

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8398 of 2024

Rita Biswas Wife of - Late Shri Manoj Kumar Biswas Resident of - Krishna Gopal Das Road, P.S. and P.O- Baruipur, Kolkata- 700144, Permanent resident of Das Kutir, Mohalla Lohanipur, Police Station Kadamkuan, District Patna, Bihar.

... .. Petitioner/s

Versus

1. The Patna Municipal Corporation through its Commissioner, Maurya Lok Complex, Patna.
2. The Commissioner, Patna Municipal Corporation, Maurya Lok Complex, Patna.
3. The Director (Town Planning), Patna Municipal, Maurya Lok Complex, Patna.
4. Sri Shekhar Das, Son of Late Tarak Chandra Das, Resident of Mohalla- East Lohanipur, "Das Kutir" P.S- Kadamkuan, District- Patna-8000003.
5. Smt. Junita Dakshy, Wife of Sri Subhashish Dakshy, Indiabulls Greens, Building No. 11F, Flat No. 2102, Marigold CHSL Sawala- Apta Road, (Rasayani Road), Kon, Panvel Patalganga MIDC, Maharashtra 410207.
6. M/S Sankalp Construction, Ground Floor, Das Kutir, East Lohanipur, Kadamkuan, Patna- 800003 through its partner Mr. Rupesh Kumar Singh.
7. Mr. Rupesh Kumar Singh, Son of Sri Vidya Prasad Singh, Partner of "Sankalp Construction", Resident of Road No. 13B, Rajendra Nagar, Patna, Bihar, Pin- 800016, Presently at 'Das Kutir', Mohalla Lohanipur, Police Station Kadamkuan, District Patna, Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Kumar Priya Ranjan, Adv. Mr. Sandeep Kumar, Adv. Mr. Sudarshan Bharadwaj, Adv.
For the PMC	:	Mr. Prasoon Sinha, Adv.
For Builder	:	Mr. Binod Kumar Singh, Adv. Mr. Ankita Roy, Adv. Mr. Vagisha Pragya, Adv.
For respondent no. 5	:	Mr. Raj Singh, Adv.
For respondent no. 4	:	Mr. Harendra Prasad Singh, Adv. Mr. Surajdeonarayan Singh, Adv.

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

3 09-09-2024 Heard the parties.

2. The present writ petition has been preferred for the



following relief(s):

“(i) to issue an appropriate writ, order or direction in the nature of certiorari for quashing the sanctioned/approval letter No.10105 dated 06.08.2021 of auto map application no. PMC BPAS-00646/2020/BP and plan case no. P-/PRITHVIPUR-PRN-IB+G+5/246/2020 in favour of the respondent no. 6 and 7, as the said map and plan was sanctioned/approved in violation of clause ड०, (झ) and (ञ) of the sanctioned/approval letter No.10105 dated 06.08.2021;

(ii) further, appropriate writ, order or direction in the nature of mandamus commanding the Respondent 1 set to Consider the complaint of the petitioner dated 04.09.2023 and reminder dated 19.02.2024 and cancel the said plan under section 14 of the Bihar Building Bylaws;

(iii) the Hon'ble Court may further adjudicate and hold that the respondents 4, 6 and 7 have obtained sanction/approval by suppressing the fact that respondent no.4 is not the only legal heir of his deceased father, rather co-sharer, and the development agreement had been executed as sole land owner with respondent no.6, 'Sankalp Construction' on 30.09.2019 by way of



suppressing the material fact in connivance with respondent no.7, and that too without knowledge and consent of the petitioner, who is the 1/3 co-sharer of the property.

iv) To grant any other relief or reliefs for which the Petitioner may be found entitled to in the facts and circumstances of the case.”

3. Pursuant to the last order passed on 22.07.2024, the respondents including the brother and sister (respondent nos. 4 and 5 respectively) have appeared.

4. The dispute relates to 'Das Kutir', Lohanipur, Patna and Manik Chandra Das left this world leaving behind his sons Tarak Chandra Das, Naba Kishore Das, Monmatha Das and Girdhari Das beside three daughters namely Kamla Bose, Sandya Mitra and Sipra Sarkar who jointly inherited the property.

5. The petitioner is daughter of late Tarak Chandra Das while respondent no. 4 and 5 are her brother and sister respectively.

6. Pursuant to the **Partition Suit No. 86 of 2022** in which a decision came on **22.11.2023** from the Court of learned **Sub-Judge-IV, Patna Sadar**, the contention of the petitioner is that she is entitled to one-third of the share in the



apartment/shopping complex which came in the share of her father, Tarak Chandra Das but the same is being denied.

7. A counter affidavit has been filed on behalf of the brother, respondent no. 4 and beside the details on genealogy, it has been put on affidavit in para 11 that he is ready to give one-third of the share but due to the repeated litigation, the other 13 share-holders are suffering which include the other sons of later Manik Chandra Das. **Paragraph 11** of the said affidavit signed by the **respondent no. 4** on **07.08.2024** read as follows:

“Para 11:- That it is humbly stated that the present writ petition is filed on 13.05.2024 when pursuant to the order dated 09.11.2023 on the I.A. No.02 of 2023 filed by the petitioner-Rita Biswas in her Civil Misc. Case No.982 of 2023 and order was passed that the respondents will file an application admitting the share of the petitioner then the learned Sub-Judge will pass a decree on admission so that further time is not vested. It is also ordered that the decree, on admission, shall be passed on the day when the defendant/respondent filed an application admitting the share of the plaintiff/petitioner and the matter was put up on 23.11.2023. Accordingly, a petition dated 10.11.2023 on affidavit was filed under Order-XII Rule 6 C.P.C. admitting the 1/3rd



share of the petitioner in "the developed property in the share of Tarak Chandra Das and accordingly, by order dated 23.11.2023 the judgment on admission was passed as stated earlier. It is pertinent to state here that on the petition of defendant/respondent dated 10.11.2023 the petitioners counsel has given no objection. Thereafter, the petitioner has filed the present writ petition on 13.05.2024 after obtaining decree in Title Partition Suit No.86 of 2022 with her consent passed on admission on 22.11.2023. Thus, the present writ petition is misconceived and filed only to illegally harass the answering respondents with oblique motive to illegally extract money. Once, the petitioner has accepted the consent decree passed on admission by a Court of Competent Jurisdiction, then she cannot challenge the registration of the project or cannot seek a relief for cancellation of the sanctioned plan because, if such relief is granted then the aforesaid decree obtained by her (at her instance on the direction of the Hon'ble High Court), will be nullified in the eye of law, which is not permissible in law. Furthermore, the sanctioned map is related to the land of 14 persons, who had separate houses and residents over that area. The answering



respondent is annexing some photographs of the demolished separate residential houses, garage, servant quarter, etc. for kind perusal of the Hon'ble Court. None of the 14 persons have any objection till date at any Forum. Therefore, the map cannot be cancelled at the instance of the petitioner, who is only sharer of a small portion of the construction area. It is pertinent to state that the respondent no.4 along with respondent no.5 and the petitioner has been allotted in the constructed area. There were seven permanent structures (Buildings and Garage) existing over the land under four registered development agreements. Five buildings and one garage had been completely demolished and it took some time. Thereafter, seventh building is also substantially demolished and at that stage the writ petition is filed. The photographs of the previous buildings and garage are annexed in this counter affidavit. It is needless to say that after demolition 80% of structural development has already completed over the land in question.”

8. In **Paragraph 16**, again, he has given an undertaking of parting with one-third of his father's share, but the contention is that without completion of construction work,



how can it be given. Paragraph 16 of the affidavit read as follows:

“Para 16:- That it is humbly stated that the project in question is a big project constituting the shares of the entire family members of the descendants of Manik Chandra Das and Purna Chandra Das and it does not belong only to the family members of Tarak Chandra Das, whose descendants had been allotted only half portion of the second floor of the building, having four bedrooms, kitchen, store, bath and varamda etc. with half portion of the vacant land, total Area-6127 sq.ft. that is 3063.5 sq.ft. At the time of filing of the suit, writ petitions, Civil Misc. Applications and RERA the substantial portion of the old building including the aforesaid area belonging to the father of the petitioner has already been demolished. None of the heirs and descendants of the aforesaid two ancestors have raised any grievance at any point of time in respect of the construction, plan, sanction plan or share in the developed property except the petitioner. It is pertinent to state here that approx. 80% of the structure under the development agreement have been completed.”



9. Learned counsel for the petitioner submits that though the petitioner has serious apprehension that she may be denied the share, he concede that after putting the same on affidavit, the respondent no. 4 cannot escape from it. The petitioner is rightly entitled to the one third share of the father, pointed out learned counsel.

10. The petitioner rightly is entitled to the one-third share allotted to late Tarak Chandra Das by the family members through their mutual partition in the property.

11. Learned counsel appearing on behalf of the respondent nos. 6 and 7, the builder of the apartment submits that the contention that residential complex/shopping complex is/are being constructed is thoroughly misconceived inasmuch as the sanction map clearly shows that it is for residential purposes.

12. This Court is not going into the merit of the case. In the Partition Suit, one-third of the share of late Tarak Chandra Das has been allotted to the petitioner, who in turn inherited it from his father late Manik Chandra Das. The petitioner had apprehension and moved before this Court, the respondent no. 4, brother has appeared and as per paragraphs 11 and 16, has made a categorical statement that he is ready to part with one-third of



the share within the campus of 'Das Kutir'.

13. In that background, appreciating the efforts taken by all the parties including Mr. Prasoon Sinha, who represent the Patna Municipal Corporation and incorporating the aforesaid paragraph of the brother, the writ petition is disposed of. The interim order stands vacated.

(Rajiv Roy, J)

Vijay Singh/-

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