

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.609 of 2018

In
Civil Writ Jurisdiction Case No.4954 of 2016

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1. Patna Municipal Corporation through Municipal Commissioner, Maurya Lok, Patna
 2. The Municipal Commissioner, Patna Municipal Corporation, Maurya Lok, Patna.
 3. Estate Officer, Patna Municipal Corporation, Maurya Lok, Patna.

... .. Appellants

Versus

Smt. Usha Kishore Resident of M2-14, S.K. Puri, District - Patna.

... .. Respondent

Appearance :

For the Appellants : Mr. Prasoona Sinha, Advocate
For the Respondents : Mr.

CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

4 14-01-2020 Delay in filing the present memorandum of appeal is
condoned.

The present appeal is directed against the judgment and order dated 02.05.2016 passed by the learned Single Judge in CWJC No. 4954 of 2016 titled as “**Smt. Usha Kishore Vs. Patna Municipal Corporation & others**” whereby the writ petition was disposed of with certain observations.

The operative portion of the impugned judgment passed in CWJC No. 4954 of 2016 titled as “**Smt. Usha Kishore Vs. Patna Municipal Corporation & others**” reads



as under:-

“I have heard learned counsel for the parties and I have perused the records.

The action initiated by the Corporation whatsoever pending consideration in the Vigilance case is an entirely distinct issue to the grievance so raised in the present writ petition which inter alia raises grievance against non execution of a lease deed which is pending since 19.6.1962 i.e. more than half a century. The nature of the grievance as originally raised in the writ petition stands modified by the application present at Annexure-13 and is entirely distinct to the objection raised by Mr. Verma relying upon the institution of the vigilance case. A right to a transfer of ownership and execution of the lease deed has to be considered on its own merits and thus even if a vigilance case is pending for alleged violations, such pendency cannot obstruct the right vested in the successor to the allottee for transfer of ownership as well as for registration/execution of a registered lease deed.

In the circumstances discussed, for the present I deem it fit and proper to dispose of this writ petition with the direction to the Commissioner, Patna Municipal Corporation to consider the prayer of the applicant who happens to be the husband of the petitioner as present in his representation dated 31.3.2016, a copy of which is present at Annexure-13 and dispose of the same in accordance with law and after giving an opportunity of hearing to the said applicant preferably within a period of three months from the date of receipt/production of a copy of this order.”

We do not find any infirmity or perversity in the findings reproduced (supra). In fact, the order is innocuous in nature, asking the authorities to decide the petitioner's request



in accordance with law, which the appellant herein is duty bound to do so.

The issue whether the present appellant is adopting a discriminatory attitude in engaging in the business of the pick and choose in allowing perpetuation of the unauthorized use of built up structures for commercial user, is left open to be considered by us in an appropriate case.

The present appeal stands disposed of.

(Sanjay Karol, CJ)

(Anil Kumar Upadhyay, J)

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