
(2014) 11 PAT CK 0020

In the Patna High Court

Case No : Miscellaneous Jurisdiction Case No. 3929 of 2014 in Civil Writ
Jurisdiction Case No. 23620 of 2013

Sanjay Kumar Sinha

APPELLANT

Vs

Patna Municipal Corporation

RESPONDENT

Date of Decision : 07-11-2014

Acts Referred:

Citation : (2014) 11 PAT CK 0020

Hon'ble Judges : Navaniti Prasad Singh, J

Bench : Single Bench

Advocate : Jitendra Singh, Sr. Advocate and Krishna Chandra, Advocate for the Appellant; Prasoon Sinha, Advocate for the Respondent

Judgement

Navaniti Prasad Singh, J.—A multi-storied commercial building was constructed. Construction was ordered to be stopped by the Municipal Commissioner. People approached this Court. This Court, after hearing the parties, noticed that construction had been completed and what was now being done was only internal finishing. The Court held that such internal finishing work cannot be stopped, moreso merely awaiting final decision in proceedings started by the Commissioner. The import of this inter-party order was clear.

2. After the Municipal Commissioner passed final orders noticing certain deviations, the builder first moved a writ petition and pursuant to leave granted, moved the Tribunal in the first statutory appeal. The High Court had granted stay till the matter was taken up by the Tribunal. The Tribunal granted status quo till the next date. The matter is being heard by the Tribunal.

3. In the meantime, on the ground that fresh constructions were being done, first information report (FIR) has been directed to be lodged and has been lodged. When this contempt application was filed and the parties appeared, a show cause and a supplementary show cause have been filed. In support of the fact that constructions were being done, ordersheets of authorities have been first annexed. The ordersheet only refers to internal work being done and there

is no suggestion of any construction as such. Then three photographs have been annexed in support of assertion that construction is being done. The first photograph clearly shows that the building is complete. The second and third clearly show that inside a hall, cubicles are being made. That is the only evidence in support of so-called construction. It is also averred in the show cause that the petitioner had misled the Court that construction was over. Let it be placed on record that it was not so controverted when the matter was taken up in the writ petition and even what all evidence that has been brought on record before this Court in these proceedings, they only suggest internal finishing work and nothing beyond that. It is as a consequence of this that FIR has been lodged saying that this Court in the writ proceedings had held that "in the meantime", internal finishing work cannot be stopped. The Tribunal granted status quo only upto the next date. Therefore, anything being done would be in violation of law.

4. Having considered the matter and having heard Shri Prasoon Sinha at length appearing for the opposite parties, I am of the view that the stand is not correct. In the writ order, which has attained finality inter party behind which we cannot go in these proceedings, this Court has, in paragraph 3, categorically held as under:

"In my view, building having been completed and internal finishing being done, that cannot be stopped...."

5. That being so, this Court then said that pending adjudication, no stoppage would be done in the facts of that case. Then we come to the High Court order where they came challenging the order of the Commissioner in the vigilance case. That order granted stay till the first date of hearing by the Tribunal. The Tribunal then granted status quo but it appears to have been noted till next date. Rather than go into the controversy, I think it is elementary that in the facts and situation if the High Court or the Tribunal had not intended to grant stay, it would have said so because the consequence is undisputedly serious. At the first instance, inter-party, this Court had held that internal finishing cannot be stopped. If no stay is granted, the result in most of the cases would be that even before the correctness of the order of the Commissioner is judged, it has to be implied that the building be demolished. What would be the fate of the appeal? If the appeal were to be allowed would the Commissioner get the building reconstructed? Who would bear the expense, surely not the tax payer. Therefore, at all stages, it was thought imperative that till final adjudication, there has to be an injunction which is elementary. Yet the Commissioner thinks otherwise. We do not have to go far to see the reason. The order of the Commissioner itself notices how notwithstanding orders of demolition, notwithstanding no order of competent authority or Court or Tribunal staying the order of demolition, a person notwithstanding being told not to inaugurate a building, did it in full public view and the Commissioner was not able to stop. It is because of that against all others and the said violator, FIRs were ordered to be lodged and now being sought to be justified. This Court would not like to comment in any manner as to

how the Commissioner has proceeded. It would only be appropriate to observe that before he proceeded to direct lodging the FIR, at least a simple notice to the parties was necessary because these are not matters akin to theft or murder or dacoity but these are technical matters. The builder could have straightway said that whatever finishing was being done was not being done by him but one of its purchasers. There could be number of defence but without even looking into it, without even enquiring into it, lodging an FIR, which has serious consequence, was not appropriate. However, the FIR having been lodged, the law would now take its own course. So far as the Tribunal is concerned all this Court can say is the Tribunal should be more conscious about passing a stay order. It should not pass orders of stay and/or status quo and then forget to extend the same. If the Tribunal actually does not want to extend the stay order, it must give reasons otherwise it leads to unnecessary controversy.

6. It would, thus, be appropriate for the petitioner to move the Tribunal and seek appropriate relief in relation to the stay matter while the matter is pending before it and the Tribunal would be competent to pass such order as it would deem fit and proper in the facts and circumstances of the case.

7. This Court, in the peculiar facts of this case, would not like to observe anything further and the proceedings stand terminated.

8. With these observations and directions, this contempt petition stands disposed of.