

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1634 of 2020

Rajoo Rajak Son of Late Babu Lal Rajak, Resident of Flat No. 004, Ground Floor, Gulmohar Apartment, South of Gandhi Maidan, Shalimpur Ahra, P.S.- Gandhi Maidan, Town and District- Patna - 800004, Presently Resident of Kamalabari, P.O. and P.S.- Duliajan, District- Dibrugarh, Assam.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Department of Urban Development and Housing Govt. of Bihar, New Secretariat, Patna.
2. Patna Municipal Corporation, Dakbunglow Road, P.O.- G.P.O., P.S.- Kotwali, Patna and District Patna, Represented through its Municipal Commissioner, Patna Municipal Corporation, Dakbunglow Road, P.O. G.P.O., P.S.- Kotwali, Town and District- Patna.
3. Khalda Sofi, Wife of Md. Ali Akbar, resident of Flat No. 404, Gulmohar Apartment, South East of Gandhi Maidan, Salimpur Ahra, P.S.- Gandhi Maidan, Town and District- Patna.
4. Ms Rubina Imam, D/o Bibi Rajiya Imam, W/o Dr. Jawed Iqbal, resident of - Rajiya Villa, South East of Gandhi Maidan, Salimpur Ahra, P.S. Gandhi Maidan, Town and District- Patna- 800004.
5. Ashiana Housing Limited, having its registered office situated at 11 G Everest, 46/C, Chowringhee Road, Kolkatta- 700071, West Bengal, Represented through its Managing Director, namely Vishal Gupta.
6. Vishal Gupta, Managing Director, Ashina Housing Limited, having its registered situated at - 11 G Everest, 46/C Chowringhee, Road, Kolkatta-700071, West Bengal.
7. Ashiana Housing Limited, Limited, having its Head Office situated at 304, Southern park, Saket Diwtrict Centre, Saket new Delhi - 110017, represented through its Managing Director, namely Vishal Gupta.
8. Vishal Gupta, Director, Ashiana Housing Limited, having its Head Office situated at - 304, Southern Park, Saket District Centre, Sket New Delhi-110017.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Chitranjan Sinha, Sr. Advocate Mr. Ravindra Kumar Shukla, Advocate
For the State	:	Mr. Yogendra Pd. Sinha (AAG-7) Mr. Rakesh Ambastha, AC to AAG-7
For Res. No. 3	:	Mr. Harun Quarashi, Advocate Mr. Saobiya Musktaque, Advocate
For the PMC	:	Mr. Bindhyachal Singh, Sr. Advocate Mr. Vipin Kumar Singh, Advocate



CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT

Date : 07-08-2023

Heard Mr. Chitranjan Sinha, learned Senior Counsel
duly assisted by Mr. Ravindra Kumar Shukla for the petitioner
and Mr. Vipin Kumar Singh who represents the Patna Municipal
Corporation.

*The petitioner has moved
before this Court for the following
reliefs:*

*(i) for issuance of a writ in
the nature of certiorari to quash the
order dated 08.10.2018 passed by
Commissioner, Ld. Municipal Patna
Municipal Corporation, in the
Miscellaneous Case No. 2/2012
(Khald Soofi Vrs. BB Rajiya Imam'
and Another.) whereby the Ld.
Municipal Commissioner has directed
B.B. Rajiya Imam & Director,
Ashiyana Housing Ltd. to demolish
and removed (i) (ka) (two) Flats
situated in the Ground Floor and two*



Flats on the Fifth Floor Building (Kha) temporary Shed on the back side Terrace Floor of the Building (Ga) constructed in the back side of Set back of the Building. (ii) To deposit Rs. 5,00,000/- as penalty under section 315 of the Bihar Municipal Act, 2007. (iii) To comply the order within 30 days and to submit compliance report. (iv) Further directed that after compliance of the order as under para (i) and (ii) they may submit revised map which can get approval after following approval related process (v) directed Planning Director, that Town after compliance report and after spot verification and after inquiry he will take decision with regard to approval on revised map;

(ii) for issuance of an appropriate Fiat in the nature of Mandamus to the concerned



Respondents not to demolish the petitioner's Flat till petitioner who is occupier for the last two decades is not given an opportunity of being heard;

(iii) to adjudicate and held that any order passed Municipal Commissioner without by providing any opportunity of being heard to the petitioner is thoroughly illegal, unjustified and bad in Law as much as against the provision incorporated under the Municipal Act itself.

2. The case in short is/are that one Rajiya Imam, the land owner executed a development agreement in Aashiyana Housing and Finance (India) Limited, Kolkata (henceforth, for short, 'the Developer'). Accordingly, Gulmohar Apartment came into existence near South Gandhi Maidan, Patna.

3. The case of the petitioner is that he purchased Flat no. 004 (ground floor of the Gulmohar Apartment) from one Ashok Kumar Singh, who was in possession of the flat which thereafter, came in his full possession, pursuant to the sale deed



dated 31.03.2001 (Annexure-2 to the petition).

4. Subsequently, the Vigilance Case No. 02 of 2012 was initiated against 'the Developer' by the Patna Municipal Corporation (henceforth, for short 'the PMC') in which after hearing the parties, finally an order was passed vide memo no. 9310 dated 09.10.2018 by the Municipal Commissioner (as also vide memo no. 3169 dated 07.03.2019) by which after declaring that the building has been illegally constructed, the direction was to demolished the same.

5. As the petitioner being one of the flat owner and a stakeholder, preferred Appeal no. 33(North)/2019 before the Appellate Authority, the Municipal Building Tribunal, Bihar, Patna (Annexure-7 to the I.A. petition).

6. The same was taken up on 07.01.2020 after after holding that the petitioner is neither the land owner nor the builder, but only a purchaser of the flat, he cannot be allowed to prefer any appeal as also since the land owner has already preferred appeal vide Appeal No. 29(N)/2019, any order passed will have bearing on him too, the prayer of the petitioner to consider appeal under Section 323 of the Bihar Municipal Act, 2007 (henceforth, 'the Act 2007') was rejected.

7. Aggrieved, this petition.



8. Learned Senior Counsel submits that he being one of the stakeholder, he has the right to appeal before the Municipal Building Tribunal under Section 323(3) of the Bihar Municipal Act, 2007.

9. He has taken this Court to the said Section 323(3) which read as follows:

(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.

10. He as such submits that the Municipal Building Tribunal, Bihar, Patna failed to look into the provision while rejecting the case of the petitioner.

11. It is his further submission that the Appeal no. 29(N)/2019 filed by the land owner is still pending and his case could have been tagged and he could have been heard before passing of the order as he is entitled to be heard under Section 323(3) of 'the Act 2007'.

12. Learned counsel for the Patna Municipal Corporation, Mr. Vipin Kumar Singh, having gone through the



said section 323(3) of 'the Act 2007' concedes that the petitioner has a right to appeal.

13. This Court has also gone through Section 323(3) of 'the Act 2007' and the same is very clear that: any person aggrieved by the order can prefer appeal. Thus, the petitioner being one of the stakeholder had every right to prefer the appeal being directly affected by the order dated 08.10.2018 passed by the Patna Municipal Corporation. The Appellate Authority clearly erred in dismissing the appeal.

14. Considering the aforesaid facts, the petition stands allowed. The order dated 07.01.2020 in Appeal No. 33 (North)/2019 passed by the Municipal Building Tribunal, Patna stands quashed. The petitioner to move before the Municipal Building Tribunal, Bihar, Patna once again.

15. If an appeal is preferred by the petitioner within four weeks from today, the Municipal Building Tribunal, Bihar, Patna shall see to it that the limitation petition is considered in the light of the fact that his case was pending before the writ Court.

16. The said appeal if filed within the aforesaid period, be tagged alongwith Appeal no. 29(N)/2019 and heard together so that the Appellate Authority can come to a



conclusion at an earliest.

17. The writ petition stands disposed of with the
aforesaid observations.

(Rajiv Roy, J)

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AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	10.08.2023
Transmission Date	

