

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13077 of 2021

-
1. Manoj Kumar S/o Gopal Prasad Jaiswal R/o Kila Road, Patna City, Nagla, Patna- 800008.
 2. Kaveri Singh W/o Dilip Singh R/o Dhelma, Lohiyanagar, Sampatchak, Patna- 800020.

... .. Petitioners

Versus

1. The State of Bihar through the Additional Chief Secretary, Urban Development Department, Government of Bihar, Patna.
2. The Urban Development and Housing Department, Government of Bihar through its Principal Secretary.
3. The Under Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
4. The Patna Municipal Corporation through the Municipal Commissioner.

... .. Respondents

Appearance :

For the Petitioner/s	:	Ms. Mayuri, Adv.
For the Respondent/s	:	Mr. Abbas Haider (SC-6)
For the PMC	:	Mr. Prasoon Sinha, Adv.

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

Date : 24-06-2022

The grievance of the petitioners who are the Members of the Empowered Standing Committee to the Patna Municipal Corporation (for short 'PMC') is that the letter dated



01.04.2021 (Annexure-2) granting permission for construction of 'Nagar Vikas Bhawan' on 1.5 acre land owned by the PMC was issued by the then Municipal Commissioner without taking the consent of the Empowered Standing Committee of the PMC who could have legally granted the permission to construct the aforesaid building on the land in question. The further grievance of the petitioners is that vide Memo No. 34 dated 05.01.2022 (Annexure-4) i.e. much after the filing of the instant writ application on 23.07.2021, a tender has been published for the construction of 'Nagar Vikas Bhawan' by the respondent-authorities which is illustrative of the fact that the process to start the construction has commenced. Thus, the petitioners have prayed for quashing of the aforesaid Annexure-1 and Annexure-4 to the present application.

2. The admitted facts of the case are that the Deputy Secretary, Urban Development and Housing Department issued letter no. 1524 dated 31.03.2021 to the PMC stating therein that the Urban Development and Housing Department has expanded with time and has multiple wings which are all functioning from different government buildings due to paucity of space. Therefore, in order to make the functioning convenient, there is a proposal for construction of 'Nagar Vikas Bhawan' in line



with the Sardar Patel Bhawan which is currently acting as police Headquarter in the State of Bihar.

3. In order to facilitate and initiate the aforementioned construction, the Municipal Commissioner was asked to submit details regarding the 3.5 acre land situated beside the A.N. College, Patna belonging to the PMC.

4. Vide the aforesaid letter dated 31.03.2021, the Municipal Commissioner was asked to prepare a report regarding the area of vacant land on the said plot on which the said construction could be started.

5. In response to the aforesaid letter dated 31.03.2021, the PMC vide impugned letter dated 01.04.2021 informed the Principal Secretary, Urban Development and Housing Department that out of a total of 3.35 acre land, an area of 1.5 acre is vacant which may be used for construction of 'Nagar Vikas Bhawan'.

6. The aforesaid letter dated 01.04.2021 was issued by the Municipal Commissioner, PMC without taking the consent of the Empowered Standing Committee.

7. Being aggrieved by the unilateral decision taken by the Municipal Commissioner, PMC, the petitioners filed the present application before this Court on 23.07.2021.



8. The matter was taken up by the Court on different dates. However, during pendency of the writ application, vide impugned Memo No. 34 dated 05.01.2021 (Annexure-4), which has been brought on record by way of filing a supplementary affidavit the Bihar State Building Construction Corporation Limited (a Government of Bihar undertaking) published tender for construction of 'Nagar Vikas Bhawan' beside A.N. College, Patna on the land owned and possessed by the PMC.

9. Ms. Mayuri, learned counsel for the petitioners submitted that the executive power of the Municipality is vested and is to be exercised by the Empowered Standing Committee. The Chief Municipal Officer who is the Principal Executive Officer by virtue of Section 27-B of the Bihar Municipal Act, 2007 is vested with the duty to carry out into effect the executive functions of the Municipality under the supervision and control of the results of the Empowered Standing Committee. But, in the present case, the consent of the Empowered Standing Committee was not taken. The Members of the Empowered Standing Committee got to know about the proposed offering of land for construction through newspaper and the matter was discussed in the 49th General Meeting of the Empowered Standing Committee conducted on 05.06.2021. The



Members of the Empowered Standing Committee unanimously passed a resolution that the land belonging to the PMC cannot be acquired without the consent of the Empowered Standing Committee and without payment of appropriate compensation or providing another land of the same value in lieu of the land being taken in accordance with the provisions of the Bihar Municipal Act, 2007 and Land Acquisition Act, 2013. She contended that the Municipal Commissioner acted in contravention of his duties prescribed under the Bihar Municipal Act, 2007 by not referring the matter to the Empowered Standing Committee and instead unilaterally and without any consultation agreed to provide the land of Municipal Corporation for construction of 'Nagar Vikas Bhawan'.

10. Ms. Mayuri, learned counsel for the petitioners further contended that acquisition of property of autonomous institutions without their consent is blatantly an illegal act and deserves to be set aside. She contended that the lack of approval from the Empowered Standing Committee vitiates and invalidates the exercise of the respondents-State. The letter granting permission by the Municipal Commissioner, PMC along with the tender that has been released by the Bihar State Building Construction Corporation Limited, Patna are fit to be



quashed and the proposal for construction is required to be placed before the Empowered Standing Committee afresh for consideration.

11. Respondent nos. 2 and 3 as well as Respondent no. 4 have filed their respective counter affidavits in the present matter.

12. In the counter affidavit filed on behalf of the respondent nos. 2 and 3, it has been stated that the State intends to construct 'Nagar Vikas Bhawan' comprising of all wings of the Urban Development and Housing Department, namely, Real Estate Regulatory Authority (RERA), Real Estate Regulatory Tribunal (RERT), Patna Metropolitan Regional Authority (PMRA), Municipal Building Tribunal (MBT), Namami Gange, Deen Dayal Antyodaya Yojana (DDAY), National Urban Livelihoods Mission (NULM) etc. under one roof, and for this project, lands in question have been identified and, in this connection, the Municipal Commissioner, PMC has communicated about the availability of 1.5 acre land near A.N. College. It is further stated that manifestly the said proposal of the State is in the larger public interest. The Government of Bihar, Urban Development and Housing Department has also sent a letter dated 24.01.2022 to the Municipal Commissioner,



PMC requesting him to obtain approval of the Board of the PMC for the construction of 'Nagar Vikas Bhawan' on the vacant part of the land in issue and further requested to send a report regarding approval immediately. In this regard, a reminder letter has also been sent to the PMC on 17.03.2022.

13. The respondent nos. 2 and 3 have also filed a supplementary counter affidavit wherein it has been stated that subsequently it came to the knowledge of the respondent nos. 2 and 3 that approval of the Board of the PMC was not taken on the letter issued by the Municipal Commissioner, PMC. Thereafter, the Urban Development and Housing Department wrote a letter to the Municipal Commissioner, PMC on 24th January, 2022 to obtain consent of the Board of the PMC on the aforesaid proposal.

14. It has been stated that the Chief General Manager, of the Bihar State Building Corporation Limited, Patna has been informed by the Departmental letter dated 17.03.2022 not to issue work order of construction of 'Nagar Vikas Bhawan' till the approval of the Board of the PMC in this regard.

15. It has further been stated that there is no proposal from the Urban Development and Housing Department, Government of Bihar for payment of compensation to the PMC



for the land in question in view of the fact that the 'Nagar Vikas Bhawan' is being set up as combined office of different Directorates and offices of different wings in the larger public interest so that all wings under the Administrative Control and Supervision of the Urban Development and Housing Department be brought under one roof for the convenience of the public in general.

16. Mr. Abbas Haider, learned counsel for the respondents-State submitted that the respondents-State would proceed with the construction of 'Nagar Vikas Bhawan' only after the Empowered Standing Committee of PMC would give its approval. In case, the Empowered Standing Committee would not agree with the proposal of the respondents-State, 'Nagar Vikas Bhawan' will not be constructed on the land in question. He contended that in case, the Empowered Standing Committee of the PMC would put any condition for giving its approval then the same would be considered by the State and an appropriate decision would be taken in this regard.

17. In the counter affidavit filed on behalf of the respondent no. 4, it has been stated that vide letter no. 209 dated 24.01.2022, the Joint Director, Urban Development and Housing Department, Government of Bihar on the directions of



the Department, vide letter no. 209 dated 24.01.2022 requested the Municipal Commissioner, PMC to place the matter before the Board of the PMC for grant of ex-post facto approval for construction of 'Nagar Vikas Bhawan' on the land in question. On the said request, a direction was issued by the Municipal Commissioner, PMC on 19.02.2022 to place the matter in the next meeting of the Empowered Standing Committee of PMC for grant of ex-post facto approval for construction of 'Nagar Vikas Bhawan' on the land in question. However, only one special meeting of the Empowered Standing Committee was held on 25.03.2022 for consideration of only one agenda regarding the budget of the PMC.

18. Mr. Prasoon Sinha, learned counsel appearing for the respondent no. 4 submitted that the impugned letter dated 01.04.2021 issued under the signature of the Municipal Commissioner, PMC as contained to the Annexure-2 to the writ application cannot be treated to be a letter whereby the Municipal Commissioner, PMC has granted approval for construction of 'Nagar Vikas Bhawan' on 1.5 acre land of the PMC. The said letter was issued under the signature of the Municipal Commissioner in response to the letter dated 31.03.2021 issued by the Deputy Secretary, Urban Development



and Housing Department addressed to the Municipal Commissioner, PMC whereby an information was given to the Principal Secretary of the Urban Development and Housing Department that 1.5 acre land of the Municipal Corporation was vacant which can be used for construction of 'Nagar Vikas Bhawan'. He submitted that since the matter is pending before the Empowered Standing Committee for ex-post facto approval, there is no need for quashing the impugned letter dated 01.04.2021 as contained in Annexure-2 to the present writ petition.

19. In reply, Ms. Mayuri, learned counsel for the petitioners submitted that there is no scheme of grant of ex-post facto approval in the Bihar Municipal Act, 2007. She contended that the proposal of the Urban Development and Housing Department for construction of 'Nagar Vikas Bhawan' ought to have been placed before the Empowered Standing Committee first so that a decision on the same could have been taken and only after taking the approval of the Empowered Standing Committee, tender for construction could have been floated. She has taken us to different provisions of the Bihar Municipal Act, 2007 dealing with the aspect of the powers of Municipal Commissioner and the Empowered Standing Committee as well



as the manner in which the property of Municipal Corporation can be disposed of.

20. We have heard learned counsel for the parties and carefully perused the materials on record.

21. The Bihar Municipal Act, 2007 was enacted to consolidate and amend the laws relating to the municipal governments in the State of Bihar in conformity with the provisions of the Constitution of India as amended by the Constitution (Seventy-fourth Amendment) Act, 1992, based on the principles of participation in, and decentralization, autonomy and accountability of, urban self-government at various levels, to introduce reforms in financial management and accounting systems, internal resource generation capacity and organizational design of Municipalities, to ensure professionalisation of the municipal personnel, and to provide for matters connected therewith or incidental thereto.

22. There is no dispute to the fact that the impugned letter dated 01.04.2021 as contained in Annexure-2 to the writ application was issued by the Municipal Commissioner, PMC without taking approval of the Empowered Standing Committee.

23. Learned counsel for the petitioner has referred sub-



section (21) of Section 2 of the Bihar Municipal Act, 2007, which reads as under:

“Section 2. (21) Chief Municipal Officer means,-

(i) in relation to a Municipal Corporation, the Municipal Commissioner, and

(ii) in relation to a Municipal Council or Nagar Panchyat, the Municipal Executive Officer;”.

24. Thus, in view of sub-section (21) of Section 2 in relation to a Municipal Corporation, the Chief Municipal Officer is the Municipal Commissioner.

25. She has further referred to Section 22 of the Bihar Municipal Act, 2007, which reads as under:

“Section 22 – Executive Power of Municipality to be Exercised by Empowered Standing Committee.

Subject to the provisions of this Act and the Rules and the Regulations made thereunder, the executive power of a Municipality shall be exercised by the Empowered Standing Committee.”

26. The aforesaid provision would make it clear that subject to the provisions of the Act and the Rules and Regulations, the executive power of a Municipality has to be



exercised by the Empowered Standing Committee.

27. Our attention has also been invited to Section 27-B of the Bihar Municipal Act, 2007 which provides the powers and functions of the Chief Municipal Officer. Section 27-B of the Bihar Municipal Act reads as under:

“27-B. Power and function of Chief Municipal

Officer.-(1) The Chief Municipal Officer shall be the Principal Executive Officer of the Municipality and all officers and other employees of the Municipality shall be subordinate to him. Powers of transfers & posting & disciplinary action against all officers and staff appointed by him under Section 38 of this Act shall vest in the Chief Municipal Officer.

(2) Subject to the supervision and control of the Empowered Standing Committee, and the provisions of this Act and of any Rules and Bye-laws made there under, executive functions for carrying on the administration of the municipality shall vest in the Chief Municipal Officer.

(3) He shall be present at the meeting of the Board of Councillors, Empowered Standing Committee or of any committee except meetings convened for the purpose of considering the question of withdrawal of his service by the State Government and he shall have the right to make



a statement or to explain facts, but he shall not vote for or against or make any proposition at such meeting.

(4) Power, functions and duties delegated by the Municipality, the Empowered Standing Committee and under the provisions of this Act to the Chief Municipal Officer shall be exercised, discharged and performed by the Chief Municipal Officer.

(5) Subject to provisions of this Act and Rules made under this Act, the Chief Municipal Officer may delegate any of his powers, duties and functions under this Act and any Rules and By-laws made there under to any officer subordinate to him.

(6) The Chief Municipal Officer shall carry into effect every resolution of the Empowered Standing Committee or the Board of Councillors or of any Committee of the Municipality which is in conformity with provisions of law unless such resolution is set aside or suspended under this Act by the appropriate authority.

(7) In the case of absence of the Chief Municipal Officer for any reason, the powers of the Chief Municipal officer as specified in the foregoing provisions of this section or elsewhere in this Act or the Rules made under this Act, shall be exercised by any officer of the Municipality as may be nominated by the Chief Councillor in this



behalf till such State Govt. makes a substitute arrangement.”

28. In view of the above provisions, specially sub-sections (1) and (2) of Section 27-B, it has rightly been submitted that the Chief Municipal Officer is the Principal Executive Officer of the Municipality and he is required to carry out into effect the resolutions of Empowered Standing Committee.

29. The next Section to which our attention has been drawn is Section 104 of the Bihar Municipal Act, 2007, which provides for the manner in which any property belonging to the Municipality may be disposed of. It reads as under:

“104. Disposal of property.- Any property belonging to the Municipality may be disposed of with the prior approval of the State Government in the manner hereinafter provided, namely:-

[(a) The Empowered Standing Committee may sell, and transfer or otherwise dispose of any immovable property belonging to the Municipality by following the procedure to be prescribed under the Rules.]

[(a)(a) The Empowered Standing Committee may let out, rent, hire, lease, allot or go for settlement of any immovable property belonging to the Municipality by following the procedure to be



prescribed under the Rules.]

(b) the Municipality may, with the prior approval of the State Government, for valuable consideration, sell or otherwise transfer, any immovable property belonging to the Municipality which is not required for carrying out the purposes of this Act, and

(c) the Municipality shall not transfer any immovable property vested in it by virtue of this Act, but shall cause the same to be maintained, controlled and regulated in accordance with the provisions of this Act and the rules and the regulations made thereunder:

Provided that the State Government may authorize, in the public interest, the disposal of such immovable property by the Municipality, if the Municipality so requires, for reasons to be recorded in writing.”

30. It would be evident from Clause (a) of Section 104 of the aforesaid provision that any property belonging to the Municipal Corporation may be disposed of with the prior approval of the State Government by the Empowered Standing Committee by following the procedure as prescribed under the Rules.

31. Our attention was also drawn to Section 102 of the Bihar Municipal Act, 2007, which reads as under:



“102. Compulsory acquisition of land.- (1)

When any land, whether within or outside the limits of the municipal area, or any easement effecting any immovable property vested in the Municipality, is required for any public purpose under this Act, the State Government may, at the request of the Municipality, proceed to acquire such land or easement under the Land acquisition Act, 1894.

(2) The Municipality shall be bound to pay to the State Government the cost including all charges in connection with the acquisition of the land under the Land Acquisition Act, 1894.

(3) The Municipality may resort to other methods of land assembly, including the use of transferable development rights.”

32. It has been contended on behalf of the petitioners that in the aforesaid provisions, if the State Government acquires a land within or outside the limits of the Municipal area which is required for any public purpose at the request of Municipality, the Municipal Corporation is required to pay the State Government the cost including all the charges incurred by the State in acquiring the land. Thus, by way of corollary, when the State Government has to acquire any land which vests in the Municipal Corporation, it should compensate the Corporation by paying cost including all charges.



33. In view of the provisions referred to hereinabove, there is no difficulty in coming to the conclusion that in so far as the issue relating to the transfer of land by the PMC to the State Government for construction of 'Nagar Vikas Bhawan' is concerned, it was required to be placed before the Empowered Standing Committee first by the Municipal Commissioner, PMC before issuing the impugned letter dated 01.04.2021. It was only after taking approval of the Empowered Standing Committee, the Municipal Commissioner could have written to the State government regarding the availability of vacant land for carrying out any construction.

34. It would be pertinent to note here that none of the respondents has disputed the legal position that the land belonging to the PMC cannot be acquired by the State without obtaining the consent of the Empowered Standing Committee. It is also not disputed that the consent of the Empowered Standing Committee was not taken in the present matter before the issuance of the impugned Annexure-2 to the present application.

35. It is no longer *res integra* that when a thing is to be done in a particular manner, it must be done in that manner of not at all. This rule emanated in **Taylor v Taylor (1875) LR 1 Ch D 426** and has since then been followed consistently. In



Nazir Ahmed v King Emperor, AIR 1936 PC 253 (2), it was held that ‘...where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all...’

36. The Hon’ble Supreme Court in the matter of **Chandra Kishore Jha v Mahavir Prasad and Others** since reported in **(1999) 8 SCC 266** observed that when a statute provides for a thing to be done in a particular manner, then it has to be done in that manner, and in no other manner.

37. In **State v. Sanjeev Nanda, AIR 2012 SC 3104**, the Hon’ble Supreme Court reiterated that it is ‘a settled principle of law that if something is required to be done in a particular manner, then that has to be done only in that way or not, at all’.

38. Thus, we are of the considered opinion, that the act of the Municipal Commissioner, PMC in not seeking the approval of the Empowered Standing Committee for communicating with the respondent no. 2 regarding availability of 1.5 acre land for carrying out construction of ‘Nagar Vikas Bhawan’ and writing a letter unilaterally to the respondent no. 2 in this regard was an arbitrary, unjust and illegal exercise of power. Similarly, the impugned tender notice inviting tender dated 05.01.2022 published by the Bihar State Building



Construction Corporation Limited, Patna for the construction of 'Nagar Vikas Bhawan' near A.N. College, Patna on the land of PMC is apparently illegal in the eyes of law.

39. It has rightly been submitted on behalf of the petitioners that the lack of approval from the Empowered Standing Committee vitiates and invalidates the actions of the respondent-authorities and mere ex-post facto approval would not ratify or validate the transfer as there is inherent lack of competence in the Municipal Commissioner, PMC who has issued the letter allowing the construction of 'Nagar Vikas Bhawan' to be made pursuant to which the notice inviting tender for construction was issued.

40. In view of the aforesaid, we consider it appropriate to set aside the letter no. 05076 dated 01.04.2021 issued by the Municipal Commissioner, PMC as contained in Annexure-2 to the writ application and the notice inviting tender vide Memo No. 34 dated 05.01.2022 as contained in Annexure-4 to the writ application. Accordingly, they are set aside.

41. The writ application is allowed.

42. However, it would be open to the respondent-State to take fresh steps in accordance with law with regard to the vacant land of the PMC for construction of 'Nagar Vikas



Bhawan’.

(Ashwani Kumar Singh, J)

rohit/-

(Dr. Anshuman, J)

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	28-06-2022
Transmission Date	NA

