

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10003 of 2023

Aradhnahomes Private Limited having its registered office at House No. 02, Aashray, 2nd floor, New Punaichak, Off Boring Canal Road West, Patna represented by its Director Anand Mohan Singh (Age 49 years, Sex Male), Son of Lalit Mohan Singh, Resident of House No. 141, Road No. 13, Patel Nagar, Hatia, District- Ranchi, Jharkhand.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Housing and Urban Developments, Government of Bihar, Patna.
2. The Town Commissioner, Patna Municipal Corporation, Patna.
3. Smt. Phulpati Devi Wife of Late Jaggu Thakur Resident of Mohalla- Dhanaut, P.S.- Rupaspur, Town and District- Patna.
4. Sushil Kumar Son of Late Jaggu Thakur Resident of Mohalla- Dhanaut, P.S.- Rupaspur, Town and District- Patna.
5. Shambhu Kumar Son of Late Jaggu Thakur Resident of Mohalla- Dhanaut, P.S.- Rupaspur, Town and District- Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Kanchan Jha, Advocate Mr. Narendra Kumar, Advocate
For the Respondent/s	:	Mr. Subhash Prasad Singh, GA-3 Mr. Dilip Kumar, AC to GA-3
For PMC	:	Mr. Prasoon Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 05-09-2023

Heard Mr. Narendra Kumar, learned counsel appearing on behalf of the petitioner. The State is represented by Mr. Subhash Prasad Singh, learned GA-3. Learned counsel for the Patna Municipal Corporation is also present.

2. The petitioner is a company registered under the Indian Companies Act approached before this Court seeking quashing of the order/notice dated 18.04.2023 issued by the Respondent No. 2 in Misc. Case No. 02 of 2023 (Annexure-12)



whereby the ongoing construction has been stayed without any enquiry and statute.

3. Learned counsel for the petitioner tried to persuade this Court that the impugned notice restraining the petitioner from constructing the apartment has been causing serious prejudice to the petitioner and, as such, before issuance of such order/notice, he must be allowed an opportunity to be heard.

4. On the other hand, learned counsel for the Patna Municipal Corporation submits that the map plan was sanctioned vide Letter No. 11002 dated 09.08.2019 with certain conditions, *inter alia*, that the land in question should be in peaceful possession of the petitioner. In case of any dispute after sanction of the map plan, involving right, title and interest of the petitioner, the map plan shall be deemed to be cancelled. He further submits that there is no illegality in the notice and the same has been issued in terms of Section 319 of the Bihar Municipal Act, 2007.

5. From perusal of the impugned notice as contained in Annexure – 12, it appears that the same has been issued only with a direction to the petitioner to file his response to the charges levelled by the complainant that the petitioner procured the map by suppressing the material facts and till further order



the petitioner is restrained from further construction in terms of Section 319 (3) of the Bihar Municipal Act, 2007.

6. Well settled it is that, normally, the writ Court should not interfere at the stage of issuance of the show-cause notice by the authorities. While issuing notice, what is entertained by the department or authority is only a, *prima facie*, view on the basis of which the notice is to be issued. The final determination is made only on the response preferred by the person, against whom, the notice has been issued. However, there is no complete bar and in exceptional cases, the writ can be entertained against the notice/show-cause, where the same is found to be wholly without jurisdiction or issued by an authority, who is not competent in this regard under the provisions of the statute or if there is allegation of malafide but, this is not the case of the petitioner.

7. In this regard, it would be proper to quote relevant paragraph of the judgment of the Apex Court in the case of **Union of India and Another Vs. Vicco Laboratories** reported in **2007 (13) SCC 270**.

“31. Normally, the writ court should not interfere at the stage of issuance of show-cause notice by the authorities. In such a case, the



parties get ample opportunity to put forth their contentions before the authorities concerned and to satisfy the authorities concerned about the absence of case for proceeding against the person against whom the show-cause notices have been issued. Abstinance from interference at the stage of issuance of show-cause notice in order to relegate the parties to the proceedings before the authorities concerned is the normal rule. However, the said rule is not without exceptions. Where a show-cause notice is issued either without jurisdiction or in an abuse of process of law, certainly in that case, the writ court would not hesitate to interfere even at the stage of issuance of show-cause notice. The interference at the show-cause notice stage should be rare and not in a routine manner. Mere assertion by the writ petitioner that notice was without jurisdiction and/or abuse of process of law would not suffice. It should be prima facie established to be so. Where factual adjudication would be necessary, interference is ruled out.”



8. At this juncture, learned counsel for the petitioner submits that be that as it may, in pursuant to the notice as contained in Annexure – 12, the petitioner has already submitted his response way back on 24.04.2023, but till date no final determination has been made and the work of the petitioner has been continuously suffering, on account of the order of restraintment of further construction.

9. In view of the facts and the position obtaining in law, discussed hereinabove, the present writ application sans any merit. However, considering the fact that the petitioner has already submitted his response, it is expected that the Municipal Commissioner, Patna Municipal Corporation shall take up the matter and dispose of the same expeditiously, as early as possible.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.09.2023.
Transmission Date	NA

