IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19762 of 2014

==

1(a) Smt. Kunti Singh Wife of late Birendra Mohan Singh Resident of Mohalla- Rejendra Nagar, Road No. 1, P.S. Kadamkuan, Patna-16

1(b) Mrs. Pushpa Chauhan W/o Mr. S.S. Sinha, D/o Late Birendra Mohan Singh At Present resident of Mohalla- Rajendra Nagar, Road No. 1, P.S. Kadamkuan, Patna-16

1(c) Mrs. Rekha Chauhan W/o Dr. Rabindra Prasad Singh, D/o late Birendra Mohan Singh At Present residing at Mohalla- Pipe Factory Road, Mahatma Gandhi Nagar, P.S, Kankarabagh, Patna-26

1(d) Mrs. Sunita Chauhan, W/o Mr. Bishwamohan Kumar Singh, D/o Late Birendra Mohan Singh Presently resident of Mohalla- A-01, Reserve Bank of India Colony, D, Block Poorvi Marg, Vasant Vihar, New Delhi- 110057

1(e) Mrs. Anita Singh W/o Mr. Shailesh Kumar Singh, D/o late Birendra Mohan Singh Presently residing at Mohalla-B 802, Mont Vert Attesse, Pashan Sus Road , Behind Union Bank of India, Pashan Pune- 411021 Maharashtra.

1(f) Mrs. Priti Singh W/o Mr. Sanjay Singh, D/o Birendra Mohan Singh Presently resident of Mohalla- 1404, Satpura Towers, Kaushambi, Ghaziabad, U.P.

1(g) Dr. Archana Shahi W/o Dr. Sanjay Shahi, D/o late Birendra Mohan Singh Presently resident of Mohalla- Shahi Clinic, Gurudwara Road, Udham Singh Nagar, Rudrapur- 263153.

1(h) Mrs. Tripti Singh W/o Mr. Rajishwar Pratap Singh, D/o late Birendra Mohan Singh Presently resident of Mohalla- Vivek Vihar(AWHO), Flat No. D416, Section 82 Noida- 201304, U.P.

1(i) Mrs. Priyanka Singh W/o Mr. Ravi Ranjan, D/o late Birendra Mohan Singh Presently resident of Mohalla- Rajendra Nagar, Road No. 1, Opposite Water Tower, P.O. Rajendra Nagar, P.S. Kadamkuan, Patna-16.

... ... Petitioners

Versus

The Patna Municipal Corporation through Sri Kuldeep Narayan the Commissioner, Mauryalok Complex, Opposite- Kotwali Police Station, Patna-1

... ... Respondent

==

Appearance :

For the Petitioner/s : Mr. A.B. Ojha, Sr. Advocate
Mr. Ajay Kumar Singh, Advocate
Mr. Nitesh Kumar, Advocate
Mr. Bharat Bhushan, Advocate

For the P.M.C. : Mr. Sanjay Prakash Verma, Advocate
==

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 11-04-2019

The petitioners are seeking a writ in the nature of mandamus directing the respondent authorities to execute a lease deed in respect of Plot No. 63“B”, Block - “A” Rajendra Nagar, Road No. 1, P.S. Kadamkuan, Patna.

The case of the petitioners is that plot of land bearing no. 63“B” was owned and possessed by Patna Improvement Trust (hereinafter referred to as the ‘Trust’). In due course the ‘Trust’ was suceeded by Patna Regional Development Authority (hereinafter referred to as the ‘PRDA’). All the assets and liabilities of the Trust were transferred to the ‘PRDA’ and subsequently those were vested in Patna Municipal Corporation (hereinafter referred to as the ‘PMC’) under Ordinance No. 2/2007 and PMC Act No. 11 of 2007.

It is the case of the petitioners that the original petitioner (since deceased) was given the possession of the plot on 23.10.1959. A house was constructed thereon in which the petitioners are living. The cost of the plot was Rs.

9699.28 paise besides ground rent of Rs. 5/- per annum. According to the petitioners they paid Rs. 5602.24 in State Bank of India, Patna on 22.09.1959 in favour of the Trust, only Rs. 4097.04 paise could not be paid due to some domestic disputes relating to ancestral properties.

Further case of the petitioners is that the Trust had filed Money Suit No. 210/1966 which was later on converted into Title Mortgage Suit No. 78/1974 because the building in question was subject to Mortgage. The said Mortgage Suit was decreed on 05.08.1974 whereunder the court below allowed a sum of Rs. 1948.70 towards principal and Rs. 15/- for ground rent together with a cost and the total amount for which the decree was issued came to Rs. 2273.70 + 310 for the cost of the suit. It is the case of the petitioner that the entire payments were made in court through eight challans. Number of challans have been given in the writ application and copies thereof have been brought on record with the rejoinder filed on behalf of the petitioners.

It is submitted that in order to facilitate execution of lease deed petitioners had made available all concerned papers to the then 'PRDA' but for the reasons best known to them they were sitting tight over the matter.

It appears that the writ application was initially filed by the husband of the present petitioner no.1 who had died on 07.09.2017, thereafter name of the petitioner was substituted vide I.A. No. 8780/2017. The petitioner has thereafter filed one I.A. No. 3/2019 to add further reliefs in the writ application.

By filing Interlocutory Application being I.A. No. 03/2019 now the petitioner is praying to quash the order contained in letter no. 368 dated 12.01.2019 by which the petitioners asked to deposit Rs. 56,67,268.00. It is the stand of the petitioners that the entire payments in terms of the mortgage decree have been made long back but the respondent corporation is not looking into those documents which have already been submitted with the then 'PRDA' and by ignoring those documents now a huge liability of over Rs. 56 lakhs have been created against the petitioners.

It appears that the matter was earlier taken up on 03.01.2019, the court passed the following order: -

"In the counter affidavit filed on behalf of the

Estate Officer, Patna Municipal Corporation, Patna a statement has been made that as per revised rate of Rs.12,97,500/- of the plot in question, due amount has been calculated as on 31.03.2016 which comes to Rs.54,86,507/-. The deponent of the counter affidavit nowhere states that in past the petitioner has ever been served with any such demand showing the calculations of Rs.54,86,507/-. The Estate Officer is, therefore, directed to communicate the petitioner, the demand, if any, with complete calculations showing the mode and manner by which such amount has been reached by the Estate Officer. This exercise will at least give an opportunity to the petitioner to understand the nature of demand and he would be in a position to come out with his stand thereon. Let the whole exercise be completed within a period of three weeks.

List this matter on 24.01.2019 when a further affidavit on behalf of the Estate Officer should be available on the record showing the steps taken by him during this period.

Let it be recorded that this order is being passed without prejudice to the right and contention of the petitioner and as and when occasion will arise the petitioner will have an opportunity to contest such demand in accordance with law."

Pursuant to the aforesaid order the calculation was made and now the same has been challenged by filing the interlocutory Application.

The Municipal Corporation has come out with it's second supplementary counter affidavit admitting therein the payment of Rs. 5,702.24 till 05.09.1959. It is also admitted therein that Title Suit No. 328/1963 and 78/1974 was filed before the competent court. However, the pleas of the Corporation are that the detail of the suit as well as the dues of balance amount are not available in the official record. It is their stand that they are not aware as to how the payment of the due amount were made by the allottee.

In paragraph ‘17’ of the second supplementary counter affiavit it is stated that “*it is necessary to submit that in the Revenue Receipt, the receipt number and the date with regard to deposit of the payment of balance amount for the plot in question has not been mentioned. If the balance amount has been deposited, the petitioners can show the photocopy of the receipt.*”

Having heard learned counsel for the parties and on perusal of the records which has been discussed hereinabove, this court finds that the Municipal Corporation is admitting receipt of Rs. 5702.24 till 05.09.1959. The Corporation is also admitting about the Title Mortgage Suit No. 78/1974, but thereafter they have simply stated that the official record is not having the documents as regards the detail position of the suit and the dues of the balance amount. The Corporation has also come out with a stand that the revenue receipts and other documents with regard to deposit of payment of balance amount may be shown by the petitioners.

Under these circumstances, it is apparent and evident from the records that the various documents such as the copy of the judgment and decree of the Mortgage Suit as contained in Annexure-5 and copies of the Challans available at Annexure-6 series with the rejoinder of the petitioners have not at all been looked into and considered by the Corporation. This court also finds from Annexure-‘7’ enclosed with the rejoinder of the petitioner that vide letter no. 20533 dated 19.06.2013 the Estate Officer of the Corporation had called upon the petitioners to submit all the papers relating to the mortgage suit and the proof of payment so that further action may be taken upon the application of the petitioners. It appears from Annexure-‘8’ to the rejoinder that in response to the letter dated 19.06.2013 written by the Estate Officer of the Corporation the petitioner had submitted his letter along with certain enclosures.

In all fairness, equity and justice the Municipal Corporation should have while filing supplementary counter affidavit looked into those documents which are very much available on the record and a stand should have been taken with specific consideration of those documents which have not been done in the present case.

In the totality of the circumstances, this court finds that the Municipal Corporation is required to do certain exercise with reference to the materials which are available on the record. This court directs that the petitioners shall once again submit all those documents with an affidavit in the office of the Municipal Commissioner within a period of two weeks from today. The Municipal Commissioner, Patna Municipal Corporation shall look into those documents, examine the same and upon a proper consideration thereof will take a reasoned decision with regard to the request of the petitioners to execute the lease deed of the plot in question. So far as the calculation which have been submitted and is under challenge by the petitioners in the Interlocutory Application is concerned, the same shall not be enforceable as the court has found that the Municipal Corporation is required to examine the documents and take a decision afresh.

Let such a decision be taken and communicated to the petitioners within a period of 60 days from the date of receipt of the affidavit with all supporting documents of the petitioners in the office of the Municipal Commissioner, Patna Municipal Corporation, Patna within the prescribed period.

Accordingly, this writ application as well as I.A. No. 3 of 2019 stand disposed of in aforesaid terms.

(Rajeev Ranjan Prasad, J)

Rajeev/-

AFR/NAFR	
CAV DATE	
Uploading Date	12.04.2019
Transmission Date	