

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.499 of 2018

In
Civil Writ Jurisdiction Case No.3702 of 2016

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Mithilesh Kumar, S/o Late Sakaldeep Narayan Singh, Resident of Flat No.104, Aranya Balbhadra Apartment, East Boring Canal Road, P.S.- Buddha Colony, District-Patna.

... .. Petitioner

Versus

1. The State of Bihar.
2. Principal Secretary, Urban Development Department, Govt. of Bihar.
3. Commissioner, Patna Municipal Corporation
4. District Magistrate, Patna
5. Director General of Police, Patna
6. Chandra Shekhar Prasad, S/o Late Balbhadra Prasad Singh Resident of Flat No.101-104, Aranya Karuna Apartment, East Boring Canal Road, PS Buddha Colony, Dist. Patna (Land Owner)
7. Ajay Kumar, S/o Late N.K. Sharma Road No.22 Plot No.154, Near New Park, S.K. Nagar Patna (Builder)
8. Ratna Ojha, W/o Sri Suman Ojha Resident of Flat No.402, East Boring Canal Road PS Buddha Colony, Dist. Patna

... .. Respondents/ Opposite Parties

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Appearance :

For the Petitioner	:	Mr. Rajen Sahay-Advocate
For the P.M.C.	:	Mr. Sanjay Prakash Verma-Advocate
For the State	:	Mrs. Indira Kumari-AC to AAG- 7

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

16-10-2019

Heard learned counsel for the petitioner.

2. This application under Article 226 of the Constitution of India read with Section 114 and Order-47, Rule-1 of the Code of Civil Procedure has been filed by the petitioner for review of the order dated 26.06.2018 passed in C.W.J.C. No.3702 of 2016 whereby the writ application preferred by the petitioner was disposed of with a direction to the Municipal



Commissioner to ensure compliance of the order dated 14.07.2006 passed by the then Vice-Chairman of the Patna Regional Development Authority (for short P.R.D.A.) as early as possible, preferably within six weeks from the date of receipt/production of a copy of the order and remove the generator set from the site of installation.

3. Learned counsel appearing for the petitioner submitted that the main prayer of the petitioner in Para-11 of the writ petition was withdrawn by the counsel for the petitioner without any authority or instruction of the petitioner. He contended that since the main prayer of the petitioner has not been considered by the Court while passing the order dated 26.06.2018, the order needs to be reviewed and the remaining prayers, which were not pressed by the counsel for the petitioner should also be permitted to be pressed and only thereafter a fresh order be passed.

4. It would be evident from perusal of the pleadings made in C.W.J.C. No.3702 of 2016 that the petitioner had made the following three prayers:-

“(I) For Issuance of a writ in the nature of Mandamus commanding the State Respondent Authorities to conclude the proceedings initiated pursuant to Letter No.6604 dated 12.11.2014 issued by the Patna Municipal



Corporation under the signature of its Vigilance Officer whereby the concerned persons including the Petitioner, Land Lord and the Builder were directed to produce the relevant documents viz. Sanctioned Map, Copy of Sale-Deed, etc. within a week as during the course of the proceedings it has been found that there is an encroachment by establishing Generator Set and constructing Flats/ Garages on the southern portion of Block-A & B of the Apartment in question.

(II) For Issuance of a writ in the nature of Mandamus for commanding the State Respondent Authorities to implement the Order dated 14.07.2006 (Annexure-7) as passed by the then P.R.D.A. (Now merged with Patna Municipal Corporation) whereby the concerned Executive Engineer was directed to remove the Generator Set within a period of one week and to send the compliance report to the Court in as much as the Appeal preferred against the aforesaid Order has been dismissed by the Appellate Tribunal on 03.08.2006 and the writ application bearing no.11533/ 2006 as preferred by the Land Owner was also dismissed for want of prosecution by the Hon'ble Patna High Court vide its Order dated 01.07.2011.

(III) For Issuance of a writ in the nature of Mandamus, Certiorari and/ or any other writ/ writs as this Hon'ble Court deems fit and proper under the facts and circumstances as stated above commanding the State



Respondent Authorities to conduct an enquiry pursuant to the several applications/ complains preferred by the Petitioner from time to time before the State Authorities with regard to grievances raised by the petitioner.”

5. When the matter was taken up, learned counsel appearing for the petitioner made a categorical statement that the petitioner has confined his prayer for directing the respondent authorities to implement the order dated 14.07.2006 as passed by the then Vice-Chairman of the P.R.D.A. whereby the concerned Executive Engineer was directed to remove the generator set within a period of one week and furnish a compliance report to the Court.

6. Taking into consideration, the submission made by the learned counsel for the petitioner, after taking note of the submissions made on behalf of the parties, this Court disposed of the writ petition vide judgment dated 26.06.2018. The operative part of the judgment dated 26.06.2018 reads as under:-

“10. Keeping in mind the sensitivity of the matter, the writ petition is disposed of with a direction to the Municipal Commissioner, Patna to ensure compliance of the order dated 14.07.2006 passed by the then Vice-Chairman of the PRDA as early as possible, preferably within six weeks from the date of receipt/ production of a copy of the order to the Patna Municipal Corporation in



removal of the generator set from the site it is installed. The District Magistrate, Patna and the Senior Superintendent of Police, Patna are also directed to provide necessary assistance.”

7. After four months of the judgment dated 26.06.2018, the instant application for review has been filed on 26.10.2018.

8. It is well settled that review of judgment may be allowed on three grounds, namely, (1) discovery of new and important matter of evidence, which after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him at the time when the judgment was passed or order was made, or (2) some mistake or error apparent on the face of the record, or (3) for any sufficient reason.

9. It is not the case of the petitioner that there is any mistake or error apparent on the face of the record as a result of which, the judgment dated 26.06.2018 warrants review. It is also not the case of the petitioner that any new or important matter of evidence, which after the exercise on due diligence, was not within the knowledge of the petitioner or could not be produced by him at the time when the judgment was made. There is also no other sufficient reason, which warrants review



of the judgment.

10. Merely because belatedly the petitioner has realized that the confinement of the relief prayed for in the case at his behest by the counsel is not to his liking, the judgment cannot be modified or reviewed.

11. The application, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	19.10.2019
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