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BABITA BADASARIA & ORS.

v.

PATNA MUNICIPAL CORPORATION & ORS.

(Writ Petition (Civil) No.337 of 2013)

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MARCH 10, 2016

[PINAKI CHANDRA GHOSE AND R.K. AGRAWAL, JJ.]

Urban Development – Demolition of unauthorized construction – Payment of compensation to affected person – Construction of the multi-storeyed building – Deviation from the sanctioned plan – In appeal, before this Court, issuance of direction to the State Development Authority to demolish the unauthorized construction of flats – Thereafter, flat owners whose flats were to be demolished filed writ petition challenging the order passed by this Court – Demolition order upheld and direction issued to respondent no.4 to deposit Rs.25 crores or furnish Bank Guarantee – Subsequent thereto disposal of writ petition directing payment @ Rs.6,000/- per sq. ft. of the carpet area to the persons affected on account of the demolition – Adjourment of the matter from time to time – Submission of the flat owners-petitioners that the so called mezzanine floor, which is actually the first floor of the building be completely sealed and not be counted as a floor – Held: Suggestion given by the Court Commissioner to make an illegal construction as a legal construction by compounding the same by paying compounding fee cannot be accepted – Illegal construction which is contrary to law cannot be allowed – Since long time has lapsed, rate of Rs.6,000/- per sq. ft. enhanced to Rs.7000/- per sq. ft. – Compensation to be paid to the flat owners who would vacate the premises in their occupation – Direction to Municipal Corporation to demolish the unauthorized structures within the stipulated period and file a compliance report.

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CIVIL ORIGINAL JURISDICTION: Writ Petition (Civil) No. 337 of 2013.

Vikas Singh, Sr. Adv., Devashish Bharuka, A. Hasan, Advs. for the Appellant.

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Sanjiv Sen, Sr. Adv., Abhinav Mukerji, Rudreshwar Singh, Gopal

Jha, Gautam Singh, Kaushik Poddar, Dr. Maurya Vijay Chandra, Prem Prakash, Rajiv Shankar Dvivedi, Advs. for the Respondents. A

The following Order of the Court was delivered

ORDER

1. This matter has been placed before us by the Office along with an Office Report for directions. B

2. Civil Appeal No.5470 of 2004, filed by M/s. Saket Housing Ltd., was dismissed by this Court on 7-5-2013, after noting the fact that there was enormous deviation from the sanctioned plan in construction of multi-storeyed building. At that point of time this Court observed as follows: C

“There being enormous deviations from the sanctioned plan in constructing the multi-storeyed building, after following the due process of law, construction beyond sanctioned plan was directed to be demolished by the Patna Regional Development Authority. Deviation is shocking and can be undertaken only by such person who considers himself to be law unto himself. One of the deviations is that against sanction of 24 flats in 6 floors at the rate of 4 flats per floor, 9 floors have been constructed having 6 flats every floor.” D

3. Accordingly this Court had directed for demolition of the said unauthorized construction dismissing the civil appeal and that order has attained finality. Thereafter, a writ petition, being Writ Petition (Civil) No.337 of 2013 was filed by the petitioners/ owners of the residential flats in Santosha Complex, claiming themselves to be the owners of the portion which was directed to be demolished. This Court refused to recall the orders so passed for demolition of the unauthorized construction and directed M/s. Saket Housing Ltd. (respondent No.4) to deposit a sum of Rs.25 crores or furnish the Bank Guarantee in the Registry of this Court. Steps were taken accordingly in the matter. Subsequent thereto, the said writ petition was disposed of by this Court by an order dated July 9, 2014 when this Court was pleased to dismiss the writ petition holding that the writ petition was absolutely misconceived and passed the following order: E

“Having heard learned counsel for the parties and in the facts and circumstances of the case, we are of the opinion that H

A ends of justice shall be met by directing payment @ Rs. 6,000/- per sq. ft. to the persons who shall be affected on account of the demolition. Those persons shall be entitled to have the amount @ Rs. 6,000/- per sq. ft. of the carpet area, i.e., the area transferred to individuals and not the common area.

B For ascertaining the carpet area of each of the persons, we appoint Mr. Justice S.N. Jha, former Chief Justice of the Rajasthan High Court, as the Commissioner.

C The Patna Municipal Corporation shall within one week furnish to the Commissioner the area/ flats to be demolished in terms of the Order dated 7.05.2013 passed in Civil Appeal No. 5470 of 2004. The Commissioner shall ascertain through the agency of his choice the carpet area in possession of each of the persons going to be affected by the demolition. He will not decide inter se disputes between rival claimants. In such cases he will determine the carpet area. On such report, the Registry of the Court will earmark sum calculated on the aforesaid basis and deposit in an interest bearing account. The amount along with interest shall be disbursed to the person establishing the right before a Court of competent jurisdiction. As regards others, on the report of the Commissioner, the Registry of this Court shall disburse the amount calculated on the aforesaid basis to all those persons given by the Commissioner. The Commissioner may indicate the amount one would be entitled calculated on aforesaid basis.

D The functionaries of the Patna Municipal Corporation and the State Government shall provide to the Commissioner all facilities as required by him. Within four weeks of the payment, all those persons shall vacate the premises in their occupation and hand it over to the Patna Municipal Corporation. In cases having inter se dispute between rival claimants, they shall also vacate the same within four weeks of submission of the report and shall not wait for the disbursement of amount. In case any one of them does not do so, he will be evicted by using force.

E Immediately thereafter all concerned will act in accordance with the directions given by this Court in its Order dated 7.05.2013 passed in Civil Appeal No.5470 of 2004.

F After the disbursement of the amount, as aforesaid, left over

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amount, if any, shall be returned to respondent No. 4.

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The Bank guarantee(s) furnished by respondent No. 4 be encashed and the disbursement, as aforesaid, be made. The encashed amount be deposited in an interest bearing account and the disbursement be made from that from time to time. At the first instance, one of the Bank guarantees, i.e., Rs. 15 Crore be encashed.

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We fix the fee of the Commissioner @ Rs. 2 lac per sitting and that shall be disbursed from the amount already deposited by respondent No.4.

For the present, a sum of Rs.10 lac be disbursed to Mr. Justice S.N. Jha forthwith. Rest of the fee be paid to him whenever asked for.

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All these exercise including demolition be completed within a period of ten weeks.

We make it clear that any deviation in carrying out this order shall be viewed seriously.

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The writ petition is disposed of with the directions aforesaid.”

4. In view of the disposal of the writ petition, all the I.As. which were filed till then, were disposed of without any order. Subsequently, further I.As., being I.A. Nos.7-14 & 15 were filed which were disposed of by the following order passed on 13.8.2014:

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“Reference may be made to the Order dated 9.7.2014 whereby this Court very categorically held that after the Writ Petition was finally disposed of, no further orders need be passed on the I.As. We are of the same view that after disposal of the Writ Petition, I.As. should not be entertained. Hence, all I.As. are hereby dismissed.

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However, if the petitioners have any grievance with regard to measurement etc., they may approach the Commissioner and put their grievance.”

5. Subsequent thereto, I.A. No.16 was filed which was also disposed of on 8.9.2014, clarifying the order dated 13.8.2014, to the extent that the word “Commissioner” used in the last but one line to the order shall refer to “Ld. Court Commissioner”. Thereafter, I.A. No.17 was filed for condonation of delay in renewing the Bank Guarantee which was allowed by order dated 28.11.2014.

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- A 6. Thereafter, Office Report for directions was placed before this Court and an interim report was submitted by the learned Court Commissioner and on 22.02.2015 this Court requested the learned Court Commissioner to submit the final report on or before 9.03.2015 and the Bank Guarantee was extended for another 10 weeks.
- B 7. Parties, thereafter, prayed for report of the learned Court Commissioner to be furnished to them and on such prayer, an order was passed on 6.04.2015 to provide copies of the reports of the learned Court Commissioner to all the learned counsel appearing for the parties in the matter.
- C 8. Thereafter, a proposal was filed before this Court by the petitioners and the matter was adjourned from time to time. The Patna Municipal Corporation was also directed to consult the Engineers and give suggestions with regard to the suggestions placed by the parties before this Court.
- D 9. The proposals which were given on behalf of the petitioners/ flat owners were as follows:
- E “(A) Direct permanent sealing/ demolition of the mezzanine floor so that the FAR so released can be made available to the flat owners/petitioners by considering the second floor as the first floor and in the same way, considering the seventh floor as the sixth floor;
- F (B) Direct the Ld. Court Commissioner to work out the number of flat owners whose areas can be saved in view of the fact that the mezzanine floor is sealed and is not being utilized towards the FAR and also in terms of compounding vide order of the Vice-Chairman, Patna Municipal Corporation dated 24.02.2000, which has become final after the dismissal of the builder’s Civil Appeal No.5470 of 2004 by this Hon’ble Court vide its judgment dated 07.05.2013.”
- G 10. Patna Municipal Corporation filed its response to the proposal dated 31.8.2015 filed by the petitioners and it was further submitted before us that the proposals given by the petitioners cannot be accepted and the same should be rejected by this Court in their entirety. It is submitted on behalf of the Municipal Corporation that the so called Mezzanine Floor, which is actually the First Floor of the building, be
- H completely sealed and not be counted as a floor, has no merit. It was

further submitted on behalf of the Municipal Corporation that it is not possible to accept the suggestion of the petitioners as the Mezzanine Floor is a complete floor built over 100% of the Ground Floor. As per the rules, a Mezzanine Floor can only be one if it is over 1/3rd of the Ground Floor area. Therefore, the said proposal is not accepted by the Municipal Corporation Authorities. It is further contended that the building was sanctioned for Ground and six floors (G+6 floors). The height of the building is important because if the proposal of the petitioners is accepted, then the building will be Ground+7 Floors or more with one floor (the so called Mezzanine Floor) which is not being counted. It is further pointed out that the sanctioned plan is G+6 Floors and it may not be safe to allow it to rise over the number of floors for which the foundation has been laid by the Builder – Respondent No.4. Accordingly, it is submitted that it would not be safe to allow compounding of any part of the construction of the building. It is further submitted that in case of sealing of the Mezzanine Floor, it is necessary to monitor the same in the future. It is further stated that it may not be proper to do so on account of the severe deviation in the Floor Area Ratio (FAR), which in the building is 5.459 as against the sanctioned FAR of 2.99, further the height of the Building was illegally increased from the sanctioned height of 21 metres to 31.05 metres. Instead of G+6 Floors, the Builder has constructed G+9 Floors. It is further submitted that it is also contrary to the notification and guidelines issued by the Airport Authority of India as the height of the building was increased by the Builder to beyond 23 metres without any sanction or approval of the Airport Authority of India. It is further submitted that it would not be possible to demolish the so called Mezzanine Floor. In these circumstances, it is submitted on behalf of the Patna Municipal Corporation that the illegal construction should be demolished.

11. We have considered the Report of the Patna Municipal Corporation filed before this Court. We have also duly considered the Report dated 24.02.2015 filed by the Court Commissioner. However, we do not accept part of the Report which has been specifically stated as follows:

“(13) In any case, I am inclined to think that as the Builder was pursuing the legal remedies by way of appeal before the Appellate Tribunal or the writ petition/ LPA before the High Court bona fide, the issue of compounding should not be treated as a closed option. If it is allowable under the bye-laws of the PRDA/PMC, the Hon’ble Court may give a fresh look at the same if it results in

A regularization of a few flats of the owners who purchased them bona fide from their hard-earned money and are now on the verge of being displaced.

(14) To conclude the discussions, I would respectfully recommend that while the offer of compounding may be allowed, the option of removal of the floor claimed to be mezzanine or the First Floor by either side – may be considered. A favourable decision on these two points may save two full floors i.e. 14 flats of bona fide purchasers, without compromising the FAR parameters. It may be mentioned that de hors the question of FAR, height of the building is not in issue. It may also be mentioned that three flats out of seven flats on the top floor – facing imminent demolition, belong to the Builder themselves.”

12. After the final report, any suggestion which has been given by the Court Commissioner only to make an illegal construction as a legal construction by compounding the same by paying compounding fee, is totally unacceptable to us. In our opinion, the issue of compounding is a closed chapter as the writ petition as well as the appeal have already been dismissed by this Court. In these circumstances, we do not find any reason to change our mind and allow to keep this illegal construction which is contrary to law. We have already expressed our views in our order passed at the time of disposal of the writ petition. In these circumstances, we do not intend to pass any further order in this matter. We only direct that steps shall be taken by the respondent authorities/Patna Municipal Corporation in the matter in terms of our order dated 9th July, 2014 passed in the said writ petition.

13. We, however, make it clear that at the time of disposal of the writ petition, we had directed payment at the rate of Rs.6,000/- per sq. ft. to the persons who shall be affected on account of the demolition. Since the matter is concluded today, we enhance the said rate from Rs.6,000/- per sq. ft. to Rs.7000/- per sq. ft.. We further direct that all the flat owners will get their compensation and such compensation shall be paid within a period of six weeks from date and they will vacate the premises in their occupation, to give effect to the order so passed by us, within a period of one month thereafter.

14. We further direct that the Patna Municipal Corporation shall demolish the unauthorized structures within a period of four months and thereafter shall file a compliance report before this Court.

H Nidhi Jain

Directions issued.