

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2056 of 2024

Sanjay Dayal S/o Late Jugeshwar Dayal, Road No. - 6 A, Rajendra Nagar,
Patna - 16, District - Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through The Secretary, Urban Development and Housing Department, Vikash Bhawan, Patna.
2. The Patna Municipal Corporation, through its Municipal Commissioner, Maurya Lok, Patna.
3. The Chairman, Municipal Building Tribunal - I, Flat no. - 82/40, Officers Flat, Bailey Road, Patna, Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Jai Ram Singh, Advocate
For the Respondent/s : Mr. Prasoon Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

2 02-07-2024 Heard Mr. Jai Ram Singh, learned Counsel for the

petitioner and Mr. Prasoon Singh representing the Patna

Municipal Corporation.

2. The present petition has been preferred for the:-

*issuance of writ in the nature of
CERTIORARI for setting aside the order dated
30.08.2018 passed by Learned Municipal
Commissioner in vigilance case no-1(A)/2016
particularly regarding for imposition of five times
"Arth dand" of Rs 36,39,840/- (Thirty six lakh
thirty nine thousand Eight hundred forty only) over
and above the calculation of compounding and
condonation fee of Municipal Commissioner as
well as order dated 17.08.2023 passed by learned
Municipal Building Tribunal-I (hereafter referred
as Tribunal) in Appeal no-8(N)/2018, who has held
not to interfere in this regard being beyond its
jurisdiction and further pray for direction to the
Respondent No-2 to make necessary calculation*



and ensure the refund of the amount which has been realized in the light of the order passed by the Municipal Commissioner, Patna Municipal Corporation, in Vigilance Case no-1(A)/2016 dated 30.08.2023 and affirmed by the Municipal Building Tribunal-1 vide order 17.08.2023 in Appeal No-8(N)/2018.

3. It is the case of the petitioner that respondent-authorities are resorting to this five times “Arth dand” despite having no legal sanctity and has taken this Court to an order relating to Arun Kumar Singh vs. Patna Municipal Corporation (C.W.J.C. No. 5393 of 2008) disposed of on 11.10.2012 and concluding part read as follows:-

“Matter was adjourned on several occasions. Counsel representing Patna Municipal Corporation was directed to point out the statutory provisions from where power has been derived. After much delay and deliberation, the best piece of evidence which they have produced in the counter affidavit, is a so-called resolution of the Empowered Standing Committee, which has been annexed as Annexure-C.

Learned senior counsel Mr. Lalit Kishore appearing on behalf of the Corporation has tried to prevail upon the court that it is not a case of no power having been vested in the Municipal Commissioner to pass such an order. He was only



enforcing what has emerged from the decision of the Empowered Committee. However, on being questioned closely as to root entry in the statute or the Act, from where such resolution could be adopted and power to impose fine, five times the condonation fee has not been pointed out.

The Court is of the opinion that in view of above, obviously the decision to impose fine five times the condonation fee is a decision exceeding the power and jurisdiction of the Municipal authorities without any statutory or legal force behind it.

Writ is allowed. Annexure-4 dated 18.09.2007 stands quashed.”

4. He submits that despite the aforesaid order passed in the year 2012, the respondent-Corporation is resorting to the same *modus operandi* and in continuation of that has come this order dated 30.08.2018 in Vigilance Case No. 01A of 2016 in which the five times fine of Rs. 36,39,840/- was imposed upon him which he paid under protest (Annexure-4 to the petition).

5. An appeal was preferred vide Appeal No. 08(N) of 2018 dated 17.08.2023 before the Municipal Building Tribunal-01, Patna which was partly allowed but so far as the imposition of five times “Arth dand” is concerned, the same was not interfered with (Annexure-5 to the petition).



6. Learned Counsel for the petitioner has taken this Court to an order of this Court in a case of **Firoz Khan vs. The State of Bihar & Ors.** (C.W.J.C. No. 11382 of 2022, disposed of on 07.08.2023) relating to the same issue and paragraphs 8 to 10 read as follows:-

“8. As such, the order dated 28.5.2019 by the Municipal Commissioner of 'the PMC' in Vigilance Case No. 46(B)/2016 (Annexure-4) and order dated 22.6.2022 in Appeal No. 19(N) of 2019 (Annexure-5) are hereby set aside.

9. The Municipal authorities are free to decide the matter afresh after giving proper opportunity to the petitioner.

10. The writ petition stands disposed of with aforesaid observations.”

7. He further took this Court to another order of **M/s Yunus Construction Pvt. Ltd. vs. The Patna Municipal Corporation and Ors.** (C.W.J.C. No. 5033 of 2023, disposed of on 29.08.2023) in which the Court again interfered and further observed that once the Municipal Commissioner, Patna Municipal Corporation makes necessary calculation, the petitioner shall be entitled to the refund.

8. Paragraph-9 onwards read as follows:-

9. It is needless to observe that the



respondent no.2, Municipal Commissioner, Patna Municipal Corporation, shall make necessary calculation and ensure the refund of the amount which has been realized in the light of the order passed by the Municipal Commissioner, Patna Municipal Corporation, in Vigilance Case No.04A/2016 dated 10.09.2016 (Annexure P/5) and affirmed by the Municipal Building Tribunal-1 vide order dated 15.03.2022 (Annexure P/7).

10. Needless to observe that the aforesaid exercise must be completed within a period of six weeks from today.

11. At this juncture, Mr. Katriar, learned counsel for the petitioner submits that till date occupancy certificate has also not been issued in favour of the petitioner.

12. In response to the aforesaid submission, Mr. Sinha, submits that though there is no such prayer in the present writ petition, but the petitioner is at liberty to approach the concerned authority and if there would not be any impediment, the same would be issued in favour of the petitioner.

13. This order, accordingly disposes the present writ petition.”

9. Mr. Prasoon Sinha, learned Counsel represent the Patna Municipal Corporation. Having gone through the facts of the case as also orders passed by Patna High Court right from



the year 2012 till the present one, he submits that the matter will be taken up by Municipal Commissioner, Patna Municipal Corporation and necessary order shall be passed.

10. The orders in question i.e. the order dated 30.08.2018 passed by the Municipal Commissioner, Patna Municipal Corporation in Vigilance Case No. 01A of 2016 as also the consequent order dated 17.08.2023 of the Municipal Building Tribunal-I so far as the payment of fine part is concerned, the same are hereby quashed.

11. The Municipal Commissioner, Patna Municipal Corporation will take up the matter immediately, pass a reasoned order and refund the amount to the petitioner after calculation which he had paid under protest. The entire exercise has to be completed in next four months.

12. The writ petition stands disposed of with the aforesaid observation.

(Rajiv Roy, J)

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