

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12398 of 2024

Abhay Kumar Jha Son of Nand Kishore Jha, Resident of Mohalla Biswanath
Nagar, Gali No.06, Ward No.23, P.S. Kotwali, District Begusarai

... .. Petitioner/s

Versus

1. The State of Bihar through Chief Secretary of Bihar, Patna.
2. The District Magistrate, Begusarai.
3. The Nagar Ayukat, Nagar Nigam, Begusarai.
4. The Police Officer Incharge, Nagar Thana, Begusarai.
5. Lalan Kumar, son of not known to the petitioner, Resident of Mohalla-Biswanath Nagar, Gali No. 06, Ward No. 23, P.S. Kotwali, District-Begusarai.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Ashok Kumar Verma, Advocate
For the Respondent nos.1 and 2 : Mr. Kinkar Kumar, SC-9
For the respondent no.3 : Mr. Prasoon Sinha, Advocate
(on the request of the Court)

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

2 20-08-2024 Heard Mr. Ashok Kumar Verma, learned counsel for

the petitioner and the State.

2. Despite service of copies upon Mr. Amitesh Kumar who represents the respondent no.3, the Municipal Commissioner, Begusarai Municipal Corporation, he chose not to appear in this case. In absence of Mr. Amitesh Kumar, this Court requested Mr. Prasoon Sinha, learned counsel who represents the Patna Municipal Corporation and is thankful to him for the valuable assistance rendered to this Court.

3. The facts of the case is/are as follows:



4. The petitioner is having a building at Lane no. 6 Ward no. 23 in the district of Begusarai. Lalan Kumar and others made allegation that the petitioner has put two pillars on the road to support his building thus encroaching the Municipal road.

5. Accordingly, he was put on notice under section 313 and 435 of the Bihar Municipal Act, 2007 (henceforth for short 'the 2007 Act'). The response of the petitioner was that he has now entered into an agreement with the complainant, the building is on his own land and it was his fault for not taking the approval of the Municipal Corporation for erecting the two pillars.

6. The Municipal Commissioner constituted three members Committee and sought a report in the matter. The Committee submitted its report which made it clear that two pillars have been erected on the road which has been done without any application/sanction of the Municipal Corporation, Begusarai thus clearly violating section 313 of 'the Act'.

7. In that background, invoking section 315 of 'the 2007 Act', a fine of Rs. 1,25,000/- was imposed upon the petitioner which was communicated vide memo no. 1035 dated 20.05.2024 (Annexure-P/1 to the petition).



8. Aggrieved, the present petition.

9. Learned counsel for the petitioner submits that the Municipal Commissioner, Begusarai has no power to pass such order, it is in exclusive domain of the Empowered Standing Committee. He took this Court to section 22 of 'the 2007 Act' in support of his case which read as follows:

22. Executive power of Municipality to be exercised by Empowered Standing Committee. Subject to the provisions of this Act and the Rules and the Regulations made thereunder, the executive power of a Municipality shall be exercised by the Empowered Standing Committee.

10. He again took this Court to Rule-10 of the Bihar Municipal Empowered Standing Committee Conduct of Business Rule, 2010 (henceforth for short 'the 2010 Rules') to show that the items relating to the financial position of the municipalities is one of the power that has been vested in it. Rule 10 of 'the 2010 Rule' read as follows:

10. The Executive Powers of the Municipality shall vest in the



Empowered Standing Committee.

Executive Powers shall be used collectively:

Provided that administrative control on the Staffs of Municipality shall vest in Chief Executive Officer/ Executive Officer. Resolution shall be passed in the light of orders directions issued time to time by the State Government.

Officially brought agenda shall contain the following-

(a) Items relating to the establishment as per provisions of the Act, which includes appointments, promotions, benefits, transfers, disciplinary actions etc of the employees of the Municipality.

(b) Items relating to the collection of taxes and fees.

(c) Items relating to the financial position of the Municipality. (d)



Development activities undertaken and to be undertaken by the Municipal body. (e) Items necessary for effective implementation of the provision of the Act:

Provided that all items are to be placed before the Committee by the Chief Municipal Officer and shall be in the form of memorandum which will include the subjects, the status and the proposal to be approved by the Committee. A separate sheet is to be attached under the signature of the Chief Municipal Officer specifying the period by which the proposal approved by the Committee shall be implemented.

(4) The Empowered Standing Committee shall not discuss and pass a resolution in (a) any matter/issue which is against the Rules, laws and directives of the State Government;



(b) any issue which is sub-judice in any court of law and which may affect the interest of Municipality adversely.

(5) All issues passed by the Committee shall be placed before the Municipality in its next meeting.

11. He as such submits that the Court must set aside the aforesaid direction.

12. Mr. Prasoon Sinha on the other hand firstly took this Court to section 313 of 'the 2007 Act' which has been mentioned in the order, the same read as follows:

“313. Prohibition of construction without sanction.—No person shall construct, or commence to construct, any building or any structure of a permanent nature or execute any of the work relating to construction of building including addition, alteration or modification of an existing building in any municipal area, save and except in accordance with building



bye-law.”

13. He again took this Court to section 435 of ‘the 2007 Act’ which read as follows:

435. Encroachment on streets.

No person shall cause any damage to any property belonging to the Municipality. Any person causing any damage to any property belonging to the Municipality shall, on conviction, be punished with fine which may extend to one thousand rupees.

14. It is his submission that ‘Three Members Committee’ submitted its report clearly showing that two iron poles have been erected by the petitioner to support his building, thus encroaching the road. He submits that even the order-sheet shows that the petitioner accepted it and further claims that since there has been agreement with the complainant, the same should be consigned. The further submission is that in the aforesaid background, the Municipal Commissioner invoked section 315 of ‘the 2007 Act’ which empowers him to impose a fine up to Rs. 10 lakh. Section 315 of ‘the 2007 Act’ read as follows:

315. Construction of building in



contravention of building by-law.

Any building or structure of permanent nature which has been constructed or construction has commenced in contravention or breach or deviation of building by-law shall be liable to be demolished, notwithstanding that it may have been approved by a registered Architect. Provided further that the owner or occupier or any person responsible for construction of a building or structure of permanent nature or commencement of construction in contravention, breach, or deviation of building by-law shall further be liable to pay a penalty of minimum of Rupees one lac, which may extend up to Rupees 10 lacs depending upon size of the building or structure and extent of deviation. Provided further that the penalty under this Section



shall be in addition to any other fine provided under this Act including fine for compounding as may be provided under building bye-law.

15. Having heard the parties and perusing the records, the things which are clear:

- (i) without any application/approval, the petitioner erected two iron poles on the road;*
- (ii) Lalan Kumar (respondent no.5) made a complaint before the Begusarai Municipal Corporation;*
- (iii) Upon inspection, the complaint was found to be true;*
- (iv) the Municipal Commissioner, Begusarai Municipal Corporation thereafter constituted three members Committee to enquire and submit report;*
- (v) the Committee also gave the same report that the petitioner has violated the different sections of 'the Act' as has been stated above by erecting poles on the road without approval.*

16. In that circumstances, the Municipal



Commissioner, Begusarai invoked section 315 of ‘the Act’ which allows him to impose fine after having been convinced that the different sections of ‘the 2007 Act’ has been violated.

17. The Municipal Commissioner also gave an opportunity to the petitioner to appear before him to represent the case. The petitioner should have paid the fine (even under protest) and could have represented his case before the Corporation. Instead, despite violating the different sections of ‘the 2007 Act’, he rushed to the Court.

18. The details have been incorporated, facts are there, the order has been passed by the Municipal Corporation, Begusarai, this Court does not find any error in it.

19. The writ petition is misconceived, ill advised and is dismissed with a cost of Rs. 5000/- to be deposited with the District Legal Services Authority, Begusarai in next two weeks (for the purchase of journals) as decided by the learned District Judge, Begusarai. In case, the fine is not deposited, the authority shall take recourse for realizing the amount in accordance with law.

(Rajiv Roy, J)

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