

(2021) 03 PAT CK 0190

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 4631 Of 2020

Gopal Sharan Bharatia @APPELLANT @Hash State Of Bihar And Ors

Date of Decision : 22-03-2021

Acts Referred:

Bihar Municipal Act, 2007 — Section 329
Constitution Of India, 1950 — Article 12, 226, 227

Citation : (2021) 03 PAT CK 0190

Hon'ble Judges : Chakradhari Sharan Singh, J

Bench : Single Bench

Advocate : Tuhin Shankar, Saroj Kumar Singh, Abbas Haider, Prasoon Sinha, Yashraj Bardhan

Final Decision : Disposed Of

Judgement

1. Against an order dated 12.04.2014 passed by the Municipal Corporation, Patna in Vigilance Case No. 85A of 2012, the petitioner has preferred an appeal before a Municipal Building Tribunal at Patna (hereinafter referred to as "the Tribunal"), constituted under Section 329 of the Bihar Municipal Act (hereinafter referred to as 'the Municipal Act') giving rise to Appeal Case No. 23 of 2014. There is statutory limit of 60 days prescribed for preferring an appeal. The petitioner had filed the appeal within the said stipulated time.

2. This writ application invoking extraordinary writ jurisdiction of this Court under Article 226 of the Constitution of India has been filed on 28.02.2020, seeking issuance a writ in the nature of writ of mandamus commanding the Tribunal to dispose of the petitioner's aforesaid appeal, which has remained pending for nearly six years.

3. There is statement in paragraph 5 of the writ application that the appeal was fixed for hearing on 13.10.2014 but it was adjourned for the next few dates mainly for want of quorum due to the absence of either the Chairman of the Tribunal or other Members which continued for next 15 dates and in between, the case was transferred to Bench No. 2 of the Tribunal. It has further been stated that the case was heard in part on 06.07.2015 and 01.10.2015 and

adjourned for further hearing. Thereafter, the matter was adjourned on 26 occasions due to absence of either the Chairman or one of the Members of the Tribunal, which continued for nearly two years from the last date of hearing. The matter was reheard on 13.04.2017, 05.05.2017 and subsequently it was heard on seven subsequent dates whereupon the detailed arguments concluded on 13.07.2017 and finally the case was fixed for orders on 10.08.2017. It has further been stated that though the Tribunal fixed dates for orders, for want of quorum or on account of absence of the counsel for the Patna Municipal Corporation, few more adjournments were granted. It is alleged that the Tribunal had again insisted on hearing on 11.10.2018 whereafter initially, a date was fixed for further hearing, which took place on few more occasions till the last date on 17.01.2020. The matter was subsequently adjourned till 06.03.2020.

4. In the wake of the manner in which the statutory appeal remained pending for nearly six years as noticed above, the petitioner has approached this Court seeking a direction to the Tribunal to dispose of his appeal. When the matter was taken up on 29.09.2020, this Court noticing with utter dismay the state of affairs had directed the Corporation to supply to this Court the names of such members of the Tribunal who had been functioning since the date of filing of Appeal Case No. 23 of 2014, till the same was finally heard. The Court also desired to know the names of such members of the Tribunal who were working as on that date. When this matter was taken up again on 13.01.2021, from a counter affidavit filed on behalf of the Corporation, it transpired that the then Chairman of the Tribunal retired on 24.08.2017 and the post of another member had become vacant. There was, thus, lack of quorum at the Tribunal. Paragraph 13 of the counter affidavit filed on behalf of the Corporation reads as under:-

"That it is stated that vide another Letter No. 22, dt. 09.11.2020 by the learned Chairman of Municipal Building Tribunal, Patna that at the time when the appeal was reserved for orders after the arguments, (i) Sri Niranjana Kumar Singh was Chairman of the Tribunal, (ii) Sri Shyam Sunder Pathak and (iii) Sri Vinay Kumar Singh were its learned Members. It was also informed that at present the seat for two learned Members is vacant and there is only the Chairman of the Tribunal."

5. On the point of status of the petitioner's appeal before the Tribunal, it has been stated that the final argument was in fact concluded on 13.07.2017 and the matter was posted for 10.08.2017. On 04.08.2017, a new vakalatnama was filed on behalf of the Patna Municipal Corporation and a request was made to rehear the case whereafter the matter was posted for 10.08.2017 for rehearing. On 11.08.2017, learned counsel for the Patna Municipal Corporation sought for fifteen days further time to produce additional written arguments. By an order dated 11.08.2017, on the request made by learned counsel for the Patna Municipal Corporation, the matter was adjourned to 24.08.2017 for filing additional written notes of the arguments. As has been noticed above, on 24.08.2017, the post of the Chairman became vacant and the developments

subsequent thereto have already been noticed hereinabove.

6. In the aforesaid background, since the petitioner was rendered remediless, he has invoked extraordinary remedy of judicial review under Article 226 of the Constitution of India.

7. In the backdrop of the facts noted above, this Court was constrained to pass an order dated 13.01.2021 directing the State of Bihar to file an affidavit dealing with issue of constitution of the Tribunal and to ensure that the Tribunal functions effectively and normally in accordance with the provisions of the Municipal Act. It is evident from the counter affidavit, which has been filed on behalf of the Urban Development Department, Government of Bihar that only after the order of this Court was passed on 13.01.2021 fresh steps have been taken for appointment of Members in the Bihar Municipal Building Tribunal. The Court was informed on 21.01.2021 that the process for constitution of Municipal Building Tribunal, Patna had begun and an advertisement inviting applications for appointment of the Members of the Tribunal has been published. In the affidavit filed on behalf of the State of Bihar on 21.01.2021, following statement has been made in paragraph 12, which reads thus:-

"That most humbly and respectfully, it is stated that the answering respondent pray for two months time to exercise the fresh process for appointment of members in the Bihar Municipal Building Tribunal to ensure the Tribunal function normally and effectively."

8. This matter was adjourned on several dates so as to know the progress of constitution of the Tribunals and restoration of smooth and effective functioning of the Tribunal.

9. It is relevant to note that this Court had to intervene earlier also in the year 2013, which is evident from Annexure- A to the counter affidavit, which apparently was an advertisement inviting applications for the post of Members for constitution of the said Tribunal in the light of certain order passed in C.W.J.C. No. 8152 of 2013.

10. The constitution of Municipal Building Tribunal is a statutory requirement under Section 329 of the Municipal Act, which is a quasi judicial forum for deciding appeals arising out of sanctioning of building plans by the Municipality in accordance with such procedure and to realize such fees in connection with such appeals, as may be prescribed by the Government and other ancillary matters.

11. The salutary purpose of making provision to set up a tribunal as a quasi judicial institution is to overcome, to some extent, the situation arising out of huge pendency of cases in various Courts. Such provisions, if implemented with deservedly true spirit, achieve multiple objectives of reducing the work load of the courts, expediting decisions and providing a forum manned by experts in the areas falling under the jurisdiction of the Tribunal. These Tribunals are meant to perform a crucial and specialized role in adjudication of disputes typical to a

given organisation, institution or subject matter, and to lessen the work of already overburdened courts including constitutional courts. If a person has no effective statutory remedy under the law against any administrative or quasi judicial action, inaction or omission which is adverse to his interest, he has a right to invoke extraordinary writ jurisdiction before the constitutional courts to enforce his/her legal rights which indeed has severe adverse affect of encumbering the constitutional courts with unnecessary and and otherwise avoidable matters and, thus inhibiting such courts from adjudicating such other pending litigations to be essentially decided by these courts.

12. Despite indulgence shown by this Court to the respondents to ensure constitution of the statutory Tribunal, as stipulated under Section 329 of the Municipal Act, the State Government has shown remote interest and has clearly acted with a perceivable degree of indifference, apathy and reluctance for unknown reasons towards this important issue. Inaction on the part of the State respondents, in this regard, is strongly deplorable.

13. The present case is illustrative in nature. As the matter remained pending before the Tribunal for nearly six years, the petitioner approached this Court under Article 226 of the Constitution of India for a direction to the Tribunal to dispose of his appeal. Needless to say that appeal is a statutory right conferred under the Municipal Act by virtue of the provision under Section 329 of the Municipal Act and subsequent constitution of the Tribunal, which is now not functional. This Court exercising power of judicial review under Article 226 of the Constitution of India has a duty to enforce legal rights of a citizen if breached by any action or omission by any State within the meaning of Article 12 of the Constitution of India. In view of the nature of relief, which the petitioner has sought for in the present writ application, the Court could have disposed of the writ application with a direction to the Tribunal to pass final orders on the petitioner's appeal pending before it. Such order will be meaningless, in the facts and the circumstances of the present case as noted above, because of the abject failure on the part of the State of Bihar to constitute Statutory Tribunal under the Municipal Act. It can be easily presumed that numerous such proceedings must be pending, filed by persons aggrieved before the Tribunals, constitution of which is contemplated under Section 329 of the Municipal Act. It may not be affordable for all of them to invoke extraordinary writ jurisdiction for numerous conceivable reasons. At this stage, this Court cannot lose sight of its jurisdiction under Article 227 of the Constitution of India of superintendence over all Courts and 'Tribunals' throughout the territories in relation to which it exercises writ jurisdiction. Clause 2 of Article 227 of the Constitution of India reads as under:-

"(2) Without prejudice to the generality of the foregoing provisions, the High Court may

(a) Call for returns from such courts;

(b) Make and issue general rules and prescribe forms for regulating the practice

and proceedings of such courts; and

(c) Prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts."

14. In view of the facts noted above it is considered appropriate to dispose of this writ application with a direction to the Chief Secretary, Government of Bihar to ensure that Tribunals within the meaning of Section 329 of the Municipal Act start functioning effectively within one month from today, failing which, the Court will take serious view of the matter. The Court has made observations as aforesaid because it is already overburdened with dockets and the State respondents have not shown due interest in ensuring constitution of the Statutory Tribunal within a reasonable time. It is further directed that the Tribunal shall be required to dispose of the petitioner's appeal within a period of six months from the date of constitution of the Tribunal.

15. List this case under the heading 'To Be Mentioned' on 22.04.2021 for the State to inform compliance of this Court's order in respect of the constitution of the Tribunal.