

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9394 of 2016

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Zeenat Praveen, Wife of Mohammad Mahboob Alam Resident of Sabjibagh
Near Karimi Dawakhana Dariapur Road PS Pirmahore, District Patna.

... .. Petitioner/s

Versus

1. The Municipal Building Tribunal II, Patna through its Chairman, Municipal Building Tribunal II, Patna
2. The Commissioner, Patna Municipal Corporation Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Salahuddin Khan, Advocate
For the Corporation : Mr. Prasoon Sinha, Adv.

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 29-08-2023

Heard Mr. Salahuddin Khan, learned counsel
appearing on behalf of the petitioner and Mr. Prasoon Sinha,
learned counsel for the Patna Municipal Corporation.

2. The petitioner, by invoking the extraordinary
writ jurisdiction of this Court under Article 226 of the
Constitution of India, is seeking quashing of the order dated
12.01.2016 passed in Municipal Building Appeal No. 49 of
2014 by the Municipal Building Tribunal II, Patna (Annexure-8
to the writ petition), as also the order dated 15.07.2014 passed in
Vigilance Case No. 56A of 2013 by the Patna Municipal



Commissioner (Annexure-7 to the writ petition) under which direction was given to demolish the construction of the house/shop of the petitioner at her own cost.

3. The short facts, which led to filing of the present writ petition is that the late husband of the petitioner has purchased one old building/land measuring 510 sq. ft. *vide* sale deed dated 02.03.2007 (Annexure-1). Out of the aforesaid building/land, the portion admeasuring 152.65 sq. ft. was sold to one Shaukat Ali *vide* sale deed dated 30.03.2013 by the late husband of the petitioner and the petitioner along with his family has been coming in the peaceful possession of the remaining portion of the land. It is submitted that all of a sudden, the husband of the petitioner received a notice dated 21.09.2013 issued by the Patna Municipal Corporation in Vigilance Case No. 56A of 2013 directing him to file show cause. The aforesaid show cause contains that the report submitted by the Inspecting Team, has found that unauthorized construction was undertaken by the husband of the petitioner in violation of the provisions as contained under the Building Bye-laws and the Municipal Act, 2007 and accordingly the husband of the petitioner was directed to stop the construction work till further order.



4. It is the case of the petitioner that the aforesaid notice was quite vague and no inspection report was attached with the same. The so called inspection of the building in question was done completely behind the back of the petitioner and her late husband. That apart, the Inspecting Team had failed to look into the old municipal record of the holding/building in question where the structure was already constructed even before 1995. It is the further case of the petitioner that the late husband of the petitioner had submitted all the relevant papers including registry paper before the Municipal Authority and nonetheless, the subject matter of the case is a small portion of the shop, thus the husband of the petitioner was answerable only to the remaining portion of the about 3 dhurs of the land. Moreover, it is not a case of any construction, rather after purchase of the land/building in question, the late husband had only renovated it and done some plaster work.

5. Learned counsel for the petitioner has drawn the attention of this Court to the documents relating to the mutation in the name of late husband of the petitioner in the assessment register of the Corporation, after purchase of the building/land in question and the rent receipts duly granted by the Corporation in his favour. During the pendency of the aforementioned Vigilance



Case No. 56A/2013, the husband of the petitioner died on 01.04.2014 and thereafter the impugned order came to be passed on 15.07.2014 by the Patna Municipal Commissioner, obviously, against the dead person. The present petitioner being aggrieved by the order dated 15.07.2014 preferred Municipal Building Appeal No. 49 of 2014 before the Municipal Building Tribunal II. The aforesaid appeal also came to be rejected *vide* order dated 12.01.2016 by the learned Tribunal.

6. Mr. Khan, learned counsel for the petitioner while assailing the impugned order passed by the Municipal Commissioner and duly affirmed by the Municipal Building Tribunal II, has submitted that it has wrongly mentioned that the late husband of the petitioner made a new construction and violated the provisions of the Bihar Municipal Act, 2007. The site inspection was not done in presence of her late husband or any of her family members. There is no provision in Bihar Municipal Act to leave set back in commercial place where area is too small, house/building in question is more than 100 years old and only repairing was being done and as such there is neither erection, construction or development in the existing building. He vehemently submitted that the impugned order passed against the dead person is not at all legal because the



husband of the petitioner died on 01.04.2014 and the order came to be passed on 15.07.2014.

7. He lastly submitted that the impugned order passed by the Municipal Commissioner is wholly illegal and without jurisdiction for the simple reason that the order was reserved on 06.02.2014 by the Municipal Commissioner in Vigilance Case No. 56A of 2013 and the final order was came to be passed by him on 15.07.2014, that too when the husband of the petitioner already died on 01.04.2014. Thus, in any view of the matter, the impugned order is not sustainable in the eyes of law. Heavy reliance has been placed on sub rule 5 of Rule 104 of the Civil Court Rules of High Court of Judicature at Patna. He further placed reliance upon the judgments rendered by the Supreme Court in the case of **R.C. Sharma vs. The Union of India and Ors.** reported in **AIR 1976 SC 2037** and in the case of **State of Bihar vs. Anil Rai** reported in **(2001) 7 SCC 318**. On the strength of the aforesaid statutory provision and the mandate of the law, he once again submitted that under the Municipal Act every authority either judicial or quasi judicial is bound to follow the time limit prescribed under the Civil Court Rules of High Court of Judicature at Patna, which stipulates that if the judgment is not pronounced within 15 days from the date



on which the hearing of the case was concluded, the Court shall record the reasons for such delay in the order-sheet and shall also furnish an explanation for further delay in the order-sheet.

8. *Per contra*, Mr. Prasoon Sinha, learned counsel representing the Patna Municipal Corporation while refuting the contention of the petitioner submitted that from the materials available on record it appears that two plots pertaining to municipal survey plot no. 851, 852 having total area of 510 sq. ft. were purchased in the name of the husband of the petitioner on 02.03.2007 and out of the aforesaid 510 sq. ft. purchased in the name of the petitioner's husband, the husband of the petitioner had sold 152.65 sq. ft. on 30.03.2013 by a registered sale deed. Hence, the total area remained in possession of the petitioner's husband is 357.35 sq. ft. that comes to 33.199 sq. mtrs. Thus, the petitioner is not exempted to make construction without obtaining sanctioned map from the Corporation. Learned counsel by referring to the Note 12 of Clause 20.1.1 of the Building Bye laws, submits that even "in case of very small irregular shape of plot having up to 100 (sq.) meters maximum plot coverage shall be 80% with a minimum front set back 1.5 meter after provision of widening of road up to 6 meters. Maximum height of building on such plot shall be 6.5 meters.



No chajja projection on drainage, water supply line, sewerage line or window of any opening shall be allowed in others land or on the approach road”. He further submits that a team comprising of Engineers, Amins and other officials of Municipal Corporation had visited the plot of the petitioner’s husband where construction of G+1 building was being carried out. Measurement of the building in question was taken by the team in presence of the representative of the petitioner’s husband and a report was submitted describing the deviation found in the construction being carried out in violation of the provisions of the building bye laws. Only on the basis of the aforesaid report, Vigilance Case No. 56A of 2013 was initiated against the husband of the petitioner. He further submits that in response to the notice issued in the aforementioned vigilance case, the son of the petitioner appeared on 20.11.2013, however, despite direction being made to make available papers related to the title of the land in question as well as the papers relating to the sanctioned plan of the building in question, no document/papers was produced and lastly on 22.10.2013 an incomplete show cause along with the sale deed of the land in question was received by post in the office of the Municipal Commissioner. Thereafter, learned counsel representing the petitioner’s husband appeared



in the case and ultimately on 06.02.2014 a show cause was filed and he advanced his argument and placed the grounds as contained in the show cause, which have been fully discussed in the foregoing paragraphs, where they have dealt the case of the petitioner. The learned counsel for the Corporation in order to refute the contention with regard to the delay in passing the impugned order submitted that it is true that the order was reserved on 06.02.2014 by the Municipal Commissioner in the aforenoted vigilance case and finally the order was came to be passed by him on 15.07.2014 whereas the husband of the petitioner died on 01.04.2014 but that cannot be termed as wholly without jurisdiction and illegal as the issue raised by the petitioner is squarely covered by the principle decided by the Hon'ble Apex Court in its judgment reported in **(1995) 5 SCC 115** holding, *inter alia*, that there shall be no abatement by reason of death of either party between the conclusion of the hearing and pronouncement of the judgment, but the judgment may in such case be pronounced notwithstanding the death and shall have the same force and effect as if it had been pronounced before death took place. The aforesaid mandate of the Apex Court is based on the provisions as contained in Rule 6 of Order 22 of the Code of Civil Procedure. He lastly submitted that there



is no infirmity in the order passed by the Municipal Building Tribunal II which has found that the construction/alteration in question is effected in absence of sanctioned map and without leaving minimum required front set back as well as erection of usable projection on the road against the provision of building bye laws, hence the provision of Sections 313 and 314 of the Municipal Act, 2007 is attracted.

9. However, the learned Tribunal while affirming the order of the Municipal Commissioner has also observed that if the petitioner after demolishing the excess portion of construction, which is against Clause 20.1.1. Note 12 of the Building Bye laws comes and files map for *post facto* sanction within three months of this order, the learned Municipal Commissioner shall consider the same as per the building bye laws and other parameters required under the Municipal Act.

10. This Court has given anxious consideration to the submissions made on behalf of the parties and perused the materials available on record. From the submissions made hereinabove, as also in the opinion of this Court, the primary issue posed before this Court, as to whether the order passed by the Municipal Commissioner in Vigilance Case No. 56A of 2013, in view of sub rule 5 of Rule 104 of the Civil Court Rules



of the High Court of Judicature at Patna and the law laid down by the Hon'ble Supreme Court in the case of **R.C. Sharma vs. Union of India** (*supra*) and in the case of **State of Bihar vs. Anil Rai** (*supra*), is sustainable when the order was reserved on 06.02.2014 by the Municipal Commissioner and the same was passed by him on 15.07.2014. It is needless to observe that, if the issue raised hereinabove goes in favour of the petitioner that would be suffice for holding both the impugned orders illegal and no further need would arise to enter into the merits of the case as the issue certainly goes to the root of the case.

11. Undisputedly, from the provisions prescribed in the Bihar Municipal Act, 2007 and the Rules/Regulations made therein, it is manifest that no time limit has been prescribed either for disposal of the case or for passing final order after the order being reserved. It would be relevant to observe that the Municipal Commissioner while exercising his power to hear and dispose of the vigilance case, is exercising a quasi judicial power and the provisions of the Civil Procedure Code or Civil Court Rules of the High Court of Judicature at Patna is not applicable in the *stricto sensu*.

12. The judgments relied upon by the petitioner in the case of **R.C. Sharma** (*supra*) though deals with situation



where the delay has occurred at the level of the High Court in giving its judgment eight months after it had heard arguments. Hon'ble Supreme Court in para-12 of the said judgment has observed that;

“the Civil Procedure Code does not provide a time limit for the period between the hearing of arguments and the delivery of a judgment. Nevertheless, we think that an unreasonable delay between hearing of arguments and delivery of a judgment, unless explained by exceptional or extraordinary circumstances, is highly undesirable even when written arguments are submitted. It is not unlikely that some points which the litigant considers important may have escaped notice. But, what is more important is the litigants must have complete confidence in the results of litigation. This confidence tends to be shaken if there is excessive delay between hearing of arguments and delivery of judgments. Justice, as we have often observed, must not only be done but must manifestly appear to be done”.

13. Further, the Hon'ble Supreme Court, while hearing on the point of similar issue related to delay in pronouncement of judgement in a criminal appeal, in the case of **Anil Rai** (*supra*), laid down the following guidelines which reads as follows:



(i) The Chief Justices of the High Courts may issue appropriate directions to the registry that in a case where the judgment is reserved and is pronounced later, a column be added in the judgment where, on the first page, after the cause title date of reserving the judgment and date of pronouncing it be separately mentioned by the Court officer concerned.

(ii) That Chief Justices of the High Courts, on their administrative side, should direct the Court officers/Readers of the various Benches in the High Courts to furnish every month the list of cases in the matters where the judgments reserved are not pronounced within the period of that month.

(iii) On noticing that after conclusion of the arguments the judgment is not pronounced within a period of two months, the concerned Chief Justice shall draw the attention of the Bench concerned to the pending matter. The Chief Justice may also see the desirability of circulating the statement of such cases in which the judgments have not been pronounced within a period of six weeks from the date of conclusion of the arguments amongst the judges of the High Court for their information. Such communication be conveyed as confidential and in a sealed cover.

(iv) Where a judgment is not pronounced within three months, from the date of reserving it, any of the parties in the case is permitted to file an application in the High Court with prayer for early judgment. Such application, as and when filed, shall be listed before the Bench concerned within two days (Para 10, 21) excluding the intervening holidays.

(v) If the judgment, for any reason, is not pronounced within a period of six months, any of the parties of the said lis shall be entitled to move an application before the Chief Justice of the



High Court with a prayer to withdraw the said case and to make it over to any other bench for fresh arguments. It is open to the Chief Justice to grant the said prayer or to pass any other order as he deems fit in the circumstances.”

14. The Hon’ble Apex Court while enumerating the aforesaid guidelines has also been pleased to hold that the pronouncements of judgment in the civil case should not be permitted to go beyond two months.

15. It is also to be noted that in a similar factual scenario, where a judgment was delivered after a delay of 3-4 months, in the Court, without listing it in the cause list and notice to the parties, the Hon’ble Supreme Court pleased to set aside the impugned order and remit the matter for fresh consideration (***Krishi Utpadan Mandi Samiti, Achenera Vs. Vinod Kumar, (2008) 2 SCC 588***).

16. True it is that delay in disposal of the cases facilitates the people to raise eyebrow, which may shake the confidence of the people in the judicial system. Time without number the delay in delivery of a judgment has been observed to be violation of Article 21 of the Constitution of India.

17. It cannot be countenanced that between the date judgment was reserved and it was delivered, there is a long gap of more than five months, more than what has been observed to



be maximum period for even pronouncement of reserved judgment as per the guidelines enumerated in the case of **Anil Rai** (*supra*).

18. This Court also cannot lose sight of the statutory provisions as prescribed under Civil Court Rules of the High Court of Judicature at Patna, though it is not applicable in *stricto sensu*, but well settled it is, that any equitable principle in the interest of administration of justice cannot be neglected and undervalued, that too when the issue relates to fair and speedy justice as inscribed under Article 21 of the Constitution.

19. In view of the aforesaid settled legal position, this Court has left with no option but to set aside the impugned orders dated 12.01.2016 passed in Municipal Building Appeal No. 49 of 2014 (Annexure-8) as also the order dated 15.07.2014 passed in Vigilance Case No. 56A of 2013 (Annexure-7).

20. The matter is remitted to the Municipal Commissioner, Patna Municipal Corporation to hear the parties afresh after giving proper show-cause notice or opportunity of hearing and pass reasoned and speaking order. Needless to observe that as there is disputed question of facts related to area of land/building and the inspection was allegedly done behind



the back of the petitioner, let a fresh inspection also be done in presence of the petitioner or her representative after giving proper notice for the same. This Court also expects that the entire exercise must be completed within a period of three months from the date of receipt/production of a copy of this order.

(Harish Kumar, J)

Anjani/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	01.09.2023
Transmission Date	N.A.

