

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13656 of 2023

Md. Farooque Azam S/o Late Md. Shibli, resident of Flat No. G- 003, Ground Floor, Gulmohar Apartment, South East of Gandhi Maidan, Salimpur Ahra, P.S. - Gandhi Maidan, Town and District - Patna - 800004.

... .. Petitioner/s

Versus

1. The State of Bihar through the Urban Development and Housing Department, Govt. of Bihar, Vikash Bhawan, Bailey Road, Patna - 800001.
2. The Patna Municipal Corporation, Dak Bungalow Road, P.O. - G.P.O, P.S. - Kotwali, Town and District - Patna represented through its Municipal Commissioner.
3. Municipal Commissioner, Patna Municipal Corporation, Dak Bungalow Road, P.O. - G.P.O, P.S. - Kotwali, Town and District - Patna.
4. Khalda Soofi, W/o Md. Ali Akbar, resident of Flat No. 404, Gulmohar Apartment, South East of Gandhi Maidan, Salimpur Ahra, P.S. - Gandhi Maidan, Town and District - Patna- 800004.
5. Ms. Rubina Imam, D/o Bibi Rajiya Imam, W/o Dr. Jawed Iqbal, resident of - Rajiya Villa, South East of Gandhi Maidan, Salimpur Ahra, P.S. - Gandhi Maidan, Town and District - Patna - 800004.
6. Talat Zeba Imam, D/o Bibi Rajiya Imam, W/o Tanweer Rahman Mallick, resident of - Rajiya Villa, South East of Gandhi Maidan, Salimpur Ahra, P.S. - Gandhi Maidan, Town and District - Patna - 800004.
7. Tariq Ahmad Imam, S/o Bibi Rajiya Imam @ Dr. Shahid Imam, resident of - Rajiya Villa, South East of Gandhi Maidan, Salimpur Ahra, P.S. - Gandhi Maidan, Town and District - Patna- 800004.
8. Ashiana Housing Limited, having its registered office situated at- 11 G Everest, 46/C, Chowringhee Road, Kolkatta - 700071, West Bengal, represented through its Managing Director, namely Vishal Gupta.
9. Vishal Gupta, Managing Director, Ashiana Housing Limited, having its registered office situated at - 11 G Everest, 46/C, Chowringhee Road, Kolkatta - 700071, West Bengal.
10. Ashiana Housing Limited, having its Head Office situated at - 304, Southern Park, Saket District Centre, Saket, New Delhi- 110017, represented through its Managing Director, namely Vishal Gupta.
11. Vishal Gupta, Managing Director, Ashiana Housing Limited, having its Head Office situated at - 304, Southern Park, Saket District Centre, Saket, New Delhi - 110017.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ritu Raj Shukla, Advocate Mr. Manish Kr. Jha, Advocate Mr. Pratyush Pratap Singh, Advocate
For the State	:	Mr.Subhash Prasad Singh (Ga 3)



For the PMC : Mr. Prasoon Sinha, Advocate
Mr. Amarnath Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 28-02-2024

Heard Mr. Ritu Raj Shukla, along with Mr. Manish Kr. Jha and Mr. Pratyush Pratap Singh, learned counsels appearing on behalf of the petitioner; Mr. Subhash Prasad Singh learned GA 3 for the State and Mr. Prasoon Sinha and Mr. Amarnath Kumar, learned counsels for the PMC.

2. Learned counsel appearing on behalf of the petitioner submitted that the petitioner had purchased Flat No. G - 003, Ground Floor, Gulmohar Apartment from Dr. Satyajit Kumar Singh, who had executed agreement for transfer of the said flat after having completed all the terms and conditions contained in the Bihar Apartment Ownership Act, 2006.

3. Petitioner is aggrieved by the illegal action of the Municipal Commissioner, Patna, who *vide* order dated 08.10.2018 (Annexure 3), directed to demolish the said flat for alleged violation of deviation in the construction of flat. Learned counsel further submits that the petitioner, being the owner of the said flat, against the said order of demolition, had preferred appeal before the Municipal Building Tribunal, Bihar, Patna being Appeal No.35(N)/2019. Learned counsel submitted that there is a specific provision contained in sub-Section (3) of



Section 323 of the Bihar Municipal Act, 2007 (hereinafter referred to as “the Act”), which is reproduced hereinafter:-

“323. Order of demolition and stoppage of buildings or works in certain cases and appeal.

(3) Any person aggrieved by an order of the Chief Municipal Officer under sub-section (1) may, within thirty days from the date of the order, prefer an appeal against the order to the Municipal Building Tribunal appointed under section 329.”

4. In above backgrounds, learned counsel submitted that the impugned order dated 07.01.2020, passed by the Bihar Building Tribunal, holding the appeal filed by the petitioner to be not maintainable, is in consistent with the said provision of the Act. In support of his contention, learned counsel has referred to order dated 07.08.2023 passed in **CWJC No.1634 of 2020 (Rajoo Rajak Versus the State of Bihar & Ors.)** in which, the Court had quashed the order passed by the Building Tribunal and had issued direction to the Tribunal to hear the appeal of the petitioner/Rajoo Rajak, who is the neighbour of the petitioner and owner of the flat No.004. The fact of the said case is similar to the fact of the present case.

5. In view of the above submission, the Municipal Building Tribunal is directed to strictly follow the provisions of the Act and exercise its jurisdiction within limit. The appeal of the petitioner is directed to be heard after giving due opportunity



of hearing to all the affected parties and final order must be passed expeditiously taking into consideration that the appeal was filed in the year 2019, preferably within a period of six weeks from the date of communication of this order.

6. In case of failure, this Court will take appropriate action against the Chairman of the Municipal Building Tribunal for having delayed the matter just on a frivolous ground without exercising power in accordance with law.

7. With aforesaid observation and direction, the present writ petition stands disposed of.

(Purnendu Singh, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	01.03.2024
Transmission Date	NA

