

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17538 of 2024

Swati Agrawal Daughter of Late Ramesh Chand Agrawal, resident of Purnea Market, Bhatta Bazar, P.S.-Khat, District-Purnea.

... .. Petitioner/s

Versus

- 1. The State of Bihar through Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
- 2. The Purnea Municipal Corporation Patna through its Municipal Commissioner, Municipal Corporation, Purnea, Bihar.
- 3. The Municipal Commissioner, Purnea Municipal Corporation, District-Purnea, Bihar.
- 4. The District Magistrate, Purnea, Bihar.
- 5. The Superintendent of Police, Purnea, Bihar.
- 6. The Sub Division Officer, Purnea, Bihar.
- 7. The Executive Engineer, Electricity Supply Division, East and West Purnea, Bihar.
- 8. The Incharge of Building Maps Purnea Municipal Corporation, District-Purnea, Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Kamal Nayan Chaubey, Sr. Advocate
Mr. Dineshwar Pandey
Mr. Shashank Shekhar Dubey
Ms. Riya Giri
Ms. Ritu Priyadarshini
Mr. Ashok Kumar Garg
Mr. Amit Kumar

For the State Mr. Madan Mohan, SC 5
For the Municipal Corporation
Purnea Mr. Prince Kumar Mishra

CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR PANDEY

CAV ORDER

3 17-12-2024 I have already heard the learned senior counsel for the petitioner as well as the learned counsel for the Municipal Corporation, Purnea, besides the learned counsel for the State.

2. The petitioner has prayed for the following



reliefs:-

“(i) To issue a writ/order/direction in the nature of certiorari to set aside order dated 06.09.2024 passed by the Chairman, Municipal Building Tribunal-1, Bihar, Patna in Appeal No.22 (N)/2023 (arising out of Vigilance Case No.09/2022-23 of Purnea Municipal Corporation) whereby and whereunder without interfering with the order passed in Vigilance Case No.09/2022-23 dated 03.11.2022 the appeal of the petitioner was dismissed with a direction that if the petitioner submits any map plan for post facto sanction to the Purnea Municipal Corporation, the corporation shall consider the said map submitted by the petitioner for regularizing the building in question within the ambit and scope of relevant building byelaws.

(ii) To issue a writ/order/direction in the nature of certiorari to set aside order dated 03.11.2022 passed by the Municipal



Commissioner, Municipal Corporation
Purnea in Vigilance Case No.09/2022-23
whereby and whereunder Sri Ramesh
Chandra Agrawal (father of the petitioner)
was held guilty of violating of Section 314 of
the Bihar Municipality Act, 2007 and was
fined Rs.10,00,000/- under section 315 of
Bihar Municipality Act for violating Building
Byelaws and constructing a permanent
structure and further the said structure was
directed to be sealed under Rule 16 (Kha) of
Bihar Building Byelaws 2014.

(iii) To pass interim / ex-parte interim order
staying order dated 06.09.2024 passed by the
Chairman, Municipal Building Tribunal-1,
Bihar, Patna in Appeal No.22 (N)/2023
(arising out of Vigilance Case No.09/2022-23
of Purnea Municipal Corporation) whereby
and whereunder without interfering with the
order passed in Vigilance Case No.09/2022-
23 dated 03.11.2022 the appeal of the
petitioner was dismissed with a direction that



if the petitioner submits any map plan for post facto sanction to the Purnea Municipal Corporation, the corporation shall consider the said map submitted by the petitioner for regularizing the building in question within the ambit and scope of relevant building byelaws, during the pendency of the present writ application.

(iv) To pass interim / ex-parte interim order dated 03.11.2022 passed by the Municipal Commissioner, Municipal Corporation Purnea in Vigilance Case No.09/2922-23 whereby and whereunder Sri Ramesh Chandra Agrawal (father of the petitioner) was held guilty of violating of Section 314 of the Bihar Municipality Act, 2007 and was fined Rs.10,00,000/-under section 315 of Bihar Municipality Act for violating Building Byelaws and constructing a permanent structure and further the said structure was directed to be sealed under Rule 16 (Kha) of Bihar Building Byelaws 2014, during the



pendency of the present writ application.”

3. In the meanwhile, the Municipal Commissioner, Purnea (respondent no.3), vide Memo No. 4847 dated 14-11-2024 directed the petitioner to get the premises vacated from her tenants within a period of 7 days and thereafter the following relief as relief No. 6 was also claimed by filing I.A.No. 01 of 2024 which is as follows:-

“6. That the memo dated 14.11.2024 is illegal and liable to be at aside by this Hon'ble court because the said memo has been laud by respondent authorities in compliance of order dated 06.09.2024 passed in Appeal No. 22(N) of 2023 by Learned chairman, Municipal Building Tribunal-1, Patna, but from perusal of the order dated 06.09.2024 passed by Bihar Municipal Building Tribunal-!, Bihar, Patna it is clear that there is no such direction to taken the possession of Building in question from the petitioner. Hence, the action of the respondent authorities is arbitrary and liable to be interfered with by this Hon'ble court.”



4. The petitioner claims the land in question as her *raiya* land. According to the petitioner, her father's great grand-mother had obtained the land, where the building is said to have been constructed, through three registered sale deeds in 1907, 1910 and 1913 from the Britishers and the Britishers had taken that land in settlement from Raj Banail Estate. It was recognized as *Khasmahal* land by the vendors of the great grand-mother of the petitioner's father.

5. The case of the State Government is that it is not a *raiya* land of the petitioner, rather it is a *Khasmahal* land. The Collector, Purnea had sent a notice dated 29.07.2002 to the petitioner's father to get renewal of lease of that *Khasmahal* land.

6. Being aggrieved by the notice dated 29.07.2002, the father and grandmother of the petitioner preferred a writ petition being CWJC No. 11713 of 1999, claiming that the land in question was their *raiya* land. The writ petition was disposed of vide order dated 03.05.2010. The Coordinate Bench of this Court observed that under writ jurisdiction, it cannot be decided whether the land in question is *Raiya* or the *Khasmahal*. Paragraph 4 of the Order dated 03.05.2010 is being extracted herein below:-



“4. This Court in writ jurisdiction cannot decide the status of the petitioners vis-à-vis the lands in-question as their title is disputed by the authorities on the basis of the entries made in the Khas Mahal register. This Court in the writ jurisdiction has to proceed on the basis of the admitted position, which is evident from the impugned order dated 5.2.1999 and the contents of the notice dated 29.7.2002, wherefrom it is evident that petitioners or their ancestors are the lessee of the Khas Mahal land and the authorities require them to obtain renewal of the lease failing which the petitioners would be evicted from the lands in question and the lands would be leased out in favour of others.”

7. The Coordinate Bench restrained the father of the petitioner and other petitioners from transferring or selling the land in question for three months, during which the State might file the suit. Thereafter, the State of Bihar filed Title Suit No. 222 of 2010, which is still pending. The written statement has been filed on behalf of the petitioner in Title Suit No. 222 of 2010.

8. The case of the Municipal Corporation is that violating the building bye-laws, the petitioner constructed a (G+5) building over the land in dispute which was without



sanctioning of the map and the building plan. It was violation of Section 314 of the Bihar Municipal Act 2007 (hereinafter referred as 'the Act of 2007') and a fine of Rs. 10,00,000/- under Section 315 of 'the Act of 2007' was also imposed on the father of the petitioner in Vigilance Case No.09 of 2022-23 and the building was ordered to be sealed under Rule 16(b) of Bihar Building Bye-laws, 2014, vide order dated 03.11.2022.

9. Against the order dated 03.11.2022, the petitioner preferred Appeal No. 22(N)2023 before the Municipal Building Tribunal-01. Vide order dated 06.09.2024, the Tribunal dismissed the appeal with a direction that if the appellant submits any map for *post-facto* sanction to the Purnea Municipal Corporation, the Corporation shall consider the said map submitted by the appellant for regularizing the building in question within the ambit and scope of relevant bye-laws. This appellate order has also been impugned here.

10. Learned senior counsel for the petitioner submits that the land in question is not of the *Khasmahal*, rather it is the *Raiyati* ancestral land of the petitioner. While dismissing the appeal, it has been mentioned in the appellate order that the land is *Khasmahal* land. He has also submitted that a title suit is pending in which it is a fact in issue whether the land in



question is *Raiyati* or of the *Khasmahal*. He has next submitted that the maximum cost of Rs. 10,00,000/- was imposed and no reason has been assigned by the Corporation as to why the maximum cost was imposed.

11. On the other hand, the learned counsel for the Municipal Corporation has submitted that it is an admitted fact that the building has been constructed without sanctioning of a map and building plans in violation of building bye-laws. The alleged building has been erected without sanctioning of map which is mandatory as per bye-laws. He submitted further that the petitioner never filed any application for sanctioning of the map.

12. From perusal of Section 314 of the Act 2007, it appears that there is prohibition of construction of a building without sanctioning of building plan.

Section 314 of the Act, 2007 is being extracted hereinbelow:-

“314. Sanction of building plan. -No persons shall construct or commence to construct, any building or structure of permanent nature or execute any work relating to construction of building undertake or any alteration addition or modification of an existing building unless,



the building plan is approved [By a competent authority to be designated under Rules and Bye Laws to be framed by the Government].

Provided that no Architect shall sanction any building plan unless it is in conformity with building bye-law framed by the State Government/Municipality.

Provided further that in case the building plan is in contravention or deviation of the building bye-law, in addition to any other action that may be taken under this Act, the registered architect, the builder and the approving authority shall be liable to be prosecuted and shall be liable to pay fine of Rupees fifty thousand or sentence to imprisonment for a period which may extend to one year or both.”

13. As per Section 315 of the Act 2007, the building or construction erected in contravention of by-laws is liable to be demolished.

Section 315 of the Act, 2007 reads as under:-

“15. 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 [competent authority).

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.”

14. It is an admitted fact that the building has been constructed without sanctioning of the map/building plan which is a violation of Section 314 of the Act 2007. Though it is the averment of the petitioner that a building plan/map has been submitted to the Municipal Corporation for its approval but this averment is denied by the Municipal Corporation. There is no



evidence at all showing that the petitioner has applied for sanctioning of the building plan or map. The Municipal Building Tribunal, vide order dated 06.09.2024, directed the petitioner to submit a building plan/map for *post-facto* sanction to the Purnea Municipal Corporation and it was also observed that the Corporation shall consider the said map submitted by the appellant for regularizing the building in question within the ambit and scope of the relevant bye-laws.

15. I do not find any illegality, impropriety or irregularity in the order dated 06.09.2024 passed by the Municipal Building Tribunal-01 in Appeal No.22(N) 2023 as well as in order dated 14.11.2024 as contained in memo no. 4847, passed by the Municipal Commissioner, Municipal Corporation, Purnea.

16 The writ application is accordingly dismissed.

(Nawneet Kumar Pandey, J)

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