

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11382 of 2022

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Firoz Khan S/o Mokhtar Khan, Resident of Samanpura, Raza Bazar, B.V. College, Patna 14, District-Patna. Petitioner/s

Versus

1. The State of Bihar through The Secretary, Urban Development and Housing Department, Vikash Bhawan, Patna.
2. The Patna Municipal Corporation through its Municipal Commissioner, Maurya Lok, Patna.
3. Asagar Alam Lokayukt Office, Bihar, Patna.
4. The Chairman, Municipal Building Tribunal-1, Flat No-82/40, Officers Flat, Bailey Road, Patna, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Jai Ram Singh, Advocate
For the Respondent/s	:	Mr.Indeshwari Prasad, GA-3
For PMC	:	Mr. Prasoon Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

5 07-08-2023 Heard Mr. Jai Ram Singh, learned counsel for the petitioner and Mr. Prasoon Sinha, who represent the Patna Municipal Corporation.

2. The present petition has been preferred for the following relief:

for issuance of writ in the nature of CERTIORARI for setting aside the order dated 28.05.2019 passed by Learned Municipal Commissioner in vigilance case no-46(B)/2016 particularly regarding for imposition of five times "Arth dand" of Rs 1,29,170 (one lakh twenty nine thousand one



hundred seventy) over and above the calculation of compounding and condonation fee of Municipal Commissioner as well as order dated 22.06.2022 passed by learned Municipal Building Tribunal-1 (hereafter referred as Tribunal) in Appeal no-19(N)/2019, who has held not to interfere in this regard being beyond its jurisdiction and also to set aside the order dated 22.06.2022 for imposing fine Rs.1,00,000/- (one lakh) under section 315 of the Bihar Municipal Act 2007 by quashing the order vide memo no 2632 dated 12.03.2016 of Patna Municipal Corporation.

3. Learned counsel for the petitioner has straight away taken this Court to Annexure-2 to the petition i.e. an order a bench of Patna High Court in C.W.J.C. No. 5393 of 2008 (disposed of on 11.10.2012) and it is important to incorporate the relevant paragraph which read as follows:

"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 the 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.



*Writ is allowed. Annexure-4
dated 18.9.2007 stands
quashed".*

4. The case of Mr. Jai Ram Singh is that ignoring/deliberately overlooking the said order, in his case, the five times condonation fine has again charged, the same having been approved by 'the Tribunal' also.

5. He further submits that even so far as section 315 of the Bihar Municipal Act, 2007 which relates to penalty is concerned, he has to be given a hearing before an order is passed.

6. So far as the penalty part is concerned, he has again taken this Court to another order of the Patna High Court in C.W.J.C. No. 9063 of 2015 (disposed of on 4.11.2015) and the relevant portion is incorporated hereinbelow:

"The two orders nowhere discusses any reason for imposition of such penalty except that section 315 of 'the Act' provides as such. As I have already held that section 315



'the Act' even while vesting power in the Chief Municipal Officer to impose penalty casts an obligation to arrive at such finding after opportunity of hearing to the petitioner. Since the order of the statutory authorities is silent as to the conduct of the petitioner which warranted imposition of penalty in my opinion in absence of any such finding in the impugned orders the petitioner certainly was not liable for any such penalty.

For the reasons so discussed hereinabove this Court even while refraining from interfering with the impugned orders passed by the statutory authorities is unable to uphold the penalty imposed on the



petitioner and to that extent the orders impugned in this writ petition stand modified and the penalty imposed on the petitioner by the Chief Municipal Commissioner as modified by 'the Tribunal' is set aside".

7. The petitioner has made out a point. A perusal of the orders as narrated above clearly shows that:

(i) so far as the charging five times condonation fee is concerned, 'the PMC' is not entitled for that;

(ii) again so far as the penalty part is concerned, in view of the order that has been incorporated above, the Municipal authorities are duty bound to arrive at the finding after granting opportunity of hearing to the



petitioner and in absence of that
any order passed has to go.

8. As such, the order dated 28.5.2019 by the
Municipal Commissioner of 'the PMC' in Vigilance Case No.
46(B)/2016 (Annexure-4) and order dated 22.6.2022 in
Appeal No. 19(N) of 2019 (Annexure-5) are hereby set aside.

9. The Municipal authorities are free to decide the
matter afresh after giving proper opportunity to the petitioner.

10. The writ petition stands disposed of with
aforesaid observations.

(Rajiv Roy, J)

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