge dismissing the petition is not sustainable on law as the learned Single Judge mechanically



followed the findings recorded by the learned Tribunal as well as the original order passed by the Commissioner, Patna Municipal Corporation and has wrongly come to the conclusion that the appellant has constructed the building G+4 and construction of the 5th floor in complete violation of 10.2 of the Building By-laws. It is submitted that as such no independent finding has been recorded by the learned Single Judge in the impugned order.

5.2 It is further submitted by Shri Giri, learned Senior Counsel appearing on behalf of the appellant, that the plan for construction for Bhagwat Kunj Apartment Plot No. 1440 and 1441 is duly approved by PRDA vide its order dated 16.06.2009 after carrying out a detail investigation by the then Amin and Junior Engineer of PRDA and the same was approved by the Assistant/Executive Engineer, PRDA basing on the enquiry report in which the road in front of the building was found to be PCC Road with 6.85 metre wide the north and 6.80 metre from the south and the drain is found to be 4.4 metre and the total land measured was found to be 492.071 sq.mtr. and thereafter the plan was approved for constructing a building measuring height of G+4 i.e., 14.40 metre.

5.3 It is further submitted by Shri Giri, learned Senior Counsel appearing on behalf of the appellant, that the learned



Single Judge has not properly appreciated the fact that as such there was no 5th floor constructed and what is constructed is a Barsati, which is permissible under Clause-21.2 of the modified Building By-laws in Note-1. It is submitted that the structure including Barsati is permissible to be constructed not beyond one third of the roof area of the building and the same shall not be counted or added for the purposes of determining the height of the building. It is submitted that in the present case by adding the height of Barsati the so-called height of the building has been shown to be 19.9 metres, which is based on incorrect finding recorded by the learned Single Judge.

5.4 It is further submitted that the Learned Single Judge has also failed to appreciate the fact that the road includes drain in view of the clause 2.74 of the modified building by-laws and has wrongly interpreted Clause 2.74 of the modified building by-laws by arriving to a conclusion, the street does not include drain (Nala).

6. Making above submissions, inter alia it is requested to allow the present appeal and quash and set aside the impugned orders including the order passed by the learned Single Judge dismissing the petition.



7. Learned counsel appearing on behalf of the State as well as the Patna Municipal Corporation has supported the orders passed by the authorities below as well as the impugned judgment and order passed by the learned Single Judge.

8. It is vehemently submitted by the learned counsel appearing on behalf of the respondent Patna Municipal Corporation that the findings recorded by the learned Single Judge are based on record and considering the material on record, which are neither perverse nor contrary to the evidence on record.

8.1 It is vehemently submitted by the learned counsel appearing on behalf of Patna Municipal Corporation that as such there are concurrent findings of fact recorded by all the authorities below including the learned Single Judge that the 5th floor constructed by the appellant herein/original petitioner was absolutely illegal and for which even the plan was not got sanctioned.

8.2 It is further submitted by Shri Prasoon Sinha, learned counsel appearing on behalf of Patna Municipal Corporation, that as such the learned counsel appearing for the appellant herein conceded before the learned Single Judge that the construction of the 5th floor is without getting the plan sanctioned.



8.3 It is further submitted that there are concurrent findings recorded by the authorities below including the learned Single Judge that the appellant herein/original petitioner got the plan sanctioned by giving false information and the particulars, more particularly with respect to the area of the land and thereby committed the fraud. Therefore, it is requested to dismiss the present appeal.

9. Heard learned counsel appearing on behalf of the respective parties at length. We have perused the record and considered the impugned order passed by the learned Single Judge and the findings recorded by the learned Single Judge, more particularly the findings recorded in paragraphs 26 to 32. It is required to be noted that even the appellant/original petitioner admitted that the construction of the 5th floor was without any sanctioned plan. Paragraphs 26 to 32 are as under:-

“26. The very foundation of the pleading of the petitioner is that the government had taken a decision to cover up the drain (nala) which will ultimately expand the width of the road would make it manifest that the petitioner is trying to take advantage of its own wrong. The petitioner admits that the construction of the 5th floor is without any sanctioned plan. There is no provision in the bye-laws, which stipulates waiving of width of road or height of the building on the basis of future expansion for widening of road and, therefore, no relief can be granted to the



petitioner on such pleadings. The width of the road is to be measured on actual basis and not any future hope of widening of road. If such plea is permitted and buildings are allowed to be erected on the basis of anticipated widening of road, there would be a complete chaos.

27. So far as the alternative plea taken by the petitioner that road includes drains in view of clause 2.74 of the modified building bye-laws is concerned, it would be relevant to extract clause 2.74 which reads as under:-

“2.74. Street- Any highway, street lane, pathway, alley, stairway, passage way, carriage-way, footway, square, place or bridge whether a thorough fare or not, over which the public have a right of passage or across or have passed and had access uninterruptedly for a period within one year after completion of road development, whether existing, proposed in any scheme and includes all bunds, channels, ditches, storm water drains, culverts, sidewalls, traffic in lands, road side trees and hedges, retaining walls fences, barriers and railing within the street lines.”

28. From a reading of the aforesaid clause 2.74, it would be evident that the definition of street does not include the word „drains“ rather it includes „storm water drains“ which are meant to drain out rainy water.

29. Thus, the argument advanced by the petitioner in this regard is also contrary to the definition of the street as provided under clause 2.74 of the bye-laws.



30. Furthermore, it is not the case of the petitioner that resident of the locality have a right of passage or across or have passed and had access uninterruptedly for a period of one year after completion of road.

31. So far as the plea taken by the petitioner in respect of construction having been made pursuant to the order passed by this Court in C.W.J.C. No.1154 of 2012 is concerned, it would be evident from perusal of the order dated 18.07.2012 that the petitioner was granted liberty to proceed with the construction in accordance with sanctioned building plan at his own risk. Since the petitioner had constructed the building in question after obtaining the plan of the building sanctioned for construction of G+4 floors upto the height of 14.40 meters by wrongly showing the total area of land in its possession as 492.071 square meter in his map whereas according to the physical verification report made by the Amin, the area of land was found only 373.471 square meter on the existing road, which is less than 20 feet wide on which a building upto the height of 11 meter could have only been sanctioned, no illegality can be found with the impugned orders passed by the Municipal Commissioner and the Tribunal.

32. Thus, the issue as it stands presently is that the width of the road is only 3.79 meters. The permissible limit as per the bye-laws on a 20 feet wide road is ground plus three storey building with a ceiling of height upto 11 meters. The petitioner has misled the authorities in getting the building plan approved for ground plus four storey by misrepresenting the size of the plot. It has also made an unauthorized construction of fifth storey, which was never approved or sanctioned. It is taking a lame excuse of road widening on account of decision taken by the State to cover open



drain for condoning the unauthorized and illegal construction made by it The State has refuted the claim of the petitioner by filing counter affidavit. Thus, the undeniable and undisputed facts that emerge are that the petitioner has indulged in blatant violation of law in constructing multi storyed apartment. The Municipal Commissioner and the Tribunal while passing the impugned orders have given concurrent findings on fact, which are based on sound appreciation of evidence. They are neither perverse nor illegal and have been passed after affording opportunity of hearing to the petitioner.”

10. So far as 5th floor is concerned, as such the same is required to be demolished as the same has been constructed without any sanctioned plan.

10.1 So far the removal of construction of 4th floor is concerned, it is required to be noted and as observed by the learned Single Judge considering the materials on record, that the appellant/original petitioner constructed the building in question after getting the plan of the building sanctioned for construction of G+4 floors up to the height of 14.40 metres by wrongly showing the total area of the land in his possession as 492.071 square metres in his map, whereas according to physical verification report made by the expert, the area of the land was found 373.171 square metres on the existing road, which was less than 20 ft. on which a building upto the height of 11 metres could have only been sanctioned. Therefore, as such the appellant/petitioner first of



all got the building plan sanctioned by giving wrong particulars/measurement and by committing the fraud. There are concurrent findings by all the authorities below including the learned Single Judge. Therefore, as such it cannot be said that the learned Single Judge has committed any error in dismissing the petition.

11. Now, so far the submission on behalf of the appellant/original petitioner relying upon Clause 2.74 of the modified Building By-laws is concerned, the same has been dealt with in detail by the learned Single Judge in para 27 to 30, which is reproduced hereinabove. We concur with the same.

11.1 The person/builder who has played misrepresentation and the fraud and has put up the construction by getting the plan approved for G+4 by misrepresenting the size of the plot etc., no sympathy is required to be shown. The learned Single Judge has rightly relied upon the decision of the Hon'ble Supreme Court in the case of *Esha Ekta Apartments Cooperative Housing Society Limited and others Vs. Municipal Corporation of Mumbai and others, 2013 (5) S.C.C. 357*.

12. In view of the above and for the reasons stated above, we see no reason to interfere with the impugned well reasoned order passed by the learned Single Judge. We are in complete



agreement with the view taken by the learned Single Judge. No interference is called for in exercise of the appellate jurisdiction, more particularly with the findings of fact recorded by all the authorities below including the learned Single Judge.

13. In the facts and circumstances, this appeal deserves to be dismissed and is accordingly dismissed.

14. In view of dismissal of the appeal, all the interlocutory applications stand disposed of.

(Mukesh R. Shah, CJ)

(Dr. Ravi Ranjan, J)

K.C.Jha/-

AFR/NAFR	NAFR
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