

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18722 of 2019

1. M/s Azalfa Building Construction Pvt. Ltd. through its Managing Director namely Mr. Naushad Alam having its Office at 506A/1, New Azimabad Colony, Police Station Bahadurpur, District-Patna.
2. Mr. Naushad Alam, Male, aged about 50 years, Son of Mr. Adalat Hussain, Resident of Mohalla-New Azimabad Colony, Police Station - Bahadurpur, District-Patna.

... .. Petitioners

Versus

1. The State of Bihar through Principal Secretary, Town Planning and Urban Development Department, Government of Bihar, Patna.
2. The Patna Municipal Corporation through its Commisioner, Maurya Lok Complex, Patna.
3. The Town Commissioner, Patna Municipal Corporation, Maurya Lok Complex. Patna.
4. The Executive Officer, Bankipore Division, Patna Municipal Corporation, Maurya Lok Complex, Patna.
5. The Vigilance Officer, Patna Municipal Corporation, Patna.
6. Ram Naresh Singh, son of Late Harendra Prasad Singh, resident of village – Parsona, P.S. - Taraiya, District – Saran.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Sanjay Singh, Advocate Mr. Umakant Prasad, Advocate Mr.Sanjeev Kumar Singh, Advocate
For the PMC	:	Mr. Yashraj Bardhan, Advocate
For the Respondent no. 6:	:	Mr. Jitendra Kr. Roy, -1 Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 08-11-2019 This writ application has been preferred seeking a writ of certiorari to quash the order as contained in Memo No. 11219 dated 10.08.2019 issued under the signature of the Municipal Commissioner, Patna Municipal Corporation, Patna. By the impugned order as



contained in Annexure '9' to the writ application, the Municipal Commissioner has held that the Vigilance Case initiated against the petitioner may be decided only after disposal of the title suit no. 520/2007 and other disputes which are going on with respect to the land in question. Till then, the Municipal Commissioner has directed the writ petitioners not to carry on any construction work in terms of Sanction Plan Case No. P/Moharrampur /PCN/B2+G+6/368/2017 and in case of violation of the order the said sanctioned plan would be deemed to have been cancelled automatically.

The petitioners had earlier moved this court in CWJC No. 938/2019 when the Municipal Commissioner, in exercise of his power under Section 324(1) of the Bihar Municipal Act, 2007 directed the petitioners to stop further construction and called upon them to show cause as to why appropriate order be not passed for demolition of the unauthorized construction. In the said writ application, the petitioner contended that the inspection carried out by the authorities of the Corporation was an ex



parte inspection behind the back of the petitioners and in fact a portion of the constructed area had fallen down because of the soil erosion. Considering the submissions of the petitioners at the said point of time, this court took a view that no interference was required with the show cause notice issued by the Municipal Commissioner as it is open for the petitioners to appear before the Municipal Authorities and file their show cause. This court directed the Municipal Commissioner to consider the show cause of the petitioners and other submissions and take an appropriate decision in the best interest of the people. The petitioners were directed to abide by the order of the Municipal Commissioner of the Corporation as regards to carry on the remedial measures wherever required.

On a Letters Patent Appeal preferred by the petitioners against the order passed in CWJC No. 938/2019, Hon'ble Division Bench though did not interfere with the order of the writ court, the Hon'ble Bench thought it just and proper to direct the Municipal Commissioner to dispose of the matter within a period of



six months which was taken to be a reasonable period for the Commissioner to attest the finality to the exercise. Hon'ble Division Bench took note of the submissions of the petitioners that the nature of contest relates to a civil construction, cost of which is escalated and the ultimate burden of which falls on the purchasers.

After the Division Bench judgment of this court, the Municipal Commissioner heard the matter on 10.08.2019 and after taking note of the submissions of the parties, took a view that until disposal of the disputes pending with respect to the land in question the vigilance case cannot be decided. Taking that view of the matter a further diction was issued to the petitioners not to carry any construction work.

Mr. Sanjay Singh, learned counsel for the petitioners has drawn attention of this court towards the order dated 13.09.2019 passed in the present writ application. By the said order while recording the submissions of the parties and giving time to the Municipal Commissioner to file his counter affidavit, this



court directed that the authorities of the Municipal Corporation shall not carry on any further demolition of any part of the building and the premises. The question of allowing the petitioners to continue with the construction work was left to be considered on the next date of hearing after obtaining stand of the Corporation.

During this period, though no counter affidavit was filed on behalf of the Corporation, today when the matter was called out learned counsel for the Corporation has filed counter affidavit on behalf of the respondent no. 2 to 5.

One Interlocutory Application being I.A. No. 01/2019 has also been filed on behalf of the proposed Intervener namely, Ram Naresh Singh on whose instance the vigilance case is said to have been registered.

In the given facts and circumstances of the case, learned counsel for the petitioners has no objection to allowing the I.A. No. 01 of 2019 and adding the proposed Intervener as party respondent no. 6 to the writ application.



This court has heard learned counsel for the petitioners, learned counsel for the Corporation as well as the newly added respondent no. 6.

In course of argument, what has finally culled out is that except Title Suit No. 520/2007 which is pending in the Civil Court at Patna no other suit is pending in any other court of law in India. The litigation which is said to be pending in the Hon'ble Delhi High Court is in between the two groups of the Baptist Church and so far as this land is concerned, is not the subject matter of any suit or proceeding before the Hon'ble Delhi High Court.

This court has also been informed by learned counsel for the petitioners that prior to sanction of the plan in question the present Intervener - respondent no. 6 had lodged a complaint, his complaint was enquired into and only after considering the same the plan in question was sanctioned. This assertion of Mr. Singh, learned counsel for the petitioners has not been controverted by learned counsel for the respondent no. 6.



Learned counsel for the respondent no. 6 has, at the same time, admitted that prior to lodging the present vigilance case he had not filed and till date has not filed any suit claiming right, title or possession with respect to the land in question. This being the position, this court can safely come to a conclusion that Title Suit No. 520/2007 is the only suit pending in respect of the land in question. In the said suit, an application for grant of interim injunction was filed by the plaintiffs and the said application has been rejected. This fact has been taken note of in the court's order dated 13.09.2019 and the relevant part from the order dated 20.02.2019 passed by the learned Civil Judge (Civil Division) 3rd, Patna which has been extracted in the order dated 13.09.2019 is once again being quoted hereunder for a ready reference:

“Therefore, in a nutshell it can be epitomised that while on the one hand defendant nos. 1 and 2, being registered entities, are armed with possession of the suit land and also with a registered Development Agreement, on the other the plaintiffs are merely in the representative capacity who are yet to substantiate their credentials, and who have also not been able to establish their claim in any of the litigations at any stage with regard to the suit property. As mentioned earlier, they have already been shown to be bereft of any prima facie case. Further, the



very fact that the Development Agreement still holds ground even in the face of the numerous litigations tilts the balance of convenience heavily in favour of defendant nos. 1 and 2. Any restraint order with regard to construction over the suit property will put them to more hardships than the plaintiffs, who are not even in the possession of the suit property. Still further, in the given facts and circumstances any irreparable loss appears out of sight. Accordingly, finding the petitioner to be devoid of any merit it stands rejected.”

In the counter affidavit filed today on behalf of the Corporation the complaint filed by Intervener respondent no. 6 has been referred and it has been submitted that in course of an inspection carried out by Engineering Team on 25.10.2018 of the site, deviations were found in the construction work. It has been alleged that no space was left towards Baripath in the light of 2031 Master Plan of Patna. It has been submitted that in course of another inspection held on 02.04.2019 with regard to the falling down of the boundary wall of Hathua Market during the excavation of the basement, it has been reported that the floor plan map was found on the wall of the site office, however concerned map/plan was not made available. All that has been said about is some sort of deviation said to have been done in the construction.



The counter affidavit also refers to a proceeding said to have been initiated before the learned Lokayukta, Bihar.

A bare perusal of the counter affidavit shows that there is no answer to the submission of the petitioner that once the application seeking injunction filed in Title Suit No. 520/2007 has been rejected by a competent court of law, how the Municipal Commissioner can take upon itself to pass an order of restraint despite there being a valid and existing sanctioned plan and by doing so is he not sitting in appeal over the order of the competent civil court and is granting in fact an injunction in favour of the plaintiffs of the suit at the instance of a person who has himself not brought any suit or proceeding claiming right, title or interest in the land. The counter affidavit is totally silent on this most vital issue which has been raised in the writ application.

In course of argument as well when this court called upon learned counsel for the Corporation to justify as to why the Municipal Commissioner will keep on



sitting over the matter in the name of pendency of the Title Suit, learned counsel is unable to explain any legal impediment in the matter. Learned counsel for the Intervener respondent no. 6 has though opposed the writ application but his opposition is limited to his bald statements with respect to his own rights and admittedly such claims are not under adjudication before any competent court of law.

Having heard learned counsel for the parties and upon a careful perusal of the records, in the light of the discussions made hereinabove, this court would have no hesitation in coming to a conclusion that the Municipal Commissioner, Patna Municipal Corporation, Patna has failed to exercise his jurisdiction in the manner it is required to be done in the facts of the present case. He has issued a notice in terms of the statutory provision under the Municipal Corporation Act, 2007, the petitioner had already submitted his reply, thereafter there were some inspections said to have been made, those were sufficient materials available before him to proceed with the



vigilance case and pass an appropriate order after giving an opportunity of hearing to the petitioners. Before him, the petitioners had contended that in Title Suit No. 520/2007 the learned Munsif has refused to grant injunction and the reasons therefor has been fully discussed in the order passed by the learned Munsif. Despite there being the information available on the record, the Municipal Commissioner proceeded to take a view that the vigilance case cannot be disposed off until decision in the Title Suit. In the opinion of this court, there was no reason for the Municipal Commissioner to await the decision in the Title Suit because ultimately it is parties to the suit who will have to bear the consequences of the judgment in the Title Suit. The vigilance case was registered on certain allegations within the framework of the statute, thus the consideration on the part of the Municipal Commissioner was required to be confined to the requirement of law to find out as to whether the petitioners were complying with those requirements or not and in case the petitioners had been deviating from the



sanctioned plan then what consequences would follow.

In the opinion of this court, the Municipal Commissioner has miserably failed to exercise the power vested in him in the name of pendency of Title Suit No. 520/2007.

In result, the impugned order as contained in Memo No. 11219 dated 10.08.2019 (Annexure '9' to the writ application) is hereby set-aside. The matter is remitted to the Municipal Commissioner, Patna Municipal Corporation, Patna to consider the Vigilance Case and take an appropriate view of the matter after hearing all concern within a period of two months from the date of receipt/production of a copy of this order.

Learned counsel for the petitioners has informed this court that the project with which the petitioners are going on has an initial cost of Rs. 120 Crores and they have already invested Rs. 30 Crores approximately. The Hon'ble Division Bench has already taken note of this aspect of the matter and had shown it's concern by observing that in the nature of the contest which relates to



civil construction, the cost of the same is ever escalated and the ultimate burden falls on the purchasers. Keeping in view the said observation, a prayer has been made that the petitioners may be allowed to carry on the construction work at their own risk. This court for the present thinks it just and proper to direct the Municipal Commissioner, Patna Municipal Corporation, Patna to complete the whole exercise within a period of two months and take a decision in the matter, failing which the petitioners shall proceed with the construction work without waiting for further order from the Municipal Commissioner.

The Writ Application is allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J)

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