

(2012) 06 PAT CK 0012
In the Patna High Court
Case No : CWJC No. 234 of 2012

Parag Sahakari Grih Nirman Samitee Ltd.	APPELLANT
Vs	
The Patna Municipal Corporation and Others	RESPONDENT

Date of Decision : 26-06-2012

Acts Referred:

Bihar Municipal Act, 2007 — Section 314, 317, 319
Penal Code, 1860 (IPC) — Section 420

Citation : (2013) 1 PLJR 749

Hon'ble Judges : V.N. Sinha, J

Bench : Single Bench

Advocate : Krishnandan Singh, Shivjee Singh and Mukesh Kumar, for the Appellant; Lalit Kishore, Bishwa Bibhuti Kr. Singh for the P.M.C., Ram Kishore, P.R. Srivastava for the Respondent No. 3 and Mr. S.R. Sharan for the Intervenor, for the Respondent

Judgement

V.N. Sinha, J.—Heard learned counsel for the petitioner, Patna Municipal Corporation, Respondent No. 3 and the Intervenor who has not only filed an Intervention Application but also filed counter affidavit opposing the prayer made in the writ petition. Petitioner is a Housing Co-operative Society. It has challenged the instruction of the Municipal Commissioner bearing Memo No. 5283 dated 31.12.2011, Annexure-1, whereunder Municipal Commissioner, Patna Municipal Corporation has requested the District Magistrate, Senior Superintendent of Police, Patna to make available required police force on 6.1.2012 for facilitating demolition of the illegal construction made by the petitioner deviating the sanctioned plan in compliance of the order of the Vice-Chairman dated 24.5.2001, Annexure-2, appellate authority dated 2.4.2002 passed in Appeal No. 29/2001, Annexure- 3 which has already been affirmed by the High Court under orders dated 9.3.2010 passed in C.W.J.C. No. 5273 of 2002, Annexure-4. From perusal of the original, appellate order dated 24.5.2001, 2.4.2002, Annexures-2, 3 respectively, it appears that the authorities directed for demolition of the structure measuring an area of 90.12 sqmt. raised

in the parking/common area of the premises which was being objected to by the intervener. The original order directing demolition of the aforesaid construction as also the appellate order were challenged by one flat-owner Ashok Kumar by filing C.W.J.C. No. 5273 of 2002 which was dismissed under orders dated 9.3.2010 observing that availability of an additional F.A.R. cannot be a ground to uphold the offending construction. While making such observation this Court further observed that even if further construction is permissible the same may be permitted on the application of the Housing Co-operative Society by raising either additional floors or even an area which is permissible under the bye-laws but the construction should not cause obstruction to the existing flat-owners.

2. In the light of the aforesaid order of the High Court it is submitted by Dr. K.N. Singh, learned Senior Counsel that the Society having demolished the offending portion of the construction applied for post facto sanction of the construction which could be permitted under the permissible floor area ratio which was considered in accordance with law by the Architect u/s 314 of the Bihar Municipal Act, 2007 (hereinafter referred to as the "Act"), who under letter No. 0135 dated 22.4.2010, Annexure-7 called upon the Secretary of the petitioner-Society to deposit the building, regularization, pasting fee amounting to Rs. 20,245/- which was submitted through bank-draft drawn in the name of the Patna Municipal Corporation bearing no. 534545 dated 24.4.2010, Annexures-7/1, 7/2, 7/3 before the Architect who in turn deposited the bank-draft in the prescribed proforma before the Patna Municipal Corporation which was also encashed, as would appear from the certificate granted by the concerned Branch Manager dated 10.3.2012, Annexure-7/4. Learned counsel for the petitioner in the aforesaid background submitted that while giving instruction to the District Magistrate, Senior Superintendent of Police, Patna to make available the police force on 6.1.2012 for demolition of the offending portion of the building the Municipal Commissioner ignored the subsequent events, had he taken into account the aforesaid subsequent events, there was no occasion for the Municipal Commissioner to have issued the impugned instruction for making available police force for ensuring demolition.

3. Counsel for the Patna Municipal Corporation and the Intervener has opposed the aforesaid submission. According to them the High Court affirmed the order of the Vice-Chairman, Appellate Authority and while upholding the order of the Vice-Chairman, Appellate Authority observed that the offending constructions cannot be regularized and to ensure compliance of the order of the Vice-Chairman, Appellate Authority, High Court the impugned instructions have been issued and this Court should uphold the same without looking into the subsequent events. Reference in this connection has been made to the counter affidavit filed by the Municipal Corporation as also by the intervener. Learned counsel for the Corporation, Intervener further submitted that the sub-sequent sanction of the plan regularizing 50 and odd sqmt. out of the 90 and odd sqmt. offending portion found by the authorities, High Court cannot be regularized as such regularization has been made by the Architect without appreciating the observations of the

High Court that the offending portions or part thereof found by the authorities cannot be regularized and in appreciation of such fact Municipal Commissioner has issued notice dated 12.12.2011, Annexure-J to the Architect asking him to show cause as to why his licence be not cancelled and has also lodged Report against him which is dated 30.12.2011 on the basis of which Patliputra P.S. Case No. 293/2011 dated 31.12.2011, Annexure-K has been registered against the Architect for the offence u/s 420 and other allied Sections of the Penal Code. It is further stated that the records relating to subsequently sanctioned plan dated 26.4.2010 is also traceless from the office of the Corporation.

4. From the writ petition it appears that thereunder petitioner has not made a categorical statement that he has demolished the offending portions, as was found by the Vice-Chairman and affirmed by the appellate authority including the High Court but statement has been made in paragraph 9 of the writ petition that as per the observations of the High Court petitioner took steps for post facto sanction of the additional constructions. During the hearing of the writ petition learned counsel for the petitioner Dr. K.N. Singh made categorical statement that in compliance of the order of the High Court the offending portion out of the 90.12 sqmt. was demolished and thereafter steps for regularization of the remaining 50 odd sqmt. was taken in terms of Sections 314, 317 of the Act and on instructions from the Architect contained in Letter No. 0135 dated 22.4.2010, Annexure-7 required building, regularization, pasting fee of Rs. 20,245/- was deposited through bank draft bearing no. 534545 dated 24.4.2010 whereafter plan, Annexure-5 was sanctioned on 26.4.2010 and the constructions presently available in the precincts of the Society is as per the sanctioned plan dated 26.4.2010. Any portion contrary to the subsequently sanctioned plan dated 26.4.2010 can always be demolished but not such construction which is authorized in terms of sanctioned plan dated 26.4.2010, Annexure-5. Learned counsel for the petitioner further submitted that notice for cancelling the licence of the Architect dated 12.12.2011, Annexure-J and the allegations contained in the written report dated 30.12.2011 on the basis of which Patliputra P.S. Case No. 293/2011 dated 31.12.2011 has been registered against the Architect for the offence u/s 420 and other allied Sections of the Penal Code shall have no bearing on the existence of the structure raised in accordance with Annexure-5 until final order is recorded against the Architect in the light of the notice dated 12.12.2011 under sub-section (2) of Section 319 of the Act. It is also submitted on behalf of the petitioner that the sanctioned plan dated 26.4.2010, Annexure-5 is in terms of Sections 314, 317 of the Act, as such, unless the same is cancelled by resorting to sub-section (1) of Section 319 of the Act no steps to demolish the structure raised in accordance therewith can be taken.

5. Having heard counsel for the parties, it is evident that High Court approved demolition of 90.12 sqmt. of structure raised in the parking, common area of the building in question, as such, such construction is required to be demolished but constructions raised as per sanctioned plan dated 26.4.2010, in my opinion, cannot be demolished until the sanctioned plan dated 26.4.2010, Annexure-5 is

itself cancelled for being contrary to the building bye-laws. Only because notice for cancelling the licence of the Architect has been issued and a First Information Report has been registered, in my opinion, the validity of the sanctioned plan cannot be brought under cloud until order u/s 319 of the Act is passed. In such view of the matter, I have no option but to quash the impugned instruction dated 31.12.2011, (Annexure-1), however, with direction to the Municipal Commissioner to verify whether sanctioned plan, Annexure-5 is in tune with the building bye-laws, as is evident from Annexure-7 series including the proforma for deposit of the fee u/s 314 of the Act, Annexure-7/3 and the amount already credited in the account of Patna Municipal Corporation through Demand Draft No. 068534545 dated 24.4.2010 through Centralized Clearing Processing Centre, Patna on 7.10.2010. In the light of my direction above, the Municipal Commissioner having examined the plan dated 26.4.2010 with reference to the building bye-laws shall first pass order either upholding the plan dated 26.4.2010 or cancelling the same. In the event plan dated 26.4.2010, Annexure-5 is upheld, he shall confirm by making a spot inspection of the building in question that the constructions available at the sight is as per the sanctioned plan and if any portion in the parking area or common passage is contrary to the subsequently sanctioned plan then the authorities shall be at liberty to demolish the offending portion contrary to the subsequently sanctioned plan. In case for the reasons indicated in writing the Municipal Commissioner is of the view that the sanctioned plan dated 26.4.2010, Annexure-5 is contrary to the building bye-laws, he may pass an order to that effect and proceed accordingly, of course after hearing the petitioner, as is provided u/s 319 of the Act. The writ application is, accordingly, disposed of.