

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.125 of 2019

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Kumari Asha D/o Sri Dinkar Prasad Singh, W/o Brajesh Thakur,
Resident of Mohalla- Chotki Kalyani, Sahu Road, P.O.- Ramna, P.S.
Town Muzaffarpur, District- Muzaffarpur.

... .. Appellant/Petitioner

Versus

1. The State of Bihar through Principle Secretary, Building Construction Department, Govt. of Bihar, Patna.
2. The Joint Secretary, Building Construction Department Govt. of Bihar, Patna.
3. The Chief Engineer (North), Building Construction Department, Govt. of Bihar.
4. The Collector, Muzaffarpur.
5. The Muzaffarpur Municipal Corporation through its Municipal Commissioner, Muzaffarpur- 842001.

.... Respondent 1st Set.

6. Brajesh Thakur s/o Late Radha Mohan Thakur, Resident of Mohalla- Chotki Kalyani, Sahu Road, P.O.- Ramna, P.S. Town Muzaffarpur, District- Muzaffarpur. Presently in Patiala Jail, Punjab.

... .. Respondents 2nd Set.

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Appearance :

For the Petitioner/s : Mr.Ranjan Kumar Dubey, Advocate
For the Respondent/s : Mr.Subodh Kumar A.C. to S.C.-26
For the PMC : Mr. Prashoon Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 04-01-2019

Heard learned counsel for the petitioner and learned
counsel representing the Muzaffarpur Municipal Corporation.

2. The petitioner, in the present case, has challenged
the part of the order dated 10.12.2018 passed by the
Municipal Building Tribunal, Patna in Appeal No. 21(N)/2018



by which the prayer of the petitioner to stay the demolition of the unauthorized construction of building has been rejected.

3. The facts in brief are not in dispute. The petitioner is the wife of respondent no. 6 who was allegedly running a shelter home in a four-storeyed building situated at the land in question. Many illegalities were allegedly noticed to have been committed by respondent no. 6 which led to filing of a Public Interest Litigation in this court as well as in the Hon'ble Supreme Court. On 25.10.2018, the Hon'ble Supreme Court, while hearing the petition in Special Leave to Appeal (C) No. 24978/2018, was informed by learned Special Public Prosecutor that respondent no. 6 had constructed a four-storeyed building having height of 50 feet with no window except on the top/4th Floor. The Hon'ble Apex Court took a *prima facie* view that the building is unauthorized.

4. Learned counsel representing the State of Bihar in the Hon'ble Supreme Court submitted that the matter will be looked into and notice for demolition will be issued if it is found that the structure does not confirm the legal process. Rest of the aspects of the matter are not relevant in the present case.



5. In terms of the statements made before the Hon'ble Apex Court, notice was issued to respondent no. 6 and he was called upon to explain as to why the building which was an unauthorized construction be not ordered to be demolished. Pursuant to the aforesaid action taken, ultimately the Municipal Commissioner vide his order dated 10.11.2018 held that the sanctioned map of the house in question was only for Ground plus 1st Floor (G+1) and as per the sanctioned map setbacks were required to be provided in the eastern and southern side, the height of the building was only 22 feet, but in course of inspection by the Inspecting Team of the Municipal Corporation it was found that the building has not been constructed in accordance with the rules. There is no setback left and in narrow street the building has been constructed up to height of 50 feet without there being any window and provision for ventilation. The Municipal Commissioner, Muzaffarpur Municipal Corporation, therefore directed for demolition of the building and the respondent no. 6 was given an opportunity to demolish the unauthorizedly constructed building within a period of one month failing which the Municipal Corporation shall demolish



the unauthorizedly constructed building and shall remove the garbage by incurring cost which will be realized from the house owner.

6. Against the order dated 10.11.2018, respondent no. 6 and his wife both have preferred appeal bearing No. 21(N)/2018 before the Municipal Building Tribunal-01 at Patna. The said appeal has been admitted for hearing. There was no order of stay of the operation of the order passed by the Municipal Commissioner, therefore on expiry of the one month's time the Municipal Commissioner, Muzaffarpur has taken steps for demolition of unauthorized construction. It is at this stage that the petitioner hurriedly moved an application before the Tribunal for stay of the demolition. When the application for stay was moved, the Tribunal found that the petitioner has not served the other side Municipal Corporation in advance and had been praying for an *ex parte* order of stay.

7. Since the case was fixed for some other date, on 10.12.2018, when the application for stay was moved, the same has been rejected. This part of the rejection order is under challenge in the present writ application.



8. Learned counsel representing the petitioner submits that the observations of the Hon'ble Supreme Court, as noticed above, cannot be said to be a verdict on the issue as to whether the construction is unauthorized or not, and in any case the petitioner and respondent no. 6 have a right to vindicate their grievance against the order passed by the Municipal Commissioner, Muzaffarpur.

9. It is also submitted that prior to passing of the order dated 10.11.2018 the Municipal Commissioner, Muzaffarpur had not made available a copy of the report which was said to have been submitted by the Inspecting Team of the Municipal Corporation. It is one of the submissions that on this ground alone the order dated 10.11.2018 is liable to be quashed.

10. It is further submitted that since the demolition action has already been started, till disposal of the appeal before the Tribunal if the subject matter of the */is* is not protected, the appeal itself will become infructuous.

11. On the other hand, Mr. Prashoon Sinha, learned counsel representing the Municipal Corporation submits that



the petitioner cannot get a protection from this court unless he proves a strong *prima facie* case showing that the building in question is authorized construction and is in terms of the sanctioned map.

12. Learned counsel submits that this is the first requirement which the petitioner is required to show for the purpose of stay. It is submitted that nowhere in the writ application the petitioner has denied the factual aspects noted by the Municipal Commissioner, Muzaffarpur in his order dated 10.12.2018, and if it is so, the petitioner is not entitled to seek protection from this court at this stage. Learned counsel for the petitioner has, however contested this submission.

13. Learned counsel further submits that presently the demolition work has been started from the top floor of the building and it is likely to take sometime in complete demolition, before that the appeal pending before the Municipal Tribunal may be directed to be disposed of.

14. Having heard learned counsel for the petitioner and learned counsel representing the Muzaffarpur Municipal Corporation as also learned counsel for the State, this court is



of the considered opinion that at this stage the petitioner is unable to demonstrate a strong *prima facie* case in order to get a protection from demolition of the building which is said to be unauthorized construction. The petitioner has nowhere stated that any part of the impugned order of the Municipal Commissioner, Muzaffarpur with regard to the sanctioned map and the condition of building is incorrect, in this view of the matter alone this court being a constitutional court in exercise of its power under Article 226 of the Constitution of India would not be willing to pass any order of stay of demolition. This court is however conscious that as per the stand of the Municipal Commissioner himself in the impugned order, the respondent no. 6 had perhaps a sanctioned map for G+1.

15. The petitioner and respondent no. 6 are presently availing statutory remedy of appeal before the Appellate Tribunal where they would have liberty to take all such pleas which are available to them to satisfy the Tribunal with regard to the construction in question. At this stage, this court would direct both the parties to be present before the Municipal Building Tribunal, Patna on 9th January, 2019, when



the Tribunal shall fix a date of hearing of the appeal as early as possible and all endeavours should be made to dispose of the appeal on its own merit.

16. Let it be recorded that no part of the observations made in this order shall prejudice the either parties.

17. This writ application is, thus, disposed of in the aforesaid terms.

(Rajeev Ranjan Prasad, J)

Rajeev/-

AFR/NAFR	
CAV DATE	
Uploading Date	07.01.2019
Transmission Date	

