Municipal Building Tribunal, Bihar, Patna

M.R. No. ... Date ... Amount ... Date on which certified copy was ready for delivery

Certified copy of the Appeal Misc. Appeal no.- 03 ... of the Year ...

Municipal Building Tribunal-I

Appeal no.- 03/2015

(Arising out of Vig. Case no.-11A/2013, 28A/2014

P. Jeevy Ranjan,
S/o Late Birendra Kumar,
Managing Director, M/s Swastik Engicon Pvt. Ltd.
Office Situated at Shiva Jee Nagar New By-Pass Road,
P.S.-Gardanibagh, District-Patna.

... Appellant

V/s

Patna Municipal Corporation,
through its Municipal Commissioner Patna,
Ist Floor, Gyan Bhawan, Gyan Bhawan Complex, PS-Kotwali, District- Patna.

... Respondents

Present

Sri [illegible] Chairman, Municipal Building Tribunal
Sri Ram Lochan Ram, Member, Municipal Building Tribunal
Sri [illegible], Member, Municipal Building Tribunal

For the appellant : Sri Jai Ram Singh, Advocate
For the PMC respondents : Sri Pankaj Kumar, Advocate

ORDER

Shri [illegible] the appellant Sri Jai Ram Singh, Ad...

Shri [illegible] PMC respondent Sri Pankaj Kumar, Ad...

Case called out. On call learned counsel for both the parties ... advanced their respective arguments.

Have heard the learned counsel's for the appellant ... Perused the record.

This appeal has been filed by the ... against the order dated 29.12.14 passed by the Municipal ... in Vigilance Case No. 11A/2013, 28A/2014 ...

Vigilance case no. 11A/2014 and 28A/2014 have been initiated against the said construction. The learned counsel for the appellant further submitted that the building in question was constructed after the building plan was sanctioned vide plan case no. ff/ BBP/PROP/RES/G+3/PAT/541/4319 dated [illegible] 2013 u/s 4 of the Bihar Municipal Act, 2007. The learned counsel for the appellant submitted that the building plan was sanctioned in the year of 2013 and as such the building bye laws prevailing at that time would be applicable to the case. In support of his contention he has filed a photocopy of the order of the Supreme Court passed in the case of R.Satya Narayan Vs. Shanthi Smt. as annexure-2.

The learned counsel for the appellant submitted that the impugned order is bad in the eye of as well as on the facts because the learned [illegible] failed to consider the provisions of Rule20.1.4(1), Appendix-1, Table-2A-1, Table-2B, office order no.-171 dated 28.08.2008 [illegible] 38 of the Building Bye Laws. The learned Commissioner has also failed to consider the clause 11 and section-38 of the Bihar Regional Development Authority Act, 1981 as well as section 317 of the Bihar Regional Development Authority Act, 1981. The learned Commissioner has also relied upon the spot measurement report submitted by its own officials in the absence of the appellant and has passed the order of demolition on the basis of the provisions of the Bye laws and the Act.

Further contention of the learned counsel of the appellant is that on perusal of the site inspection report it transpires that the same was taken in absence of the appellant and the report is vague. It is also further submitted that the width of the road, on which construction

counsel submitted that 30% area in the front set back can be condoned on payment of requisite fees as per Appendix-L' Clause 10.2 of the Building Laws and Appellant is ready to pay requisite fees for the regularization of the building in question. It has further been submitted in connection that appellant has already left land strip for road widening.

The learned counsel also submitted that projection up to 0.60 mtr permissible as per clause 20.1.4(a) of the Modified Building Bye laws and his view is supported in the case of Nutan Parsoni Apartment V/s Patna Regional Development Authority and Ors. and has annexed photocopy of the Appendix 'L' of the Modified Building Byelaws and copy of the order passed in the case of Nutan Parsoni Apartment V/s Patna Regional Development Authority and Ors. as annexure-5 and 6.

Further contention of the learned counsel of the appellant regarding rear set back of the building in question, the team has reported deviation in building line between 1.80 mtr to 3.60 mtr and reported deviation in shape of projection up to 0.45 mtr. The learned counsel in this connection, submitted that 50% area in the rear set back is condonable after payment of requisite fees as per Appendix L' Clause 10.2 of the Building Bye Laws and appellant is ready to pay requisite fees against the regularization of the rear set back of the building in question. It further submitted in this connection that 0.60 mtr projection is permissible as per Rule 20.1.4(a) of the Modified Building Byelaws.

The learned counsel submitted that the deviation in shape of projection up to 0.40mtrs, as reported by the team of the Inspection Wing are negligible and submitted that the ~~the~~ [illegible] submitted in this connection that this is very minor [illegible]

deviation within the permissible condonable limit as per bye-laws should be condoned for which the Municipal Commissioner fairly agreed that if the deviation is within the condonable limit he shall condone the same."

But the main grievance of the appellant is that the appellant could not be benefited by such direction of the Hon'ble High Court and the order passed on whims without considering the provisions of u/s 317 of the Bihar Municipal Act,2007 in which it reiterated under the height of the nature building under permitted level and also provided that –" *If any building or construction of permanent nature has been constructed or commence to construct after duly approved building construction plan is found to have deviated from the approved construction plan within permitted level of deviation then the Chief Municipal Officer shall not order for its demolition."*

Provided that –" *Chief Municipal Officer shall proceed to realize such fine or penalty as is prescribed under the Act or Rule, Regulation or Building bye laws as the case may be"*

Provided further that -*"deviation within permitted level shall not be a ground to prosecute the registered Architect."*

The learned counsel for the appellant further referred to the [illegible] no. 171 dated 25.08.2000 in which as per the resolution no. 69/2000 dated 15.09.2000 regarding compounding and condonation fee [illegible] which was excess to permitted height is already provided in the year 2000 [illegible] same principle has been adopted in the present Bihar [illegible] further argued that actually at the time of construction [illegible] and due to the height of road builder raised the plinth [illegible] Therefore the height of the building was automatically raised [illegible] 13mtrs and 10mtrs height already completed in G+2 and [illegible]

the building within 11mtrs which was already sanctioned. Therefore he ra
his wall height up to 12.40mtrs but he could not construct the roof of 3
and the impugned order was passed to stop the construction on 13
though the said deviation in height was within permissible condonable
per office order no. 171 dated 25.08.2000. Hence he prayed that the
Court may be directed to condone the deviation in height and
deviations under the provisions of Appendix-"L" and above referred
order and further prayed hat as per clause -8 of the Building Bye law
building was to be constructed within 3 years from the date of sanctio
26.12.14 but meanwhile due to the impugned order, which is under chall
before this Tribunal he could not complete the construction within stipula
time. Therefore, the Court below may further be directed to permit
appellant to complete the construction within 3 years after deducting
period which was lapsed due to pendency of the vigilance case and this ap

The learned counsel for PMC-respondent vehemently opposed the
of the appellant and submitted that there is wilful and planned deviation
should not be condoned and this appeal may be dismissed and any such
may be passed which may be deemed fit in the interest of justice.

Heard both side and perused the entire case record. In above fac
circumstances this Tribunal comes to the conclusion that.

Finding

1. Although in the impugned order it is admitted that
under construction building was actually sanctioned out of which
slab of G+2 has been cast and further up to the
columns have been constructed as part of 3rd floor. During

measurement of the building in presence of the builder and his representative although map was not provided, but after measurement it was found that the road widening land strip of 1.35 mtrs to 1.3mtrs was not left by the appellant considering the width of the road of 6mtrs as per Building Byelaws and on the spot inspection it was found 3.40mtrs to 3.30mtrs. As per Building Byelaws the height of 11mtrs there should be 6mtrs wide road and the appellant was directed by the impugned order to leave the land strip for road widening to erect his boundary for which the learned counsel of the appellant admitted that the appellant's building was constructed not on the main road rather it is passage from main road and that passage is only for three (3) buildings. 1st is adjacent to the main road and appellant's building is on 2nd number and the 3rd building is at the end of the passage. The impugned order was passed without perusal of the sanctioned map and moreover, the site plan placed by the vigilance team shows that the approach road is as above 58.5mtrs and that may not be classified as road. It will only be treated as means of access as provided in clause 18.6(a) of the Modified Bombay Bye-laws which it is provided that :- " *Minimum width of road required to access to building in existing columns not developed by any authorised agency such as PRDA, Housing Society, Co-operative Societies, Government or semi-government organisations will be as follows :*

In case of up to 25mtrs of length of the road, in meter, minimum width of road/street may be 3.6mtrs or o12ft and in case of exceeding 25mtrs and up to 100mtrs of the length of road the minimum width of road may be 4.8mtrs or 16ft. And exceeding 100mtrs of length the width of road may be 6mtrs or 20ft."

The appellant is ready to deposit the fine for the deviation which is under condonable limit for the excess construction in the setbacks, but permissible limit as provided in the Appendix-"L" and the deviations mentioned in the order after construing the Resolution no. 171 dated 25.09.2008, Appendix-"L" and other applicable Building Byelaws and the sanction under section 317 of the Bihar Municipal Act,2007 as well as the part-C of the order passed in CWJC no. 8152/13 dated 07.08.14. It appears that the deviations are within permissible condonable limit as per Byelaws and shall be condoned for which the Municipal Commissioner has fully agreed before the Hon'ble High Court, as mentioned in the order dated 09.12.14.

Therefore this Tribunal passes the following order

Order

1. The impugned order dated 09.12.14 is modified to the extent observations and findings and the Municipal Commissioner is directed to condone the deviations after getting condonation fee/fine from the appellant as per building Byelaws.

2. Due to reason that the appellant is ready to leave the land strip for road widening as per provision 19.6(a), Court Commissioner is directed to measure the land strip in length and its width for which appellant is ready to leave the required strip of land for road widening.

3. So far the deviation in height is concerned, as per [illegible] will be operative in accordance with the update law [illegible] the date of ordrance may be permitted to be utilized by the appellant that 3 (three) years time was not elapsed at the [illegible]

4. With this observation this appeal is hereby disposed [illegible] observations.