

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5033 of 2023

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M/s Yunus Construction Pvt., Ltd., having its Office at East Exhibition Road (Old Chankya Cinema Campus, through its Director Sri Babar Yunus, aged about 70 Years (Male), S/o Late Md. Yaqub Yunus, Resident of 193, Grand Apartment, Fraser Road, Patna, P.S. Kotwali, District-Patna.

... .. Petitioner/s

Versus

1. The Patna Municipal Corporation, through Municipal Commissioner, Patna Municipal Corporation, Maurya Lok, Patna.
2. The Municipal Commissioner, Patna Municipal Corporation, Maurya Lok, Patna.
3. The Chairman, Municipal Building Tribunal, Patna Division, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ankit Katriar, Adv.
For the Respondent/s : Mr. Prasoon Sinha, Adv.

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
Date : 29-08-2023

Heard Mr. Ankit Katriar, learned counsel for the petitioner and Mr. Prasoon Sinha, learned counsel for the Patna Municipal Corporation.

2. The petitioner, a builder company, has filed the present writ petition invoking the extraordinary writ jurisdiction of this Court under Article 226 of the Constitution of India, seeking quashing of the order as contained in Memo No. 2632



dated 12.03.2016 issued by the Patna Municipal Corporation whereby decision has been taken to impose five times fine over and above the condonation and compounding fee (Arth Dand). He further seeks quashing of the order dated 10.09.2016 passed in Vigilance Case No. 04A/2016, and in particular, the portion pertaining to the erroneous imposition of five times Arth Dand, amounting to Rs.9,17,295/-, over and above the aforesaid incorrectly calculated fine (i.e. Rs.1,83,459/-) against compounding and condonation fee.

3. Mr. Katriar, learned counsel for the petitioner, fairly contended that the petitioner is not raising any grievance with regard to the prayer made in the present writ application to the extent of imposition of fine amounting to Rs.1,83,459 as compounding and condonation fee. While assailing the order impugned as contained in Annexure-P/5 dated 10.09.2016 passed by the Municipal Commissioner, Patna Municipal Corporation, as also the order as contained in Annexure-P/7 dated 15.03.2022 passed by the Municipal Building Tribunal-1, he contended that the impugned order imposing the five times fine over and above the condonation and compounding fee (Arth Dand) is in the teeth of the order of this Court dated 11.10.2012 in C.W.J.C. No. 5393 of 2008.



4. In order to appreciate the submission of the petitioner, it would be apt to quote the relevant portion of the judgment, which is as under:

“Learned senior counsel Mr. Lalit Kishore appearing on behalf of the Corporation has tried to prevail upon the court that it is not a case of no power having been vested in the Municipal Commissioner to pass such an order. He was only enforcing what has emerged from the decision of the Empowered Committee. However, on being questioned closely as to root entry in the statute or the Act, from where such resolution could be adopted and power to impose fine, five times the condonation fee has not been pointed out.

The Court is of the opinion that in view of above, obviously the decision to impose fine, five times the condonation fee is a decision exceeding the power and jurisdiction of the Municipal authorities without any statutory or legal force behind it.”

5. Learned counsel for the petitioner further contended that the impugned order is also bad for the grounds as has been enumerated in para-10 of the writ petition, which *inter alia*, contends that:

“Section 321 of the Bihar Municipal Act, 2007, envisages that the state government shall frame building bye-laws for municipal



corporations. However, with respect to the matter at hand, the state government has not framed any such law providing for imposition of five times Arth Dand over and above the compounding & condonation fee.

Alternatively put, the aforesaid impugned office order, dated 12.03.2016, does not have the sanction of the state government or the Legislature and is, thus, bad in law. As a natural corollary, the five times Arth Dand imposed upon the petitioner by the impugned office order is also erroneous, misconceived and has no legs to stand.

Also, according to section 328 of the Bihar Municipal Act, 2007, power is vested with the state government to make building rules. Evidently, powers have not been vested with the municipal corporation to make any rule pertaining to the buildings within its territorial jurisdiction. Situated thus, the Patna Municipal Corporation has clearly exceeded its jurisdiction in issuing the aforesaid impugned office order dated 12.03.2016 and the same is liable to be quashed on this count alone. Needless to state, the imposition of Arth Dand upon the petitioner is illegal.”

6. He further drew the attention of this Court to the order dated 07.08.2023 passed by the learned Co-ordinate Bench of this Court in **C.W.J.C. No. 11382 of 2022 [Firoz Khan v. The State of Bihar & Ors.]** wherein the learned single



Judge after relying upon the earlier order of this Court dated 11.10.2012, has been pleased to set aside the order whereby the respondent-authorities had imposed five times fine over and above the condonation and compounding fee (Arth Dand) to the petitioner of the said writ application.

7. Mr. Prasoon Sinha, learned counsel for the Patna Municipal Corporation fairly submits that so far the imposition of five times fine over and above the condonation and compounding fee (Arth Dand) to the petitioner is concerned, the similar issue has been decided by this Court and in that view of the matter, the case of the petitioner may be relegated before the Municipal Commissioner, Patna Municipal Corporation, who would be certainly obliged to consider the case of the petitioner in terms of the order passed by this Court.

8. Considering the submissions made on behalf of the parties and taking note of the order/judgment passed by this Court dated 07.08.2023 in C.W.J.C. No. 11382 of 2022, the impugned order dated 12.03.2016 as contained in Memo No. 2632 (Annexure-P/3) is hereby set aside. Further this Court also set aside the order passed by the Municipal Commissioner, Patna Municipal Corporation, in Vigilance Case No.04A/2016 dated 10.09.2016 (Annexure P/5) as well as the order passed by



the Municipal Building Tribunal-1, in Appeal No. 15(N)/2016 dated 15.03.2022 (Annexure P/7) to the extent whereby five times fine over and above the condonation and compounding fee (Arth Dand) has been imposed upon the petitioner.

9. It is needless to observe that the respondent no.2, Municipal Commissioner, Patna Municipal Corporation, shall make necessary calculation and ensure the refund of the amount which has been realized in the light of the order passed by the Municipal Commissioner, Patna Municipal Corporation, in Vigilance Case No.04A/2016 dated 10.09.2016 (Annexure P/5) and affirmed by the Municipal Building Tribunal-1 vide order dated 15.03.2022 (Annexure P/7).

10. Needless to observe that the aforesaid exercise must be completed within a period of six weeks from today.

11. At this juncture, Mr. Katriar, learned counsel for the petitioner submits that till date occupancy certificate has also not been issued in favour of the petitioner.

12. In response to the aforesaid submission, Mr. Sinha, submits that though there is no such prayer in the present writ petition, but the petitioner is at liberty to approach the concerned authority and if there would not be any impediment, the same would be issued in favour of the petitioner.



13. This order, accordingly disposes the present writ
petition.

(Harish Kumar, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	31-08-2023
Transmission Date	

