

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6053 of 2022

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M/s Balajee Homes, having its Office at 601, 02, 6th Floor, Balajee Complex
Near Andhra bank, Exhibition Road, Patna through its Proprietor deepak
Sagar, aged about 45 Years, Gender-Male, Son of Late Rajendra Prasad,
Resident of Near Kumhrar Park, Police Station-Agamkuan, District-Patna.

... .. Petitioner/s

Versus

1. The Patna Municipal Corporation Through its Municipal Corporation
through its Municipal Commissioner and CEO, Budha Marg, Patna.
2. The Municipal Commissioner and CEO, Patna Municipal Corporation,
Budha Marg, Patna.
3. The Director, Town Planning, Patna Municipal Corporation, Budha Marg,
Patna.
4. The Deputy Director, Town Planning, Patna Municipal Corporation, Budha
Marg, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. N.K. Agrawal, Sr. Advocate with Mr. Sanjeet Kumar, Advocate
For the PMC	:	Mr. Prasoon Sinha, Advocate with Mr. Amarnath Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

6 07-08-2023 Heard Mr. N.K. Agrawal, learned Senior Counsel for

the petitioner and Mr. Prasoon Sinha, who represent the Patna

Municipal Corporation.

2. This order be read in continuation of the order
dated 4.7.2023 by which on the claim put forward by the
learned Senior Counsel for the petitioner that:

i) on 27.3.2019 vide letter no. 3947, the petitioner
was informed about the approval of the plan for the construction
of the building;



(ii) without appreciating the fact that there was no injunction order in the Title Suit No. 32 of 2019;

(iii) the order in question vide memo no. 3697 dated 10.3.2022 was passed (Annexure-1 to the writ petition) with the information about the rejection of the plan case no. P-Sheikhpura-PRN-B+G+3/376/2015

3. In the aforesaid background, the order dated 4.7.2023 was passed and the Patna Municipal Corporation (henceforth for short 'the PMC') was directed to answer on three questions which are as follows:

(i) whether the contention of the petitioner that earlier the plan was approved on 26.3.2019 is correct or not;

(ii) whether the subsequent rejection order was on the basis of the objection of the Bhavya Construction (taking into account their statement that there is an injunction order concerning the land in Title Suit No. 302 of 2019) or not;

(iii) whether in the light of the new fact that came that the injunction prayer of the Bhavya Construction in Title Suit No. 32



of 2019 stands rejected by the Title Court; whether the petitioner is entitled for reconsideration of approval of his plan relating to the land or not.

4. The Patna Municipal Corporation has filed its reply duly signed by its Director, Urban Planning, Patna Municipal Corporation and it is essential to incorporate paragraph-3 of the said order:

That this counter affidavit is filed in compliance with the directions issued by the Hon'ble Court by the order recorded 04.07.2023 in the instant matter, after recording the facts as contained in the pleading of the petitioner and considering the submissions made on behalf of the learned counsels appearing for the petitioner and the respondents. The short points on which the PMC has been directed to file its reply as well as the reply thereof on behalf of the PMC are mentioned hereunder for



ready reference:

(i) Whether the contention of the petitioner that earlier the plan was approved on 20.03.2019 is correct or not;

it is humbly stated that the Plan Case No.P/Sheikhpura/PRN/B+G+3/376/2018 was approved on 12.03.2019. After approval of the aforesaid plan, letter no.3947 dated 27.03.2019 has been sent by the PMC to the Petitioner through Sri Deepak Sagar, son of Late Rajendra Prasad, M/s Balajee Homes for depositing the fees for labour cess, Shelter fund and the dues amount against building fees.

(ii) whether the subsequent rejection order on the basis of the objection of the Bhavya Construction taking into account their statement that there is injunction order concerning the land in Title Suit No. 32 of 2019 was the



only basis for said rejection or not;

The reply to the aforesaid point as contained in Clause-(ii), is in affirmative i.e. Yes..

(iii) whether in the light of the new fact that the injunction prayer of the Bhavya Construction in Title Suit No. 32 of 2019 has been rejected by the Trial Court, whether the petitioner is entitled for reconsideration of approval of his plan relating to the land or not.

In reply to the point no. (iii), it is humbly stated that it has been provided under rule-8(7) of the Bihar Building Bye-Laws, 2014 that in case the permission is refused an appeal shall be filed before the Tribunal.

Section 329(9) of the Bihar Municipal Act, 2007 provides "No Court shall have jurisdiction in any matter for which provision is made in this



Chapter for appeal to the Tribunal."

5. Learned Senior Counsel submits that when 'the PMC' has conceded that the plan was approved and only on the wrong objection of Bhavya Construction that there is injunction on Title Suit No. 32 of 2019 pending the decision was taken as has been accepted by 'the PMC', the order has to go.

6. Mr. Prasoon Sinha, learned counsel for 'the PMC' submits that since an order has been passed, it would be appropriate that the petitioner avail the appeal remedy before the Municipal Building Tribunal, Bihar, Patna.

7. The fact that has emerged that and is before this Court is/are that:

- (i) the petitioner was having approved plan, as stated above;
- (ii) Bhavya Construction preferred objection stating that there is an injunction in T.S. No. 32 of 2019 which is pending;
- (iii) there was no such injunction order in Title Suit No. 32 of 2019.

8. The Patna Municipal Corporation in its present affidavit has accepted aforesaid facts. once the plan has been



approved, the same cannot be rejected rather it can only be cancelled.

9. In that view of the matter, when the facts are clear and accepted by 'the PMC', it would be futile sending the petitioner before the Appellate Authority.

10. The order in question issued vide letter no. 3697 dated 10.3.2022 by the Director, Town Planning Patna Municipal Corporation is quashed.

11. It would be appropriate that 'the PMC' issue a fresh demand note within a period of two weeks which shall be paid by the petitioner within the next period of three weeks so that necessary formalities are completed at an earliest.

12. The writ petition stands disposed of with the aforesaid observations.

(Rajiv Roy, J)

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