

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12243 of 2019

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1. M/s Chitra Homes Pvt. Ltd. through its Managing Director, 309B, Adharshila Complex, South Gandhi Maidan, Patna.
 2. Vikas Kumar, son of Shri Someshwar Lal, at present the Managing Director, M/S Chitra Homes Pvt. Ltd. resident of Flat No. 613 (B), Lotus Apartment, Road No. 1, F, New Patliputra Colony, P.S. Patliputra, District- Patna.

... .. Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Housing and Urban Affairs, Government of India, New Delhi.
2. The State of Bihar through the Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
3. The Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
4. The Secretary, Ministry of Housing and Urban Affairs, New Delhi.
5. The Joint Secretary, Ministry of Housing and Urban Affairs, Government of India, New Delhi.
6. The Real Estate Regulatory Authority Bihar, Patna through the Chairman, Real Estate Regulatory Authority Bihar, Patna.
7. The Officer On Special Duty, Real Estate Regulatory Authority Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Mayank Rukhaiyar, Advocate
For the Respondent/s : Mr. Abbas Haider (SC-6)

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 14-01-2020

A supplementary affidavit has been filed during the course of argument. Let it be taken on the record.

2. The petitioner No. 1, which is a company which is primarily in the business and trade of development of infrastructure in real-estate and which



has built the project viz. Chitra Residency as well as petitioner No. 2, who is the Managing Director of petitioner No. 1 have approached this Court for a direction to respondent Nos. 6 and 7 not to proceed against the project of the petitioners *suo-motu* in Case No. RERA/SM/225/2018 as the project had been completed before the cut-off date since when the RERA would have jurisdiction to deal with such projects.

3. It has been submitted on behalf of the petitioners that a public notice at large was posted on the web page of the RERA informing the public that investigations are going on in some of the projects which have not been registered with RERA. In the list of such projects, the name of Chitra Residency was also noted. Since the aforesaid information to public was of a general nature, the same was not responded by the petitioners till a show-cause notice, specific in terms was issued on 12.04.2018 asking the petitioners to explain as to why action may not be taken against the project in



terms of Section 59 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter called RERA) and Section 35 of the RERA rules, 2017.

4. The petitioners appear to have replied to the aforesaid notice by intimating that construction of the flats of the project as per the approved map had already been finished in the year 2016 and most of the flats except five of them have been sold and occupied. It was therefore clearly intimated to the RERA authority that the jurisdiction to initiate any proceeding under the RERA with respect to the project of the petitioners is not available.

5. The aforesaid reply was never acted upon and a fresh notice was initiated to the petitioners on 20.08.2018 under Section 59 of the RERA Act, 2016. This was also replied by the petitioners in greater detail by stating that Chitra Project (Chitra Residency on Saguna-Khagaul Road) was completed and only few flats were left to be sold. The details of the other projects of



petitioner No. 1 were also intimated in the aforesaid show-cause reply.

6. It further appears from the records of the case that the reply furnished by the petitioners was not considered to be satisfactory and a hearing was initiated vide order/communication dated 31.12.2018. It was at this stage that the petitioners filed the present writ application for quashing the *suo-motu* case which has been initiated by the respondent/RERA authority.

7. The learned counsel appearing for the petitioners has also shown to this Court two clarifications issued by the RERA authorities after a bipartite agreement/consultation with the Confederation of Indian Industries, Builders Association of India and Confederation of Real-Estate Developers Association of India specifying that all such projects which have been completed prior to 01.05.2017 and against which a completion/occupancy certificate is available, those projects shall not come under the purview of the RERA



Act, 2016.

8. These letters/clarifications/communications by the RERA authorities were also brought to the notice of respondent Nos. 6 and 7 while submitting the reply by the petitioners.

9. By way of a supplementary affidavit, learned counsel for the petitioners has drawn the attention of this Court to certain developments which took place during the hearing of the *suo-motu* RERA case with respect to the petitioners.

10. An investigating team was constituted and was sent to the site which submitted its report and which report has only now been furnished to the petitioners on severe insistence for the same. What the petitioners are aggrieved with is that the investigation was conducted behind the back of the petitioners' authorized representatives and additionally, the architect of the project has also been directed to be present in the office of the RERA authorities on a particular date. With the



aforesaid developments in the *suo-motu* case, the petitioners only seek to re-affirm their grounds for getting the entire proceeding set aside as the project does not fall within the net of such projects which could be looked into by the RERA authorities.

11. The primary question therefore is whether the concerned proceedings should have been initiated against the petitioners without adjudicating the issue of competence and jurisdiction which was actually the core issue to be decided before embarking upon an enquiry with respect to the lapses on the part of the petitioners.

12. The pointed argument therefore is that without the jurisdiction, the entire proceeding is without any legal basis and therefore in all fitness of things, it should not be allowed to be continued any further.

13. Alternatively, it has been argued that the issue with respect to the jurisdiction to take up the case of the petitioners by the RERA ought to be decided first.

14. Prima facie, there appears to be substance



in the submission urged on behalf of the petitioners. However, without noticing respondent Nos. 6 and 7, no concrete opinion could be given with respect to non-applicability of the RERA to the project of the petitioners as it would entail a determinative finding with respect to the project having been completed before a particular date and the petitioners being in possession of the completion/ occupancy certificate.

15. In the absence of respondent Nos. 6 and 7, such a determinative opinion ought not to be given by a Court of law when the issues are capable of being rebutted or objected to. Whether the proceeding ought to have been initiated was a matter which was required to be decided first and even when the proceedings have been taken to a considerable stage, the requirement to decide the jurisdiction is not relegated to the back-burner. There is no sanctity of an order or proceeding which is not within the four corners of the jurisdiction conferred to a body. In that event, it would only be the



correct approach of respondent Nos. 6 and 7 to deal with the aforesaid issue in pronouncing a final order in the case in which hearing has been completed.

16. While deciding the case, the objections of the petitioners that the opinion/report of the special investigating team was prepared behind the back of the petitioners shall also be considered.

17. For giving such directions regarding determination of the jurisdiction of the RERA authorities and taking into account the demur of the parties with respect to a report published behind the back of the petitioners, no notice is required to be given to the respondent Nos. 6 and 7.

18. This Court, therefore provides that before passing any final order, respondent Nos. 6 and 7 shall first deal with the issue of jurisdiction and the applicability of the Act to the project of the petitioners and shall also consider the objections of the petitioners with respect to the report submitted by the special



investigating team. The authorities in question shall also be under an obligation to decide the case as expeditiously as possible.

19. With the aforesaid observation/direction, the writ petition stands disposed off.

(Ashutosh Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	18/01/2020
Transmission Date	N/A

