

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10696 of 2022

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Sadar Harbhajan Singh Son of Late Sardar Darshan Singh, Resident of Mohalla- North Mandiri, P.S.- Budha Colony, District- Patna, at present resident of Boring Canal Road, Mitra Vihar Colony, M.M.R. 15, P.S.- S.K. Puri, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Urban Development Department, Bihar, Patna.
2. Chief Municipal Commissioner, Maurya Lok Complex, P.S.- Kotwali, Patna, District- Patna.
3. Minicipal Building Tribunal-01, through the Chairman, Bihar, Patna.
4. Sri Akhilanand Dubey, Chairman, Municipal Building Tribunal, Bihar, Patna.
5. Sri P.K. Choudhary, Member of Municipal Building Tribunal-01, Bihar, Patna.
6. Sri Amiranjan, Member of Municipal Building Tribunal-01, Bihar, Patna.
7. Shashi Bhushan Sinha, Son of Late Chandrika Prasad, CMD, Tirupati Homes Pvt. Ltd., Registered officer Commercial mall, A.G. Sector, Tirwanti City, Khagul, Panapur, District- Patna.
8. Patna Municipal Corporation, Maurya Lok Complex, P.S.- Kotwali, Patna, District- Patna through the Chief Municipal Commissioner.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Yogendra Mishra, Sr. Advocate
	:	Ms. Swati Mishra, Advocate
For the Respondent/s	:	Mr. Yogendra Prasad Sinha, AAG 7

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

4 01-02-2024 Heard Mr. Yogendra Mishra learned Senior Advocate, along with Ms. Swati Mishra, learned counsel appearing on behalf of the petitioner and Mr. Yogendra Prasad Sinha, learned AAG-7 appearing on behalf of the State.

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

i. For an appropriate writ/order/direction, quashing the order dated 15.06.2022 as contained in Annexure-5 declaring the same as illegal and void, be issued;

ii. For an appropriate writ/order/direction for immediate demolition of the building as per order of the respondent no.2 and 3, be issued;

iii. Any other writ/order/direction which is found proper by this Hon'ble Court to which the petitioner is found, be issued.

3. The petitioner had approached the Municipal Commissioner by filing an application dated 14.05.2022 alleging that map has been sanctioned by the Municipal Authority in an illegal manner without listing the site and survey conducted on the plot, the application is annexed as Annexure-4 to the writ petition. From the perusal of the Annexure-4 it appears to be incomplete in absence of cause title of the said application and adjudication not possible in absence of opposite party.

4. Learned counsel appearing on behalf of the petitioner submits that order dated 15.06.2022 has been passed behind his back without giving an opportunity of hearing to the petitioner to place his case. The petitioner has filed an application before the Municipal Authority on 14.05.2022 and

the Municipal Commissioner has passed order on the same date directing for maintenance of *status-quo* in view of spot verification report dated 16.12.2021. The order was passed in presence of respondent no.7. Learned counsel further submits that as the order passed by the Municipal Building Tribunal bearing Appeal No.3 (N)/2022 dated 15.06.2022, is not sustainable in the eye of law for having failed to adhere to the principle of natural justice. Learned counsel further submits that petitioner has right, title over the land in question upon which the building has been constructed illegally in view of the fact that an agreement to sale was executed by the land owner, without executing a sale deed in his favour, has illegally entered into development agreement with respondent no.7. Learned counsel filed a Title suit for execution of the sale deed in favour of the petitioner and in the said sale deed the respondent no.7 had also participated in the proceeding.

5. *Per-contra* learned counsel appearing on behalf of the respondent no.7 informs that respondent no.7 was arrayed as Opposite Party No.2 before the Court below and had also tendered his appearance through counsel and order was passed in presence of the parties in which the petitioner had lost. He further submitted that the application dated 14.05.2022 has

deliberately not been filed before this Court and only part of the same has been annexed as Annexure-4 to the writ petition. Learned counsel though admits that Municipal Commissioner had passed the order dated 14.05.2022 after hearing both the parties and had directed for maintaining a *status-quo* by the parties. Even learned counsel has not filed counter-affidavit. He proceeded to argue against the order dated 14.05.2022, the respondent no.7 has preferred appeal. Learned counsel further submitted that petitioner admits that he was tenant of the original land holder namely Darbari Lal Rai, who had executed development agreement with the respondent no.7 and no interference is required by this Court in any manner.

6. Considering the fact that the present writ petition is devoid of the specific pleading, to substantiate the oral argument before this Court in presence of learned counsel appearing on behalf of the respondent no.7, in whose reply the learned counsel for the respondent no.7 has also made oral objection that the writ petition is not maintainable, is also in want of specific pleading. Therefore, in want of pleading and evidences in support of the prayer, the present writ petition is not maintainable. At the same time, this Court finds that respondent no.7 has not filed counter-affidavit in the present case and the

oral submission on behalf of the respondent no.7 can not be also sustained in the light of judgment passed by the Apex Court in the case of **Bharat Singh & Ors. Vs. State of Haryana & Ors. (AIR 1988 SC 2181)** *inter-alia* has held as follows:-

“13. As has been already noticed, although the point as to profiteering by the State was pleaded in the writ petitions before the High Court as an abstract point of law, there was no reference to any material in support thereof nor was the point argued at the hearing of the writ petitions. Before us also, no particulars and no facts have been given in the special leave petitions or in the writ petitions or in any affidavit, but the point has been sought to be substantiated at the time of hearing by referring to certain facts stated in the said application by HSIDC. In our opinion, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter-affidavit, as the case may be, the court will not entertain the point. In this context, it will not be out of place to point out that in this regard there is a distinction between a pleading under the Code of Civil Procedure and a writ petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it. So, the point that has been raised before us by the appellants is not entertainable. But, in spite of that, we have entertained it to show that it is devoid of any merit.”

7. This Court finds that the petitioner has neither been able to bring on record tenancy agreement in support of his claim to substantiate that he was tenant nor he has brought agreement of sale on record, duly executed by the landlord in

support to adjudicate into the matter and decide the claim of the respective parties.

8. At this stage, learned counsel appearing on behalf of the Municipal Corporation submits that the respondent no.7 has not been issued “No Objection Certificate” with respect to apartment concerned.

9. Mr. Yogendra Mishra learned counsel at this stage submits that he will avail remedy in accordance with law, before appropriate Forum.

10. Accordingly, the present writ petition stands disposed of.

(Purnendu Singh, J.)

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