

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14991 of 2023

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Municipal Corporation Purnea through its Municipal Commissioner, having its Office at Shivaji Colony, P.S.-K. Hat, N District-Purnea.

... .. Petitioner/s

Versus

1. The Municipal Building Tribunal-1 Bihar, Patna through its Registrar, Having its Office at-Officers Flat, Nehru Path, Punaichak, Patna.
2. Ritwick Prabhat Son of Raj Kumar Singh Resident of Rang Bhoomi Chowk, District-Purnea, Presently Residing at Sita Sadan West of Ramgarh Kothi, Behid Petrol Pump, Rukanpura, District-Patna.
3. The Executive Engineer, Municipal Corporation, Purnea.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Prince Kumar Mishra, Advocate.
For the Respondent no.2	:	Mr.Amit Kumar Anand, Advocate.
For the State	:	Mrs. Manisha Singh, AC to GP-7.

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 30-11-2023

Heard Mr. Prince Kumar Mishra, learned counsel
appearing on behalf of the petitioner and Mr. Amit Kumar
Anand, learned counsel for the respondent no.2.

2. The petitioner has filed the writ application for
the following reliefs:

- (i) For issuance of writ in the nature of certiorari or any other appropriate writ, for quashing the Order dated 01/09/2023 passed in Appeal No. 11 (N)/2022 (hereinafter referred as "impugned order") by learned Court of Bihar Municipal Building Tribunal,-1, Bihar, Patna (hereinafter referred as "learned Tribunal"), whereby and whereunder. Order dated 02/11/2022 passed in Vigilance Case No.01/2022 23 by Municipal Commissioner, Purnea and the Letter No. 2591 dated 12/08/2023 issued by Municipal Commissioner, Purnea, has been stayed till further order - which has effect of giving final relief itself to respondent no.2 itself, without there being any final adjudication on merits as he would start construction, which has been stopped by the learned Municipal Commissioner, Purnea, as it was found to be against the provisions of Bihar Building bye-laws-2014.
- (ii) For issuance of writ in the nature of mandamu, directing and commanding upon the learned Court of Bihar Municipal Building Tribunal, -1, Bihar, Patna, to adjudicate Appeal No. 11 (N)/2022, pending before it, without unnecessary delay, as expeditiously as possible within a period of four weeks.
- (iii) For that Lower Court Records be called from the learned



Court of Bihar Municipal Building Tribunal, -1, Bihar, Patna.

(iv) To any other relief or reliefs, which the petitioners may be found entitled to in the facts and circumstances of the case.

(v) Cost of this litigation.”

3. Mr. Prince Kumar Mishra, learned counsel appearing on behalf of the petitioner submits that the *status quo* was granted till three weeks from the date the Municipal Building Tribunal becomes functional and from the orders, it would appear that vide order dated 07.06.2023, the *status quo* was extended. Both the parties appeared before the Tribunal on several dates in Appeal No. 11(N) of of 2022 and at no point of time, the respondent no.2 found it proper to obtain stay in spite of the liberty granted by this Court vide order dated 22.11.2022.

4. In the meantime, the Municipal Commissioner issued Letter No. 2591 dated 12.08.2023 to the respondent no.2, but the same was for maintaining status quo. Learned counsel admits that the same was not at all required and it can be treated just an information given to the respondent no.2. The concern of the petitioner is that the respondent no.2 had made an application before the Tribunal for seeking stay of the order dated 02.11.2022 passed in Vigilance Case No. 01 of 2022-23 in accordance with the provision of Section 323(1) of the Bihar Municipal Act, 2007 on the verge of conclusion of the final argument on behalf of the respondent no.2.

5. The petitioner is aggrieved by the order granting



stay dated 01.09.2023 to the extent that the Tribunal must not have granted blanket stay to the respondent no.2 in violation of provision of Section 323(4) of the Bihar Municipal Act. Learned counsel in support of his submission has relied upon Para-7 of the law laid down by the Apex Court in the case of **Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others** reported in (1985) 1 SCC 260 and the said proposition have been reiterated in subsequent judgment of the Apex Court in the case of **State of Haryana Vs. Suman Dutta** reported in (2000) 10 SCC 311; **State of U.P. and Others Vs. Ram Sukhi Devi** reported in (2005) 9 SCC 733; **Mehul Mahendra Thakkar Vs. Meena Mehul Thakkar** reported in (2009) 14 SCC 48 and **State of Uttar Pradesh and Others Vs. Sandeep Kumar Balmiki & Others** reported in (2009) 17 SCC 555. Learned counsel further submits that the Tribunal has proceeded in an incorrect manner by granting stay to the respondent no.2 and the order must be interfered by this Court having passed without jurisdiction in violation of the statutory provision of the Act.

6. Per contra, Mr. Amit Kumar Anand, learned counsel has tendered his appearance on behalf of private respondent no.2 and he has submitted that there is no infirmity in the order passed by the Tribunal granting stay to the



respondent no.2 which is in accordance with the liberty granted by this Court vide order dated 22.12.2022 passed in C.W.J.C. No. 17042 of 2022. However, the order of the tribunal is not in accordance with the provision of Section 323(4), he, however, submits that the respondent no.2 is ready to furnish surety as provided under Section 323(4) of the Bihar Municipal Act, 2007 which gives discretionary power to the Tribunal.

7. Ms. Manisha Singh, learned counsel appearing on behalf of the State also supports the submission made on behalf of the respondent no.2 to the extent that the Tribunal has proceeded to grant stay not in accordance with the provision of Section 323(4) of Bihar Municipal Act, 2007 by not directing the respondent no.2 to furnish surety or by way of bank guarantee or any other mode.

8. Heard the parties.

9. The Municipal Commissioner, Purnea vide order dated 02.11.2022 passed in Vigilance Case No. 01/2022-23 directed the respondent no.2 to deposit compounding fee in view of deviation in construction in Block-A as well as had sealed one of the floor of Block-B finding unauthorized construction being in violation of provisions contained in Bihar Building bye-laws 2014.

10. Being aggrieved by the said order, the



respondent no.2 had filed an Appeal No. 11(N) of 2022 on 14.11.2022 before the Municipal Building Tribunal-I, Patna. The Municipal Building Tribunal-I, Patna being non-functional due to lack of quorum, the respondent no.2 moved before this Court by filing C.W.J.C. No. 17042 of 2022 which was disposed of vide order dated 22.12.2022 and the following directions were passed by this Hon'ble Court.

“Accordingly, the writ petition stands disposed of by directing for maintaining of status quo between the parties, as existing today, till three weeks from the date the Municipal Building Tribunal before which the petitioners have filed Appeal No. 11(N) of 2022, becomes functional, during which period it shall be open to the petitioners to seek any interim protection from the said Tribunal.”

11. The parties appeared thereafter and the Respondent No.2 proceeded to argue on several dates. In the meantime, respondent no.2 filed stay petition which was heard and vide order dated 01.09.2023, interim stay was granted to the respondent no.2 by the Tribunal which is, inter alia, as follows:

“As per impugned order block A of building in question as per sanctioned map vide plan case no 125/2019-20, physical verification and permissible FAR, total 3383.72 sq meter build up area is permissible. At present the petitioners have constructed basement, ground floor, first floor and second floor in total area comes 2165.58 sq. meter. This make it clear that petitioner have constructed build up area less than the permissible limit up till now in block A of said building and the permission to petitioner for construction in Block A of building can be given up to 1218.14 sq meter as per map sanctioned to the petitioner. further there is no order to stop the construction work in impugned order dated 02-11-2022 passed in vigilance case no 01/2022-23 but later on appellatant is directed to stop construction work vide letter no 259 dated 12-08-2023. Further impugned order dated 02-11-2022 is passed in vigilance case no 01/2022-23 is the order challenged in this appeal and all the construction of build up



area shall be subject to the final decision of this tribunal. Hence in view of above observation the operation of order of learned municipal commissioner Purnia municipal corporation passed in vigilance case no 01/2022-23 dated 02-11-2022 as well as operation direction / order vide letter no- 259 dated 12-08-2023 passed by learned municipal commissioner Purnia municipal corporation is hereby temporarily stayed till further order of this tribunal. Both the appellant and respondent of this appeal case is directed to conclude their argument at the earliest.”

12. The question for determination is as to whether this Court can interfere with the interim order dated 01.09.2023 passed by the learned Tribunal. The said issue can well be considered if the provision of Section 323 is taken note of which is reproduced hereinafter:

“323 . Order of demolition and stoppage of buildings or works in certain cases and appeal.

(1)Where the erection of any building or the execution of any work has been commenced, or is being carried on, or has been completed without, or contrary to, the sanction referred to in section 314 or in contravention of any of the provisions of this Act or the rules or the regulations made thereunder, the Chief Municipal Officer may, in addition to any other action that may be taken under this Act, make an order directing that such erection or work shall be demolished by the person at whose instance the erection or the work has been commenced or is being carried on or has been completed, within such period, not being less than five days and more than fifteen days from the date on which a copy of the order of demolition with a brief statement of the reasons therefor has been delivered to such person, as may be specified in the order:

Provided that no order of demolition shall be made unless such person has been given, by means of a notice served in such manner as the Chief Municipal Officer may think fit, an opportunity of showing cause why such order shall not be made :

Provided further that where the erection of any building or the execution of any work has not been completed, the Chief Municipal Officer may, by the same order or by a separate order, whether made at the time of the issue of the notice under the first proviso or at any other time, direct such person to stop the erection of such building or the execution of such work until the expiry of the period within which an appeal against the order of demolition, if made, may be preferred under sub-section (3).

Explanation. – In this chapter, “the person at whose instance” shall mean the owner, or the occupier, or any other person who



causes the erection of any building or the execution of any work, including alterations or additions, if any, to be done, or does it by himself.

(2) The Chief Municipal Officer may make an order under sub-section (1), notwithstanding the fact that the assessment of such building has been made for the levy of the property tax on lands and buildings.

(3) Any person aggrieved by an order of the Chief Municipal Officer under sub-section (1) may, within thirty days from the date of the order, prefer an appeal against the order to the Municipal Building Tribunal appointed under section 329.

(4) Where an appeal is preferred under sub-section (3) against an order under sub-section (1), the Municipal Building Tribunal may stay the enforcement of the order on such terms, if any, and for such period, as it may think fit:

Provided that where the erection of any building or the execution of any work has not been completed at the time of the order under sub-section (1), no order staying the enforcement of the order under that sub-section shall be made by the Municipal Building Tribunal unless a surety, sufficient in the opinion of that Tribunal, has been given by the appellant for not proceeding with such erection or work pending the disposal of the appeal (Emphasis supplied).

(5) Save as provided in this section, no Court shall entertain any suit, application or other proceeding for injunction or other relief against the Chief Municipal Officer to restrain him from taking any action, or making any order, in pursuance of the provisions of this section.

(6) Every order made by the Municipal Building Tribunal on appeal and, subject to such order, every order made by the Chief Municipal Officer under sub-section (1), shall be final and conclusive.

(7) Where no appeal has been preferred against an order made by the Chief Municipal Officer under sub-section (1) or where an order under that sub-section has been confirmed on appeal, whether with or without modification, the person against whom the order has been made shall comply with the order within the period specified therein or, as the case may be, within the period, if any, fixed by the Municipal Building Tribunal on appeal, and, on the failure of such person to comply with the order within such period, the Chief Municipal Officer may himself cause the building or the work to which the order relates to be demolished, and the expenses of such demolition shall be recoverable from such person as an arrear of tax under this Act.

(8) Notwithstanding anything contained in this chapter, if the Empowered Standing Committee is of the opinion that immediate action is called for in relation to a building or a work being carried on in contravention of the provisions of this Act, it may, for reasons to be recorded in writing, cause such building or work to be demolished forthwith.”

13. The provisions of Section 323(4) makes it



mandatory to obtain sufficient surety in the opinion of that Tribunal, from the party seeking stay in such cases where appeal is pending.

14. That being the case, the Tribunal has proceeded to pass order without jurisdiction granting stay to the respondent no.2 without adhering to the provision of Section 323(4) of the Bihar Municipal Act, 2007. The reported citation on behalf of the petitioner also makes it mandatory to the statutory bodies while granting interim order, if sufficient surety is not furnished by the persons seeking interim protection, is not sustainable. In case of **Assistant Collector of Central Excise (supra)**, the Hon'ble Supreme Court in Para-7 has made following observations:

“7. Now coming to the facts of the present case, the respondent, Dunlop India Limited is a manufacturer of tyres, tubes and various other rubber products. By a notification dated April 6, 1984 issued by the Government of India, Ministry of Finance (Department of Revenue) in exercise of the powers conferred by Rule 8(1) of the Central Excise Rules, 1944, tyres, falling under Item 16 of the First Schedule to the Central Excise and Salt Act, 1944, were exempt from a certain percentage of excise duty to the extent that the manufacturers had not availed themselves of the exemption granted under certain other earlier notifications. The Department was of the view that the Company was not entitled to the exemption as it had cleared the goods earlier without paying central excise duty, but on furnishing bank guarantees under various interim orders of courts. The Company claimed the benefit of the exemption to the tune of Rs 6.05 crores and filed a writ petition in the Calcutta High Court and sought an interim order restraining the central Excise Authorities from the levy and collection of excise duty. The learned Single Judge took the view that a prima facie case had been made out in favour of the Company and by an interim order allowed the benefit of the exemption to the tune of Rs two crores ninety-three lakhs



and eighty-five thousand for which amount the Company was directed to furnish a bank guarantee, that is to say, the goods were directed to be released on the bank guarantee being furnished. An appeal was preferred by the Assistant Collector of Central Excise under clause 10 of the letters patent and a Division Bench of the Calcutta High Court confirmed the order of the learned Single Judge, but made a slight modification in that the Collector of Central Excise was given the liberty to encash 30% of the bank guarantee. The Assistant Collector of Central Excise has preferred this appeal by special leave. By our interim order dated November 15, 1984, we vacated the orders granted by the learned Single Judge as well as by the Division Bench. We gave two weeks' time to the respondent Company to file a counter. No counter has, however, been filed. Shri F.S. Nariman, learned counsel, however appeared for the respondent. We do not have the slightest doubt that the orders of the learned Single Judge as well as Division Bench are wholly unsustainable and should never have been made. Even assuming that the Company had established a prima facie case, about which we do not express any opinion, we do not think that it was sufficient justification for granting the interim orders as was done by the High Court. There was no question of any balance of convenience being in favour of the respondent Company. The balance of convenience was certainly in favour of the Government of India. Governments are not run on mere bank guarantees. We notice that very often some courts act as if furnishing a bank guarantee would meet the ends of justice. No governmental business or for that matter no business of any kind can be run on mere bank guarantees. Liquid cash is necessary for the running of a Government as indeed any other enterprise. **We consider that where matters of public revenue are concerned, it is of utmost importance to realise that interim orders ought not to be granted merely because a prima facie case has been shown. More is required. The balance of convenience must be clearly in favour of the making of an interim order and there should not be the slightest indication of a likelihood of prejudice to the public interest. We are very sorry to remark that these considerations have not been borne in mind by the High Court and interim order of this magnitude had been granted for the mere asking. The appeal is allowed with costs.**" (Emphasis supplied)

15. The said proposition of law has been reiterated in **State of Haryana Vs. Suman Dutta** reported in (2000) 10 SCC 311; **State of U.P. and Others Vs. Ram Sukhi Devi** reported in (2005) 9 SCC 733; **Mehul Mahendra Thakkar Vs.**



Meena Mehul Thakkar reported in **(2009) 14 SCC 48** and **State of Uttar Pradesh and Others Vs. Sandeep Kumar Balmiki & Others** reported in **(2009) 17 SCC 555**.

16. The writ petition is allowed. The order dated 01.09.2023 granting interim stay in Appeal No. 11(N)/2022 is set aside and quashed.

17. The Tribunal is directed to proceed afresh in the manner prescribed under Section 323 of the Bihar Municipal Act.

18. Taking into consideration the grievance of the petitioner that the respondent no.2 has proceeded to construct the building, the Tribunal must pass order within two weeks from the date of communication of this order and further decide the appeal within four weeks.

19. At this stage, parties have informed this Court that the appeal shall be finally heard and concluded within a period of one month.

(Purnendu Singh, J)

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AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	01.12.2023
Transmission Date	N.A.

