

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10054 of 2019

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

... .. Petitioners

Versus

1. The State of Bihar through Principal Secretary, Urban Development Department, Govt. of Bihar, Patna.
2. The Principal Secretary, Urban Development Department, Government of Bihar, Patna.
3. The Municipal Building Tribunal, Patna through its Chairman
4. The Chairman, Municipal Building Tribunal, Patna
5. Krishna Kumar Rungta, S/o of Shree Govind Prasad Runta, Resident of 202, Santosha Apartment, Bandar Bagicha, present address 303/304, Ambition Residency, Exhibition Road, Behind Narayan Plaza, Distt.- Patna-1
6. Bina Devi Kataruka, W/o Late Lalit Kumar Kataruka, Resident of 04 Riding Road, Sheikhpura, P.S.- Shastri Nagar, Patna, At present resident of 109, Durga Marin Drive, 1st Floor, Main Road, Dujara, Patna-1

... .. Respondents

Appearance :

For the Petitioners	:	Mr. Bindhyachal Singh, Senior Advocate Mr. Shailendra Kumar Singh, Advocate
For the Respondent No.5:		Mr. Suraj Samdarshi, Advocate
For the Respondent No.6:		Mr. Rajiv Kumar Singh, Advocate Mr. Sajal Kumar Sinha, Advocate
For the State	:	Ms. Deepika Sharma, AC to SC-9

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and

HONOURABLE MR. JUSTICE NAWNEET KUMAR
PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date : 16-08-2022

Heard Mr. Bindhyachal Singh, learned senior
counsel for the petitioners, Mr. Suraj Samdarshi, learned
counsel for respondent no.5 and Mr. Rajiv Kumar Singh,



learned counsel for the respondent no.6.

2. In the instant case, the petitioners have prayed for quashing of the order dated 12.09.2018, passed by the Municipal Building Tribunal-1(respondent no.3) in Appeal No. 12 (North Bihar) of 2016 arising out of Vigilance Case No. 172A of 2014 by which the respondent no.3 has modified the order dated 29.08.2016 passed by the Patna Municipal Commissioner (petitioner no.2) in Vigilance Case No. 172A of 2014 with following observations and directions:-

“This Tribunal comes to the conclusion that calculation of condonable and demolishable set-back area is erroneous and not correct and it should be done as per prescribed procedure of calculation as stated in above para. The averment and submission made by the appellant’s counsel is acceptable in the light of the provisions made in Section 317 of the Bihar Municipal Act-2007, para-11(1), Appendix-L and M of the Modified Building Bye laws. Since, the 3 year duration for validity of sanctioned map has elapsed, hence the appellant will make the whole structure as residential after submitting the revised plan based on parameters of bye laws prevalent at the date of interference by P.M.C. after demolishing non-condonable area of structure, removing extra construction beyond



present map. The revised map submitted by the appellant will be sanctioned by the P.M.C. as per parameters of Bye laws prevailing at the time of interference by P.M.C. Before submitting revised map the appellant will pay condonation fee, leave 1.5m land strip for widening of the front road and demolish all illegal constructions assessed by P.M.C. as per mathematical calculation stated in above para. The impugned order will be modified to the extent stated above.

Therefore, considering all above facts and circumstances we come to the conclusion that the impugned order regarding demotion of entire structure is not just and proper in accordance with law and that the structure may be kept for the purpose of converting into the residential building for which the appellant is ready.”

3. The facts of the case, according to the petitioners, in brief, are that the *suo motu* Vigilance Case No. 172A of 2014 was initiated against one Lalit Kumar Kataruka (husband of respondent no.6). and developer Krishna Kumar Rungta (respondent no.5). After hearing the parties, the Patna Municipal Commissioner vide order dated 29.08.2016 passed in vigilance Case No. 172A of 2014 cancelled the map plan sanctioned by the Architect and after declaring the whole structure illegal,



directed for demolishing the same.

4. As the map had been sanctioned for basement + ground + six floors in which upto 5th floor community facility had been provided and only in the 6th floor residential facility had been provided whereas plot lies in the residential Zone where no commercial facility could have been accorded. Hence, it was ordered by the respondent no.2 to comply with the order dated 29.08.2016 within 30 days, otherwise Patna Municipal Corporation would demolish the same and the expenditure incurred therein will be realized from the respondents. The aforesaid Krishna Kumar Rungta being aggrieved by the order passed in Vigilance Case No. 172A of 2014 preferred Appeal No. 12 (North Bihar) of 2016 before the Municipal Building Tribunal-1 (for short 'the Tribunal'), which was heard and the impugned order was modified to the extent indicated in the order, which is under challenge in the present application.

5. Mr. Bindhyachal Singh, learned senior counsel appearing for the petitioners submitted that 30.10.2011, the registered Architect had sanctioned the building plan of Lalit Kumar Kataruka, who died during the pendency of the appeal before the Tribunal. His wife Bina Devi Kataruka has been impleaded as respondent no.6 in the present application. He



contended that the registered Architect had sanctioned the building plan in contravention of the provisions of the Building Bye laws by sanctioning the commercial facility in the residential zone. He contended that the respondent no.5 is a professional builder and knowingly he procured the sanction order in collusion with the Architect by using unfair method. He is erecting the building in collusion with the Architect wherein the map has been sanctioned for basement + ground + six floors in which upto the 5th floor community facility has been provided and only in 6th floor the residential facility has been provided. He submitted that a new case has been introduced at the appellate stage by the respondent nos. 5 and 6, which is not permissible in law. According to him, the Tribunal has travelled beyond its jurisdiction by allowing the change of nature of the building, which was neither an issue raised before the Municipal Commissioner nor dwelt upon or determined by him. He argued that the Tribunal has neither discussed nor considered any illegality in the order of the Municipal Commissioner and issued directions, which are absolutely unwarranted, unreasonable and beyond the statutory provisions. He urged that the calculation of condonable area in the impugned order is against the modified Building Bye-law.



6. The further contention of the learned senior counsel for the petitioners is that by ignoring the provisions of Section 315 of the Bihar Municipal Act, 2007 (for short 'the Act of 2007'), the Tribunal has held that the building structure shall not be demolished and shall be converted into residential building. He submitted that Section 315 of the Act of 2007 provides that any building or structure of permanent nature, which has been constructed or construction has commenced in contravention, breach or deviation of building bye-laws shall further be liable to pay a penalty of minimum of rupees one lakh, which may extend upto rupees ten lakh depending on the size of the building or structure and the extent of deviation. The penalty in this Section is to be imposed in addition to any other fine provided under this Act including fine for compounding. He urged that the Tribunal has no jurisdiction to issue direction to the Municipal Commissioner to sanction revised map or building, which has been constructed in contravention of building bye-laws by sanctioning the commercial activity in residential zone. He argued that since the sanction of map was found to be illegal by the Municipal Commissioner, it was cancelled and the building was ordered to be demolished. The Tribunal did not find the order to be illegal, but directed the



Municipal Commissioner not to demolish the same and to pass the revised map on the basis of parameters of bye-laws at the time of interference by the Patna Municipal Corporation meaning thereby that if the building plan has to be sanctioned afresh, it has to be sanctioned as per the new building bye-laws, which came into effect from December, 2014.

7. On the other hand, Mr. Suraj Samdarshi, learned counsel appearing for the respondent no.5 submitted that an agreement was executed between the landlord (respondent no.6) and the developer (respondent no.5) pursuant to which, respondent no.5 got a sketch map ready for construction of the building. The project map was duly sanctioned by the registered Architect on 30.10.2011 for construction of basement + ground + six floors having absolute height of 28.92 meters from the ground level. He submitted that though the said plan was sanctioned for residential purpose upto 5th floor, the sanctioned map referred to community facility and only the 6th floor showed construction for residential purpose. While the construction was going on pursuant to the sanction of the building plan, the petitioners initiated a *suo motu* vigilance case against the land owner and the developer for the alleged irregularities. At the time of initiation of the vigilance case, the



construction was made only upto the 3rd floor. The allegations levelled were for minor deviations. However, the most important allegation was that the Zone in which the map was sanctioned was a residential area and, therefore, in view of the restriction over the commercial activity, the building which did not reflect any residential habitation in future upto 5th floor could not have been constructed. Thus, the map, which was sanctioned by the registered Architect of the Patna Municipal Corporation was held to be collusive in nature, and ultimately, vide order dated 29.08.2016 passed in Vigilance Case No.172A of 2014, the Municipal Commissioner, Patna Municipal Corporation cancelled the map sanctioned by the registered Architect. He contended that being aggrieved by the aforesaid order dated 29.08.2016 passed by the Municipal Commissioner, respondent no.5 preferred an appeal before the Tribunal vide Appeal Case No.12 of 2016 and after a detailed hearing, the Tribunal modified the order of the petitioner no.2 vide impugned order dated 12.09.2018.

8. Mr. Suraj Samdarshi, learned counsel for respondent no.5 further contended that there is no illegality in the order passed by the Tribunal. He submitted that there is no merit in the contention of the petitioners that the Tribunal has



passed order without jurisdiction. According to him, every order passed by the Municipal Commissioner under Section 323 of the Act of 2007 is subject to sub-sections (3), (6) and (7) of Section 323 of the Act of 2007 and, therefore, the direction of the Tribunal for sanction of map for residential purpose is within the jurisdiction of the Tribunal under Section 329 read with Sections 323 and 340 of the Act of 2007. He submitted that the constitution of the Tribunal under Section 329 of the Act of 2007 is for the redressal of grievance and in particular for the cases dealt with in Chapter-XXXVII wherein Section 342 primarily deals with the premises not to be used for non-residential purpose without municipal license. He contended that the jurisdiction of the respondent no.2 so far as it related to the cancellation of the sanctioned map is limited and can be exercised only if any material misrepresentation or fraud has been made in the application form, or any incorrect information is furnished for sanction of map. He contended that any deviation from the sanctioned map during the period of construction has to be strictly in terms of the bye-laws during which the map was sanctioned and not the subsequent bye-laws, which came into existence after the sanction of the plan. According to him, the subjective opinion of the respondent no.2



that the nature of the building has been converted into commercial from residential is totally misconceived. He has referred to the various provisions of the relevant bye-laws in order to persuade us that the inference drawn by petitioner no.2 that the building in question is being constructed in a manner that it will be used for commercial purpose is based on conjecture and surmises.

9. Mr. Rajiv Kumar Singh, learned counsel for the respondent no.6 adopted the submissions made by Mr. Suraj Samdarshi, learned counsel for the respondent no.5. Ms. Deepika Sharma, learned AC to Standing Counsel No.9 submitted that the State is a formal party in the present application. She contended that she would support the contentions advanced on behalf of the petitioners in the present case.

10. We have heard submissions made on behalf of the parties and carefully perused the material on record.

11. From the submissions made on behalf of the parties and the pleadings made in the application and the counter affidavit filed on behalf of the respondents, it would be manifest that the land-owner Lalit Kumar Kataruka now being represented by his wife (respondent no.6) entered into an



agreement with the respondent no.5 for construction of building.

12. In furtherance of the agreement, a project map was presented before the registered Architect, which was sanctioned by him on 30.10.2011 for construction of a building as basement + ground + six floors having absolute height of 28.92 meters from the ground level. The respondent no.5 started construction in compliance of the aforesaid map approved by the registered Architect. An inspection was carried out by the Patna Municipal Corporation on 12.04.2014 wherein it was alleged that there was deviations with regard to the set-back of structure. There was also an objection with regard to the nature of the building. It was alleged that according to the sanctioned map, only 6th floor was shown as bed room while rest of the construction were shown to be community facility, which was against the Building Bye-laws.

13. In sum and substance, it was alleged that the map, which was sanctioned, was in relation to the residential zone and in view of the restriction over commercial activity, the building, which did not reflect any residential habitation in future upto 5th floor could not be constructed. The petitioners presumed that the map was sanctioned by the registered Architect in collusion with the land owner, and ultimately, the



petitioner no.2 vide order dated 29.08.2016 passed in Vigilance Case No.172A of 2014 cancelled the map sanctioned by the registered Architect. At the time of cancellation of the building plan, the building was constructed upto ground + third floor and it was not even put to use either residential or commercial.

14. Thus, being aggrieved by the aforesaid order dated 29.08.2016, the respondent no.5 preferred an appeal before the Tribunal vide Appeal Case No.12 of 2016. After hearing, vide order dated 12.09.2018, the Tribunal modified the order of petitioner no.2 vide order dated 29.08.2016.

15. As a matter of fact, the Tribunal did not set aside the order of the Municipal Commissioner rather it directed for a revised map to be issued by the Patna Municipal Corporation as per the prevalent building bye-laws specifying the residential uses of the building. The respondent no.5 was directed to pay penalty and condonation fee in terms of the existing building bye-laws and it was also directed to leave 1.5 meter land strip for widening of the front road and demolition of the illegal construction assessed by the Patna Municipal Corporation, which was not condonable.

16. Apparently, the grievance of the petitioners is that the Tribunal could not have directed the petitioner no.2 for



revising the map for a residential building. The further grievance of the petitioners is that the revised plan as directed by the Tribunal was to be issued under the existing building bye-laws and not the new bye-laws, which was modified and came into effect from December, 2014.

17. The petitioners have challenged the impugned order mainly on the ground that it violated the provisions prescribed under Sections 315, 323 and 340 of the Act of 2007.

18. In view of the rival submissions advanced on behalf of the parties, at this stage, it would be apposite to take note of the relevant provisions prescribed under Sections 312, 313, 314, 315, 316, 317, 323, 329 and 340 of the Act of 2007, which read as under:-

Chapter XXXVI

BIHAR MUNICIPAL ACT, 2007

“Section 312. In this chapter, unless the context otherwise requires, the expression-

(1)“to erect a building” means-

(a) to erect a new building on any site, whether previously built upon or not,

(b) to re-erect-

(i) any building of which more than one-half of the cubical extent above the level of plinth have been pulled down, burnt or



destroyed, or

(ii) any building of which more than one-half of the superficial area of the external walls above the level of plinth has been pulled down, or

(iii) any frame-building of which more than half of the number of posts or beams in the external walls have been pulled down

(c) to convert into a dwelling-house any building or any part of a building not originally so constructed for human habitation or, if originally so constructed for human habitation, subsequently appropriated for any other purpose,

(d) to convert into more than one dwelling-house a building originally constructed as one dwelling-house only,

(e) to convert into a place of religious worship or into a sacred building any place or building, not originally constructed for such purpose,

(f) to roof or cover an open space between walls or buildings to the extent of the structure formed by the roofing or covering of such space,

(g) to convert two or more tenements in a building into a greater or lesser number of such tenements,

(h) to convert into a stall, shop, office, warehouse or godown, workshop, factory or garage any building not originally constructed



for use as such, or to convert any building constructed for such use, by sub-division or addition, into greater or lesser number of such stalls, shops, offices, warehouses or godowns, workshops, factories or garages,

(i) to convert a building, which, when originally constructed, was legally exempt from the operation of any building regulations or any rules made under this Act or in any other law for the time being in force, into a building which, had it been originally erected in its converted form, would have been subject to such building regulations,

(j) to convert into, or use as, a dwelling-house any building, which has been discontinued as, or appropriated for any purpose other than, a dwelling-house,

(k) to make any addition to a building, and

(l) to remove or reconstruct the principal staircase of a building or to alter its position;

Section 313. Prohibition of construction without sanction: - No person shall construct, or commence to construct, any building or any structure of a permanent nature or execute any of the work relating to construction of building including addition, alteration or modification of an existing building in any municipal area, save and except in accordance with building bye-law.



Section 314. Sanction of building plan:- No persons shall construct or commence to construct, any building or structure of permanent nature or execute any work relating to construction of building undertake or any alteration, addition or modification of an existing building unless, the building plan is approved by a certified Architect registered under Architects Act, 1972.

Provided that no Architect shall sanction any building plan unless it is in conformity with building bye-law framed by the State Government/Municipality.

Provided further that any Architect, who is found to have approved a building plan in contravention or in deviation of building bye-law, he shall be liable to be prosecuted and shall be liable to pay fine of Rupees fifty thousand or sentence to imprisonment for a period which may extend to one year or both.

Section 315. Construction of building in contravention of building bye-law:-Any building or structure of permanent nature which has been constructed or construction has commenced in contravention or breach or deviation of building bye-law shall be liable to be demolished, notwithstanding that it may have been approved by a registered Architect.

Provided further that the owner or



occupier or any person responsible for construction of a building or structure of permanent nature or commencement of construction in contravention, breach, or deviation of building bye-law shall further be liable to pay a penalty of minimum of Rupees one lac, which may extend up to Rupees 10 lacs depending upon size of the building or structure and extent of deviation.

Provided further that the penalty under this Section shall be in addition to any other fine provided under this Act including fine for compounding as may be provided under building bye-law.

Section 316. Building plan approved by registered Architect to be submitted to Chief Municipal Officer:-

(1) Every registered Architect, who approves a building construction plan shall within seven days from approving the plan submit detail of construction plan alongwith approval granted by him to the Chief Municipal Officer of the municipality.

(2) On receipt of approved building plan by registered Architect, the Chief Municipal Officer may inquire and verify and satisfy himself that the building construction plan confirms to building bye-law and other parameters required under this Act.



(3) If Chief Municipal officer, on such inquiry or verification finds that the building or structure of permanent nature construction plan has been approved by the registered Architect in contravention, breach or deviation of building bye-law or other parameters under this Act, he shall immediately stop construction work and proceed to take action against owner, occupier or any person responsible for construction of such building in contravention, breach or deviation of building bye-law and other parameter and shall also proceed to take action against registered Architect, who approved such building construction plan.

Section 317. Deviation in construction of building within permitted level:-If any building or structure of permanent nature has been constructed or commence to construct after duly approved building construction plan, is found to have deviated from approved construction plan within permitted level deviation, the Chief Municipal officer shall not order for its demolition.

Provided that Chief Municipal officer shall proceed to realize such fine or penalty as is prescribed under this Act or Rule, Regulation or building bye-law as the case may be.



Provided further that deviation within permitted level shall not be a ground to prosecute registered Architect.

Section 323. Order of demolition and stoppage of buildings or works in certain cases and appeal.-(1) Where the erection of any building or the execution of any work has been commenced, or is being carried on, or has been completed without, or contrary to, the sanction referred to in section 314 or in contravention of any of the provisions of this Act or the rules or the regulations made thereunder, the Chief Municipal Officer may, in addition to any other action that may be taken under this Act, make an order directing that such erection or work shall be demolished by the person at whose instance the erection or the work has been commenced or is being carried on or has been completed, within such period, not being less than five days and more than fifteen days from the date on which a copy of the order of demolition with a brief statement of the reasons therefor has been delivered to such person, as may be specified in the order:

Provided that no order of demolition shall be made unless such person has been given, by means of a notice served in such manner as the Chief Municipal Officer may



think fit, an opportunity of showing cause why such order shall not be made:

Provided further that where the erection of any building or the execution of any work has not been completed, the Chief Municipal Officer may, by the same order or by a separate order, whether made at the time of the issue of the notice under the first proviso or at any other time, direct such person to stop the erection of such building or the execution of such work until the expiry of the period within which an appeal against the order of demolition, if made, may be preferred under sub-section (3)

Explanation.— In this chapter, “the person at whose instance” shall mean the owner, or the occupier, or any other person who causes the erection of any building or the execution of any work, including alterations or additions, if any, to be done, or does it by himself.

(2) The Chief Municipal Officer may make an order under sub-section (1), notwithstanding the fact that the assessment of such building has been made for the levy of the property tax on lands and buildings.

(3) Any person aggrieved by an order of the Chief Municipal Officer under sub-section (1) may, within thirty days from the date of the order, prefer an appeal against the order to the



Municipal Building Tribunal appointed under section 329.

(4) Where an appeal is preferred under sub-section (3) against an order under sub-section (1), the Municipal Building Tribunal may stay the enforcement of the order on such terms, if any, and for such period, as it may think fit:

Provided that where the erection of any building or the execution of any work has not been completed at the time of the order under sub-section (1), no order staying the enforcement of the order under that sub-section shall be made by the Municipal Building Tribunal unless a surety, sufficient in the opinion of that Tribunal, has been given by the appellant for not proceeding with such erection or work pending the disposal of the appeal.

(5) Save as provided in this section, no Court shall entertain any suit, application or other proceeding for injunction or other relief against the Chief Municipal Officer to restrain him from taking any action, or making any order, in pursuance of the provisions of this section.

(6) Every order made by the Municipal Building Tribunal on appeal and, subject to such order, every order made by the Chief Municipal Officer under sub-section (1), shall be final and conclusive.

(7) Where no appeal has been preferred against an order made by the Chief Municipal Officer



under sub-section (1) or where an order under that sub-section has been confirmed on appeal, whether with or without modification, the person against whom the order has been made shall comply with the order within the period specified therein or, as the case may be, within the period, if any, fixed by the Municipal Building Tribunal on appeal, and, on the failure of such person to comply with the order within such period, the Chief Municipal Officer may himself cause the building or the work to which the order relates to be demolished, and the expenses of such demolition shall be recoverable from such person as an arrear of tax under this Act.

(8) Notwithstanding anything contained in this chapter, if the Empowered Standing Committee is of the opinion that immediate action is called for in relation to a building or a work being carried on in contravention of the provisions of this Act, it may, for reasons to be recorded in writing, cause such building or work to be demolished forthwith.

Section 329. The State Government may appoint one or more Municipal Building Tribunals (hereinafter referred to in this section as the Tribunal) as may be considered necessary to hear and decide appeals arising out of sanctioning of building plans by the



Municipality in accordance with such procedure, and to realize such fees in connection of with such appeals, as may be prescribed by the Government.

Section 340. Power to prohibit change of authorized use of building.-(1) No person shall, without the permission, in writing, of the Chief Municipal Officer or otherwise than in conformity with the conditions of such permission,-

(a) use, or permit to be used, for the purpose of human habitation any building or part thereof not originally erected or authorized to be used for such purpose,

(b) change, or allow the change of, the use of a building for any purpose other than that specified in the sanctioned plan,

(c) change, or allow the change of, the use of any building erected before the commencement of this Act contrary to the use for which such erection was originally sanctioned or to the use to which such building was actually put,

(d) convert, or allow the conversion of, a tenement within a building to an occupational use, other than the use intended in the original sanctioned plan, or materially alter, enlarge, or extend such use.

(2) If, in any case, such permission is given, no change of occupancy or use shall be allowed



before necessary alterations or provisions have been made to the satisfaction of the Chief Municipal Officer and in accordance with the provisions of this Act and the rules and the regulations made thereunder and any other law for the time being in force.

(3) Any change of use made before the commencement of this Act, except in so far as such use is permissible under the provisions of an earlier State law on the subject in force before the commencement of this Act, shall be deemed to be a change in contravention of the provisions of this Act.

(4) Without prejudice to any other action that may be taken against any person, whether owner or occupier, contravening any provision of this section, the Municipality may levy on such person such fine, not exceeding, in each case, rupees one hundred per square metre per month for the area under unauthorized use throughout the period during which such contravention continues, as may be provided by regulations.

(5) The Chief Municipal Officer may, if he deems fit, order that such unauthorized use be stopped forthwith:

Provided that before making any such order, he shall give a reasonable opportunity to the person affected to show cause why such order shall not be made.



(6) Any person aggrieved by an order of the Chief Municipal Officer under sub-section (5) may, within thirty days from the date of the order, prefer an appeal against the order to the Municipal Building Tribunal whose decision in the matter shall be final and conclusive.

(7) When an appeal is preferred under sub-section (6), the Municipal Building Tribunal or the Municipality, as the case may be, may stay the enforcement of the order made by the Chief Municipal Officer under sub-section (5) on such terms, and for such period, as it may think fit.

(8) Save as otherwise provided in this section, no court shall entertain any suit, application or other proceeding for any relief or injunction, restraining the Chief Municipal Officer or the Municipal Building Tribunal or the Municipality from taking any action or making any order in pursuance of the provisions of this section.

Explanation.—For the purposes of this chapter, “unauthorized use” shall mean change or conversion of a building without sanction from one occupancy or use group to another occupancy or use group referred to in sub-section (2) of section 312.”

19. It would further be relevant to take note of the relevant Rules of the Bihar Building Bye-laws, 1993 as



amended from time to time and Bihar Building Bye-laws, 2014,
which read as under:-

**Bihar Building Bye-laws, 1993 As Amended
From Time to Time**

“Rule 10. Deviation during Construction-

10.1. During the course of construction of the building, if any deviation excluding those mentioned in Bye-laws 4.5 from the sanctioned plan is intended to be made, permission of the Authority shall be obtained before the proposed deviation is executed. It shall be incumbent upon every person, whose plans have been approved, to submit plans for any deviation, he proposes to make. The procedure laid down for other documents hereinbefore shall apply to all such amended plans excepting that the time limit specified under Bye-law no.6.4(c).

Rule 10.2. Condonation of minor deviation.- The Authority shall have the power to condone minor deviations made in course of execution on the basis of sanctioned plan subject to the condition hereinafter laid down.

The term “minor deviation” shall be interpreted in terms of the provisions of Appendix- ‘L’.

The conditions for such condonation will be:-

(a) that the said minor deviation asked to be condoned does not affect the Master Plan.

(b) that the deviation is strictly within



the definition of “Minor Deviation”.

(c) that the condonation with fine will be considered only when deviation has been made after getting the earlier map of the plan sanctioned and not otherwise.

(d) that the condonation will be considered only when the owner of the building or the person at whose instance the execution of the said building has been made, applies in writing, for such condonation and agrees to pay condonation fee and such fees in advance to the Authority.

(e) that the rate of condonation fee shall be as per the rates stated in Appendix ‘L’. The rates will be subject to revision by the Authority as and when considered necessary.

(f) that the condonation fee will be deemed to be public demand within the meaning of the Bihar Public Demand Recovery Act as such.

Rule 11. Cancellation of permission.-

11.1. If any time after permission to proceed with any building or development work has been given, the Authority is satisfied that such permission was granted in consequence of any material misrepresentation or fraudulent statement contained in the application given or



information furnished, the Authority may cancel such permission and any work done thereafter shall be deemed to have been done without permission.

Rule 18.2. No permission to construct a building on site shall be granted, if the site is within nine (9) Meters of the highest water mark of a tank, unless the owner satisfies the Authority that he will take such measures as will prevent any risk of the domestic drainage of the building passing into the tank. Further the Authority may require the floor of the lowest storey of such building to be raised above the normal maximum flood level of the adjoining ground or to such other level as the Authority may specify.

Appendix- ‘M’

**Provision regarding Uses in Land Use Zone
(Bye-law No.18.4)**

Land Use Zone	Uses permitted	Uses permissible if allowed by the Authority after special appeal
1	2	3
A. Residential	1. Residence, Hostels and Boarding Houses with density Limitations. 2. Nursery, Kinder garten and High Schools. 3. Clinics, social and cultural institutions with adequate parking facilities.	1. Places of worship. 2. Professional, Commercial and Government Offices. 3. Service uses and retail shops of a neighbourhood character when located in local shopping centres or in concentrated



	4. Retail shopping and community facilities with adequate parking facilities. 5. Neighbourhood recreational use including clubs and others such public recreational facilities with adequate parking facilities.	locations or as shown in the Zonal Development plan of the areas when prepared. 4. Hotels, hospitals and sanatoria not treating contagious diseases or mental patients, provided the set back and coverage of plots are such as not to constitute nuisance to the residential area. 5. Non-commercial poultry and cattle farms provided that a part of such building is not such that 50 ft. away from a dwelling or property line. 6. Institutions of higher learning. 7. Bus depots, railway passenger and freight station. 8. Petrol filling Stations on road of 90 ft. width and above. 9. Service and storage Yard, taxi and scooter stands.
B. Commercial (Retail)	1. Retail shops and markets. 2. Business and professional Offices. 3. Service uses shops like bar-beers, tailors, laundry cleaners etc. 4. Restaurants and places of entertainment with adequate parking places.	1. Social and welfare institutions. 2. Petrol filling stations and garages with adequate set back and coverage so that there is no nuisance created to the locality. 3. Coal, Wood or Timber yard. 4. Light manufacturing



	5. Residences, Hostels and Boarding Houses and social and welfare institutions provided they are located in the first and higher floors. 6. Meat, Fish, Vegetables and fruit markets. 7. Roofed storage for legitimate retail business. 8. Public and semi-public recreational discos. 9. Public utilities and buildings (Parking area requirements for all these uses must be approved).	units employing not more than 4 persons with or without power provided the goods manufactured are sold on the premises in retail and that does not create nuisance or hazard. 5. Taxi and Scooter stand, Bus Terminal (Parking areas requirements for all the above uses must be approved).
C.Commercial (wholesale)	1. Wholesale and retail shops. 2. Storage for wholesale uses except when specifically prohibited. 3. Commercial and Government Offices. 4. Restaurants and residences provided they are located in first and higher floors. 5. Public utilities and buildings. (Parking, loading and unloading requirements must be approved for all the above uses).	1. Truck terminals and parking. 2. Market, Clinic, Social and Cultural institutions. 3. Dwelling for watch-and-ward. (Parking, loading & unloading requirements must be approved for all the above uses).
D. Industrial:	1. Industries which do not cause excessive, injurious or obnoxious noise, vibration, smokes, gas, flames, odour, dust, effluent or other objectionable conditions and do not employ more than 100 workers. (Parking,	1. Bus and Truck Terminal. 2. Railway passenger and freight terminal. 3. Petrol filling Station, Taxis and Scooter stands, junk yards. 4. Dwelling for



	loading and unloading requirements must be approved for all use.	watch and ward staff, canteen and recreational facilities for the employees.
E. Public and Semi-public uses.	1. Local, State and Central Government Offices and use of land for defence purposes. 2. Social and cultural institutions. 3. Radio Transmitters and Wireless Stations subject to height and density restrictions. 4. Educational, Medical and research institution. 5. Social and Cultural institutions. 6. Monuments and religious institutions. 7. Public utilities and buildings. 8. Cremation grounds and cemeteries. 9. Bus and Railways passenger terminals. 10. Parks, play-grounds and special recreational areas. (Parking area requirements for all these uses must be approved).	1. Residences and other uses incidental to main use in no way causing any nuisance or hazard. 2. Outdoor theaters and drive-in-cinemas. 3. Restaurants and selling of eatables. 4. Uses clearly incidental to recreational use which will not create nuisance or hazard. 5. Dwelling for watch and ward staff. (Parking area requirements for all uses must be approved).
F. Agricultural	1. Agriculture and Horticulture. 2. Dairy and Poultry farming. 3. Farm houses and accessory buildings of appropriate specification 4. Brick Kilns (Parking area requirement for all	1. Places of worship. 2. Special educational and cultural buildings. 3. Parks and non-commercial and semi-public, recreational uses. 4. Storage and processing & sale of farm product.



	these uses must be approved).	5. Service and repair of farm implements. 6. Public utility and building (Parking area requirement for all these uses must be approved).
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Bihar Building Bye-laws, 2014

Rule 4. Deemed permission.-

- (1)The construction or any building in respect of which permission has been issued before coming into force of these bye laws, shall, so far as it is not inconsistent with the provisions of the old bye laws, continue to be validly made and the said permission shall be deemed to have been issued under the corresponding provisions of those bye laws.
- (2) Where any building has been constructed before the notification of these byelaws with deviation of an approved plan, the provisions of old byelaws shall be insisted upon.
- (3) Where any building has been constructed without an approved plan, the provisions of these byelaws shall be insisted upon.”

20. Be it noted here that Chapter XXXVI of the Act contains provisions regarding erection of buildings within the municipal area. Section 312 of the Act defines the expression to ‘erect building’. Section 313 of the Act says that no person shall construct, or commence to construct, any building or any



structure of a permanent nature except in accordance with building bye-law. Section 314 of the Act says that no person construct or commence to construct, any building or structure of permanent nature unless the building plan is approved. Section 316 of the Act says the registered Architect, who approves a building construction plan and submit detail of construction plan along with approval granted by him to the Chief Municipal Officer of the municipality. Section 315 of the Act provides for actions which may be taken in case of construction or commencement of construction in contravention or breach or deviation of building bye-laws whereas Section 317 of the Act gives power to the Chief Municipal Officer of the municipality to condone deviations in construction of building within permitted level.

21. It would be clear from the reading of the aforesaid Sections of the Act that there is prohibition of construction of any building or structure without sanction of building plan. In case of any contravention, breach or deviation, the person responsible may be liable to pay penalty which may ranged between 1 lac to 10 lacs depending upon the size of the building or structure or deviation under Section 315 of the Act. However, certain deviations may be within permitted level,



and, in such a case, the Chief Municipal Officer shall be obliged not to order for its demolition and shall condone the same on the realization of such penalty or fine as may be prescribed under the Act, Rule or Regulation or building bye-laws as the case may be in terms of the provision prescribed under Section 317 of the Act.

22. It is clear from a reading of Section 323 of the Act, particularly, Sub-section (1) & (2), that they simply confer power to a Chief Municipal Officer to pass an order of demolition of any building or stop the erection of such building, where the erection of any building or the execution of any work has been commenced, or is being carried on, or has been completed without, or contrary to, the sanction of building plan referred to in Section 314 or in contravention of any of the provisions of the Act or the rules or the regulations made thereunder. Sub-section (3) confers right upon a person aggrieved by an order of the Chief Municipal Officer under sub-section (1) to prefer an appeal before the Municipal Building Tribunal appointed under Section 329 of the Act within thirty days from the date of order. Sub-section (4) provides that where an appeal is preferred under sub-section (3) against an order under sub-section (1), the Municipal



Building Tribunal may stay the enforcement of the order on such terms, as it may think fit. Sub-section (5) puts a bar upon any court to entertain any suit, application or other proceeding for injunction or other relief against the Chief Municipal Officer to restrain him from taking any action, or making any order, in pursuance of the provisions of Section 323 of the Act. Sub-section (6) provides that every order made by the Municipal Building Tribunal on appeal and, subject to such order, every order made by the Chief Municipal Officer under sub-section (1), shall be final and conclusive. Further, sub-section (7) provides that where no appeal has been preferred against an order made by the Chief Municipal Officer under sub-section (1) or where an order under that subsection has been confirmed on appeal, whether with or without modification, the person against whom the order has been made shall comply with the order within the period specified therein, as the case may be, within the period, if any, fixed by the Municipal Building Tribunal on appeal, and, on the failure of such person to comply with the order within such period, the Chief Municipal Officer may himself cause the building or the work to which the order relates to be demolished, and the expenses of such demolition shall be recoverable from such



person as an arrear of tax under the Act. Subsection (8) is a non-obstante clause. It gives overriding power to the Empowered Standing Committee to demolish building or a work forthwith, for reasons to be recorded in writing, if it is of the opinion that immediate action is called for in relation to a building or a work being carried on in contravention with the provisions of the Act.

23. Similarly, under Section 324 of the Act, the Chief Municipal Officer may by order require the person at whose instance erection of any building or the execution of any work has been commenced or is being carried without, or contrary to the sanction referred to in Section 314 of the Act or in contravention of any condition subject to which such sanction has been accorded or in contravention of any provisions of the Act or the rules or the regulations made thereunder to stop construction forthwith, and if his order is not complied with, he may require any police officer to remove such person and all his assistants and workmen from the premises within such time as may be specified by him, and such police officer shall comply with such requirement. Under this provision the Chief Municipal Officer may, if he thinks fit, by an order in writing depute a police officer to watch the premises in order to ensure



that the erection of building or execution of the work is not continued, and where a police officer has been deputed to watch the premises, the cost of such deputation to be determined by the Municipality by regulations, shall be realized from such person at whose instance such erection or execution is being continued or to whom notice under sub-section (1) has been given, and shall be recoverable from such person as an arrear of tax under the Act.

24. Apparently, the provisions prescribed under Sections 323 and 324 of the Act are public regulatory laws. They provide for the manner in which the Municipal authorities or the person aggrieved may proceed in case of any dispute relating to construction of any structure or building in contravention of any building bye-laws.

25. From the perusal of the impugned order, it would be manifest that the petitioner no.2 presumed the building in question to be commercial in nature. The basis for presumption was that the sanctioned map depicted bed room only on 6th floor whereas the ground + five floors were shown to be community facility.

26. The contention of Mr. Bindhyachal Singh, learned senior counsel for the petitioners is that the community facility



is contrary to the existing bye-laws.

27. On the other hand, the submission of the respondent no.5 right from the beginning is that the building was never intended for any commercial use. The respondent no.5 has filed an affidavit before this court also wherein a specific assertion has been made that the building to be constructed by respondent no.5 on survey plot Nos. 1780, 1783, 1784, 1785, 1772, 1773, Khata Nos.426, 434, 455 and 458, Tauzi No.576, Mauza-Sheikhpura, Thana No.9, P.S.-Gardanibagh, presently Shastrinagar, Town and District-Patna abutting right in road, total area 1234.04 square meters shall be used only for residential purposes by respondent no.5 and/or its purchasers. The respondent no.5 has further undertaken not to construct/build the structure beyond the permissible height in the sanctioned map and will not seek any condonation with respect to the height.

28. The respondent no.5 has taken a consistent stand that the building was never intended for any commercial use. The finding of the petitioner no.2 that the building was being constructed for commercial use appear to be based on the fact that though the map has been sanctioned for basement + ground + six floors, upto 5th floor community facility has been provided



and only in the sixth floor residential facility has been provided whereas the plot lies in residential zone where no commercial facility can be accorded. In this regard, if we look at Appendix- 'M' of the prevalent building bye-law, 1993, we find that the uses permitted in residential zone provides for various activities including community facilities. Hence, the finding of the respondent no.2 that the building is being constructed for commercial use is based on conjecture and surmises.

29. Insofar as the submission made on behalf of the petitioners questioning the jurisdiction of the Tribunal is concerned, sub-sections (3), (6) and (7) of Section 323 deal with the jurisdiction of the Tribunal established under Section 329 of the Act of 2007. They specifically refer that any person aggrieved by an order of the Chief Municipal Officer may prefer an appeal and the order passed by the Tribunal would be final and conclusive.

30. It would also be pertinent to note at this stage that sub-section (5) of Section 340 of the Act of 2007 empowers the Chief Municipal Officer to stop unauthorized use of any building forthwith. However, sub-section (6) of Section 340 of the Act of 2007 empowers the Tribunal to entertain an appeal against an order of the Chief Municipal Officer under sub-



section (5) and the decision of the Tribunal shall be final and conclusive.

31. Thus, the contention of the learned senior counsel for the petitioners that the Tribunal did not have any jurisdiction to interfere with an order passed under Section 323 of the Act of 2007 is without force.

32. Insofar as the powers of the Chief Municipal Officer under Section 323 of the Act of 2007 to order for demolition and stoppage of building or work in certain cases are concerned, it is reiterated that sub-section (1) of Section 323 of the Act of 2007 would make it manifest that the erection of any building or the execution of any work, which has been commenced or is being carried on or has been completed without or contrary to the sanction referred to in Section 314 or in contravention of any of the provisions of the Act or the Rules or the Regulations made thereunder, the Chief Municipal Officer may in addition to any other action that may be taken under the Act make an order directing that such erection of work shall be demolished by the person at whose instance the erection or work has been commenced or is being carried on or has been completed.

33. In the instant case, it is not the case of the



petitioners that the erection of the building or the execution of the work was being carried on contrary to the sanction referred to in Section 314 of the Act of 2007 rather the case of the petitioners is that the sanction granted by the registered Architect of the Municipal Corporation itself was erroneous.

34. In this regard, it would be of salience to note that in view of Rule 11 of the relevant building bye-laws interference with the construction activity of the respondent nos. 5 and 6 could have been done and cancellation of permission could have been invoked only when the petitioner no.2 would have recorded his satisfaction that the permission was granted in consequence of any misrepresentation or fraudulent statement contained in the application seeking a sanction for erection of the building.

35. It is not the case of the petitioners that the permission to proceed with the erection of the building had been given in favour of the respondent no.6 in consequence of any material misrepresentation or fraudulent statement contained in the application given or information furnished.

36. A perusal of the order dated 29.08.2006 passed by the petitioner no.2 as contained in Annexure-3 would reveal that there was no finding regarding misrepresentation or



fraudulent statement in the application seeking permission to construct the building.

37. The next submission of the petitioners is that the Tribunal ignored Section 315 of the Act of 2007 while passing the order.

38. A perusal of Section 315 of the Act of 2007 would make it evident that if any building or structure of permanent nature, which has been constructed or construction has been commenced in contravention or breach of all deviation of building bye-laws shall be liable to be demolished notwithstanding that it had been approved by a competent authority. However, the first proviso to Section 315 of the Act of 2007 provides that in case of any contravention, breach of deviation person may be liable to pay penalty, which may range between one lakh to ten lakhs depending upon size of building or structure or deviation. However, certain deviations may be within permissible limit and clause 10 of the Building Bye-laws, 1993, which was prevalent when the building plan of the respondent was sanctioned provides that the authority shall have power to condone minor deviation made in course of execution on the basis of sanctioned plan subject to the condition laid down therein.



39. The Building Bye-laws of 1993 are in the form of regulations and, in case, the same provides for condonation of minor deviations from the sanctioned plan subject to the conditions mentioned therein. Thus, clause 10 of the Building Bye-laws, 1993, as amended from time to time, will have to be read together with Section 315 of the Act of 2007 and, in case, the deviations are within the permissible limit, the Chief Municipal Officer shall be obliged not to order for its demolition and shall condone the same on realization of such penalty or fine as may be prescribed under the Act.

40. Furthermore, even if there was any deviation in construction within the permitted (condonable) limit, as per section 317 of the Act of 2007, the Municipal Officer shall not order for demolition.

41. Since the construction by the respondent no.5 was in accordance with the sanctioned plan, there was no reason for Municipal Commissioner to pass the order of demolition.

42. Since the constitution of the Tribunal under Section 329 of the Act of 2007 is for redressal of the grievance, as such, by necessary implication when the sanctioned map had been cancelled on the ground that the premise is sought to be used for commercial purpose in residential zone, the Tribunal had the



authority to decide the same.

43. The order impugned would make it clear that the Tribunal has not passed any order altering the intended use of the structure. On the contrary, it has directed the respondent no.5 to get a fresh map sanctioned for residential use after removal of deviation beyond the condonable limit and after paying the fine assessed for the deviations made within the condonable limits. There is nothing in the order of Tribunal to infer that it has issued direction to the respondent no.2 to sanction commercial activity in residential zone.

44. Insofar as the challenge to the impugned order that the calculation of condonable area in the impugned order passed by the Tribunal is against the modified building bye-laws is concerned, it would be evident from the order passed by the Tribunal that how the calculation has to be made. Any deviation from the sanctioned map during the period of construction has to be strictly in terms of such bye-laws during which the map was sanctioned and not subsequent bye-laws which came into existence after the sanction of plan.

45. The petitioner no.2 had directed for demolition of building structure upto 3rd floor mainly on the ground that the sanctioned map was against building bye-laws because upto



ground + five all floors had been sanctioned as a hall showing community facility and at the 5th floor, bed room had been shown. It was interfered on the ground of deviation of uses, as in the residential zone a commercial structure is not permissible. However, it would be manifest from Appendix- 'M', which prescribes the permitted uses in residential zone, would make it clear that in a residential zone, various uses, such as, Residences, Hostels, Boarding Houses with density limitations, Nursery, Kindergarten, High Schools, Clinics, Social and Cultural Institutions with adequate parking facilities, Retail Shopping, **Community Facilities** with adequate parking facilities and Neighbourhood Recreational use including Clubs and others such public recreational facilities with adequate parking facilities are permitted. Apparently, the uses permitted by the bye-laws enumerated in Appendix- 'M' include community facilities. Hence, it can safely be said that it is not a case where in a residential zone, the structure being erected is not permissible. The restriction, if any, is only to the extent of its uses.

46. So far as the Building Bye-laws, 2014 is concerned, sub-rule (1) of Rule 4 therein clearly provides that the construction of any building in respect of which permission



has been issued before coming into force of 2014 bye-laws, shall, so far as it is not inconsistent with the provisions of the old bye-laws, continued to be validly made and the said permission shall be deemed to have been issued under the corresponding provision of those bye-laws. Sub-rule (2) of the aforesaid Rule 4 provides that where any building has been constructed before the notification of the 2014 bye-laws with deviation of an approved plan, the provision of old bye-laws shall be insisted upon and sub-rule (3) of Rule 4 provides that when any building has been constructed without approved plan, the provision of 2014 bye-laws shall be insisted upon.

47. In the instant case, admittedly, it is not the case of the petitioners that the building had been constructed without an approved plan rather the case of the petitioners is that the building plan was wrongly and collusively sanctioned by the registered Architect. The reasons due to which the petitioners have held the sanction of building to be collusive and bad had already been found erroneous by us. Hence, the Tribunal has rightly modified the order passed by the petitioner no.2 to the extent that the respondents would make payment for deviation as per the bye-laws and, in case, there is deviation from the permissible limit, the same would be demolished. Also, the



Tribunal has rightly observed that a revised map will be submitted by the respondents, which would be sanctioned by the Patna Municipal Corporation as per the prevailing bye-laws and the entire structure should be residential.

48. We are of the opinion that the Tribunal has rightly held that on technical ground, demolition of building would be a harsh punishment particularly when the structure is compatible to the existing building bye-laws and the provisions of the Act.

49. For the reasons stated above, we see no merit in the present application. The writ petition is dismissed.

50. However, there shall be no order as to costs.

(Ashwani Kumar Singh, J.)

(Nawneet Kumar Pandey, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.08.2022
Transmission Date	NA

