

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5425 of 2016

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Rajesh Kumar Singh Son of Sri Dina Nath Singh, Resident of Mangala Bhawan, Shanti Path, Gardanibagh, P.S. Gardanibagh, District - Patna

... .. Petitioner

Versus

1. The State Of Bihar.
2. Principal Secretary, Urban Development Department Govt. of Bihar, Patna
3. Principal Secretary, Dept. of Cooperation, Govt. of Bihar, Patna
4. Registrar, Cooperative Societies, Bihar, Patna
5. Dy. Registrar, Cooperative Societies, Patna Division, Patna
6. Patna Municipal Corporation through Municipal Commissioner, Patna
7. Municipal Commissioner, Patna Municipal Corporation, Patna
8. District Magistrate, Patna
9. Dy. Inspector General of Police, Patna
10. Senior Superintendent of Police, Patna
11. City S.P., Patna
12. Officer in Charge, Budha Colony, Police Station, Patna
13. Budha Colony, Housing Cooperative Society, Budha Colony, Patna through its Secretary
14. Bindeshwari Prasad Singh, B - 152, Budha Colony, Patna

... .. Respondents

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with
Letters Patent Appeal No. 952 of 2016
In
Civil Writ Jurisdiction Case No.2735 of 2015

=====

The Buddha Sahakari Grih Nirman Samitee, through its Secretary, Lok Prakash Singh, Resident of 301 Aatma Smiriti, Buddha Colony, Patna.

.....Respondent/Appellant

Versus

1. Bindeshwari Prasad Singh son of Late Bangali Singh. Resident of Village- Dumari, P.O. and Police Station- Sahrpur Patori, District- Samastipur. At Present- B-152 Budha Colony, Police Station Budha Colony, District Patna.
....Petitioner/Respondent 1st Set.
2. The State of Bihar through the Registrar, Cooperative, Government of Bihar,



Patna.

3. The Registrar, Cooperative, Government of Bihar, Patna.
4. The Deputy Registrar, Cooperative, Government of Bihar, Patna

.....Respondent/Respondent 2nd Set

with
Letters Patent Appeal No. 1496 of 2016
In
Civil Writ Jurisdiction Case No.2735 of 2015

Bijay Kumar Singh (substituted heir of Smt. Mani Devi original appellant))
vide order dt. 12-07-2022 in I.A.05 of 2020)

... .. Appellant

Versus

1. Bindeshwari Prasad Singh son of Late Bangali Singh. Resident of Village-Dumari, P.O. and Police Station- Sahpur Patori, District- Samastipur. At Present- B-152 Budha Colony, Police Station Budha Colony, District Patna.
.....Writ Petitioner/ Respondent
2. The State of Bihar through the Registrar, Cooperative, Government of Bihar, Patna.
3. The Registrar, Cooperative, Government of Bihar, Patna.
4. The Deputy Registrar, Cooperative, Government of Bihar, Patna
5. The Buddha Sahkari Grih Nirman Samitee, through its Secretary, Lok Prakash Singh, Resident of 301 Aatma Smriti, Buddha Colony, Patna.

.....Respondent No.1-4/Respondents

Appearance :

(In Civil Writ Jurisdiction Case No. 5425 of 2016)

For the Petitioner/s : Mr. Y.V. Giri, Sr. Adv.
Mr. Rajesh Prasad Choudhary, Adv.

For the Respondent/s : Mr. Anil Kr. Verma, AC to AAG-9

For PMC : Mr. Prasoon Sinha, Adv.

(In Letters Patent Appeal No. 952 of 2016)

For the Appellant/s : Mr. Vikash Kumar, Adv..
Mr. Girijish Kumar

For the Respondent/s : Mr. Anil Kr. Verma, AC to AAG-9

(In Letters Patent Appeal No. 1496 of 2016)

For the Appellant/s : Mr. Y.V. Giri, Sr. Adv.

: Mr. Rajesh Prasad Choudhary, Adv.

For the Respondent/s : Mr. Sumant Kumar Singh, AC to GA - 2



**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE DR. ANSHUMAN)**

Date : 03-08-2022

Heard Learned counsel for the petitioners of all cases and the learned counsel for the respondents.

2. LPA Nos. 952 of 2016 and 1496 of 2016 have arisen against the same order dated 10.02.2016 passed by Hon'ble Mr. Justice Jyoti Saran in CWJC No. 2735 of 2015, whereas the writ petition namely, CWJC No. 5425 of 2016 has been instituted independently in the form of Public Interest Litigation which was directed to be listed for analogous hearing along with LPA No. 1496 of 2016 vide order dated 03.04.2017 and LPA No. 952 of 2016 was directed to be listed for analogous hearing along with LPA No. 1496 of 2016 vide order dated 08.11.2016. As such the writ petition and the two Letters Patent Appeals have been heard together and are being disposed of by a common order.

L.P.A. No. 952 of 2016

3. The present LPA has been filed against the judgment dated 10.02.2016 passed by Hon'ble Mr. Justice Jyoti Saran in CWJC No. 2735 of 2015, by which the writ petition was allowed, setting aside the order dated 05.12.2014 passed by



Deputy Registrar, Cooperative Societies, Patna Division, Patna (respondent no.4) in Misc. Case No. 17 of 2014. This appeal has been preferred by respondent no. 4 of the writ petition

Facts of the case CWJC 2735 of 2015

4. The writ petitioner is a member of the Buddha Sahakari Grih Nirman Samitee (hereinafter called as Samitee) and was allotted a land appertaining to a plot marked as B-152, which belongs to Tauzi No.5225, Khata No.93 and Plot No. 226 measuring 4750 Sq. feet through the registered sale deed dated 08.11.1975 (Annexure-1 of writ petition). The said petitioner had applied before the Patna Municipal Corporation (hereinafter call as “PMC”) for approval of map to construct a multi-story residential building. His map was approved by the PMC vide Plan Case No. PMC-CP-Dujra-0170KPI/24/02/2012, Sl. No.146 dated 24.02.2012. Petitioner started constructing the said multi-story building purely for residential and not for commercial purposes. Thereafter respondent no. 4 i.e. Secretary of Buddha Sahakari Grih Nirman Samitee (hereinafter call “Samitee”) filed a Misc. Case No.152 of 2013 before Registrar Cooperative Societies, Patna for cancellation of deed of allotment dated 08.11.1975 in favour of the petitioner alleging that petitioner is constructing a multi-story commercial building which is in



violation of Bye Laws of Samitee. The said case was filed before the Registrar Cooperative Societies, Patna, who transferred the said case before the Deputy Registrar, Cooperative Societies, Patna (Respondent no.2 of writ petition). Before the Deputy Registrar, Cooperative Societies, Patna this case was re-instituted/ re-numbered as Misc. Case No. 17 of 2014.

5. In the Misc. Case No. 17 of 2014 the question raised by the Samitee is that, the allottee Bindeshwari Pd. Singh is constructing a multi-story building on Plot No. B-152, with help of an unknown builder without permission of the Samitee. He shall use this building for commercial use which is in violation of By-laws of the Samitee, so such construction be immediately stopped.

6. In the said Misc. Case No. 17 of 2014 the petitioner of the writ petition (Bindeshwari Pd. Singh) appeared and filed his reply/counter affidavit (Annexure-3 of writ) and stated that (i) He is constructing his house in his name only after due approval of Map for G+4 House, from competent authority. (ii) It has also been replied that the said construction is being made for purely residential purposes. The information to construct building by unknown developer is absolutely wrong and



Samitee has not produced any document in this regard. (iii) It has also been replied that there are series of multi story building constructed on the allotted plots of the Samitee but Samitee has never raised any objection for the same. (iv) It has also been replied that the said land has neither been sold to any one nor he is going to use the said plot for commercial purposes, in such circumstances demand of No- Objection Certificate from Samitee is against the By-Laws of the Samitee.

7. In the said Misc. Case No. 17 of 2014 Patna Municipal Corporation was also made party but only the writ petitioner had appeared and after hearing the samitee and the writ petitioner, the Registrar Cooperative Societies, Patna passed the order on 05.12.2014 by which prayer of the writ petitioner for vacating the order of stay imposed upon the construction of multi-story residential building was allowed and refused to grant permission for construction of the same and thereby disposed of Misc. Case No. 17 of 2014.

8. The reason assigned by the Dy. Registrar Cooperative, Patna is that, since the allottee has taken permission to construct building on the said plot in his name, but the map is approved for G+4 by which total 14 flats shall be constructed and allottee is saying that it shall be used for



residential purposes and not for circumstances does not appear to be reasonable and justifiable, as well as it is appeared to be against the direction made in the CWJC No. 8152 /2013 (Narendra Mishra Vs State & others).

9. Being aggrieved and dissatisfied from the said order dated 05.12.2014, Bindeshwari Pd. Singh (writ petitioner) preferred writ bearing CWJC No.2735 of 2015. In the said writ petition, both the writ petitioner and samitee appeared and filed their pleadings upon completion of pleadings of the parties and after hearing, learned single judge framed the following: “Whether the building is to be put up for commercial use or not”

It has been answered after detailed discussions that in his opinion the order of the Dy, Registrar, Cooperative Societies is putting restrain only on presumption and assumption which cannot be a foundation to affect the right vested in the writ petitioner under the allotment made by the Society as well as the sanction accorded by the Corporation. Thereafter the writ petition was allowed and the order passed by Dy. Registrar, Cooperative Societies dt. 05-12-2014 in Misc. 17 of 2014 was set aside.

10. Being aggrieved and dissatisfied with the order dated 10.02.2016 passed by this Court in CWJC No. 2735 of



2015 the said respondent no.4 of the writ petition i.e. Samitee has preferred the present LPA No.952 of 2016.

11. It is important to note that the only point which has been taken in the counter affidavit of the writ petition by the present appellant i.e. Samitee is that construction of 14 flats in a building by one member proves that the said construction is being made for commercial use of the land while Bye Laws of the housing cooperative societies do not permit the commercial use of land allotted by the societies.

12. In the LPA, the other point which was raised in the counter affidavit is that the said construction was done by the writ petitioner in gross violation of order passed by Hon'ble Patna High Court passed in CWJC No. 8152 of 2015. He has also raised the point that the built up area shall not exceed 50% area of the plot allotted in favour of the allottee. Both the points i.e. question for commercial use on said construction was well discussed in the order impugned as stand taken by the writ petitioner/present respondent is that building would be used only for residential purposes and that it will never be put to commercial use in future. The another fatal point on which the appellant put emphasis that built up area should not exceed 50% area of the plot has not been substantiated by any cogent



material. The construction of flats had taken place on the basis of duly sanctioned map and the said map at any stage during the construction has never been challenged before any competent authority, who are competent to decide that the said map is correct or not. The Cooperative society is not the competent authority to take a decision in this regard as such the Deputy Registrar, Cooperative Societies has not taken this question into consideration.

13. The order passed by the Hon'ble Single Judge is speaking order in which all the points are well discussed with full of reasons. We are of the considered view that there is no need of any interference in the said order, as such the present LPA 952 of 2016 is hereby dismissed.

L.P.A. No. 1496 of 2016

14. The present LPA has been filed against the judgment dated 10.02.2016 passed by Hon'ble Mr. Justice Jyoti Saran in CWJC No. 2735 of 2015, by which the writ petition was allowed, setting aside the order dated 05.12.2014 passed by Deputy Registrar, Cooperative Societies, Patna Division, Patna (respondent no.4) in Misc. Case No. 17 of 2014. This LPA has been preferred by a person who is not party to the writ but her leave to appeal has been granted vide order dated 29.09.2016



vide I.A. No. 5826 of 2016 in LPA No. 1496 of 2016.

15. The factual matrix of the LPA No. 1496 of 2016 is that the appellant Mani Devi W/o Shri Shrimohan Singh is the allottee of Plot No. B-151 of the said Samitee. She has claimed herself to be the next door neighbor of Plot No. B-152 and alleged that construction of Multi Storied Building would be no doubt for commercial use and being next door neighbour, she is the worse sufferer due to said illegal and unauthorized construction. Another point she raised in the present LPA is that the learned Single Judge has not taken into consideration the various orders passed by the Division Bench in the said CWJC No.8152 of 2013.

16. These are the two points raised by the appellant. With regard to the first point that the said multi storied building is for commercial use had already been discussed in the writ petition assigning reason and we agree on the opinion assigned by the learned Single Judge that Co-operative Society has restrained the construction only on presumption and assumption because the allottee of B-154 has categorically stated that building would be used only for residential purposes and that it would never be put for commercial use in future. Yet, it is the structure of the building caused apprehension in the



mind of the Deputy Registrar, Co-operative Societies and the present appellant of LPA No.1496 of 2016 but plea that it would be put to commercial use is based on presumption and assumption and it cannot be accepted at this juncture that it has been constructed for commercial use.

17. So far as the second point that learned Single Judge has failed to take note of the interlocutory orders passed in CWJC No.8152 of 2013 is concerned, it has been observed that the said writ petition has finally been decided on 23.06.2015 and the entire interlocutory order have merged into final orders i.e. 23.06.2015 and in the said order it has been held that it is the Patna Municipal Corporation, who has the authority to decide all questions relating to illegal construction of a multi storied building. From the materials available on record, it transpires that the approved map of the petitioner is still intact and the Samitee has never challenged the approved map anywhere and, therefore, there is no need to interfere in the order passed by the learned Single Judge.

18. Hence, the present LPA 1496 of 2016 is hereby rejected.

Civil Writ Jurisdiction Case No.5425 of 2016

19. The present public interest litigation has been filed seeking the following reliefs:



“(i) For direction commanding the respondents to stop constructions of multi storied commercial buildings/flats which are being constructed on residential plots allotted by the Housing Co-operative Society against the Bye-laws of Housing Co-operative Societies.

(ii) For restraining all such persons including the respondent no.14 from going ahead with the construction of Multi Storied building which is being constructed in violation of the order passed by this Hon’ble Court in CWJC No.8152 of 2013 dated 10.05.2013 despite filing of F.I.R. against him and others pursuant to the order of this Hon’ble Court.

(iii) For direction commanding the respondents to strictly follow the orders passed by the Division Bench in CWJC No.8152 of 2013.

(iv) For taking appropriate action against the respondents/ officials in whose connivance the direction of this Hon’ble Court is being flouted.

(v) For any other relief/ reliefs in the interest of people in general which may be found fit and proper.”

20. The petitioner is resident of Patna and alleged himself to be a public spirited person and filed the present PIL on the ground that there are rampant violation of bye-laws of Housing Co-operative Societies by its members as the allottee



of the land are changing the nature of use of the land which was allotted to them for pure residential purposes. He also claimed that he has no direct or indirect interest but being a resident of Patna he has filed the present writ petition. The legal issue which he has raised in the present PIL is solely based on different orders passed in CWJC No.8152 of 2013 (Nagendra Mishra Versus State of Bihar and others). He has also mentioned about an order dated 10.02.2016 passed by Hon'ble Single Judge of this Court in CWJC No.2735 of 2015 in his writ petition and annexed the said order as Annexure No.13. The said order dated 10.02.2016 passed in CWJC No.2735 of 2015 was already subject matter of LPA No.952 of 2016 and LPA No.1496 of 2016, therefore, it was ordered vide order no.7 dated 03.04.2017 for analogous hearing alongwith Letters Patent Appeal No.1496 of 2016, as such hearing in all the cases are going on simultaneously.

21. Since the basis of the present PIL is the various orders passed in CWJC No.8152 of 2013 and the said writ petition has already disposed of by its final order dated 23.06.2015 as such all the interlocutory orders have merged in the final order which is as follows :

“The hours, if not days, that have been spent in this writ petition by the High Court could have



utilized in disposal of thousand of matters which are pending for decades together. It became a luxury of one citizen, who thought of taking the institution for ride. The extent to which the case has kept the Court busy can easily be gazed from the fact that the orders that have been passed so far run into about 200 pages and it was heard as many as on 63 occasions. The most unfortunate part of the matter is that the learned counsel for the petitioner by name Sri Vitesh Kumar Singh has the courtesy to inform the Court that he is not ready to argue the matter today. This, at a time, when the first appeals that were filed way back in the year 1970, and the criminal appeal filed in the year 1992, are waiting their turn for hearing. Every effort made by us to convince the learned counsel to proceed with the matter did not fructify and left with no alternative, we have gone through the record and propose to deal with the matter, lest it consumes further time and energy of the Court.

The petitioner came across the construction of a building on the land in Khata No.83, Khesra No.1151, Thana No.4, situated in Ward No.34, Circle No.246, East Boring Canal Road, of Patna Municipal Corporation. Feeling that the building cannot be constructed at that place, having regard to the details of master plan and other aspects, he submitted a representation



dated 30th January, 2013 (Annexure-3) to the Commissioner, Patna Regional Development Authority, Patna. The said organization is said to have been merged with the Patna Municipal Corporation. To a query made by him, the concerned authority have an answer to the effect that the land is part of a master plan, wherein a road of 60 ft. wide is provided and that in case, adequate set back is furnished, the building can be constructed there.

Not satisfied with that, the petitioner initiated this public interest litigation, with a prayer to call for a report from the authorities of the Patna Municipal Corporation, as to why they are allowing the private individuals i.e. respondents 8 and 9 to make illegal constructions of multi storied building, in the land referred to above, in spite of his repeated representations.

This Court took up the matter and called for a report from the Patna Municipal Corporation. The report of the Corporation was widened to cover various structures also. It has generated heat and light, as is evident from the orders that were passed from time to time. The record discloses that the portion of the building which the petitioner has been objecting to has been demolished by the Patna Municipal Corporation.

Though the demolition of the building, albeit in



part, should have brought an end to the litigation, it has assumed the proportions, which are not even remotely connected with the original issue. For example, the transfer of the Commissioner, Patna Municipal Corporation became one of the hottest subjects of the writ petition; so much so that orders, which were at conflict with each other, came to be passed by separate Division Benches and for resolving that, a Full Bench had to be constituted. The actual issue lost its identity, and the subject matter of the present writ petition virtually became a device for settling the scores between different sets of persons. We feel that enough has happened, and it is not in the interest of the institution to continue the present litigation any further.

It hardly needs any mention that the Municipal Corporation is not only vested with the power, but also is endowed with the duty, to ensure that the constructions do not take place, contrary to the bye laws framed by it. We reiterate the same and observe that the same amounts of vigilance, as was exhibited, vis-a-vis the building in question, shall be continued in respect of all other structures, which have already come up or may come up, in the limits of the Patna Municipal Corporation.

We, accordingly, close the writ petition, taking note of the fact that the building, which the writ



petitioner was complaining of, has been substantially demolished.

Before parting with the case, we express our displeasure about the manner in which the learned counsel for the petitioner has acted, in refusing to arguing the case, without any excuse, whatever.

It is brought to our notice that some records of the Municipal Corporation have been summoned by this Court, in the course of the hearing of the writ petition. The registry is directed to return all the records on their acknowledgment.

Interlocutory application, if any, shall stand disposed of. There shall be no order as to costs.”

22. We are of the opinion that since the matter has already been decided by the Co-ordinate Bench, there is no need to enter into those issues further.

23. So far as the question of validity of order dated 10.02.2016 passed in CWJC No.2735 of 2015 is concerned, it has been already tested and decided in the Letters Patent Appeal attached with the present writ.

24. Accordingly, all the cases are hereby adjudicated and decided conclusively. Both the LPA's are dismissed and the present CWJC is disposed of with the observation that the



petitioner has liberty to move before the Municipal Corporation
for his grievances, if any.

(Ashwani Kumar Singh, J.)

(Dr. Anshuman, J.)

ravishankar/-

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

