

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5959 of 2023

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Santoshi Devi, Wife of Late Dhananjay Kumar Singh, Resident of Village-Dhanpurva, Ward No.34, Sasaram, Rohtas.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Department of Urban Development and Housing through its Principal Secretary, Bihar.
3. The Principal Secretary, the Department of Urban Development and Housing, Bihar.
4. The District Magistrate, Rohtas.
5. The Municipal Commissioner, Sasaram.
6. Suman Devi Wife of Mahendra Singh Resident of Village-Dhanpurva, Ward No.34 (Presently Ward No.18), Sasaram, Rohtas.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Alok, Adv.
For the Resp-State	:	Mr. Syed Hussain Majeed, Adv.
For the Resp No.5	:	Mr. Bajarangi Lal, Adv.

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 29-08-2023

Heard Mr. Alok, learned counsel for the petitioner and Mr. Syed Hussain Majeed, learned counsel for the State. The respondent no.5 is represented by Mr. Bajarangi Lal, learned counsel.

2. The petitioner being aggrieved by the letter no.780 dated 06.03.2023, passed by the Municipal Commissioner, Sasaram, has preferred the present writ application commanding a direction upon the respondents not to usurp the jurisdiction of



the civil court and pass any order restraining the petitioner from his construction work and suspend the permit of building construction work.

3. Learned counsel representing the petitioner contended that the impugned notice issued in terms of Section 319 of the Bihar Municipal Act, 2007 (for brevity 'the Act of 2007') is not justifiable for the simple reason, as the Municipal Commissioner, Sasaram by issuing the notice passed an adverse order against the owner/occupier by restraining him to make any further construction and, as such, the same is per se illegal. He would thus submit that Section 319 of the Act of 2007 clearly suggests that no action to be taken without affording any opportunity to the person affected.

4. While refuting the contention of the petitioner, learned counsel for the respondent no.5 submits that by the impugned notice, the petitioner was only called upon to file her reply along with the documents in support of her claim regarding lis pendens in relation to the land in question. He further submits that the petitioner in response to the aforesaid notice has entered her appearance and filed her reply and after having been accorded proper opportunity of hearing, the final order has already been passed by the Municipal Commissioner,



Sasaram, as contained in Annexure-8. He also drew the attention of this Court to Annexure-1/A, referred as Building Permit. Clause (e) of the aforementioned Building Permit clearly stipulates that the land in question must be in lawful ownership and peaceful possession of the applicant. Further Clause (h) thereof speaks that after its approval, the plan shall be treated automatically cancelled during the period of dispute. He next submits that, in fact, as per the approved Building Permit, it has been made clear to the parties that in case of any litigation in relation to the construction site, the sanctioned map shall be deemed to be cancelled.

5. Learned counsel for the State also reiterates the submissions made on behalf of the learned counsel for the respondent no.5.

6. This Court finds substance in the submission of the respondents that by the impugned notice cause has been shown to the petitioner asking her to file reply along with necessary evidence in support thereof, failing which action would be taken for cancellation of her sanctioned map. Be that as it may, considering the fact that the final order has already been passed by the respondent no.5, Municipal Commissioner, Sasaram, and the petitioner has statutory remedy under Section 323(3) of the



Act of 2007 before the Municipal Building Tribunal, the present writ application stands disposed of with a liberty to the petitioner to assail the order before the Municipal Building Tribunal, if he feels so aggrieved.

rohit/- **(Harish Kumar, J)**

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30-08-2023
Transmission Date	

