

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19881 of 2014

Manoj Kumar Bharti S/o- Sri Ram Chandra Prasad, Resident of 204, Shaboo Complex, Exhibition Road, P.S.- Gandhi Maidan, District- Patna, Managing Director of M/s City Makers Pvt. Ltd.

... .. Petitioner/s

Versus

1. The Municipal Building Tribunal and Ors P.S.- Kotwali, District- Patna through its Chairman
2. The Chairman, Municipal Building Tribunal situated at near Miller High School, P.S.- Kotwali, District- Patna
3. The Members, Municipal Building Tribunal, situated at near Miller High School, P.S.- Kotwali, District- Patna
4. Patna Municipal Corporation, Mauryalok Complex, Dak Bunglow Road, P.S.- Kotwali, District- Patna through its Commissioner
5. The Municipal Commissioner, Patna Municipal Corporation, Mauryalok Complex, Dak Bunglow Road, P.S.- Kotwali, District- Patna

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Suresh Prasad Singh No.1, Advocate Mr. Binod Kumar Sinha, Advocate
For the PMC	:	Mr. Prasoon Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY

C.A.V. JUDGMENT

Date : 25.07.2023

Heard Mr. Suresh Prasad Singh No. 1,
learned Counsel appearing for the petitioner and Mr. Prasoon
Sinha, who represents the Patna Municipal Corporation.

2. The present writ petition has been preferred for the quashing of an order dated 25.09.2014 passed in Appeal Case No. 08/2014 (Arising out of Vigilance Case No.- 195A/2013) by the Municipal Building Tribunal [(hereinafter referred to as "the Tribunal") (Annexure-4)] as also an order



dated 15.02.2014 passed by the Municipal Commissioner, Patna Municipal Corporation (Annexure-3) in Vigilance Case No.- 195A/2013 by which the height of the petitioner's building has been restrained upto the height of 11 mts. on the ground that width of the road in front of it is less than 6 mts. (i.e. 20 feet) and to demolish the deviations in the setbacks of the building and/or for further issuance of any other writ/writs order/orders, direction/directions.

3. The matrix of facts giving rise to present petition is/are as follows:-

4. The petitioner is builder having business in the name of City Makers Private Limited and is in the construction/development of apartments/buildings.

5. It entered into registered development agreement with Sunaina Devi, Satish Kumar Singh and Ashutosh Kumar Singh for the construction of B+G+4 floors over Plot No. 806 situated at Mohalla- Dujra, Patna in the name of 'Sai City Apartment'.

6. Accordingly, the development agreement was extended which followed submission/sanction of plan for the construction of B+G+4 floors by the certified architect of the Patna Municipal Corporation (henceforth for short 'the PMC')



vide Plan Case No. P/Dujra/PRN-B+G+4-047/12 (Annexure -1 to the writ petition).

7. During the construction period, a team of the Engineers of 'the PMC' inspected the apartment, prepared a measurement chart in which the width of the road in front of the apartment was found to be 5.60 metres to 5.75 metres as against 9.15 metres shown in the sanctioned plan. Further, minor deviations were also count.

8. Based on the said inspection report containing measurement chart, the Vigilance Case No. 195A/2013 was instituted against the appellant.

9. After hearing the parties, vide an order dated 15.02.2014, the Respondent No.4, the Municipal Commissioner of 'the PMC' restrained the petitioner to construct the apartment over and above 11 metres taking into account the fact that the width of the road is less than 6 metres (20 ft.) and further directed it to demolish the deviated portion within 30 days. (Annexure- 3 to the writ petition).

10. Aggrieved, the Appeal No. 08 of 2014 was preferred before 'the Tribunal'.

11. 'The Tribunal' after hearing the parties vide an order dated 25.09.2014 affirmed the order of 'the PMC'



and held that in view of the width of the road being less than 6 metres, the appellant is entitled to construct the building only upto 11 metres.

12. So far as the minor deviations are concerned, it held that while there are no deviations in the front and so far as the sides are concerned, there are minor deviations and as such, the same is within the condonable limit as per the bye laws (Annexure 4 to the writ petition).

13. Still aggrieved, the present petition.

14. Heard learned Counsel for the parties.

15. It has been submitted by the learned Counsel for the petitioner that contrary to the measurement made by 'the PMC' holding the width of the road to be less than 20 ft.; subsequently, the measurement was done and it was found to be 9.15 metres which is more than 20 ft. and as such, the petitioner was entitled to construct the building upto 14.85 metres height.

16. He submits that pursuant to the orders passed by the earlier bench of this Court in the present writ petition, another measurement of the road was done on 18.04.2019 in which the width of the road was found to be more than 20 ft. (Annexure R-4/F to the writ petition).



17. It is his further submission that another inspection was done on 01.07.2019 by 'the PMC' (which found incorporated as Annexure R-4/G to the writ petition) according to it also the width of the road was found to be 8.80 metres-8.34 metres which is more than 20 ft.

18. Learned Counsel for the petitioner further submits that there is '*nala*' in front of the apartment which the State Government has decided to cover and as such, it cannot be said that the width is less than 20 ft. as once covered the width of '*nala*' and road will be much more than 20 ft.

19. He thus submits that when the two measurement was showing the width of the road as 20 ft., the orders in question has to go and the writ petition is fit to be allowed.

20. Mr. Prasoon Sinha, learned Counsel appearing for 'the PMC' submits that when the first inspection was done and the measurement of the width of the road was taken, it was found to be less than 20 ft.

21. However, when the second inspection was conducted, pursuant to the orders of this Court, though the same was found to be more than 20 ft., a newly constructed wall towards the '*nala*' which was not there on the first day of



inspection on 23.11.2013 was created. He thus submits that it is clear that in front of the said building, the petitioner saw to it that the road at the time of measurement is 20 ft. by doing filling job towards the 'nala'.

22. It is his further submission that for construction of an apartment over and above 11 metres, it is essential that the entire stretch of road should be 20 ft. and not just in front of the apartment.

23. He has taken this Court to the second supplementary counter affidavit filed on behalf of the Respondent Nos. 4 and 5 with specific reference to paragraphs 3, 4 and 5 which read as follows:-

"3. That it is pertinent to mention here that the entire stretch and length of the existing PCC Road in front abutting the building in question is not uniformly and throughout 20 feet in width. After the existing PCC road slope of the embankment of Nala begins which continues upto the retaining wall of Nala. The Nala is not cemented rather it is a Kacha Nala and its width it not uniform due to erosion of soil at many places from the embankment of Nala.

4. That it is further stated that the petitioner has recently erected the wall of 10" width on the retaining wall of Nala in front of apartment in question. Slope of the embankment



the of Nala has been filled up with the soil and debris and included in the existing road abutting the building in question by the petitioner.

5. That it is humbly stated that from perusal of the measurement report as contained in Annexure-R-4/F to the affidavit filed on behalf contained of respondent nos. 4 and 5, it is evident that newly constructed wall of 10" (ten inch) width was found in front of the building in question having 19.55 meter length which was not present during the 1st measurement taken by the inspecting team-2 of the PMC on 23.11.2013 pursuant to the order dated 10.05.2013 passed in a PIL bearing CWJC No. 8152/2013. The report dated 18.04.2019 (Annexure-R-4/F) discloses that the newly constructed wall was found only in front of the building in question having 19.55 meter length but at no other place throughout the existing PCC road."

24. He as such, submits that when the entire stretch of road on which this apartment has been conducted is not 20 ft., any construction made over and above 11 metres is illegal.

25. Mr. Sinha has taken this Court to an order of this Court in **CWJC No. 8880 of 2015 (M/s Gayatri Engicon Private Limited vrs. The State of Bihar and Ors.)**



disposed of on 19.06.2018 with specific reference to Paragraphs 12 to 14, 18, 19 and 21 to 28 which read as follows:-

“12. After hearing the parties, the Municipal Commissioner, Patna vide order dated 12.04.2014 passed in Vigilance Case No.24B of 2010 directed the petitioner to demolish the 4th and 5th floor of Bhagwat Kunj Apartment situated at Road No.-1, Mahesh Nagar (Nala), P.S.-Patliputra, District-Patna and also directed the petitioner to correct the non-compoundable deviations and further directed the petitioner not to obstruct/encroach the private road of the apartment, which is used by the other residents of the locality.

13. Against the aforestated order dated 12.04.2014 passed in Vigilance Case No.24B of 2010, the petitioner filed a writ petition vide CWJC No.9131 of 2014, which was disposed of directing the petitioner to approach the Tribunal. Thereafter, the petitioner filed an appeal before the Tribunal vide Appeal No.104 of 2014. The Tribunal after hearing the parties, vide order dated 15.05.2015 affirmed the order dated 12.04.2014 passed in Vigilance Case No 24B of 2010 by the Commissioner, Patna Municipal Corporation and dismissed the appeal. The operative part of the order passed by the Tribunal in appeal No 104 of 2014 reads as under-

"The learned



counsel for the appellant has urged that the appellant has got sanctioned map for construction of G+4 and construction of 5th floor is permissible under note 14 and appendix-L clause 10.2 of Building Bye laws on the payment of requisite fee and to achieve required FAR. The learned counsel for the respondent no.-2 has replied that the total area of land in possession to the appellant as per Amin report (annexure-11) is only 373.471 sqr. m. whereas it has been wrongly shown as 492.071 sqr. m. in the sanctioned map and according to the correct area, the appellant has achieved required FAR in G+4 and as per existing road less than 20 feet wide, the building up to G+3 height up to 11 m. can only be sanctioned in place of G+4. In this regard, we have already discussed above that the building in question has been situated abutting the existing road less than 6m. wide, hence the building in question shall not be allowed more than 11 m height as per clause 20.1.1. note 11 of the Bye Laws hence there is no need to discuss the said issue.

Considering the



facts and circumstances of the case as well as the discussion made above, the tribunal is of opinion that the building in question shall not be allowed more than 11 m height as per clause 20.1.1. Note 11 of the building Bye laws and the appellant shall not create any interruption on the approach road situated west of the building in question for common use of the respondent no. 2. The deviations within the permissible condonation limit as per bye laws should be condoned and the learned municipal commissioner is directed to condone the same after calculating the area of condonation which comes within the condonable limit and rest deviation is liable to be demolished.

*Accordingly,
this appeal is hereby disposed of with
the aforesaid observation."*

14. Being aggrieved by the aforestated orders passed by the Municipal Commissioner and the Tribunal, the petitioner has filed the present writ petition.

18. Having heard the learned counsel for the parties and on perusal of records, I am inclined to dismiss the writ petition, in my



opinion, it has no merit.

19. At the outset, it would be relevant to note that while hearing the parties, this Court vide order dated 06.07.2015 had observed as under:-

"The entire issues raised by the petitioner hinges on his contention that the drain running adjacent to the road on which the building in question has been constructed, is being covered by the State Government and thus the width of the road would be increased to more than 13 meters.

The situation as it stands today is that the road on which the building in question abuts is 3.79 meters. Lying adjacent to the said road is a drain which has a width of 5.98 meters and across the drain there is another road of a width of 3.36 meters. According to the petitioner, there is a decision of the State Government to cover the drain and as a consequence, the width of the road would meet the statutory requirement.

According to the statutory authorities since the road on which the building abuts is less than 6 metres, the height of the building



cannot be more than 11 meters and thus the 4th floor and the 5th floor so constructed by the petitioner are illegal and have to be demolished. The orders also reflect that for condonation of the minor deviation noticed the petitioner has been given liberty to move an application for condonation.

As I have observed hereinabove, the matter hinges on the issue whether there is a decision of the State Government to cover the drain. If the contention of the petitioner is supported by the decision of the State Government then the issues raised by him would merit consideration but in case there is no such decision then the petitioner would have to abide by the decision impugned in this writ petition.

Learned counsel for the State prays for a short adjournment to seek instructions as to whether the public drain running at Mahesh Nagar is to be covered so as to join the two streets situated on either side of the drain and if the answer is in affirmative then let the decision to such effect be placed on



record.

Put up this case under the same heading on Monday i.e. 13.7.2015.

Let status quo as existing today be maintained by the parties and the petitioner would not indulge in any construction work in the meanwhile."

21. A reply to the counter affidavit has also been filed on behalf of the petitioner wherein it has been stated that there is no requirement of any proposal from Patna Municipal Corporation for covering the drainage and the State Government is competent enough to take a decision for such construction for the purpose of covering up the drainage. It is further contended that the State Government has already taken a decision to cover nine drainages passing from different part of Patna Capital Town and, thus, the drainage, which passes through in between the two streets, are to be covered for the purpose of widening the road.

22. Be that as it may, from the pleadings of the parties, it is an admitted position that width of the road in front of the building in question was less than 6 meters when the building plan was sanctioned and building was erected.

23. At this stage, it would be



*pertinent to note that in **Narendra Mishra (supra)**, a public interest litigation, it was highlighted that a large scale violation of building bye-laws was being committed by the builders and developers in Patna. In the said litigation, vide order dated 10.05.2013, a Division Bench of this Court directed the authorities concerned that till further orders, no apartment, complex or multi-storied building can be constructed beyond 11 meters and upto 15 meters in height unless the entire stretch and length of road in front abutting the building is uniformly and throughout 20 feet in width. The observations made by the Division Bench in its order dated 10.05.2013 read as under-*

"We take notice of the fact that the present is not an isolated exception case in the Town of Patna. It is not possible for every citizen to approach this Court every time there is a building violation. Yet the number of such cases filed reveals a serious malady with allegations for construction of illegal apartments by builders. Complaints are filed by citizens before the Corporation which are ignored for very obvious reasons suiting the builder and those required to enforce the law. If applications are disposed of by the Court to consider the grievances still no action is taken



by the Corporation leading to a repeat writ application by the aggrieved. The Corporation then reluctantly looks into the matter to report violations. Urban planning in the town of Patna leaves much to be desired. The municipal building bye laws appear to be followed more in breach by the Corporation than enforcement of the law. There has been and continues a mushroom growth of apartments even in lanes and bye lanes in gross violation of building bye laws. An ingenious device was introduced by the authorities that even if the road in front was uniformly not twenty feet wide, the builder would leave area in front of a building to make the road twenty feet wide in front only. The Corporation would then imagine a non-existent state of affairs that the entire road was twenty feet wide and approve the building plan. Urban planning has been reduced to a zig zag road with the builder also subsequently enclosing that area shown as part of the road and private use ultimately. The resultant is urban chaos in Patna, all its aspects."

24. Having observed as



above, the Division Bench issued mandamus to the authorities concerned in the following words:-

"We therefore direct that till further orders no apartment complex or multistoried building can be constructed beyond 11 meters and upto 15 meters in height unless the entire stretch and length of road in front abutting the building is uniformly and throughout 20 feet in width.

This shall be enforced with immediate effect collectively by the Secretary, Urban Development Department, the Municipal Commissioner, the District Magistrate, the Senior Superintendent of Police and Officer In-charge of the Police Station of the area concerned."

25. *In view of the order passed by the Division Bench in **Narendra Mishra (supra)**, the building in question could not have been constructed beyond 11 meters.*

26. *The very foundation of the pleading of the petitioner is that the government had taken a decision to cover up the drain (nala) which will ultimately expand the width of the road would make it manifest that the petitioner is trying to take advantage of its own wrong. The petitioner admits that the construction*



of the 5th floor is without any sanctioned plan. There is no provision in the bye-laws, which stipulates waiving of width of road or height of the building on the basis of future expansion for widening of road and, therefore, no relief can be granted to the petitioner on such pleadings. The width of the road is to be measured on actual basis and not any future hope of widening of road. If such plea is permitted and buildings are allowed to be erected on the basis of anticipated widening of road, there would be a complete chaos.

27. So far as the alternative plea taken by the petitioner that road includes drains in view of clause 2.74 of the modified building bye-laws is concerned, it would be relevant to extract clause 2.74 which reads as under-

"2.74. Street- Any highway, street lane, pathway, alley, stairway, passage way, carriage-way, footway, square, place or bridge whether thorough fare or not, over which the public have a right of passage or across or have passed and had access uninterruptedly for a period within one year after completion of road development, whether existing, proposed in any scheme and includes all bunds, channels, ditches, storm water drains,



culverts, sidewalls, traffic in lands, road side trees and hedges, retaining walls fences, barriers and railing within the street lines."

28. From a reading of the aforesaid clause 2.74, it would be evident that the definition of street does not include the word 'drains' rather it includes 'storm water drains' which are meant to drain out rainy water."

26. He also took this Court to paras 31 and 32 of the said order in support of his case which read as follows:-

" 31. So far as the plea taken by the petitioner in respect of construction having been made pursuant to the order passed by this Court in C.WJ.C. No.1154 of 2012 is concerned, it would be evident from perusal of the order dated 18.07.2012 that the petitioner was granted liberty to proceed with the construction in accordance with sanctioned building plan at his own risk. Since the petitioner had constructed the building in question after obtaining the plan of the building sanctioned for construction of G+4 floors upto the height of 14.40 meters by wrongly showing the total area of land in its possession as 492.071 square meter in his map whereas according to the physical verification report made by the Amin, the area of land was found only 373.471 square meter



on the existing road, which is less than 20 feet wide on which a building upto the height of 11 meter could have only been sanctioned, no illegality can be found with the impugned orders passed by the Municipal Commissioner and the Tribunal.

32. Thus, the issue as it stands presently is that the width of the road is only 3.79 meters. The permissible limit as per the bye-laws on a 20 feet wide road is ground plus three storey building with a ceiling of height upto 11 meters. The petitioner has misled the authorities in getting the building plan approved for ground plus four storey by misrepresenting the size of the plot. It has also made an unauthorized construction of fifth storey, which was never approved or sanctioned. It is taking a lame excuse of road widening on account of decision taken by the State to cover open drain for condoning the unauthorized and illegal construction made by it. The State has refuted the claim of the petitioner by filing counter affidavit. Thus, the undeniable and undisputed facts that emerge are that the petitioner has indulged in blatant violation of law in constructing multi storyed apartment. The Municipal Commissioner and the Tribunal while passing the impugned orders have given concurrent findings on fact, which are based on sound appreciation of evidence. They are neither perverse nor illegal and have been passed after affording opportunity of hearing to the petitioner.”



27. Lastly, he took this Court to para 35 which read as follows:-

*“35. Keeping in mind the totality of the facts and circumstances of the case and the ratio laid down by the Supreme Court in **Esha Ekta Apartments (supra)** after taking into consideration its various decisions, I am of the considered opinion that no ground is made out to upset the concurrent findings on fact in exercise of writ jurisdiction under Article 226 of the Constitution of India. Accordingly, the writ petition is dismissed.”*

28. He thus submits that plea of the petitioner that the road includes the ‘*nala*’ also which the State Government has decided to cover and as such, the width is much more than 20 ft. has to be rejected as ‘*nala*’ cannot be considered part of the road, as per the order passed by this Court in **M/s Gayatri Engicon Private Limited (supra)**.

29. He further submits that the said order of the learned Single Judge was challenged before the Division Bench in **LPA No. 974 of 2018** which came to be dismissed on 13.08.2018 and it is essential to incorporate paragraphs 10 to 14 of the said order which read as follows:-

“10. So far as 5th floor is concerned, as such the same is required to be



demolished as the same has been constructed without any sanctioned plan.

10.1 So far the removal of construction of 4th floor is concerned, it is required to be noted and as observed by the learned Single Judge considering the materials on record, that the appellant/original petitioner constructed the building in question after getting the plan of the building sanctioned for construction of G+4 floors up to the height of 14.40 metres by wrongly showing the total area of the land in his possession as 492.071 square metres in his map, whereas according to physical verification report made by the expert, the area of the land was found 373.171 square metres on the existing road, which was less than 20 ft. on which a building upto the height of 11 metres could have only been sanctioned. Therefore, as such the appellant/petitioner first of all got the building plan sanctioned by giving wrong particulars/measurement and by committing the fraud. There are concurrent findings by all the authorities below including the learned Single Judge. Therefore, as such it cannot be said that the learned Single Judge has committed any error in dismissing the petition.

11. Now, so far the submission on behalf of the appellant/original petitioner relying upon Clause 2.74 of the modified Building Bye-laws is concerned, the same has been dealt with in detail by the learned Single Judge in



*para 27 to 30, which is reproduced hereinabove.
We concur with the same.*

*11.1 The person/builder who has played misrepresentation and the fraud and has put up the construction by getting the plan approved for G+4 by misrepresenting the size of the plot etc., no sympathy is required to be shown. The learned Single Judge has rightly relied upon the decision of the Hon'ble Supreme Court in the case of **Esha Ekta Apartments Cooperative Housing Society Limited and others Vs. Municipal Corporation of Mumbai and others, 2013 (5) S.C.C. 357.***

12. In view of the above and for the reasons stated above, we see no reason to interfere with the impugned well reasoned order passed by the learned Single Judge. We are in complete agreement with the view taken by the learned Single Judge. No interference is called for in exercise of the appellate jurisdiction, more particularly with the findings of fact recorded by all the authorities below including the learned Single Judge.

13. In the facts and circumstances, this appeal deserves to be dismissed and is accordingly dismissed.

14. In view of dismissal of the appeal, all the interlocutory applications stand disposed of.”

30. Still aggrieved, M/s Gayatri Engicon



Private Limited preferred **SLP (Civil) No. 14900 of 2019** before the Hon'ble Apex Court which too came to be dismissed on 01.07.2019 (Annexure R-4/I to the 3rd Supplementary Counter affidavit).

31. He as such, submits that a decision of the learned Single Judge has been stamped by the Division Bench and further affirmed by the Hon'ble Supreme Court where it was held that if the entire stretch of road is not 20 ft and only in front of the apartment or any other place, the width shows 20 ft., any construction over and above 11 metres will be deemed illegal and fit to be demolished.

32. He as such, submits that there is no merit in the petition and the same is fit to be dismissed.

33. Having heard the rival parties, this Court finds force in the submissions put forward by the learned Counsel for 'the PMC'.

34. In the context of the orders that were being passed in CWJC 8152 of 2013 (**Narendra Mishra Vrs. The State of Bihar**) [2015 (1) PLJR 650] , the Division Bench of this Court had passed extensive order and had observed that any road which has less than 20 ft. wide, no building can be constructed over and above 11 metres.



35. In the light of the said orders being passed, the site of the petitioner's underconstruction building was inspected which followed the Vigilance Case against him initiated by 'the PMC'. At that time, only G+1 was constructed and despite the pendency of Vigilance case in which the petitioner was contesting, he went ahead and constructed over and above 11 metres on his own risk, he will have to face the consequences.

36. Admittedly, during the first inspection, the width of the road was found to be less than 20 ft. However, after the interim orders of this Court, measurements were taken in 2019 where the width was found to be more than 20 ft. Learned Counsel for 'the PMC' has explained in its counter affidavit/supplementary counter affidavit that the filling work was done towards the '*nala*' to make it 20 ft. However, although the petitioner managed to increase the width of the road in front of the apartment, the entire stretch of the road does not have the same width and in that background, the decision of the learned Single Judge in **M/s. Gayatri Engicon Private Lim. (supra)** comes into picture where when the full stretch of the road is not 20 ft., any construction made over and above 11 metres is illegal and has to be demolished.



37. In **M/s. Gayatri Engicon Private Limited (supra)**, it was further held by the learned Single Judge that the width of the road does not include '*nala*' and as such, the contention of the petitioner that once the State Government has decided to cover the same, the width of the road will be more than 20 ft. is fit to be rejected.

38. As stated above, the order dated 19.06.2018 passed by the learned Single Judge in **M/s. Gayatri Engicon Private Limited (supra)** was affirmed by the Division Bench in **LPA No. 974 of 2018** and by the Hon'ble Supreme Court in **SLP (Civil) 14900 of 2019**.

39. In the light of the aforesaid facts and the circumstances as also the submissions put forward by the learned Counsels and after perusing the documents on record, this Court is of the view that when the entire stretch of road is not 20 ft., the petitioner despite being aware of the Vigilance case pending against him chose to increase the height of the apartment over and above 11 metres by making constructions, the same has rightly been declared illegal by 'the PMC' and affirmed by the Municipal Building Tribunal.

40. In that background, the orders in question i.e. the order dated 25.09.2014 passed by 'the Tribunal'



in Appeal Case No. 8 of 2014 (Annexure 4 to the writ petition)
as also the order dated 15.02.2014 passed by ‘the PMC’ in
Vigilance Case No. 195A/2013 (Annexure 3 to the writ petition)
need no interference.

41. The writ petition stands dismissed.

(Rajiv Roy, J)

Neha/-

AFR/NAFR	AFR
CAV DATE	17.07.2023
Uploading Date	26.07.2023
Transmission Date	

