

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1876 of 2023

Dr. Dev Narayan Bhagat, Son of Late Jamuna Bhagat, Resident of Moh- Line Bazar, Navbharat Hospital, P.S.- K. Hat, Dist- Purnea.

... .. Petitioner/s

Versus

1. The State of Bihar through Addl. Chief Secretary, Urban Development Deptt., Patna.
2. The District Magistrate, Purnea
3. The Purnea Municipal Corporation, Purnea through its Commissioner,
4. The Commissioner, Purnea Municipal Corporation, Purnea.
5. The Town Manager, Purnea Municipal Corporation, Purnea.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Suraj Narayan Yadav, Advocate
		Mr. Anil Kumar Anal, Advocate
For the Respondent/s	:	Mr. Ashutosh Kumar Upadhyay, AC to SC- 9
For the Municipal Corp.	:	Mr. Prince Kumar Mishra, Advocate

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

Date : 10-10-2023

Heard Mr. Suraj Narayan Yadav, learned counsel for the petitioner, Mr. Prince Kumar Mishra, learned counsel for the Purnea Municipal Corporation and Mr. Ashutosh Kumar Upadhyay, learned counsel for the State.

2. The petitioner claimed to be the owner of the land, in question, pertaining to Khata no. 2, Khesara No. 258 (क) (ख) (ग) (घ), holding no.52/99, which are said to have been purchased through four sale deeds, all dated 21.12.1996.

3. It is submitted that the petitioner got the plan/map sanctioned for the building vide Plan Case No. 790 of



2013-14, however, while the construction was going on, in the meantime, some of the residents made complaint to the respondent no.3. Thereafter show-cause notices were issued to the petitioner and in response thereto the petitioner submitted his explanation. However, despite the pendency of the explanation, when no action was taken, the petitioner filed writ petition, bearing C.W.J.C. No. 5040 of 2021, wherein the petitioner also assailed the communication dated 28.09.2020, issued by the Municipal Commissioner, Purnea Municipal Corporation, whereby the petitioner was asked to submit his explanation and in the meanwhile, the petitioner was restrained to make construction.

4. The aforesaid writ petition came to be dismissed vide order dated 04.01.2022 with liberty to the petitioner to take recourse to appropriate remedy either by responding to the said communication dated 28.09.2020 before the Municipal Commissioner or by approaching the appropriate authority in accordance with law.

5. In deference to the order of this Court, the petitioner filed explanation before the Municipal Commissioner, Purnea Municipal Corporation, however, when the explanation filed by the petitioner did not bring to its logical conclusion, the



petitioner again moved this Court by filing the present writ application seeking direction to the respondents to consider his show-cause explanation dated 29.09.2020 and 07.03.2022 filed pursuant to the notice, as contained in Memo No. 1683 dated 28.09.2020.

6. During the pendency of the present writ petition, it has been informed to this Court by filing counter affidavit on behalf of respondent nos. 3 to 5 that the aforementioned explanations of the petitioner came to be disposed of vide letter no. 1213 dated 15.04.2023 by the Municipal Commissioner, Municipal Corporation, Purnea.

7. It is submitted on behalf of the respondent Municipal Corporation that since the final order has already been passed by the Municipal Commissioner, thus the petitioner has efficacious alternative remedy available under the Bihar Municipal Act, 2007 (hereinafter referred to as 'the Act, 2007') by preferring an appeal under Section 323(3) of the Act, 2007 before the Bihar Building Municipal Tribunal, if the petitioner feels aggrieved or to get fresh building plan sanctioned in accordance with the provisions of Bihar Building By Law and the Act, 2007.

8. At this stage, learned counsel for the petitioner



submits that admittedly the order has been passed by the Municipal Commissioner, however, while passing the impugned order certain inspection report/documents have not been taken note of and thus he tried to persuade this Court showing the illegality in the order.

9. Be that as it may, this Court without going into the merit of the case, dispose of the present writ petition with a liberty to the petitioner to approach before the Bihar Building Municipal Tribunal under Section 323(3) of the Act, 2007, preferably within a period of four weeks' from today.

10. If such, appeal is filed by the petitioner within four weeks from today, the Bihar Building Municipal Tribunal shall consider the same, including the additional documents, which would be filed in support of the claim of the petitioner, before passing the final order.

11. It is needless to observe that till four weeks', no coercive action shall be taken against the petitioner in furtherance of order dated 15.04.2023 and so far the period of limitation is concerned, the same shall also be considered sympathetically in view of the fact that the petitioner has been bonafide pursuing his remedy before this Court.

12. Accordingly, the present writ petition stands



disposed of with the liberty aforesaid.

(Harish Kumar, J)

uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.10.2023
Transmission Date	NA

