

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5637 of 2024

Ram Vinay Sinha Son of Late Pulgenda Sinha Resident of Flat No. 1, Ground Floor, Laxmi Apartment, Rai Ram Briksh Path Nehru Nagar, P.S.- Patliputra, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Additional Chief Secretary, Urban Development Department, Govt. of Bihar, Patna.
2. The Patna Municipal Corporation through Municipal Commissioner, Patna.
3. The Executive Engineer, Nutan Rajdhani Division (North), Patna Nagar Nigam, Patna.
4. The Vigilance Officer, Patna Municipal Corporation, Patna.
5. Surendra Kumar Singh Son of Late Harbansh Narayan Singh Director of M/s Sangita Housing Development Pvt. Ltd. Resident of Flat No. 401, Laxmi Apartment, Rai Ram Briksh Path, Nehru Nagar, P.S.- Patliputra, District- Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Virendra Kumar, Adv.
For the Respondent/s	:	Government Pleader 6
For Respondent No. 5	:	Mr. Shravan Kumar, Sr. Advocate. Mr. Krishna Kumar, Advocate
For PMC	:	Mr. Prasoon Sinha, Adv.

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

3 03-09-2024 Heard Mr. Virendra Kumar, learned counsel for the petitioner, Mr. Shravan Kumar, learned Senior Counsel appearing for respondent no. 5 and learned counsel appearing for Patna Municipal Corporation.

2. The present writ petition has been preferred for the following relief(s):

“(i) for issuance of a writ in the nature of Mandamus directing the respondent Authorities to remove the illegal construction like saloon etc.



Upon the common place of Laxmi Apartment, Nehru Nagar, Patna as respondent no. 5 who is builder has forcibly usurped all the common space like car parking area and others;

(ii) for issuance of an appropriate writ directing the respondent-authorities to take action on the basis of inspection report of Patna Municipal Corporation, Patna dated 18.10.2016 and remove the illegal construction and release the common space which has been illegally usurped by the respondent no. 5.”

3. The petitioner is one of the owner of the flat with the name Laxmi Apartment, Nehru Nagar, Patna and is aggrieved by the fact that respondent no. 5, who is the land owner, has put iron grill on the way to roof, as a result whereof, none of the flat owners can go to the roof of the building and/or clear their water tanks causing ailments. It is his further submission is that even the parking space has been encroached and a saloon has been constructed.

4. In that background, on 09.07.2024, the following order has been passed:-

“ Heard learned counsel for the petitioner, State as also the Patna Municipal Corporation.

2. The present writ petition has been preferred for the following relief(s):

“(i) for issuance of a writ in the nature of Mandamus directing the



respondent Authorities to remove the illegal construction like saloon etc. Upon the common place of Laxmi Apartment, Nehru Nagar, Patna as respondent no. 5 who is builder has forcibly usurped all the common space like car parking area and others;

(ii) for issuance of an appropriate writ directing the respondent-authorities to take action on the basis of inspection report of Patna Municipal Corporation, Patna dated 18.10.2016 and remove the illegal construction and release the common space which has been illegally usurped by the respondent no. 5.”

3. Learned counsel for the petitioner submits that he being an elderly person is unable to cope up with the acts of the builder who has created obstruction prohibiting all the flat owners to visit the roof of the building and they are not even able to clear their water tanks causing ailments. The further submission is that in the parking area, a saloon has been constructed which is currently hampering their movement.

4. In the opinion of this Court, that is a serious issue and the Patna Municipal Corporation, which has sanctioned the map has to look into it whether the builder has deviated or not. If the contention of the petitioner is correct, he being owner of the flat is entitled to visit the roof and no one much less the builder can obstruct/create hindrance in this regard. Similarly, the parking area has to be free of any hindrance as in case of emergency, it may hamper resene work.

5. Let the Patna Municipal



Corporation file parawise counter affidavit which must include the recent inspection report to show:

(i) whether all the flat owners have access to the roof or not ?

(ii) whether any construction has been made in the parking area or not ?

(iii) any other deviation has been made by the builder or not ?

6. Issue notice to the respondent no. 5 through both processes i.e. ordinary as well as registered cover with A/D for which requisites etc. must be filed within a period of two weeks failing which the application shall stand rejected without further reference to the Bench.

7. In case, the order passed is not complied and the matter accordingly stands dismissed, subsequently, the same be posted under the heading 'To be Mentioned' alongwith 'Tied Up' matters before the Bench on the 'TIED UP' day.

8. As prayed for, list this case after six weeks enabling the Patna Municipal Corporation to file counter affidavit along with the recent inspection report.

9. Failure to do so, the respondent No. 2, the Patna Municipal Corporation shall be paying a cost of Rs. 5000/- to the Patna High Court Services Committee.

5. Pursuant thereto, the respondent no. 5 has also appeared through the learned Senior counsel, Mr. Shravan Kumar while Patna Municipal Corporation has filed counter affidavit. Paragraph-16 reads as follows:-



16. That it is humbly stated that the directions issued by the Hon'ble Court by the order dated 09.07.2024 has fully been complied with and a Site Inspection Report dated 30.07.2024 has been prepared enclosing therewith a site inspection sketch under the joint signatures of the Director, Urban Planning, PMC, Executive Engineer, Patliputra Division, PMC, Assistant Town Planning Supervisor, Urban Planning, PMC and the Amin, Urban Planning, PMC.

6. The inspection report dated 31.07.2024 which has been duly signed by the Director, Urban Planning, the Executive Engineer, Patliputra Division amongst other of Patna Municipal Corporation have found that :

(i) iron grill has been fixed on fourth floor and as such, there is no access to the roof,

(ii) there is construction in the parking area and

(iii) some construction has been made in deference to the sanctioned map (Annexure R2/B Series).

7. It has been submitted by the learned counsel for the petitioner as also by the learned Senior Counsel that a **Vigilance Case No. 43B/2016** which was being heard by Municipal Commissioner, Patna Municipal Corporation, has taken note of the report, the case was last heard on 28.08.2024 and the order has been reserved. The bare perusal of the case



would show that it is awaiting final order of the Municipal Commissioner for the last eight years.

8. The people, who are residing in it, are suffering, the report is there, it is expected that the Municipal Commissioner, Patna Municipal Corporation will pass a reasoned order taking note of the pleadings/documents made available by both the parties as also the inspection report dated 31.07.2024 and decide the matter at the earliest and at best by 30.09.2024.

9. The writ petition stands disposed of.

(Rajiv Roy, J)

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