

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21562 of 2018

Binod Kumar Singh S/o Late Raj Keshari Singh, R/o Moti Raj Bhawan, Rajiv
Nagar, Patna

... .. Petitioner

Versus

1. The State of Bihar through its Chief Secretary, Govt. of Bihar.
2. The Principal Secretary, Urban Development , Government of Bihar, New Secretariat, Patna
3. The Commissioner, Patna Municipal Corporation
4. The District Magistrate, Patna.
5. S.D.O., Patna Sadar
6. Sri Ashok Arora, Secretary, Krishna Apartment, S/o Late Budhwa Ram, R/O C-443 Krishna Apartment, Boring Road, Patna
7. Sri Binod Kumar Khataor, President, Krishna Apartment, S/o Vinayak Khator, R/O C-443, Krishna Apartment, Boring Road, Patna

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr.Sandeep Kumar, Advocate
For the P.M.C.	:	Mr.Prabhakar Singh, Advocate
For the State	:	Mr.R.S. Singh, AC to AAG-7
For the Opp. Parties	:	Mr.Dr. Shashi S. Kishore, Advocate
		Mr.Abhay Krishna, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

7 07-05-2019 The report of the learned Advocate Commissioner is available on record in a sealed envelop. This Court directs opening of the sealed cover.

The sealed cover was opened and inspection report has been placed before this Court. The conclusion arrived by the learned Advocate Commissioner are quoted hereunder for a ready reference :-

“Conclusion :-

The premise in question which has been



built upon Parking Space No. 26 & 27 of Krishna Apartment is in form a flat which on date of inspection i.e. 06.04.2019 was found completely empty with no trace of any commercial or any similar activity going on. As far as said premise whether is in contravention of sanction map plan the same can only be ascertained in presence of duly issued sanctioned map plan and in absence of same commenting upon same would be merely a guess work as there are other permanent structures legality or illegality of same could only be traced after referring to sanctioned map plan. For example during physical inspection store room, guard rooms, washrooms were found which all were made in parking space and legality of same can only be established by reference to sanctioned map plan. Though interestingly parking space seems to encroached at several places by way of several permanent structure in form of wall or rooms. Driveway of the apartment from front which faces main boring road is all blocked and there is presence of all commercial shops at ground floor which at the face of it seems illegal but level of illegality can only be ascertained in light of approved sanctioned map plan. Since there is absence of sanctioned map plan in instant case and physical inspection being made regarding premise in question only points which can be ascertained unequivocally is said premise has been constructed in parking space and same is in form of a flat which is surrounded by washroom at eastern side and store room in western side and southern side being a wall. Whilst entry from front through northern side. Currently no deduction can be drawn as to nature of work going on inside said premise as said premise was empty as on date of inspection.

One very pertinent aspect that remains is none of the parties even including the Patna Municipal Corporation is coming forward with sanctioned map plan which could present true state of picture thereby indicating an attempt to cover high level of



illegality which can only be ascertained by direct interference of the Hon'ble High Court.”

This case has come up before this Court challenging the decision of the Commissioner, Patna Municipal Corporation in Misc. Case No. 01 of 2018. The order of the Municipal Commissioner recorded a finding based on the inspection report of the Executive Engineer, Nutan Capital Division (North) who found that the petitioner was using two garage of the parking space in the apartment for preparation of sweets, cakes etc. and finishing and packing works were being carried on in the premises. Taking note of the provisions of sub-section ‘6’ and sub-section ‘7’ of Section ‘10’ of the Bihar Apartment Ownership Act, 2006, the Municipal Corporation Commissioner passed the impugned order by which he directed the petitioner to stop use of the garage for finishing and packing works. In Paragraph ‘7’ of the impugned order the Municipal Corporation Commissioner granted 30 days time to the petitioner to remove unauthorized construction and unauthorized use of the premises failing which Patna Municipal Corporation shall remove the same at the cost of the petitioner.

By virtue of the order dated 11.02.2019 passed by this Court, the petitioner has stopped use of the parking space for the business related activities. The inspection report of the learned



Advocate Commissioner also says that in course of his inspection he did not find any commercial activity going on in the parking space. The inspection report, however, points out that the parking space seems to have been encroached on several places by way of several permanent structure in form of wall or rooms. Drive way of the apartment from the front which faces main Boring Road is also blocked and there is presence of commercial shops on ground floor which at the face of it seems illegal but then the learned Advocate Commissioner has recorded that the level of illegality can only be ascertained when the approved sanctioned map plan is looked into.

This Court finds that the writ application is now required to be disposed off without interfering with the impugned order passed by the Patna Municipal Corporation. The Petitioner has already stopped use of the parking place for commercial purposes but while disposing the writ application, this Court put a word of caution to the Municipal Commissioner to ensure that he would take appropriate step in the light of the report of the learned Advocate Commissioner to find out the illegal and unauthorized structure in the premises which are being complained of by the petitioner.

It will be open for the petitioner to apprise the



Municipal Commissioner with such unauthorized constructions
and the Municipal Commissioner will consider the same in
accordance with law.

(Rajeev Ranjan Prasad, J)

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