

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.411 of 2022

In
Civil Writ Jurisdiction Case No.15878 of 2014

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Priti Niwas @ Preeti Niwas, wife of Pankaj Niwas, resident of Parmanand Path Nageshwar Colony, Boring Road, P.S.- Budha Colony District - Patna Bihar presently residing at 2004, Nahar Amrit Shakti Opp Nahar International School, Chandivali, Powai, Mumbai, Maharashtra- 400072.

... ..Petitioner/Appellant/s

Versus

1. Patna Municipal Corporation through its Municipal Commissioner, Maurya Lok, Patna.
2. Municipal Commissioner, Patna Municipal Corporation, Maurya Lok, Patna.
3. Sri. Vindhya Keshri Kumar, Sr. Advocate, Parmanand Path, Nageshwar Colony, P.S. - Budha Colony, Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. P. N. Shahi, Senior Advocate
Mr. Navjot Yesu, Advocate

For the Respondent/s : Mr. Prasoon Sinha, Advocate
Mr. Amarnath Kumar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 16-04-2024

The dispute revolves around whether there is any unauthorized construction by the appellant which has to be demolished. Admittedly, the plot of land on which the appellant has constructed a building is a small plot measuring 544 sqft. It is a part of survey Nos. 86 and 87, Municipal Holding No.349, Circle No.249, Tauzi No. 227/15363, Khata No.525, Survey Thana No. 7 situated in Mauza-Dhakanpura. The appellant



constructed a residential house on the plot after obtaining required sanction from the PRDA vide Plan Case No. PRN-2-413/2002 dated 20.06.2002. The third respondent made a complaint before the Vigilance Officer, of encroachment on the public road, pursuant to which a vigilance case was initiated, in which an *ex-parte* order was also passed.

2. The appellant filed an appeal before the Appellate Tribunal which was rejected. Before the learned Single Judge, the appellant contended that the construction made was strictly in accordance with the sanctioned map and there was no encroachment. The Municipal Corporation submitted that the order was passed by the Vice Chairman after inspecting the site in question along with the concerned Executive Engineer of the PRDA. The learned Single Judge found that there can be detected no patent error in the order of the Vice Chairman or the Appellate Tribunal and rejected the same.

3. Before this Court, another Division Bench noted the submission of the learned counsel appearing for the Municipal Corporation that he had himself inspected the plot. The learned counsel was directed to make a report of the inspection which was submitted before Court. The Court having perused the report on 10.11.2022; which was also directed to be



handed over to the learned counsel for the appellant. Later when the matter was taken up on 10.01.2023, the counsel for the appellant was directed to ascertain from the appellant as to whether she was ready to remove the unauthorized constructions. On 08.02.2023 the Division Bench directed that unauthorized construction should be removed within a period of 60 days and the boundary wall would be pushed back, leaving the requisite vacant area for widening of the road. The appellant's contention even at that point was that there was cherry-picking and at another portion of the road, which was sought to be widened, there is another encroachment as against which no proceedings have been taken till date.

4. When the matter came up before us, we were of the opinion that there should be another independent Commissioner appointed and we appointed Advocate Prashant Sinha, who has filed a report. The first issue was as to whether the unauthorized constructions directed to be removed have been admittedly removed or not. The report say so:-

“(i) When compared with the photographs attached with the report filed by the counsel for the Patna Municipal corporation, the stair landing projection on the southern side was found to be demolished. The boundary wall which was constructed over the elevated platform running from north to south on the western side of the premises has also been found demolished.”



(ii) On the northern side (back side), the required setback as per the sanctioned plan is 1.5 meter but an space of 15 cm in part only has been left on the northern side and therefore, 1.35 meters of construction remains to be demolished from the northern side, which was found marked for demolition prior to my inspection. It was informed by the officials of the PMC that the marking has been done by them.

(iii) On the southern side, 1.85 meter of construction is over and above the length of the plot which is 12 meter as per sanctioned plan whereas 1.8 meter front setback was required to be left as per the sanctioned plan. Thus, 1.85 meter + 1.8 meter from the southern side has not been demolished which was found marked for demolition prior to my inspection. It was informed by the officials of the PMC that the marking has been done by them.

(iv) On the western side, the elevated platform having the length of 12 meter, width of 1.45 meter and height of 0.85 meter, has not been demolished while this area was meant for future road widening in terms of the sanctioned plan. The projection on the 1st and 2nd floor above the elevated platform on the western side is also situated just above the area, which was to be left for future road widening on the western side as per sanctioned plan. The projection was also found marked with X mark with red prior to my inspection. It was informed by the officials of the PMC that the marking has been done by them. This projection has also not been demolished.”

5. The second issue was to verify as to whether there is any unauthorized construction. The Commissioner has reported that on the 2nd floor, a structure was found constructed with asbestos roof, which is not a part of the sanctioned plan.

6. Obviously, the appellant has not complied with her undertaking at the earlier point. A reply has been filed to the



report wherein again the allegation raised is of cherry-picking. There is nothing stated which would justify the unauthorized constructions. The learned Senior Counsel appearing for the appellant also pointed out Note 12 to the Building Bye-Laws, which if considered the plan could be revised and the unauthorized constructions would be validated.

7. We have to immediately notice that the submission made by the appellant would validate the contention of the Municipal Corporation that there are unauthorized constructions in the building, especially not sanctioned by the approved plan. There is no question of a revision of plan after the building is constructed that too to regularize an unauthorized portion. The submission of the learned counsel for the appellant can only be of regularization and not of revision of plan.

8. As per the above extracted report of the Commissioner, about 1.85 meter of construction on the front portion is over and above the length of the plot. The portions marked by the Corporation were not demolished. We already noticed that the learned Single Judge had opined that there was no irregularity in the orders passed, especially when the Vice Chairman himself inspected the premises along with the Engineers. We have also deputed the Commissioner who has



found many unauthorized constructions, which have been reported.

9. We find absolutely no reason to entertain the appeal. The appeal stands dismissed, making it clear that the appellant would either remove the encroachments within three weeks and on failure the Municipal Corporation would take appropriate steps for removal of the same.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

Rajnish/-

AFR/NAFR	NAFR
CAV DATE	NA
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