

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.556 of 2019

In

Civil Writ Jurisdiction Case No.6396 of 2016

Prabhat Kumar @ Prabhat Kumar Verma S/o Late Girish Kumar Resident of
Plot No. S-380, Lohia Nagar, Kankarbagh, Police Station - Kankarbagh,
District - Patna.

... .. Appellant/s

Versus

1. The State of Bihar through Secretary, Urban Development Department and Housing Department, Patna
2. The Bihar State Housing Board through its Chairman-Cum-Managing Director, 6 Mangles Road, Patna
3. The Patna Municipal Corporation Patna through its Town Commissioner, Maurya Lok Complex, Dak Bunglow Road, Police Station-Kotwali, Distt.- Patna
4. The Vigilance Officer Patna Regional Development Authority, presently under Patna Municipal Corporation, Maurya Lok Complex, Dak Bunglow Road, Police Station-Kotwali, Distt.-Patna

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. S.D. Sanjay, Senior Advocate Mr. Akshat Agrawal, Advocate Mr. Mohit Agrawal, Advocate Ms. Kanak Verma, Advocate
For the Respondent/s	:	Mr. Yogendra Prasad Sinha (Aag7)
For PMC	:	Mr. Prasoon Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 29-03-2022

Heard Mr. S.D. Sanjay, learned Senior

Advocate for the appellant and Mr. Prasoon Sinha for the

Patna Municipal Corporation.



2. The appellant has challenged the order dated 05.04.2019, passed by the learned Single Judge in CWJC No.6396 of 2016, whereby he has refused to interfere with the order dated 22/02.02.2015 passed by the Municipal Building Tribunal in Appeal No.2 of 2014, by which the order passed by the Municipal Commissioner, Patna dated 17.12.2013 has been sustained.

3. It appears from the records that one Smt. Vidyottma Devi had approached this Court with a grievance that in front of the plot allotted to her by the Housing Board, there was an encroachment which was making the ingress and egress from her house difficult. This complaint led this Court to direct the Secretary of the Urban Development Department to enquire into the matter and take necessary/corrective measure.

4. While this enquiry was being made, it was found that there were other deviations in the buildings erected on the plots allotted by the Housing Board and consequently four vigilance cases were initiated, two out of



which relate to the appellant. With respect to the appellant, it was held by the Municipal Commissioner vide his order dated 17.12.2013 that the deviations in the southern portion of the land be marked and the appellant be asked to remove such additional construction/encroachment and on failure to do so, the Patna Municipal Corporation was asked to take necessary action of demolition of such encroachment. The aforesaid order was passed on the basis of the measurement of the building taken by the Executive Engineer of the Patna Municipal Corporation and the consequent preparation of the comparative chart.

5. The grievance of the appellant all through has been that such comparative chart/map was never made available to the appellant and despite the authorities having directed for furnishing of such map/chart to the appellant, that was not done and an order referred to above was passed. The aforesaid order was challenged before the Municipal Building Tribunal, which by its order



dated 22/02.02.2015 sustained the same but with certain modifications regarding the deviations in the eastern and western side of the building and not in the southern part of the building.

6. The grievance of the appellant continues that such orders have been passed without hearing out the appellant on the issues of the map/comparative chart which was the basis for deciding the deviations in the building, never having been supplied to him.

7. Mr. Prasoon Sinha, learned Advocate for the Patna Municipal Corporation, however, submits that the case was contested by the parties and the appellant had several opportunities of indicating to the Tribunal that the map in question has not been provided to him. That not having been done, it was not open for the appellant to have raked up this issue in the appeal when the learned Writ Court refused to interfere with the orders passed by the Municipal Commissioner as also the Tribunal on the ground that in a proceeding under Article 226 of the



Constitution, the Court does not sit in appeal over the finding of facts, recorded by the competent officer as well as the Tribunal in appeal.

8. Be that as it may, taking into account the contentions raised by the appellant, especially that in the original allotment, since the entire land in question could not be handed over to him because of encroachment in the southern portion, necessitating the Housing Board to make necessary concession by offering equivalent portion of land contiguous to the main plot in order to make up for the incomplete delivery of the entire area of the allotted plot and the decision of the authorities without taking into account that the deviations were found on the basis of the comparative map prepared by the Executive Engineer of the Corporation, behind the back of the appellant, we deem it appropriate to refer the matter to the Municipal Commissioner to hear out the appellant after furnishing him the copy of the comparative map/chart prepared by the Executive Engineer of the Corporation and pass an



order in accordance with law within a period of three months of the date of receipt/production of a copy of this order.

9. Needless to state that the grievance of the appellant with respect to preparation of the map shall also be taken into account and an order shall be passed only after being satisfied that the decision is being made on the basis of the appropriate map with respect to the building in question.

10. We further direct that necessary opportunity shall be given to the appellant and the Patna Municipal Corporation to show their cause and a final/reasoned order shall be passed within the stipulated time. In case of the Municipal Commissioner finding that a fresh measurement is required to be done, that exercise can also be taken before any final order is passed so that the grievance of the appellant is redressed.



11. The orders passed by the Municipal Commissioner, the Municipal Board and the learned Single Judge are hereby set aside.

12. With the aforesaid directions, the appeal stands disposed of.

(Ashutosh Kumar, J.)

(Anjani Kumar Sharan, J.)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	31.03.2022
Transmission Date	NA

