

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6396 of 2016

Prabhat Kumar @ Prabhat Kumar Verma, Son of Late Girish Kumar, Resident of Plot No. S-380, Lohia Nagar, Kankarbagh, Police Station - Kankarbagh, District - Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through Secretary, Urban Development Department and Housing Department, Patna
2. The Bihar State Housing Board, through its Chairman cum Managing Director, 6 Mangles Road, Patna.
3. The Patna Municipal Corporation Patna through its Town Commissioner, Maurya Lok Complex, Dak Bunglow Road, Police Station-Kotwali, District-Patna.
4. The Vigilance Officer, Patna Regional Development Authority, presently under Patna Municipal Corporation, Maurya Lok Complex, Dak Bunglow Road, Police Station-Kotwali, District-Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Rajeev Verma, Senior Advocate
Mrs. Kanak Verma, Advocate
For the Respondent-Board: Dr. Anand Kumar, Advocate
For the Respondent Nos. 3 & 4: Mr. Prasoon Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
CAV JUDGMENT

Date : 05-04-2019

This instant writ petition has been filed by the petitioner to set aside the order dated 17.12.2013 passed in Vigilance Case No.47B/2011 by the Municipal Commissioner of Patna Municipal Corporation, which was upheld by the Municipal Building Tribunal (for short 'Tribunal') in Appeal No.1 of 2017.

2. The reference to the salient events will facilitate an understanding of the controversy.



3. Initially, CWJC No.13531 of 2010 was filed by one Smt. Vidyottma Devi for redressal of her grievance regarding removal of encroachment from the plot situated in front of her plot, which is said to be a road and alleged to have been encroached by some of the allottees of the Bihar State Housing Board (for short 'the Board') as a result thereof, she has no ingress and egress to her residential plot.

4. By the order dated 21.04.2011, this Court referred the matter raised in the aforesaid CWJC No.13531 of 2010 to the Secretary, Urban Development Department observing as under:-

“The matter is referred to the Secretary, Urban Department whom the court considers the most appropriate authority at this stage of the case to deal with issues.

The Secretary, Urban Development shall grant a personal hearing to the petitioner/her representative, to the Housing Board, to the Patna Municipal Corporation as also respondent no.4/her representative. Needless to state that the concern of the Court only is that the petitioner must have an ingress and egress to her residential plot.

Awaiting the report of the Secretary, Urban Development, as prayed on behalf of the State of Bihar, list after six months under the same heading at the same position.”



5. Pursuant to the said order passed by this Court, the parties concerned were noticed by the Principal Secretary, Urban Development Department and they appeared on 17.08.2011 on which date, after hearing the parties concerned, the Principal Secretary, Urban Development Department passed the following order directing the various authorities in the following manner:-

(i) The writ petitioner Smt. Vidyottma Devi to remove the encroachment made by her from the area situated between the Plot No.G-572 and plot Nos. S-374 to S-381;

(ii) The Housing Board to immediately take steps in accordance with law for removing the encroachment from the vacant plots as reported;

(iii) The Patna Municipal Corporation to make enquiry as to whether any map was sanctioned for making constructions over the plots in question and further to verify whether constructions were made as per the sanctioned plans and, in case of deviation, to take actions in accordance with law; and

(iv) The Patna Municipal Corporation and Bihar State Housing Board to submit their compliance report to the Urban Development Department within a period of one month.

6. Pursuant to the above directions given by the Principal Secretary, Urban Development Department, on 12.06.2011, the Patna Municipal Corporation initiated the following four vigilance cases:-



- “1. Vigilance Case No.468/11 (Deputy Secretary, Urban Development Department vs. Harihar Prasad)
2. Vigilance Case No.478 /11 (Deputy Secretary, Urban Development Department vs Prabhat Kumar Verma)
3. Vigilance Case No.488/11 (Deputy Secretary, Urban Development Department vs Vidyottma Devi)
4. Vigilance Case No.498/11 (Deputy Secretary, Urban Development Department vs Seema Singh).”

7. The aforesaid vigilance cases were heard on different dates by the Municipal Commissioner, Patna Municipal Corporation and vide order dated 30.11.2013, while reserving the order it was observed that Case Nos.46B/2011, 47B/2011, 48B/2011 and 49B/2011 are analogous cases. Hence, a common order will be passed. Thereafter, by a common order dated 17.12.2013, all the vigilance cases were disposed of by the Municipal Commissioner.

8. In so far as the case of the petitioner is concerned, the Municipal Commissioner in his order dated 17.12.2013 observed that a photo copy of the plan map said to have been approved by the Municipal Corporation (PRDA) in Plan Case No.811 of 1991 was produced during hearing of the vigilance case by the petitioner although no show cause was filed on his behalf during hearing of the vigilance case. The measurement of the building situated on the plot in question was made by the Executive Engineer of the



Patna Municipal Corporation and a comparative chart was prepared after measurement of the said plan map of the building in question as well as the actual measurement taken on the site where the building is situated in which deviations in construction were found. Further, the Executive Engineer of the Patna Municipal Corporation was directed to ensure demarcation of deviations found in building of the petitioner. The petitioner was given option to demolish those deviations himself otherwise the demolition would be done by the Corporation. The Executive Engineer of Kankarbagh Division was directed to contact the officials of the Board and to make a request for measurement of the land of the Board alleged to have been encroached and the Estate Officer of the Board should take steps for removal of the encroachment.

9. Against the said order dated 17.12.2013 passed in Vigilance Case No.47B/2011, the petitioner preferred an appeal vide Appeal No.2 of 2014 before the Tribunal. After hearing the parties, the Tribunal modified the order passed by the Municipal Commissioner.

10. The operative portion of the order passed by the Tribunal is as under:-

“Considering the facts and circumstances of the case, the tribunal is of the opinion that the appellant has occupied excess land on the east and west side as per



measurement report which would have left by the appellant and deviation in back set back (south) and side set back (east) which has been condoned up to the condonable limit after demolishing the excess deviation land and also leaving strip of as per appendix-L of the Building Bye laws. The impugned order is modified to that extent as per aforesaid discussion.

Accordingly, this appeal is hereby disposed of with the aforesaid observations.”

11. Mr. Rajeev Verma, learned senior advocate appearing for the petitioner submitted that the order of the Municipal Commissioner dated 17.12.2013 is based on comparative chart, which has been prepared without any notice to the petitioner for the local measurement. Although, there was an order dated 13.07.2013 for providing aforesaid comparative chart to the petitioner by the Municipal Commissioner, even then, the same was not provided to him. The comparative chart does not bear any signature of the authority by which it was prepared and so it is not a legal document. The measurement of the said comparative chart is not based upon the lease deed, which has been provided by the Board and so, the finding report by the Tribunal that the petitioner has encroached the land is erroneous in law. He contended that there may be deviation from map, but the deviation cannot be called as an encroachment. The finding and



order of the Municipal Commissioner for removal of encroachment is illegal and fit to be set aside.

12. *Per contra*, Dr. Anand Kumar, learned counsel appearing for the respondent-Board has submitted that the order dated 17.12.2013 was passed in Vigilance Case No.47B/2011 after providing sufficient opportunity to all the parties. The said Vigilance Case was instituted in the year 2011 and the final order was passed in the month of December, 2013. From perusal of the said order, it would appear that the petitioner had presented the sanctioned map of Plan Case No.811/1981 in the said vigilance case before the Municipal Commissioner. However, he did not file any written show cause. He submitted that the order impugned passed by the Municipal Commissioner has been upheld by the Tribunal with some modification. The said orders do not suffer from any illegality or irregularity. Hence, they do not call for interference by this Court.

13. Mr. Prasoon Sinha, learned counsel appearing for the respondent nos. 3 and 4 has also supported the contentions of the respondent-Board. He has submitted that the measurement had been done by the Executive Engineer, Kankarbagh Division, Patna and after preliminary enquiry, vigilance case was instituted against the petitioner and other analogous cases were instituted against



rest of the opposite parties on the basis of the complaint petition received by the Vigilance officer of the Patna Municipal Corporation.

14. I have heard learned counsel for the parties and carefully perused the record.

15. On perusal of the impugned order dated 17.12.2013, I find that the petitioner had duly been noticed and had participated in the proceedings before the Municipal Commissioner. If he had chosen not to file any show cause or written reply, he can not take the plea that he was not afforded opportunity of hearing. He admits deviation from the sanctioned plan. However, he disputes that he has occupied excess land on the east and west side as per measurement report (comparative chart).

16. It is true that one Vidyottma Devi had approached this Court initially in writ jurisdiction for redressal of her grievance regarding removal of encroachment from the plot situated in front of her plot. In the said writ petition, this Court had referred the matter to the Secretary, Urban Development Department to deal with issues whereafter pursuant to the direction of the Urban Development Department, the Managing Director of the Board got the measurement of the plot of the Vidyottma Devi done and the said measurement revealed that the petitioner had



also made encroachment. It was under this circumstance, the Principal Secretary, Urban Development Department had directed the Patna Municipal Corporation to make enquiry and take necessary action in accordance with law. Thereafter four vigilance cases were initiated including Vigilance Case No.47B/2011. In the said vigilance case, the petitioner simply produced the photocopy of Plan Case No.811/1981 in order to so that the construction was made on the strength of sanctioned plan.

17. In the available set of facts, I find that the Municipal Commissioner and the Tribunal have recorded concurrent findings that the petitioner has occupied excess land on east and west side. The findings of fact are based on consideration of material on record. The facts so recorded do not suffer from any manifest error to warrant interference by this Court in exercise of jurisdiction under Articles 226 of the Constitution of India.

18. It is well settled that this Court in exercise of its jurisdiction under Article 226 of the Constitution of India cannot sit in appeal over the findings of fact recorded by a competent tribunal. It may interfere where the statutory authority has acted without or in excess of jurisdiction or where it has committed an error of law apparent on the fact of the record. However, it is not



even the case of the petitioner that the Municipal Commissioner or the Tribunal has acted without or in excess of jurisdiction.

19. Thus, in absence of any error of law, apparent on the face of the record, I am not inclined to interfere with the order impugned.

20. The writ petition is dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.04.2019
Transmission Date	NA

