

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10194 of 2018

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Sanjay Kumar Yadav, Son of Sri Ramdeo Yadav Resident of R.S. Villa,
Behind Rajeshwar Hospital, Old Byepass, Kankarbagh Road, P.S. Patrakar
Nagar, Kankarbagh, District- Patna.

... .. Petitioner/s

Versus

The Municipal Commissioner Patna Municipal Corporation, Maurya Lok
Campus, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Sajal Kumar Sinha, Advocate.
For the PMC : Mr. Bindhyachal Singh, Sr. Advocate.
Mr. Vipin Kumar Singh, Advocate.

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 24-11-2023

Heard Mr. Sajal Kumar Sinha, learned counsel
appearing on behalf of the petitioner and Mr. Bindhyachal
Singh, learned senior counsel along with Mr. Vipin Kumar
Singh, learned counsel for the Patna Municipal Corporation.

2. In continuation of the orders dated 06.04.2023
and 25.07.2023 and the nature of relief as sought for in the
present writ petition, this Court vide order dated 09.08.2023 had
directed the petitioner to approach the Municipal Commissioner
so that he may take scientific approach in quantifying the
compensation after determining the deviation after conducting



proper measurement. The representation of the petitioner has been disposed of, but the grievance of the petitioner has been rejected on baseless grounds.

3. The proposition of law with respect to determination of deviation has been decided by this Court in C.W.J.C. No. 5393 of 2008 (Arun Kumar Singh Vs. Patna Municipal Corporation) and prior to above two judgments, this Court in the case of **Anup Kumar Vs. PRDA & Ors.** vide order dated 04.10.2007 passed in C.W.J.C. No. 2686 of 2003 has held that correct measurement would be from the plinth and if that is taken into account, there does not appear to be any deviation in the case of the petitioner.

4. The issue regarding determination of deviation of height has already been decided by this Hon'ble Court and is no more *res integra*. The measurement of height is required to be conducted from plinth level and not from the road level. In this regard, it would be apt to reproduce paragraph no. 4 of the Division Bench Judgment passed by this Court in C.W.J.C. No. 8152 of 2013 (Narendra Mishra Vs. The State of Bihar and Ors.).

“In response to such submission Municipal Commissioner, who is present in Court, through his counsel submitted that as per the provisions of the modified bye-laws Clause-2.12, the height of the building has to be measured from the street level but agreed to take the height of the building from the



plinth level provided the building plan has been sanctioned taking the height of the building from plinth level and for such purpose requested Shri Bhatt to direct the members of the Builders Association to produce their map before him.”

5. It has been informed that the judgment of the Division Bench passed in C.W.J.C. No. 8152 of 2013 has not been challenged till date by the Municipal Corporation.

6. The Municipal Commissioner has not considered the case of the petitioner in spite of he having been provided opportunity by this Court to follow the principle with respect to the measurement of height as has been settled in several pronouncements of this Court referred hereinabove, in the case of the petitioner, in accordance with the law laid down by this Court.

7. In this background, Memo No. 11089 dated 05.09.2023 is hereby set aside and quashed with respect to height only.

8. In view of the aforesaid, Municipal Commissioner has no alternative than to determine afresh the height of the building by measuring it from plinth level within a period of six weeks.

9. In case of failure, the petitioner is at liberty to take appropriate legal action against the Patna Municipal



Commissioner.

10. The writ petition stands disposed of.

(Purnendu Singh, J)

mantreshwar/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	28.11.2023
Transmission Date	N.A.

