

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19379 of 2012

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1. Veena Sinha wife of Dr. Anil Kumar Sinha
 2. Dr. Anil Kumar Sinha son of late Radha Raman Prasad Sinha, both residents of "Radha Kunj Apartment", 4th Floor, Anugrah Narayan Path, P.S. Shri Krishnapuri, Patna-800013.

... .. Petitioners

Versus

1. The State Of Bihar
2. The Principal Secretary, Department Of Urban Development & Housing, Government of Bihar "Vikash Bhawan", 1st Floor, Room No. 101, Jawahar Lal Nehru Marg, Patna-800015
3. The Municipal Commissioner, Patna Municipal Corporation Maurya Lok, "C" - Block, 2nd Floor, P.S.-Kotwali, Patna-800001
4. Shri Shiva Shankar Choudhary son of Late Ram Chandra Choudhary
5. Shri Pankaj Kumar son of late Baidyarath Prasad Singh
6. Shri Satyendra Kumar Sinha son of Shri Jagannath Prasad Sinha, all residents of Flat Nos. 3C, 2C & 2D respectively in "Radha Kunj Apartment", Anugrah Narayan Path, P.S. Shri Krishnapuri, Patna-800013.

... .. Respondents

Appearance :

For the Petitioner/s : Mr.Arun Kumar, Advocate
For the Respondent/s : Mr.Prasoon Sinha, Adv.

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

9 07-01-2019 Heard learned counsel representing the petitioners and

learned counsel on behalf of the Patna Municipal Corporation.

Mr. Ganpati Trivedi, learned senior counsel has assailed the judgment and order dated 22.08.2012 passed by the Municipal Building Tribunal in Appeal No. 4 of 2011 (arising out of Vigilance Case No. 22-B/09 of PMC). By the impugned judgment, the appeal preferred by the petitioners against the order dated 14.09.2009 passed by the Municipal Commissioner directing the petitioners to remove the alleged illegal construction on the 5th floor of their building named as Radha



Kunj Apartment within one month from the date of order at their cost has been rejected.

Learned senior counsel submits that in fact it is not in dispute that the petitioners have got a sanctioned map of G+4. It is his further submission that with the consent of the flat owners except three of them, the petitioners had started construction of one room attached with bathroom on the 5th floor. It is submitted that such kind of deviations are permissible in law and even as the petitioners had applied for revision of the map on payment of requisite fee the same has been rejected vide order dated 04.09.2008 and direction has been issued to the petitioners to remove the constructed portion on the 5th floor. Learned senior counsel further submits that prior to passing the order of demolition, the report earlier called for was not even received.

On the other hand, Mr. Prasoon Sinha, learned counsel representing the Patna Municipal Corporation submits that it is an admitted position that the petitioners are not in possession of a sanctioned map for constructing any building on the 5th floor of the apartment. Learned counsel submits that in absence of any sanctioned map for the 5th floor, if the construction work was undertaken by the petitioners, it was at their sole risk and subsequently when it was found that it is not



a case of deviation rather is a case of construction of an additional floor, the competent authority did not find it within the permissible zone to condone the unauthorized construction. It is submitted that there is a distinction between the word 'Deviation' and 'Addition'. The present case is that of 'Addition' and not of 'Deviation'. It is submitted that building bye-laws does not permit condonation of any addition if it has been done without sanctioned map. On the strength of these arguments, learned counsel submits that the impugned order passed by the Appellate Tribunal refusing to interfere with the order of Municipal Commissioner does not require any interference by this Court under Article 226 of the Constitution of India.

Having heard learned counsel for the parties and on perusal of the records, this Court finds that the Municipal Tribunal has recorded a specific finding stating that "the matter was enquired and physically verified by the Engineers of Patna Municipal Corporation who submitted a detailed report which shows that appellants/O.Ps have made illegal construction on the 5th floor without sanction....."

This Court would agree with the submissions of Mr. Prasoon Sinha, learned counsel representing the Patna



Municipal Corporation that it is a case of construction of unauthorized additional floor and, therefore, such cases cannot be brought within the purview of deviation.

This writ application has thus no merit. It is, accordingly, dismissed.

The interim order, if any, stands vacated.

(Rajeev Ranjan Prasad, J)

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