

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14394 of 2019

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Dhananjay Kumar, Son of Ram Anutha Thakur, Resident of K- 615, Sector- K, Kankarbagh, P.S.- Patrakar Nagar, District- Patna.

... .. Petitioner

Versus

1. The State of Bihar through Principal Secretary, Urban Development, Bihar, Patna.
2. Patna Municipal Corporation through Town Commissioner, Patna.
3. Town Commissioner, Patna Municipal Corporation, Patna.
4. Bihar State Housing Board through its Managing Director, Mangles Road, Patna.
5. The Managing Director, Bihar State Housing Board, Patna.
6. The Estate Officer, Bihar State Housing Board, Patna.
7. Shri Radha Raman Sharma Son of not known to the petitioner, Resident of K- 522, Sector- K, Kankarbagh, P.S. Patrakar Nagar, District- Patna.
8. The General Manager, Patna Electricity Supply Unit, Kankarbagh.
9. The Managing Director, South Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr.Sanjay Kumar, Advocate
For the Respondent/s	:	Mr.Indeshwari Pd. Mandal, AC to GA-3
For the Housing Board	:	Mr.Dr.Anand Kumar, Advocate
For the Power Company	:	Mr.A.K. Jha, Advocate
		Mr.A.K. Karan, Advocate
For the PMC	:	Mr.Yashraj Bardhan, Advocate
		Mr.Prakash Chandra, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

5 14-11-2019 Heard learned counsel for the petitioner, learned counsel representing the Bihar State Housing Board and the Patna Municipal Corporation as also learned counsel for the South Bihar Power Distribution Company Limited.

Petitioner in the present case is seeking the following reliefs :-



“i. For issuance of an appropriate writ/s, order/s, Direction/s to the respondents for quashing letter no. 73 dated 21.01.2019 issued by respondent no. 3 a notice has been issued under section 324(1) and 323(1) of Bihar Municipal Act, 2007 stating therein that in violation of provisions of section 313 and 315 of the Bihar Municipal Act, 2007, without sanction and approval of map the construction is being made on the road of Patna Municipal Corporation, Lohiya Nagar, Ward No. 44, and side by side the General Manager, PESU has been directed to disconnect the electricity connection of the petitioner and Registrar, Patna has been directed not to register the land.

ii. For issuance of an appropriate writ/s, order/s, Direction/s to the respondents not to take any coercive action against the petitioner by disconnecting electricity connection and cancellation of registration made in the name of the petitioner pursuant to the letter dated 21.01.2019 issued by the respondent no. 3 in violation of statutory provisions enshrined in section 323(1) and 324(1) of the Bihar Municipal Act, 2007.

iii. For issuance of an appropriate writ/s, order/s, direction/s to the respondents not to create any unceremonious situation for the petitioner at the instant of respondent no. 6 who has encroached a large portion of land and constructed permanent structure over the same.

iv. To pass such other order/orders as your Lordships may deem fit and proper in the facts and circumstances of this case.”

Learned counsel for the petitioner submits that in exercise of his power under Sections 323 and 324 of the Bihar Municipal Act, 2007 (hereinafter referred to as the ‘Act of 2007’), the Chief Municipal Officer/Municipal Commissioner has issued notice (Annexure- ‘P/12’) to the petitioner alleging



that the petitioner has been constructing his house on the given plot of the Housing Board in violation of the building bye-laws and in course of inspection the petitioner was unable to produce the sanctioned map. Learned counsel submits that the Municipal Commissioner did not stop here rather he sent a copy of the notice as contained in Annexure 'P/12' to the writ application to the General Manager, PESU/M.D., South Bihar Power Distribution Company Ltd. and the District Sub-Registrar, Patna calling upon them that in absence of a completion certificate and further order in this regard no electricity connection be provided in the building and if electricity connection has already been provided, the same should be disconnected.

The Municipal Commissioner has further asked the District Sub-Registrar, Patna not to register any conveyance with respect to the land or any part thereof. Submission of learned counsel for the petitioner is that the petitioner has got the piece of land from the Housing Board and the matter relating to sanction of map etc. are governed by the provisions of the Bihar State Housing Board Act. Referring to the letter as contained in Memo No. 431 dated 25.01.2019 written by the Estate Officer of the Housing Board to the Municipal Corporation, Patna Municipal Corporation as contained in



Annexure 'P/7' to the writ application, learned counsel submits that the Housing Board had sent a copy of the proposed map with 'No Objection' to the Municipal Corporation and the Municipal Corporation was requested to approve the map and send a copy thereof to the Housing Board. The letter present as Annexure 'P/7' shows that four copies of the map were sent to the Municipal Corporation. It is further stand of the petitioner that Section 78 of the Housing Board Act, 1982 provides for the consequences of unauthorized construction raised by any allottee without approval or construction in violation of the provisions of Rules/Regulations.

It is submitted that the maps sent by the Housing Board to the Municipal Corporation have been returned to the Housing Board without any approval and no reason has been shown for not granting approval of the maps.

Under these circumstances, learned counsel submits that the petitioner had proceeded to raise construction under some bonafide belief that the map which had got in principle approval from the Housing Board and 'No Objection' has been issued by the Housing Board is likely to be approved by the Municipal Corporation. It is submitted that on a complaint made by the private respondent, an inspection was carried out and by



alleging certain violations of map and non production of a copy of map the impugned notice has been issued.

It is further submitted that the original copy of the notice issued to the petitioner did not contain any information that a copy of the same has been sent to the Power Distribution Company and the District Sub-Registrar, therefore, the petitioner had no information with regard to the directions issued by the Municipal Corporation to those authorities. It is only when the petitioner was threatened with disconnection of electricity, he came to know about the fact that the Municipal Commissioner had asked those authorities to disconnect the electricity line from the premises and then had called upon the District Sub-Registrar not to register any of a deed of conveyance with respect to the land in question. Learned counsel submits that the Municipal Commissioner, Patna Municipal Corporation had no authority of law to issue such direction to the South Bihar Power Distribution Company Ltd. (in short 'SBPDCL') and to the extent he has called upon these authorities to do certain things as per his desire, is wholly illegal and has no authority of law.

Learned counsel further submits that in the proceeding initiated by the petitioner pursuant to the notice



under Sections 323 and 324 of the Act of 2007 the petitioner has already appeared and has submitted his reply in the said proceeding but the Municipal Commissioner is sitting over the matter and no decision has taken as yet. Learned counsel, therefore, submits that the petitioner has been estopped from proceeding with further construction while the matter is pending before the Municipal Commissioner due to total inaction on his part.

Learned counsel for the Bihar State Housing Board has not contested the writ application. So far as the Government of Bihar is concerned, it has simply taken a stand that the matter relates to Municipal Corporation and the department of the government is a formal respondent.

The main contesting respondent is Patna Municipal Corporation (in short 'Corporation'). A counter affidavit has been filed on their behalf. The counter affidavit brings on record the facts as to receipt of a complaint and then the inspection carried out by a team of the Corporation. As stated above the stand of the Corporation is that in course of inspection no sanctioned map was produced, as a result thereof vigilance case has been initiated and the petitioner has been asked to stop the on-going construction work. The counter affidavit admits that an



electricity connection has been provided in the premises. As regards the map sent by the Bihar State Housing Board to the Corporation, it is admitted by the Corporation that the Housing Board had forwarded the building plan with N.O.C. to the Corporation on 25.01.2019. The vigilance case has been registered thereafter and that is the reason shown for not taking any action on the submitted plan of the petitioner.

As regards challenge to the authority of the Municipal Commissioner to issue letters to the Power Company and the District Sub-Registrar, the submission of the Corporation is that it has been done as a measure to deter the illegal construction and illegal use of the premises.

Having heard learned counsel for the petitioner and the contesting respondents, this Court finds from the records that it is an admitted position that a map with N.O.C. from the Housing Board was sent to the Municipal Corporation on 25.01.2019 when no vigilance case was pending against the petitioner. The counter affidavit of the Municipal Corporation is totally silent and it nowhere says that by virtue of any law on the subject, during pendency of the vigilance case the Corporation could not have proceeded with the sanction of map sent by the Housing Board.



To this Court, it appears that the reasons shown by the Municipal Corporation for not proceeding with the sanction of map in the name of registration of a vigilance case is a mere pretext and has no backing of any law on the subject. In the opinion of this Court, once the map with N.O.C. was received from the Housing Board, it was incumbent upon the Municipal Corporation to proceed with the discharge of statutory duty by considering the map and taking a view thereon in accordance with law. If they have not done so, the ground taken by them in the notice that the petitioner failed to produce a copy of the map cannot be said to be a valid ground in the facts and circumstances of this case.

In the whole counter affidavits, the Municipal Corporation is unable to demonstrate as to how any instruction could have been issued by the Municipal Commissioner to the Power Distribution Company to disconnect the electricity already provided in the premises when the Housing Board being a competent body had issue 'No Objection'. Neither any legal provision has been cited nor any judicial pronouncement has been brought to the notice of this Court conferring such power or a direction in this regard.

In the opinion of this Court, the Power Companies are



providing electricity in terms of the directions of the Bihar Electricity Regulatory Commission and it is for the Power Company to satisfy itself with the conditions required to be fulfilled for purpose of grant of electricity connection. Once the Power Company is satisfied that a person is entitled to get an electricity connection in his premises and the same has been provided to that person, the Municipal Commissioner has no authority of law to issue a direction to the Power Company to disconnect the electricity line. Similar is the position with regard to the direction issued to the District Sub-Registrar.

In the opinion of this Court, the Municipal Commissioner has exceeded his statutory power and has gone beyond the limits in the facts of the case in issuing such directions to the Power Distribution Company and the District Sub-Registrar.

This Court, therefore, comes to a conclusion that the direction issued by the Municipal Corporation vide his letter dated 21.01.2019 calling upon the South Bihar Power Distribution Company Ltd. to disconnect the electricity connection from the premises and the District Sub-Registrar, Patna not to give effect to any registration in respect of the land in question, is wholly without jurisdiction and the same is liable



to be set aside. The letter impugned, therefore, to the aforesaid extent is hereby set aside.

Since the petitioner has already appeared in the vigilance case and has filed his reply, the Municipal Commissioner before whom the vigilance case is pending is directed to consider the show cause of the petitioner and pass an appropriate order thereon after hearing the petitioner.

In the meantime, the Estate Officer, Bihar State Housing Board is directed to send a copy of the map to the Patna Municipal Corporation with his N.O.C. as was done earlier by him which will be considered by the competent authority in the Patna Municipal Corporation and a decision thereon shall be taken within a period of 30 days from the date of receipt of the map with N.O.C. from the Housing Board.

Let it be recorded that though in this case the complainant has been made a private respondent, in the totality of the facts and circumstances of the case since it is not an adversarial litigation between the petitioner and the complainant and all that the complainant has said would be subject matter of discussion in the vigilance case, this Court has not called upon the private respondent in this case, it is left open for him to participate, if so advised, in the vigilance case before the



Municipal Commissioner.

(Rajeev Ranjan Prasad, J)

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