

(2023) 10 PAT CK 0018

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 11140 Of 2022

Sarika Kumar Sinha

APPELLANT

Vs

Chairman, Municipal Building Tribunal Patna

RESPONDENT

Date of Decision : 10-10-2023

Acts Referred:

Constitution Of India, 1950 — Article 226, 300A
Code of Civil Procedure, 1908 — Section 151, Order 1 Rule 10(2)
Bihar Municipal Act, 2007 — Section 315, 323(3)

Citation : (2023) 10 PAT CK 0018

Hon'ble Judges : Harish Kumar, J

Bench : Single Bench

Advocate : Ankit Katriar, Prasoon Sinha

Final Decision : Disposed Of

Judgement

1. Heard Mr. Ankit Katriar, learned counsel for the petitioner and Mr. Prasoon Sinha, learned counsel representing the Patna Municipal Corporation.

2. The petitioner, claimed to be the owner of Flat No. 501 in the subject Apartment, namely, "Prashray Villa" , filed the present writ petition by invoking the extraordinary writ jurisdiction of this Court under Article 226 of the Constitution of India seeking quashing of the order dated 28.04.2022, passed in Appeal No. 5(S) of 2019, by which the learned Municipal Building Tribunal has been pleased to dismiss the petitioner's impleadment petition.

3. It is submitted on behalf of the petitioner that the building, in question, in which the petitioner is one of the occupant, was constructed in terms of the revised approved building plan/map dated 27.05.2009 (Annexure- P/1). A complaint was filed by one Sanjeev Kumar Pandey and other flat owners of the subject apartment that builder has constructed two additional floors after the construction plan/map, besides other alleged irregularities, which resulted into institution of Vigilance Case No. 26B of 2015. The aforesaid Vigilance Case No. 26B of 2015 was disposed of vide order dated 16.01.2019 with the following

directions:

“(i) Demolition of construction above the 4th floor (i.e. 5th and 6th floor) and the existing 2.71 M x 1.7 M toilet on the ground floor.

(ii) Free the generator room and guard room from his possession,

(iii) Deposit Rs.7,00,000/- under Section 315 of the Bihar Municipal Act, 2007 and

(iv) After compliance of the above, submit a revised map for post facto sanction for regularizing the deviations.”

4. Against the aforementioned order, the builder has preferred Appeal, bearing Appeal No. 5(S) of 2019 before the Municipal Building Tribunal. The petitioner, subsequently, having come to know about all these events, filed an impleadment petition on 22.07.2021 before the Municipal Building Tribunal (hereinafter referred to as ‘the Tribunal’) requesting therein to implead her as a respondent, being a proper and necessary party, as she is directly aggrieved by the order dated 16.01.2019, passed by the Vigilance Court.

5. It is made clear that the said impleadment petition was filed under Order 1 Rule 10(2) read with Section 151 of the Code of Civil Procedure. The aforementioned petition came to be dismissed vide order dated 28.04.2022.

6. The petitioner while assailing the impugned order has vehemently submitted that the Tribunal has erroneously come to the misplaced conclusion that the purchaser of the flat is not necessary party as per the provisions of the Bihar Municipal Act, 2007 (hereinafter referred to as ‘the Act, 2007’), nonetheless, the Municipal Act provides in Section 323(3) that any person aggrieved by an order of the Chief Municipal Officer may, within thirty days from the date of order, prefer an appeal. He next submitted that the right to Property is a constitutional right to safeguard the property rights as envisaged under Article 300(A) of the Constitution of India, which says that no person shall be deprived of his/her property save and except by authority of law. The petitioner next submitted that she is being sought to be deprived of her property without even any cause to be shown or being given any opportunity of being heard. Reliance has also been made over two of the judgments rendered by the Hon’ble Supreme Court in the case of Deputy Commissioner, Hardoi Vs. Rama Krishna Narain & Ors, AIR 1953 SC 521 and Amit Kumar Shaw and Another Vs. Farida Khatoon and Another, (2005) 11 SC 403.

7. A counter affidavit has been filed on behalf of the Patna Municipal Corporation and the submissions of the petitioner has been vehemently refuted.

8. Mr. Prasoon Sinha, learned counsel for the Corporation submits that if the petitioner has any grievance to the order of the Municipal Commissioner passed in Vigilance Case No. 26B of 2015, the petitioner has a remedy to assail the order under Sub-Section 3 of Section 323 of the Act, 2007 and in no circumstances the petitioner has remedy of filing a petition for impleadment

under Order 1 Rule 10(2) read with Section 151 of the Code of Civil Procedure, as the same is not applicable. He next submitted that there is no perversity in the order passed by the Tribunal negating the request/contention of the petitioner.

9. Having given anxious consideration to the submissions advanced before this Court and after perusing the materials on record, it would be evident that Section 323 (3) of the Act, 2007 empowers any person to approach before the Municipal Building Tribunal on being aggrieved by the order passed by the Municipal Commissioner, however, the same is required to be done within 30 days from the date of order passed by the Municipal Commissioner.

10. From the record, the petitioner, prima facie, appeared to be a necessary and proper party, being occupant of the flat, which is sought to be demolished under the order passed by the Municipal Commissioner. Thus, his right cannot be curtailed in such an easy manner on mere technicality, once she is able to prove that she is having subsisting right, title and interest over the property, in question, which is at stake and moreover, she had never been noticed at any point of time.

11. Thus, this Court in the interest of justice by invoking the extraordinary jurisdiction under Article 226 of the Constitution allow the petitioner to file a proper appeal under Section 323 (3) of the Act, 2007 before the Municipal Building Tribunal, preferably within a period of two weeks from today.

12. If such appeal is preferred by the petitioner, the same shall be considered and proceeded by the Tribunal on its own merit taking into consideration the fact that the petitioner is an occupant of the Plot No. 501 of the subject apartment and she has been pursuing her remedy bonafidely. It is needless to observe that any petition for condonation of delay shall be considered sympathetically, as she has had no knowledge of the proceeding pending before the Municipal Corporation.

13. This Court also deems it fit and proper to observe that if both the appeals shall be heard together, it would certainly avoid different orders in similar matters.

14. The present writ application stands disposed of with the aforesaid observations made hereinabove.