

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13289 of 2022

=====

Smt. Shakuntala devi Wifef Vinod Kumar Resident of Mohalla Manpur,
Kumhar Toli, Titaiganj, Police Station Mufassil, District-Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary, Urban development and Housing Department, Govt. of Bihar, Patna.
2. The Principal Secretary, Urban Development and Housing Department, Govt. of Bihar, Patna.
3. The District Magistrate, Gaya.
4. The Gaya Municipal Corporation through Municipal Commissioner, Gaya Municipal Corporation, Gaya.
5. The Municipal Commissioner, Gaya Municipal Corporation, Gaya
6. The Senior Superintendent of Police, Gaya.
7. The Sub Divisional Magistrate, Gaya.
8. The Circle Officer, Manpur Block, Gaya.
9. The Officer-in-Charge, Mufassil Police Station, Gaya.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Kumar Dhirendra Pratap Singh, Advocate
For the Respondent/s	:	Mr. Subhash Prasad Singh (Ga 3)
	:	Mr. Indeshwari Prasad, AC to GA 3
For the Corporation	:	Mr. Rabindra Pryadarshi, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

3 24-04-2023 Heard learned counsel for the petitioner, learned

counsel for the State along with learned counsel for the

Corporation.

The learned counsel for the petitioner submits that

the petitioner *vide* Sale Deed No. 22910 dated 21.12.2019

purchased land from Vinay Kumar son of Late Mahavir

Prasad under Municipal Area, Gaya, Municipal



Corporation, for construction of residential house. It is next submitted that Vinay Kumar who is an employee of Gaya Collectorate with a view to extract more money, after receiving the entire consideration, started disturbing the petitioner and got a proceeding under Section 144 Cr.P.C. initiated on the said purchased land. It is further submitted that the petitioner got a temporary structure constructed over the said land and started residing and at the same time applied for getting the map sanctioned by the Gaya Municipal Corporation in March 2021, but no information was provided by the Gaya Municipal Corporation to the petitioner with regard to the map which he had applied for getting the map sanctioned, thus again in August 2021, the petitioner applied online for approval of map for getting the house constructed.

The husband of the petitioner received notice dated 27.07.2021 from Gaya Municipal Corporation for removing the illegal construction within 30 days, the petitioner thereafter applied online for getting the map sanctioned, based on which the petitioner got provisional permission to construct on 16.08.2021 (Annexure-3 to the



writ application).

It is next submitted that the husband of the petitioner was informed by Gaya Municipal Corporation that approval will be considered after the mutation of the land, the petitioner accordingly on 02.11.2021 (Annexure 4) represented to the Municipal Commissioner, Gaya bringing to his notice that for approval of the map, mutation is not required. It is next submitted that the petitioner came to know about the institution of an authorized construction Case No. 128/51/2021 on or after 05.08.2022.

The learned counsel next submits that thereafter petitioner came to know that neither the map submitted for approval in March 2021, nor the representation dated 2.11.2021 are on record. It is thus submitted that the petitioner apart from notice dated 20.07.2021 never received any other notice and it was only on 05.08.2022, the petitioner came to know that several notices were issued that is on 20.06.2021, 25.10.2021 and 15.02.2022. The learned counsel submits that the petitioner never received any of the notices issued as recorded hereinabove, apart from the one which was issued on 20.07.2021.



The learned counsel next submits that petitioner is completely unaware that on what basis a direction has been issued for demolishing the construction on the aforesaid land when temporary permission for going ahead with the construction of the house was granted as is evident from Annexure 3 to the writ application. The learned counsel next submits that from perusal of Annexure 3 it would manifest that the same clearly records – Can commence construction as per the plans submitted without waiting for any approval from the Authority (You will be informed regarding the instruction). This procedure is based on the principle of trust therefore, the owner as well as the architect/ license engineer are fully responsible for adhering to the provisions of the Bye Laws in both the building plans and in the actual construction. This procedure does not absolve the urban local authority of the responsibility of the inspection and the authority will have to get the inspection done within 15 days of the date of submission of the plan.

In case, it is found that the permission has been secured through misrepresentation or fraud, the permission may be suspended or revoked by the Authority under



Section 363 (3) of the Bihar Municipal Act, 2007 and/or canceled under Bye Law, 2014 of the Bihar Building Bye Laws, 2014.

The learned counsel thus submits that the provisional permission is clear in its content, it is further submitted that no inspection was ever done of the construction on the purchased land of the petitioner and all of a sudden the petitioner received order dated 15.02.2022 (Annexure 1) directing the petitioner to remove the unauthorized construction failing which the Corporation would demolish the same and would realize the cost of demolition. The learned counsel next submits that the order dated 15.02.2022 which is impugned in the present writ application does not assign any reason that on what basis the authorities came to a conclusion that the alleged construction is not in accordance with the Bihar Building Bye Laws, 2014, when there is no inspection of the site in question.

The learned counsel for the Gaya Municipal Corporation submits that petitioner without availing the remedy of appeal has approached this Court, as such, the



petitioner be directed to move before the Tribunal for availing his remedy available in law.

After hearing the learned counsel for parties, the writ application is disposed of with a direction to the petitioner to file an appeal before the learned Municipal Tribunal.

In the event, if an appeal is filed on behalf of the petitioner by 08.05.2023, the Tribunal shall consider and dispose of the appeal in accordance with law.

The order dated 15.02.2022 shall remain stayed till the first date of hearing before the Tribunal against the order passed by the Municipal Commissioner, Gaya Municipal Corporation.

(Satyavrat Verma, J)

GauravSinha/-

U			
---	--	--	--

