

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.268 of 2018

In
Civil Writ Jurisdiction Case No.4540 of 2015

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1. Om Prakash Srivastava, S/o Late Babu Lal Prasad, Resident of Ashiana Nagar, P.S.- Rajeev Nagar, District- Patna, presently Secretary of D.D. Co-operative Housing Society Committee Ltd., Boaring Road, Patna.
 2. D.D. Co-operative Housing Society Committee Ltd. through its Secretary Om Prakash Shrivastava, Son of Late Babulal Prasad, Resident of Boring Road, P.S.- S.K. Puri, District- Patna.

... .. **Respondents-Appellant/s**

Versus

1. The Apurva Awas Yojna Pvt. Ltd. Patna through its Director Smt. Sabitri Devi @ Sabitri Singh, Head Office APURVA Radha Complex, S.K. Puri, Boring Road, Patna- 01, P.S.- Krishna Puri, Dist.- Patna.
2. Smt. Sabitri Devi @ Sabitri Singh, W/o Sri Ramjee Singh, Resident of Bihta, P.S.- Bihta, District- Patna at present Apurva Radha Complex, S.K. Puri, Boaring Road, Patna- 1, P.S.- Krishna Puri, District- Patna.

.... **Petitioners/ Respondents 1st Set.**

3. The State of Bihar
4. The Principal Secretary, Urban Development, Govt. of Bihar, Patna.
5. The Khagaul Nagar Parishad, Khagaul, District- Patna through its Executive Officer.
6. The Executive Officer, Khagaul Nagar Parishad, Khagaul, District- Patna.
7. The Chairman, Municipal Building Tribunal, Patna.

..... **Respondents/Respondents**

8. Sri Haribansh Narain Pandey, S/o Baidyanath Pandey, Resident of C-13, Jagat Ambika Apartment, Brahm Ashthani Road, Sheikhpura, P.S.- Shastri Nagar, District- Patna.
9. Fahimuddin Ahmad Khan, Son of Late Moinnuddin Ahmad Khan, Resident of Egal Apartment Rajapurpul, Mainpura, P.O.- Mainpura, District- Patna.

... .. **Respondents- Respondent/s**

with
Letters Patent Appeal No. 181 of 2018
In
Civil Writ Jurisdiction Case No.4540 of 2015

Haribansh Narain Pandey @ Haribansh Narayan Pandey, S/o Baidhynath Pandey, Resident of C/13, Jagat Ambika Apartment, Braham Ashthan Road, Sheikhpura, P.S. Shashtri Nagar, Distt.-Patna

... .. **Respondent-Appellant/s**

Versus

1. The State of Bihar.
2. The Principal Secretary, Urban Development, Govt. of Bihar. Patna.



3. The Khagaul Nagar Parishad, Khagaul, Patna through its Executive Officer.
4. The Executive Officer, Khagaul Nagara Parishad Khagaul, Distt.-Patna.
5. The Chairman, Municipal Building Tribunal, Patna.
6. Om Prakash Srivastava S/o Late Babu Lal Prasad, Resident of Ashiana Nagar, P.S. Rajeev Nagar, Distt.-Patna, Presently Secretary of D.D. Co-operative Housing Society Committee. Ltd. Boring Road, Patna.
7. The Apurva Awas Yojna Private Ltd. Patna through its Director Smt. Sabitri Devi @ Savitri Singh, Head Office Apurva Radha Complex, S. K. Puri, Boring Road Patna-1, P.S.-Krishnapuri, District-Patna.
8. Smt. Sabitri Devi @ Sabitri Singh, W/o Ramjee Singh, Resident of Bihta, P.S.-Bihta,Distt.-Patna, at Present R/o-Apurva Radha Complex S.K. Puri, P.S.-Krishnapuri, Boring Road, Patna-1, Distt. -Patna.
9. D.D. Co-operative having Society Committee Ltd. through its Secretary Om Prakash Srivastava, S/o Babulal Prasad, R/o Boring Road P.S. S.K. Puri, Distt. Patna.
10. Fahimuddin Ahmad Khan, Son of late Moinnuddin Ahmad Khan, R/o Egle Apartment Rajapur Pul, Mainpura, P.O. Main Patna, Distt. Patna.

... .. Respondent/s

Appearance :

(In Letters Patent Appeal No. 268 of 2018)

For the Appellant/s : Mr. P. K. Shahi, Senior Advocate
Mr. Satyam Shivam Sundaram, Advocate

For the Respondent Nos.1 & 2 : Mr. Arbind Kumar Jha, Advocate
Mr. Vijay Kumar Verma, Advocate

For the Respondent Nos. 5 & 6: Mr. Abhay Kumar, Advocate
Mr. Ramchandra Singh, Advocate

For the State : Mr. Rakesh Ambastha, AC to AAG 7

(In Letters Patent Appeal No. 181 of 2018)

For the Appellant/s : Mr. Raj Dular Sah, Advocate

For the Respondent/s : Mr. Rakesh Ambastha, AC to AAG 7

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 02-07-2019

Heard learned counsel for the appellants and the learned
counsel for the respondent-petitioners as well as the learned
counsel for the Khagaul Nagar Parishad, Khagaul, Patna.



2. The two appeals question the correctness of the impugned judgement of the learned Single Judge dated 3rd of January, 2018 whereby the writ petition filed by the respondent-petitioners has been allowed and the order dated 15th September, 2014 passed by the Municipal Building Tribunal, Patna and the order dated 11th of January, 2012 passed by the Executive Officer, Nagar Parishad Khagaul, Patna, has been quashed.

3. The facts in brief are that the respondent-petitioner submitted a building plan being Plan Case No.17 of 2009 for sanction before the Nagar Parishad, Khagaul, District-Patna. It is undisputed between the parties that such sanction is governed by the Modified Building Bye-laws approved by the State Government known as 'The Patna Planning Standards and Building Bye-Laws, 1981'. The said Building Bye-Laws have been framed in exercise of the powers conferred under the Bihar Regional Development Authority Act, 1974.

4. The map that was proposed by the petitioner was sanctioned on 12th July, 2009. The dispute began when a complaint was lodged by one Shri Haribansh Narain Pandey appellant in LPA No.181 of 2018 and another complaint by one Mr. Fahimuddin Ahmad Khan. The third objection was filed by the appellant D. D. Cooperative Housing Society Committee Ltd.



through its Secretary Om Prakash Shrivastava, who are appellants in LPA No.268 of 2018. They had been allowed to intervene in the writ petition filed by the writ petitioner as they are claiming title over Plot Nos.223 and 230 to the extent indicated in their objections. Haribansh Narain Pandey is claiming title over Plot No. 221. It is in this background that the two appeals have been filed by these two persons and have been heard simultaneously for being disposed of together.

5. A Division Bench of this Court had passed an ad interim order on 18th April, 2018 in LPA No. 268 of 2018 staying further constructions which order was continued on 27.6.2018.

6. The application of Haribansh Narain Pandey is Annexure-5 to the writ petition. On the basis of this application a notice was issued on 8th August, 2011 which is addressed to respondent-petitioner Sabitri Singh and others. She submitted a reply signed by her. The said reply is Annexure-7 to the writ petition. We are mentioning this fact as one of the arguments advanced by the learned counsel for the respondent-petitioners in defence is that the notice was issued to the Director of the promoter Company and was not in the name of the Company that was raising the constructions. Hence, the notice was invalid and



any proceedings initiated on the basis of such a notice has to fall through.

7. At this juncture, a relevant fact deserves to be recorded at the outset, namely, the dispute about the correctness of a document that is the basis of the entire claim which is the sanction order dated 12th July, 2009. Annexure-3 to the writ petition is the said document, the reference whereof has been made in paragraph 10 of the writ petition sworn on oath by the writ petitioner. The said document categorically mentions six plots to be part of the sanction letter, namely, plot nos. 221, 223, 230, 231, 233 and 234. It is signed by the Executive Officer and it is addressed to the respondent-petitioner Sabitri Singh and others and is not in the name of the Construction Company. As against this document there is an argument advanced on behalf of the appellants that the writ petitioner filed a supplementary affidavit dated 2nd of December, 2015 before the Writ Court sworn by the respondent-petitioner Sabitri Devi herself where in paragraph 11 it has been mentioned that the same sanction letter as referred to hereinabove had been issued, but the sanction was granted for Plot Nos. 230, 231 and 234. Annexure-12 which is appended to the said affidavit is a photo copy of the said letter which bears the same number and the same date as Annexure-3 to the writ petition,



but the document recites only three plots in handwriting, namely, Plot Nos. 230, 231 and 234 which clearly establishes that the number of three plots, namely, 221, 223 and 233 has either been erased or is missing or the photo stat of the document has been prepared in a way so as to suit the averments contained in paragraph 11 of the supplementary affidavit sworn by the respondent-petitioner herself. We are clarifying this fact inasmuch as it is the consistent stand of the respondent-petitioner as is evident from the reply tendered before the Executive Officer that the mentioning of the numbers of the three plots 221, 223 and 233 is a typing mistake. This fact has been stated in paragraph 4 of the said reply dated 13.10.2011 which is Annexure-7 to the writ petition. The reply tendered by the petitioner is dated 13th October, 2011. We will deal with this fact for the purpose of recording our findings later on.

8. After the reply was submitted and the matter was considered, the Executive Officer passed a detailed order and arrived at the conclusion that the petitioner has admitted that the mentioning of three plots, namely, 221, 223 and 233, is by mistake, but the Executive Officer has recorded his opinion that the same does not appear to be a typing mistake and is deliberate inasmuch as the plot numbers are categorically mentioned in the



affidavit filed by the respondent-petitioner. The Executive Officer, therefore, came to the conclusion that in view of the findings recorded, the sanction was obtained by misrepresentation that cannot be sustained and, accordingly, since the respondent-petitioner has violated the sanction order for which separate reasons have been given, then invoking Clause 11.1 of the Modified Building Bye-Laws, the letter dated 12th July, 2009 was cancelled on 11.01.2012.

9. After having passed this order and cancelled the plan, the Executive Officer further in the same order put the respondent-petitioner to notice under Section 323 (1) of the Bihar Municipal Act 2007 calling upon her to show cause as to why the constructions raised be not demolished in view of the order passed referred to above.

10. At this juncture, we may record yet another fact which is undisputed between the parties that the proceedings under Section 323 of the 2007 Act, according to respondent-petitioner, has not concluded and according to the learned counsel for the parties, the respondent-petitioner did not submit herself to the said proceedings.

11. Be that as it may, the respondent-petitioner questioned the said order dated 11.01.2012 passed under Clause



11.1 of the Building Bye-Laws in appeal before the Municipal Building Tribunal. We may extract Clause 11.1 in order to further proceed to evaluate the respective arguments on behalf of the parties. The same is quoted hereinunder:-

“11.1. If any time after permission to proceed with any building or development work has been given, the Authority is satisfied that such permission was granted in consequence of any **material misrepresentation or fraudulent statement contained in the application given or information furnished, the Authority may cancel such permission and any work done thereafter shall be deemed to have been done without permission.**”

12. In appeal, the Municipal Building Tribunal traversed the entire facts where the respondent-petitioner did not raise any issue pertaining to the validity of the notice having been issued in the name of Sabitri Singh and not in the name of the Company. The Tribunal on merits recorded as follows:-

“8. It has been admitted by the appellant that the appellant mentioned plot no. 221, 223 and 233 in the map along with other plot nos.230, 231 and 234(P) and got the sanction. When the appellant got knowledge about the said mistake he prayed before the learned Court below for permission to correct



the same. The appellant has shown the said mistake as typing mistake in his show cause filed before the learned Court below and the learned counsel submitted that due to inadvertence plot no.221, 223 and 233 were mentioned in the heading portion of the building plan but the proposed building was constructed over an area of 15664.59 sft, about 11 kattha and 10 dhur on plot no.230, 231(P) and 234(P). From perusal of the sanctioned plan it reveals that the proposed construction at Raut City is at plot no. 230, 231, 234, 221, 223, 233 of Khata No.178, 191, 235, 311 and Tauzi no.5278, Thana No.36, Mauza Mustafapur, Danapur, Patna represented by the appellant and M/s D.D. Co-operative Griha Nirman Samity through its Secretary, Sri Dinesh Kumar in a typed paper. But in the sanctioned sketch map it has not been mentioned how much area of each plot was resulting the total area 15664.59 sft. The appellant has admitted that he has constructed the building in question on plot no.230, 231(P) and 234(P). Then the appellant should have taken steps for correction of the map by filing revised map but the same has not been done by the appellant. Besides this, the appellant has also submitted that all the plots mentioned in the map belong to the appellant but the appellant raised the construction only on 230, 231 and 234. Thus it is a contradictory statement of the appellant regarding wrong mentioning of plot no. 221, 223 and 233 as typing mistake. Moreover,



the appellant submitted planning report, indemnity bond, blue print of map and affidavit in support of the map mentioning these plot nos. by hand writing so the plea of typing mistake of the appellant can not be accepted rather it shows that the same has been mentioned deliberately and intentionally.”

13. It is thus evident from the findings so recorded that the cancellation has ensued on account of misrepresentation of facts, particularly mentioning of wrong plot numbers in the proposal of the writ petitioner and, accordingly, the order of cancellation has been upheld by the Tribunal.

14. Questioning the correctness of the order of the Tribunal dated 15th September, 2014, the respondent-petitioner preferred the writ petition giving rise to the present appeal contending that the notice was invalid inasmuch as the Company was not put to notice for which reliance was placed on the Apex Court judgement in the case of **Tata Memorial Hospital Workers Union Vs. Tata Memorial Centre & another**, reported in **(2010) 8 SCC 480**. It is further submitted that the show cause notice which was issued did not indicate any proposal for such action which the Municipal Corporation intended to take against the petitioner and, therefore, in the absence of any such contents, the notice was invalid. For violation of procedure, learned counsel has



relied on the judgement of the Apex Court in the case of **Oryx Fisheries Pvt. Ltd. Vs. Union of India & Ors.** reported in (2010) 13 SCC 427, paragraphs 20 to 32. The third contention is that no opportunity, therefore, in law can be presumed to have been given, firstly because there was no valid notice to the Company and secondly the proposed action was not narrated in the show cause notice. The third judgement relied on is in the case of **Gorkha Security Services Vs. Govt. (NCT of Delh)**, reported in (2014) 9 SCC 105, para 21 and 22.

15. These arguments were also set forth before the Writ Court and the learned Single Judge came to the conclusion that the impugned order passed by the Executive Officer had been passed without putting the Company to notice and then also came to the conclusion that the show cause notice was silent about the proposal for cancellation. These two grounds form the basis of the impugned judgement of the learned Single Judge whereupon the writ petition has been allowed and the respondent-petitioner has been given an opportunity to face the proceedings afresh in the event, the Executive Officer chooses to proceed against the respondent-petitioner if a finding is arrived at as to whether fraud or misrepresentation has been practiced by the respondent-petitioner or not.



16. Assailing the aforesaid judgement, the appellants have come up in appeal contending that if the very foundation of the sanction of the map is based on a fraudulent exercise by the respondent-petitioner by mentioning the plots which the respondent-petitioner admits being a mistake, then in that event any further arguments may not be necessary as fraud vitiates all solemn proceedings.

17. It has further been pointed out that the respondent-petitioner has relied on documents which on the face of it indicate that the respondent-petitioner has tried to mislead this Court by filing documents on oath which contradict each other and, therefore, resultantly the affidavits so filed in support of the petition as referred to above clearly calls for an action against the respondent-petitioner. It is further submitted that since the consequence of the cancellation of the map would obviously be further action to be taken by the Nagar Parishad, then in that event the arguments advanced on behalf of the respondent-petitioner may not be relevant.

18. Learned counsel for the Executive Officer has also adopted the same arguments as advanced on behalf of the appellants.



19. Having considered the submissions raised, from the facts on record and as narrated above, there is no doubt that the plan submitted by the respondent-petitioner for sanction coupled with the affidavit filed in support thereof categorically mentions three plots, namely plot nos. 221, 223 and 233 as the plots which the petitioner admits having been mentioned by mistake. The admission is of mistake in the sanction order, but we find that as recorded by the Executive Officer, the affidavit filed by the respondent-petitioner was not a mistake, but was a deliberate act on the part of the respondent-petitioner. This stands fortified by the findings recorded on these facts by the Tribunal that has been extracted hereinabove. The respondent-petitioner, therefore, for oblique motives and for reasons that have not been validly explained had tendered a map for sanction deliberately mentioning wrong plot numbers and, therefore, the finding on this issue by the Executive Officer as well as by the Tribunal has to be sustained. Once this is established, then it was not open for the Writ Court to have ignored this finding and then proceed to exercise a discretion against the admitted part of the records as is evident from the narration made hereinabove.

20. The respondent-petitioner has tried to explain it as a mistake. We would have considered the submission, but



unfortunately we find that the respondent-petitioner even before this Court has tried to deliberately misrepresent by filing a fake document which is clearly interpolated and is captioned as Annexure-12 along with the supplementary affidavit stated to be a replica of the original sanction order that is Annexure-3 to the writ petition. At the time of arguments, we specifically put a question to the learned counsel for the respondent-petitioners Shri Bindhyachal Singh who said that Annexure-3 to the writ petition is the correct document, and could not support Annexure-12 filed along with the supplementary affidavit as against the same. We are, therefore, more than certain that the writ petitioner was indulging in an unfair practice by trying to mislead this Court by filing a manipulated and tampered document which aspect has completely been overlooked by the learned Single Judge. On the basis of such facts having been brought on record what we find is that the writ jurisdiction ought not to have been exercised in favour of the respondent-petitioner as he had obtained the sanction order dated 12.07.2009 on the basis of a false disclosure which was deliberate and not a mistake.

21. Coming to the issue of a wrong notice having been sent, this point was never taken by the respondent-petitioners either before the Executive Officer or even before the Appellate



Tribunal. It was Sabitri Singh, the Director of the Company, who had been put to notice, the reason being the sanction order dated 12th July, 2009 was also in the name of Sabitri Singh and not in the name of the Company. The question of putting the company to notice, therefore, did not arise and any such mistake pointed by the learned Writ Court is against record. We, therefore, find that the notice was perfectly in order and the reply given by Sabitri Singh has been considered in detail thereby causing no prejudice or violation of principles of natural justice as alleged. The petitioner had acquiesced to the notice without demur and has contested the matter upto the stage of appeal without any objection on this issue.

22. We further find that the reply given by the respondent-petitioner contains all necessary details after having admitted the mistake of the plot numbers. This by itself is sufficient to indicate that the respondent-petitioner was fully aware of the proposed action that was to be taken, inasmuch as, the notice was under Clause 11.1. which is nothing else but an exercise for cancellation of a map in the event any fraud or misrepresentation is located. We, therefore, find that the entire exercise by the Executive Officer was in consonance with the



provisions of 11.1 and did not suffer from any want of notice or the proposed action to be taken against the respondent-petitioner.

23. The judgements as cited at the bar on behalf of the respondent- petitioner therefore on the facts disclosed do not come to aid the contentions raised and the learned Single Judge was not justified in invoking the ratio thereof to support the conclusions.

24. The third aspect is with regard to any consequential action being taken. From the order dated 11.01.2012 it is evident that the respondent-petitioner had been called upon to answer as to why the constructions be not demolished in terms of Section 323 of the 2007 Act. There is no dispute between the parties that the said proceedings have not been finalized as yet. We do not wish to proceed any further on the said aspect without prejudice to the rights of either of the parties to contest the said position before the appropriate forum.

25. For all what has been stated hereinabove and the reasons that we have given in support of our conclusions, we find that the judgement of the learned Single Judge dated 3rd of January, 2018 cannot be sustained. The appeals are allowed, the judgement dated dated 3rd of January, 2018 is set aside and the order of the Executive Officer dated 11th January, 2012 and that of the Appellate Tribunal dated 15th September, 2014 are upheld. The



interim order passed by this Court staying further constructions shall continue until any final orders are passed in the proceedings initiated under section 323 of the 2007 Act.

26. Appeals are allowed.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

Sunil/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	06.07.2019
Transmission Date	

