

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17042 of 2022

1. Ritwick Prabhat Son of Sri Raj Kumar Singh resident of Rangbhumi Maidan Chowk ward No. 18, P.S.- K. Hat, District Purnea presently residing at Sita Sadan, West of Ramgarh Kothi, behind Petrol Pump, Rukanpura, P.S.- Rupaspur, District- Patna.
2. Ritesh Kumar Son of Raj Kumar Singh resident of Rangbhumi Maidan Chowk ward No. 18, P.S.- K. Hat, District Purnea

... .. Petitioner/s

Versus

1. The State of Bihar through the Commissioner, Urban Development Department, Government of Bihar, Patna.
2. The Urban Development Commissioner, Government of Bihar, Patna.
3. The District Magistrate, Purnea.
4. The Municipal Commissioner, Purnea Municipal Corporation, Purnea.
5. The City Manager, Purnea Municipal Corporation, Purnea.
6. The Executive Engineer, Purnea Municipal Corporation, Purnea.
7. The Assistant Engineer, Purnea Municipal Corporation, Purnea.
8. The Junior Engineer, Purnea Municipal Corporation, Purnea.
9. The Map In-charge, Purnea Municipal Corporation, Purnea.
10. The Amin, Purnea Municipal Corporation, Purnea.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. P.K. Shahi, Senior Advocate.
: Mr. Sanjay Kumar Singh, Advocate.

For Purnea Municipal Corporation : Mr. Pushakar Narain Shahi, Sr. Advocate
: Mr. Bijendra Kumar Singh, Advocate.

For the State : Mr. Kumar Dhananjay Singh, Advocate.
: Mr. Kinkar Kumar, SC 9
: Ms. Deepika Sharma, AC to SC 9

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
and
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

2 22-12-2022

Heard Mr. P.K. Shahi, learned senior counsel along



with Mr. Sanjay Kumar Singh, learned counsel for the petitioners; Mr. Pushakar Narain Shahi, learned senior counsel along with Mr. Bijendra Kumar Singh, learned counsel for the Purnea Municipal Corporation (hereinafter referred to as the 'Corporation') and Mr. Kinkar Kumar, learned SC 9 along with Ms. Deepika Sharma, learned AC to SC 9 for the State.

2. The petitioners have moved the Court for the following reliefs:-

“(i) For quashing the order dated 02.11.2022 (Annexure 10) passed by the learned Municipal Commissioner, Municipal Corporation Purnea (hereinafter referred to as the “Corporation”) in Vigilance Case No. 01/2022 by which the learned Municipal Commissioner has been pleased to pass following orders for two separate Block i.e. Block-A and Block-B.

For Block-A

The build up area in Block-A is found 1353.49 sq. meter as per sanction map/physical verification and the permissible FAR is 2.5, thus 3383.72 sq. meter buildup area should be permissible. At present the petitioners have



constructed basement, ground floor, first floor and second floor. In which total area comes 2165.58 sq. meter (exclude the area of basement, lift & cut out area). It is clear that the permission to petitioners for construction in Block-A shall be given up to 1218.14 sq. meter only. The construction beyond further 1218.14 sq. meter shall be deemed unauthorized. Calculation of 1218.14 sq. meter build up area shall be deemed as per provision of building bye laws 2014.

Further order to deposit Rs.46,22,300.00 as condonation fee @ 10000/- per sq. meter of the provision under Rules 76 and 77 of Building bye laws 2014 for the deviation in constructed build up area at ground, first and 2nd floor of Block-A.

For Block-B

The buildup area in Block-B is found 1225.21 sq. meter as per sanction map/physical verification and the permissible FAR is 2.5. Thus 3065.52 sq. meter buildup area should be permissible. At present the petitioners have constructed basement, ground floor, first floor to



six floor. In which total area comes (3537.17-133.52) sq. meter =3403.65 sq. meter (exclude the area of basement, lift, cut out area). It is clear that the petitioners have constructed 338.13 sq. meter extra. Therefore order to stop of use of 338.13 sq. meter and seal the said premises (6th floor) under the provision of 16 (B) of the Building bye laws 2014.

(ii) For direction to the respondents to measure the build up area of the premises afresh in presence of the petitioners.

(iii) For direction to the respondents to pay an amount of Rs. fifty lakhs to the petitioners as compensation amount due to damages and loss occurred due to stop/stay of further construction work as approximately rupees fifteen crores have already been invested in the construction of R.R. Plaza Building.

(iv) For any relief or reliefs as the petitioners are entitled to in law.”

3. Learned counsel for the petitioners submits that he would not address the Court on merit for the present for the



reason that the order impugned is appealable for which he has already filed Appeal No. 11 (N) 2022 before the Municipal Building Tribunal on 14.11.2022 but because the same is not functional due to the retirement of the then Chairman and absence of quorum the matter is not being heard and thus, there was urgency for him to move before this Court directly by filing the present writ application. It was submitted that the Court may give interim protection against coercive action against the petitioners till the Municipal Building Tribunal is constituted and starts functioning so that he can move before the said Tribunal in the appeal filed by him seeking stay of the order impugned.

4. Learned senior counsel for the Corporation submits that the petitioners have made construction beyond the condonable limits and even the amount which has been charged is justified.

5. Having considered the matter, the Court would not like to go into the merits of the issue for the reason that the same is first to be taken up before the Municipal Building Tribunal, which the petitioner has already approached by filing Appeal No. 11 (N) 2022 and the same is pending due to lack of quorum.

6. Accordingly, the writ petition stands disposed of by



directing for maintaining of *status quo* between the parties, as existing today, till three weeks from the date the Municipal Building Tribunal before which the petitioners have filed Appeal No. 11 (N) of 2022, becomes functional, during which period it shall be open to the petitioners to seek any interim protection from the said Tribunal.

(Ahsanuddin Amanullah, J)

(Sunil Dutta Mishra, J)

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