

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15878 of 2014

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Priti Niwas @ Preeti Niwas, Wife of Pankaj Niwas, Resident of Parmanand Path, Nageshwar Colony, Boring Road, P.S.-Budha Colony, District - Patna

... .. Petitioner

Versus

1. Patna Municipal Corporation through its Municipal Commissioner, Maurya Lok, Patna
2. Municipal Commissioner, Patna Municipal Corporation, Maurya Lok, Patna
3. Sri Vindhya Keshri Kumar, Sr. Advocate, Parmanand Path, Nageshwar Colony, P.S.-Budha Colony, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjay Singh, Advocate
		Mr. Mukesh Kumar, Advocate
For the Respondent-PMC:		Mr. Prasoon Sinha, Advocate
		Mr. Sanjay Prakash Verma, Advocate
For the Private Respondent:		Mr. Rana Sanjay Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 08-04-2019

This application under Article 226 of the Constitution of India has been filed by the petitioner for issuance of a writ in the nature of *certiorari* for setting aside the order of the Appellate Tribunal, Patna Regional Development Authority (for short 'PRDA') dated 03.04.2006 passed in Appeal No.54 of 2005 as well as order passed by the Vice Chairman dated 28.10.2005 passed in Vigilance Case No.44-B of 2005.

2. The facts of the case, in brief, are that the petitioner had purchased a plot of land measuring 544 sq.ft. to build her dwelling house. The land is part of Survey No. 86 & 87, Municipal



Holding No.349, Circle No.249, Tauzi No.227/15363, Khata No.525, Survey Thana No.7 situated in Mauza-Dhakanpura, which earlier belonged to one Late Thakur Dayal Gope. One late Nageshwar Prasad had purchased a chunk of land including plot nos. 86 and 87 in 1939. Later, the land was partitioned. The vendors of the petitioner had plotted and sold their lands providing private roads. The petitioner constructed his house after obtaining the required sanction from the PRDA vide Plan Case No. PRN-2-413/2002 dated 20.06.2002. The respondent no.3 made a complaint before the Vigilance Officer, PRDA alleging therein that the petitioner has encroached the public road pursuant to which, Vigilance Case No.44-B/2005 was initiated in which the Vice Chairman of the PRDA passed *ex parte* order for demolition against the petitioner.

3. Being aggrieved, the petitioner preferred an appeal before the Appellate Tribunal, PRDA vide Appeal No.54 of 2005 and the learned Appellate Tribunal rejected the said appeal on 03.04.2006.

4. Mr. Sanjay Singh, learned counsel for the petitioner submitted that the petitioner has constructed his house according to sanctioned map vide Plan No. PRN-2-413 of 2002 and there is no deviation in the construction. The plan was sanctioned on 10 ft.



wide road, which is still existing. Therefore, no encroachment of road or public land has been made by the petitioner. He contended that the impugned order passed by the Vice Chairman, PRDA, which has been affirmed by the appellate authority is wholly illegal, arbitrary and unjustified in law.

5. *Per contra*, Mr. Prasoon Sinha, learned counsel appearing for the Patna Municipal Corporation submitted that the road in question is an important link road of Paramanand Path and Kavi Raman Path and it is nearly 20' in width before the turning of the road at the building in question and after another turning of the road which is finally joined Kavi Raman Path. He submitted that the Vice Chairman, PRDA had inspected the site in question along with the concerned Executive Engineer of PRDA and found the deviations made by the petitioner whereafter he ordered for demolishing the encroachment was passed by the Vice Chairman of the PRDA, which has been affirmed in appeal by the Appellate Tribunal vide order dated 03.04.2006.

6. Having heard learned counsel for the parties and perused the materials on record, I find that the order dated 28.10.2005 was passed by the Vice Chairman, PRDA after physically inspecting the site as also after proper verification of sanctioned map and the relevant provisions of building bye laws.



The Appellate Tribunal affirmed the order passed by the Vice Chairman, PRDA.

7. On perusal of the orders impugned, I do not find any patent error in the order of the Vice Chairman, PRDA or the Appellate Tribunal. The exercise of power under Article 226 of the Constitution of India would be available only to correct the error committed by the court or the authority and the error should be self-evident.

8. In absence of any patent error in the order of the Vice Chairman or the Appellate Tribunal, it would be not proper for this Court to interfere with the same. Since there is a concurrent finding of fact by the Vice Chairman and the Appellate Tribunal, there is no justification for this Court to probe into any factual issue again by undertaking appreciation of evidence like first appellate court in order to reverse the finding.

9. In that view of the matter, I see no merit in this application. The application is dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	01.05.2019
Transmission Date	NA

