

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12211 of 2019

Niraj Kumar Roy, S/o Late Sri Krishna Roy R/o Khaazanchi Road Opp. Dr. Niraj Sinha, Arya Kumar Road, P.S. Pirbahore, Dist. Patna and Director, Savitri Enclave, Near Shyamal Hospital, Maurya Path, Khajepura, Patna

... .. Petitioner/s

Versus

1. Patna Municipal Corporation through its Municipal Commissioner Office situated at 2nd Floor, Maurya Lok Complex, P.s. Kotwali, Patna
2. Municipal Commissioner, Patna Municipal Corporation, 2nd Floor, Maurya Lok Complex, P.s. Kotwali, Patna
3. The Additional Commissioner, Patna Municipal Corporation, 2nd Floor, Maurya Lok Complex, P.s. Kotwali, Patna
4. The Executive Engineer, Patliputra Pramandal, Patna Municipal Corporation, Patna
5. Sri Mahesh Prasad Singh S/o Hari Narayan Singh Flat owners of Savitri Enclave, Near Shyamal Hospital, Maurya Path, Khajepura Path, Patna
6. Bijay Kumar Choudhary S/o Late Bishun Chauhdary Flat owners of Savitri Enclave, Near Shyamal Hospital, Maurya Path, Khajepura Path, Patna
7. Deepak Chandra S/o Late Dinesh Chandra Flat owners of Savitri Enclave, Near Shyamal Hospital, Maurya Path, Khajepura Path, Patna

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Naresh Dixit, Adv.
For the Respondent/s : Mr. Prasoon Sinha, Adv.

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 20-06-2019 Petitioner has approached this Court for setting aside the memo no.7658 dated 01.09.2018 containing the order dated 30.08.2018 passed by the Municipal Commissioner, Patna Municipal Corporation whereby a direction has been issued that the flat of the petitioner situated at plot no.667, Thana no.11, Mauja -Khajpura, Savitri Enclave, Near Shayamal Hospital, Maurya Path, Patna be demolished for deviated construction at



5th Floor and further a sum of Rs.5 lacs has been imposed as penalty. He has also prayed for setting aside the order contained in memo no.1014/P dated 10.06.2018 issued under the signature of the Executive Engineer, Patliputra Division, Patna Municipal Corporation by which steps are being taken to implement the order of the Municipal Commissioner by demolishing the construction in question.

Mr. Dixit, learned counsel representing the petitioner submits that against the order passed by the Municipal Commissioner, the petitioner has applied for remedy of statutory appeal available to him under the Bihar Municipal Act, 2007, but because the Chairman of the appellate authority i.e. the Municipal Building Tribunal, Patna is not available, the appeal preferred by the petitioner is not proceeded. In this connection, he has placed before this Court a certified copy of the order-sheets of the appeal which would show that on 02.04.2019 the appeal was adjourned because the post of Chairman was vacant and the quorum of the tribunal was incomplete. Learned counsel submits that apart from the fact that the appeal of the petitioner is pending in the tribunal, the petitioner has also submitted a revised plan for post-facto approval which is still pending consideration. In this regard the statements made in paragraph



15 of the writ application have been referred to. It is submitted that in such circumstance when the petitioner is pursuing his remedy in law there was no reason for the Executive Engineer to serve the impugned notice for demolition of the building.

Learned counsel however also submits that in order to show his bonafide, the petitioner is ready to deposit Rs.5 lacs as has been directed by the Municipal Commissioner subject however to the result of the case within two weeks from today.

Mr. Prasoon Sinha, learned counsel representing the Patna Municipal Corporation submits that on deposit of the penalty amount as per the order of Commissioner further action shall be taken as regards the deviations which may be found compoundable on payment of fee in accordance with law, but so far as the additional construction made by the petitioner on the 5th floor is concerned, that is apparently illegal and unauthorized. Learned counsel has defended the impugned order of the Municipal Commissioner.

At this stage, after hearing learned counsel for the parties, this Court finds that the petitioner has applied for a remedy under the Bihar Municipal Act, 2007 by filing an appeal before the Municipal Tribunal which is still pending consideration. The Chairman of the Tribunal is not there and for



that reason the appeal is being adjourned. The petitioner has offered to deposit Rs.5 lacs within two weeks so that as regards deviation part further action may be taken in terms of the order towards inspection and then calculation of required fee which the petitioner may have to deposit to compound the deviation. Thus, the deposit of Rs.5 lacs for the present will facilitate the further progress in the matter.

In these circumstances, the Court finds reasons to direct that on the petitioner depositing the aforesaid amount of Rs.5 lacs as offered by him within two weeks from today, no coercive action shall be taken to implement the impugned order as regards the demolition of the building during such time the post of the Chairman of the Municipal Tribunal is vacant and the Tribunal does not become totally functional so as to consider the grievance of the petitioner in the pending appeal.

This writ application stands disposed off in the aforesaid terms.

(Rajeev Ranjan Prasad, J)

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