

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.938 of 2019

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1. Md. Azalfa Building Construction Pvt. Ltd. through its Managing Director namely Mr. Nuashad Alam having its office at 506/1, New Azimabad Colony, Police Station Bahadurpur, District Patna.
 2. Mr. Naushad Alam, Male, aged about 50 years, son of Mr. Adalat Hussain, resident of Mohalla – New Azimabad Colony, Police Station – Bahadurpur, District – Patna.

... .. Petitioners

Versus

1. The State Of Bihar of Bihar through Principal Secretary, Town Planning and Urban Development Department, Government of Bihar, Patna.
2. The Patna Municipal Corporation through its Commissioner, Maurya Lok Complex, Patna.
3. The Town Commissioner, Patna Municipal Corporation, Maurya Lok Complex, Patna.
4. The Executive Officer, Bankipore Division, Patna Municipal Corporation, Maurya Lok Complex, Patna.
5. The Vigilance Officer, Patna Municipal Corporation, Patna.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr.Sanjeev Kumar Singh, Adv. Mr.Uma Kant Prasad, Adv. Mr. Sanjeev Kumar Singh, Adv.
For the Respondent/s	:	Mr.Kinkar Kumar -SC9 Mr.Yogesh Kumar, AC to SC9
For the PMC	:	Mr. Prasoon Sinha, Adv.

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 28-01-2019 Heard learned counsel for the petitioners and learned counsel representing the State.

Mr. Prasoon Singh, learned counsel representing the Patna Municipal Corporation is present.

Petitioners in the present case are engaged in construction of a building on a piece of plot within the jurisdiction of Patna Municipal Corporation (hereinafter referred to as ‘the Corporation’).



It is the case of the petitioners that the Corporation has sanctioned and approved a map and they were proceeding with the construction work in accordance with the sanctioned map. While the work was going on, an inspection of the construction site was conducted behind the back of the petitioners and then based on the said inspection report the Commissioner of the Corporation has issued Letter No. 11308 dated 19.11.2018 as contained in Annexure-5 to the writ application.

By the said impugned letter the Commissioner while exercising his power under Section 324(1) of the Bihar Municipal Act, 2007 directing the petitioners to stop further construction, called upon them to show as to why appropriate order be not passed for demolition of unauthorized construction.

Learned counsel for the petitioners submits that the entire inspection was conducted behind the back of the petitioners and, therefore, no reliance could have been placed on the said inspection report.

On the other hand, Mr. Parsoon Sinha, learned counsel representing the Corporation submits that in the nature of the letter bearing No. 11308 dated 19.11.2008, no interference is called for at this stage by this Court because the



matter is still subjudiced before the Statutory Authority and by the impugned letter the petitioners have been called upon to show cause. It is his submission that whatever be the issues available to the petitioners, they may represent their case before the Commissioner.

At this stage, Mr. Sanjay Singh, learned counsel representing the petitioners submits that in fact during pendency of writ application while the excavation work was going on at site, on account of open space which had been created due to digging for the purpose of construction, soil erosion took place and unfortunately the boundary wall of the adjacent Hathwa market collapsed in the night of 12.01.2019.

Learned counsel submits that one FIR has already been lodged in the said case but the petitioners are ready and willing to carry on repair work and other remedial measures whatever be necessary for preventing further soil erosion in the adjacent area. Learned counsel submits that permission in this regard is sought for from the authorities of the Corporation but the same has not been given so far.

Having heard learned counsel for the petitioners as also learned counsel for the Corporation, this Court is of the considered opinion that so far as the impugned letter as



contained in Annexure-5 is concerned, no interference is required from this Court sitting in its writ jurisdiction. It is apparent from Annexure-5 that petitioners have been called upon to show cause, thus, the petitioners were required to present their case before the Municipal Authorities. It is stated now that a show cause has already been filed before the Commissioner of the Corporation. In that view of the matter alone, when the matter is adjudicated before the Corporation, this Court would not dwell into issues raised by the petitioners in the present writ application.

So far as the developments which have taken during pendency of writ application, again the petitioners are required to bring the entire facts to the notice of the Commissioner of the Corporation, with their request to allow them to take up the remedial measures so that the damage to the adjacent area may be controlled. On such request the Commissioner of the Corporation shall look into the matter and will take an appropriate decision in the best interest of the people who are likely to be affected, at the earliest to stop further erosion of soil and damage to the adjacent properties. The petitioners will abide by the order of the Commissioner of the Corporation as regards the directions to carry on the remedial measures whatever is



required.

This writ application stands disposed off with the
aforesaid observations.

(Rajeev Ranjan Prasad, J)

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