

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15963 of 2023

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Shyam Chandra Sharma, Son of Late Ramnaresh Sharma, Resident of
Mohalla- Dakbungalow Road, Dahiyana, P.S.- Chapra Nagar, Chapra,
District- Saran- 80113, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
2. The Additional Chief Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
3. The Additional Chief Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna.
4. The Additional Chief Secretary, Registration, Excise and Prohibition Department, Govt. of Bihar, Patna.
5. The Assistant Inspector General, Registration, Excise and Prohibition Department, Govt. of Bihar, Patna.
6. The Collector, Saran at Chapra.
7. The Additional Collector, Saran at Chapra.
8. The Municipal Corporation, Chapra Saran through its Municipal Commissioner.
9. The Municipal Commissioner, Municipal Corporation, Chapra, Saran.
10. The Junior Engineer, Municipal Corporation, Chapra, Saran.

... .. Respondent/s

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Writ petition for following reliefs i.e., to issue directions to the Municipal Commissioner for certain relief which are (i) to issue order to the Municipal Commissioner for sanction of building plan for construction of residential – cum- commercial building on his piece of land (ii) for setting aside decision of Municipal Commissioner, Chapra (iii) for orders for granting him further relief – the petitioner was in continuous possession of the land measuring 5800sq. feet falling under Chapra Municipal Corporation bearing holding no.716 situated in ward no.2 under circle no.16 in the district of Saran – the aforesaid piece of land was purchased by the petitioner and his wife, namely Bibha Sharma, by two registered sale

deeds – by the first registered sale deed dated 22/6/2006 the purchased a part of the aforesaid piece of land measuring 5586 sq. feet equivalent to 12.823 decimal was purchased by the wife of the petitioner, Bibha Sharma from the same vendor Smt. Pratibha Verma vide registered Sale deed dated 20/11/2006 – the petitioner applied for transfer of name in requisite application form along with copies of the registered sale deeds including relevant documents before Chapra Municipal Corporation – The authorities being satisfied had transferred the holding numbers in their names – the piece of land had a dilapidated house on part of the on the part of the aforesaid land measuring 1000sq.ft. which became inhabitable – the petitioner and his wife submitted an application for building plan for construction of residential –cum- commercial building on the said land along with duly filled forms, building plans and requisite expenses as per requirement under Building bye laws, 2014 – the application and building plan was rejected by the Municipal Commissioner on the ground that the land in question is un-surveyed land and in view of prohibition imposed by the State Government, transfer of ownership of such land cannot take place – on the basis of decision dated 3/6/2017 taken under the Chairmanship of Principal Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna had earlier issued a letter directing the respective Collector-cum-district Registrar, including sub-registrars to prohibit registration of sale deed or any document through which the ownership of un-surveyed lands is being transferred to others – the petitioner has failed to furnish Jamabandi and revenue receipts duly generated by the State Government, the application has been rejected – in compliance of the direction of this Court Additional Chief Secretary, Revenue and Land Reforms Department Govt. of Bihar appeared before this Court and informed this Court that the land in question is un-surveyed topo-land - as per existing law all un-surveyed land belong to the State government – no individual can claim ownership of the said land – land involved unsurveyed land in Chapra town – the Division Bench by a reasoned order has directed the State Government and concerned Sub-Registrar, Chapra to register Deed of mortgage – The State government preferred S.L.P vide Diary No.11958/2023 before the Hon'ble Apex Court which was dismissed by order dated 10/4/2023 – As a consequence of the Court order the department has stopped the sale and purchase of topo-land – it is admitted by the parties that vide sale deeds abovementioned the petitioner came in possession of the lands measuring 5800 sq.ft. bearing holding no.716, ward 2, circle no.16 in district Saran – the application was made for transferring the holding number along with the dilapidated building existing on the plot mentioned in sale deed in Chapra is also unsurveyed land and bears no Khata and Khesra no.s relating to holding 716 – the main ground for rejecting the claim of the petitioner for grant of building plan by Municipal Commissioner, Chapra vide order dated

14/9/2009 appears to be rent receipt, LPC and other documents were not annexed with check list due to the non issuance of the same by Circle Officer and the concerned officer of the Municipality refused to sanction building plan to be not in accordance with 2014 Building –bye-laws – on perusal of rejection order it appears that the authorities admit that the petitioner fulfills the conditions as laid down by Building Bye –laws of 2014- the rejection of the building plan on ground of non submission of up to date rent receipts and land possession certificate duly issued by Circle Officer in view of the decision contained in letter no.597 dated 29/9/2022 restricting the Circle Officer/L.R.D.c not to exercise power of cancellation/ creation of jamabandi including fixation of rent of un-surveyed land can be held to be in consistence with the order of this Hon’ble Court and government decision contained in Letter No 4087 dated 16/8/2022 by which the ban was lifted on the sale and purchase by the Registration and Prohibition Department – the Circle Officer is required to take suo moto cognizance for mutation after registration of land – by law no construction can be carried out without following the proceure of the building byelaws,2014 and necessitates prior approval of building plan by Competent Authority as per the bye-laws before any construction could be carried out – the bye laws require submission of necessary documents along with application for building permit – Rule 4 of building bye laws the construction of any building in respect of which permission has been issued before coming into force of 2014 bye-laws, continued to be validly made and the said permission shall be deemed to have been issued under corresponding bye-laws – to mean that the sale deed cannot be registered unless the land proposed to be sold stands recorded in favour of the transferor in the “ Record of Rights” is not a document of title – preventing a person from getting the land mutated at the strength of valid sale deed would be contrary to provisions of S.8 of Transfer of Property Act,1882 – article 300A of the Constitution of India also tends to safeguard the invaluable right to property – whether after allowing topo land/unsurveyed land to be registered in favour of petitioner can at the same time by a policy decision prohibit the Circle officer to not create Jamabandi and issue L.P.C and as a consequence of the same in absence of required documents the Municipal Authorities can refuse to sanction building plan till the State Government takes a policy decision – the prohibitory order has not been issued under any authority of law – Law does not contempelate performance of impossible conditions/obligations from any individual- the law shall not expect performance of the impossible condition is required to be excused- the building plan of the petitioner having not been sanctioned in the name of petitioner by Municipal Authorities is without authority of law which calls for interference – the present writ petition stands disposed of-no order as to costs

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6. The Collector, Saran at Chapra.
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8. The Municipal Corporation, Chapra Saran through its Municipal Commissioner.
9. The Municipal Commissioner, Municipal Corporation, Chapra, Saran.
10. The Junior Engineer, Municipal Corporation, Chapra, Saran.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Mrigank Mauli, Sr. Advocate. Mr. Pratik Kumar Sinha, Advocate
For the State	:	Mr. Subhash Prasad Singh, GA-3.
For the PMC	:	Mr. Indu Bhushan Singh, Advocate.

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 01-04-2024

Heard Mr. Mrigank Mauli, learned senior counsel along with Mr. Pratik Kumar Sinha, learned counsel appearing on behalf of the petitioner; Mr. Subhash Prasad Singh, learned GA-3 for the State and Mr. Indu Bhushan Singh, learned counsel for the Patna Municipal Corporation.



2. The petitioner has sought for the following reliefs
in Para-1 of the writ petition:

(i) To issue order / orders or writ / writs or direction / directions preferably a writ of mandamus upon the respondent no.4, Municipal Commissioner, Chapra Municipal Corporation directing him to forthwith sanction the Building Plan (Map) for construction of a residential-cum-commercial building on his piece of land having an area of 5586 sq. feet bearing holding no. 716, under Circle no. 16 and Ward No. 22 as in absence of the same, the petitioner is not able to construct his residential-cum- commercial building and thereby is not only being deprived of his inalienable and inviolable right of "Right to Shelter" guaranteed under Article 21 but is also being deprived of his fundamental right of right to carry occupation, trade or business guaranteed under Article 19 (1) (g) of the Constitution of India;

(ii) To issue an appropriate writ/writs or order/orders or direction/directions, preferably a writ of certiorari quashing and setting aside the decision of the respondent no. 9, Municipal Commissioner, Chapra as contained in letter no. 2823 dated 14/9/2023 by which on an application filed by the petitioner seeking sanction of Building Plan (Map) for a piece of land having an area of 5800 sq. feet bearing holding no. 716 under Circle no. 16 and Ward No. 22 has been rejected on the non est ground that the respondent no. 10, Junior Engineer, Municipal Corporation, Chapra did not find the rent receipt, land possession certificate and other documents pertaining to the said land to be in consonance with the check list;

(iii) To issue further order/orders or writ/writs or direction/directions directing the respondent authorities to grant him further relief as the petitioner may be entitled to in the attending fact and circumstances of the case to see the ends of Justice.

ARGUMENT

3. Learned counsel appearing on behalf of the petitioner submitted that the petitioner is coming into continuous possession of land measuring total area of 5800 sq. feet (12.823 dec.) falling under Chapra Municipal Corporation bearing holding no. 716, situated in ward no.2, under circle no.



16 in the district of Saran. The aforesaid piece of the land was purchased by the petitioner and his wife, namely Bibha Sharma, by two registered sale-deeds. By the first registered sale-deed dated 22.06.2006, the petitioner purchased a part of the aforesaid piece of land measuring an area of 200 sq. feet from one Smt. Pratibha Verma. Similarly, the remaining area of the aforesaid piece of land, ad-measuring to an area of 5586 Sq. feet equivalent to 12.823 dec., was purchased by the wife of the petitioner, namely Bibha Sharma, from the same vendor i.e. Smt. Pratibha Verma, vide registered sale-deed dated 20/11/2006. The petitioner applied for transfer of name in requisite application form along with the copies of the registered sale-deeds dated 22.06.2006 and 20.11.2006, including other relevant documents before the Chapra Municipal Corporation. The Municipal Authorities after being satisfied had transferred the holding number in their names. The above piece of land had a dilapidated house on part of the aforesaid land i.e. 1000 sq. feet which became inhabitable. The petitioner and his wife submitted an application before the respondent no. 4, for issuance of building plan (map) in regard to construction of residential-cum-commercial building, on the aforesaid land, along with, the duly filled Form-II (Building Plan Application



Form), Form-IV (Certificate of Structural Stability), Form-V (Form of Supervision), Form VI Check List, Form-X (Form of Notice for Commencement of Work) containing the signature of Authorized Engineer of the Chapra Municipal Corporation, along with the proposed building plan on 26.06.2023. The petitioner also deposited requisite fees expenses amounting to Rs. 1,51,500/- and Rs. 35,513/-, by two cheques, alongwith an undertaking, in form of an affidavit, dated 29.08.2022 as per the requirement under the Building Bye Laws, 2014.

4. Learned counsel submitted that the authorities of the Chapra Municipal Corporation is required to issue building plan, on the basis of the holding number, in accordance with the statutory requirement of Building Bye-Laws, 2014. However, the application and the Building Plan of the petitioner were rejected vide letter no. 2823 dated 14.09.2023 by the respondent no. 9 (The Municipal Commissioner, Chapra) on the ground that land in question is an un-surveyed land and in view of the prohibition imposed by the State Government, transfer of ownership of such land cannot take place.

5. Learned counsel submitted that the rejection of the application of the petitioner vide memo no. 597 dated 29/9/2022 is in clear violation of law when the land is un-surveyed land in



the urban area, then transfer of ownership and holding shall be carried out on basis of holding number by the concerned Municipal Corporation.

6. Learned counsel has emphatically submitted that out of the same piece of land, a portion of land area has been purchased by 4 to 5 persons and amongst them, heirs of Harihar Sharma has even entered into development agreement with a developer and is constructing shopping complex after grant of building plan. Similarly, building plan has been sanctioned by the Corporation and construction work is going on for the commercial building also in the vicinity of the petitioner's plot.

7. Learned counsel submitted that the petitioner, in support of his claim has brought on record recent photographs from which it would appear that in front side of the petitioner's land, there is a shop of Motorcycle in the name and style of "Prabhu Automobiles" and in the right-hand side of the Prabhu Automobiles, a G+2 shopping complex has already been constructed.

8. Learned counsel further submitted that in the state of Bihar, there are some districts, including the district of Saran, wherein, large area of the lands is still un-surveyed land, due to which, time to time disputes do occur in regard to the ownership



of such land, particularly when one transfers the ownership of the land to others or such land is acquired for laying of projects. On basis of the decision dated 03.06.2017, taken under the Chairmanship of the Principal Secretary, Revenue and Land Reforms Dept., Govt. of Bihar, Patna, the Registration Excise and Prohibition Dept., Govt. of Bihar, Patna, earlier had issued a letter no. 3113 dated 20.07.2017, directing the respective Collector-cum-District Registrar, including the sub-registrars of concerned office, to prohibit the registration of sale-deed or any document, through which the ownership of un-surveyed lands is being transferred to others.

9. *Per-contra*, learned counsel appearing on behalf of the Municipal Corporation stated that the writ petition is not maintainable, because the petitioner's application for sanction of map has been rejected vide letter no.2823 dated 14.09.2023, by the Municipal Commissioner, Nagar Nigam Chapra, because the petitioner did not fulfill the requirement of the Rule 6 of Bihar Building Bye-Laws, 2014 and failed to submit Land Possession Certificate, Jamabandi Number, Entry in Records of Right, etc. which is required for sanction of map.

10. He further submitted that the writ application is also fit to be dismissed on the ground that whenever application



for sanction of map is rejected in view of Rule 6 of the Bihar Building Bye Laws, 2014, then an appeal against the order under Sub Clause (6) shall lie with Municipal Building Tribunal under Section 329 of the Municipal Act or Tribunal constituted under the Act. The petitioner without exhausting alternative remedy has directly filed the present writ petition, which is not maintainable. Section 329 of the Bihar Municipal Act, 2007 is reproduced hereunder:

“329. Municipal Building Tribunal. (1) The State Government may appoint one or more Municipal Building Tribunals (hereinafter referred to in this section as the Tribunal) as may be considered necessary to hear and decide appeals arising out of sanctioning of building plans by the Municipality in accordance with such procedure, and to realize such fees in connection with such appeals, as may be prescribed by the government.”

11. He further submits that no infirmity has been pointed out by the petitioner in Memo No.2823 dated 14.09.2023 that there is any violation of Rule 6 of the Bihar Building Bye-Laws, 2014, since the petitioner has failed to furnish Jamabandi and revenue rent receipt duly generated by the State Government, the application of the petitioner has been rejected.

12. At this stage, learned counsel appearing on behalf of the petitioner further submitted that the petitioner is also aggrieved by the illegal action of the Circle Officer, who is



adamant not to grant Jamabandi and the rent receipt with respect to Holding No.716, in spite of the fact that the petitioner is ready to deposit the requisite rent/fee to the State Government.

13. The Additional Chief Secretary, Revenue and Land Reforms Department is directed to personally appear before the Court today (i.e. on 01.04.2024) at 03.00 P.M. to clarify the status of the topo land and jurisdiction of the Circle Officer.

14. The matter will be heard at 03.00 P.M. today (i.e. on 01.04.2024) so that the Additional Chief Secretary, Revenue and Land Reforms Department, Government of Bihar can clarify the situation at circle level taking into consideration the fact that the people are facing difficulty at the circle level due to inaction of the Circle Officer in the State of Bihar.

Later on at 03:00 P.M.

15. In compliance of the direction of this Court in pre-recess session, the Additional Chief Secretary, Revenue and Land Reforms Department, Government of Bihar has appeared before this Court and is represented by the learned Advocate General and Mr. Subhash Prasad Singh, learned GA 3, who have informed that the land in question is an un-surveyed topo-land.

16. He further submitted that as per the existing law,



all un-surveyed lands in the State belong to the Government. No individual can claim ownership over un-surveyed land. But Government is contemplating to announce a policy in regard to topo land on which topographic survey has not been carried out. The state government is bound to give ownership rights to all citizen who have been living or carrying out agricultural activities on the topo lands in districts such as Khagaria, Lakhisarai, Saran, Samastipur and other district for the last several decades for which they have also been paying taxes for the land to the concerned department since then. Soon a policy decision in regard to creating Jamabandi in the name of the persons, who are inhabiting the topo lands by constructing their dwelling house or are agriculturists and running their business and earning their livelihood, once the ongoing survey of topo land in the State is completed, the policy is to reduce the cases of land disputes in the state arising out of unsurveyed land.

ANALYSIS

17. The dispute in the present writ petition relates to unsurveyed land in Bihar which is almost 20 percent of its area. The land surveys in Bihar were carried out by the British between 1905 and 1915 and left out lands that subsequently emerged from the river. Unsurveyed lands in Bihar are called



‘topo’ lands and mostly situated on the banks of the Ganga and Koshi. The ‘topo land’ in Ganga basin are perennial in nature formed due to alluvion and diluvion of the river. At times the land emerges and at times it is eroded by the streams of the river or by the rain and other natural calamities due to which land survey could not be carried during cadastral or revisional survey. Now, the Government has decided to carry out another land survey, but that too could not be completed.

18. In the State of Bihar, there are some districts, including the district of Saran, wherein a large area of the lands is still un-surveyed land, due to which, time to time disputes do occur in regard to the ownership of such land, particularly when one transfers the ownership of the land to others or such land is acquired for laying of projects.

19. The record reveals that the petitioner along with his wife had submitted an application dated 26.06.2023 before the respondent no.8 for issuance of building plan (Map), for the construction of residential-cum-commercial building, on land appertaining to holding No. 716 accompanying therewith the duly filled form (ii) (building plan application form-(iv), (Certificate of Structural Stability), Form-(v) (Form of Supervision), Form-(vi) Check list, Form-(x) (Form of notice



for commencement of work) containing the signature of authorized engineer of the Chapra Municipal Corporation along with building plan, besides those documents, fees, expenses amounting to Rs.1,51,500/- and Rs.35,513/- through different cheques, along with undertaking in the form of an affidavit dated 29.08.2022 under Bihar Building Bye Laws, 2014.

20. The petitioner then filed representation dated 05.07.2023 before the Municipal Commissioner – respondent no.9, seeking sanction of building plan. The petitioner received a letter no. 2823 dated 14/9/2023 from the office of the respondent no. 9 who had forwarded the same to the Junior Engineer, who upon verification of check list attached with the Form for grant of approval of building plan had found that the same did not contain the rent receipt, Land Possession Certificate and other documents, pertaining to the said land duly issued by the concerned Circle Officer and had recommended for rejection. The Municipal Commissioner, Chapra, accordingly, rejected the claim for sanction of building plan without giving notice to the petitioner and providing opportunity to produce the additional documents required for passing of building plan which were not found in the check list, which related to submission of Jamabandi, rent receipt and L.P.C,



issued in favour of the petitioner. The petitioner has shown his inability to submit the same as the land in question is un-surveyed land and in view of the specific direction of the State Government to the revenue authorities vide memo no. 597 dated 29/9/2022, which prohibit to grant rent receipt and L.P.C. and refusal to mutate the sale deed by the Circle Officer. It has been informed that the Circle Officer concerned has refused to issue the same till the exercise of survey is completed (Annexure- 8 to the writ application).

21. The record reveals that on the basis of the decision dated 03.06.2017 taken under the Chairmanship of the Principal Secretary, Revenue and Land Reforms Dept., Govt. of Bihar, Patna, the Registration Excise and Prohibition Dept., Govt. of Bihar, Patna had earlier issued letter no. 3113 dated 20/7/2017, directing the respective Collector-cum-District Registrar including sub-registrars of concerned office to prohibit the registration of sale-deed or any document, through which the ownership of un-surveyed lands is being transferred to others, as per the decision contained in letter no. 3113 dated 20/7/2017.

22. Reliance has been placed on a decision of a Division Bench of this Court in *C.W.J.C. No. 9937 of 2020 (Satyendra Kr. Singh vs. The State of Bihar & Ors.)*, wherein



also the land involved was un-surveyed land of Chapra town within the district of Saran, the petitioner was aggrieved by the action of the Sub-Registrar, who had refused to register the mortgaged deed without assigning any reason. The Division Bench by a reasoned order had directed the State Government and the concerned Sub-Registrar, Chapra to register the deed of mortgage. The State Government against the said order had preferred S.L.P. vide Diary No. 11958/2023 before the Hon'ble Apex Court, which was dismissed at the very threshold vide order dated 10.04.2023.

23. A co-ordinate Bench of this Court had also occasion to decide the similar issue in the case of ***Rakesh Gupta vs. The State of Bihar & Ors. (C.W.J.C. No. 2524 of 2018)***, wherein also, un-surveyed land of Chapra town, coming under the territorial jurisdiction of Chapra Municipal Corporation was involved. This Hon'ble Court after having discussed the governing law and also taking into consideration the case of Satyendra Kumar (supra) declared the minutes dated 3/6/2017, as contained in memo dated 7/6/2017 of the Revenue and Land Reforms Department and also consequential letter dated 20/7/2017 of the Deputy Inspector, General of Registration, Bihar, Patna to be invalid and non-est.



24. As a consequence of the Courts order, the Assistant Inspector General, Bihar, Patna vide letter no. 4087 dated 16.08.2022 withdrew the earlier memo no. 3113 dated 20.07.2017, by which the department had stopped the sale and purchase of topo-land.

25. A meeting was conveyed regarding the ownership transfer of Topo lands on 12.09.2022 under the Chairmanship of Additional Chief Secretary, Revenue and Land Reforms, Govt. of Bihar, wherein, it was decided to constitute a committee for survey of Topo lands located in the urban areas, where sale/purchase of such land is taking place on the basis of holding number. It was decided in the meeting that the change of ownership or transfer of holding by the Municipal Corporation/Nagar Parishad/Nagar Panchayat, whether the Circle Officer has been authorized to create Jamabandi and fix rent can only be done after completion of survey and not otherwise. A copy of the decision is contained in memo no. 597 dated 29.09.2022 of Urban Development and Housing Department, Government of Bihar, Patna.

26. It is admitted by the parties that vide sale deed dated 22.06.2006 and 20.11.2006, the petitioner came in possession of the land measuring total area of 5800 sq. feet



(12.823 dec.) falling under Chapra Municipal Corporation bearing holding no. 716, situated in ward no.2, under circle no. 16 in the district of Saran. The application was made for transferring the holding number along with the dilapidated building existing on the plot mentioned in the sale deed falling in the city of Chapra which is also an un-surveyed land and bears no Khata and Khesra numbers relating to the holding number 716. The main ground of rejecting the claim of petitioner for grant of building plan by the respondent no. 9 (The Municipal Commissioner, Chapra) vide order dated 14.09.2023 appears to be that rent receipt, L.P.C. and other documents were not annexed with the check list, due to non-issuance of the same by the Circle Officer and the concerned officer of the Municipality refused to sanction building plan to be not in accordance with the 2014 Building-byelaws. .

27. On perusal of the rejection order contained in Letter No. 2823 dated 14/9/2023, it appears that the authorities admits that the petitioner fulfills the conditions, as laid down in the Building Bye-Laws of 2014. The rejection of the building plan on the ground of non-submission of the up-to-date rent receipts and land possession certificate duly issued by the Circle Officer in view of the decision contained in Letter No. 597



dated 29/9/2022 restricting the Circle Officer/L.R.D.C. not to exercise power of cancellation/creation of Jamabandi including fixation of rent of un-surveyed land can be held to be in consistence with the order of this Hon'ble Court and government decision contained in Letter No. 4087 dated 16.08.2022 by which ban was lifted on sale and purchase by the Registration and Prohibition Department.

28. The prohibitory order of the State Government was subject matter of CWJC No. 9937 of 2020 (**Satyendra Kumar Singh vs. The State of Bihar**), wherein Hon'ble Court had occasion to determine as to whether an authority can refuse to register documents which otherwise comply with the statutory requirements and formalities. This Court *inter alia* made the following observations:-

“ 7. Having considered rival submission advanced on behalf of the parties as noted above, in the background of the aforesaid facts, we find substance in the submission made on behalf of the petitioner that if a document otherwise complying with the statutory requirement and formalities is presented for registration, the registering authority is duty bound to register it. We may usefully notice the Supreme Court's decision in case of State of Rajasthan Vs. Basant Nahata reported in (2005) 12 SCC 77 wherein it has been laid down that the aim of the Registration Act is to govern the documents and not the transactions embodied therein. The Supreme Court has noted that by registration of a document, only notice of the public is drawn.

8. The Division Bench of this Court in case of Bihar



Deed Writers Association (supra) has laid down in paragraph 3 as under :-

“3.....In our view, if a document otherwise complying with the statutory requirements and formalities is presented for registration, the registering authority is bound to register it. It is not for the registering authority to enquire and ascertain the title to its own satisfaction. Under the provisions of the T.P. Act, 1888, if the transferor does not have any title or has transferee on transfer will either get no title or he will get an imperfect title. This will be to the prejudice of the transferee and is not of any concern to the registering authority.”

9. The submission advanced on behalf of the State of Bihar that registration of the document in the present case will defeat public policy in the light of the decision taken by the Revenue and Land Reforms Department, Government of Bihar, is not acceptable to this Court as the said decision, in the nature of executive instruction cannot be said to be laying down any public policy. Subsection (1) of Section 22 A of the Registration Act confers upon the State Government of power to declare that registration of any document or class of document is oppose to public policy. Subsection (2) of Section 22 A is a non-obstante clause which mandates the registering officer to refuse to register any document to which a notification issued under Subsection (1) is applicable. In case of Basant Nahata (supra) a notification issued under Subsection (1) of Section 22 A of the Act, whereby registration of power of attorney authorising the attorney to transfer any immovable property for a term or irrevocable or without prescribing any term, had fallen for consideration. Rejecting the plea, dealing extensively with the phraseology “opposed of public policy” the Supreme Court in case of Basant Nahata (supra) held in paragraph 61 and 64 as under :-

“61. Hence, it becomes amply clear that



it is not possible to define public policy with precision at any point of time. It is not for the executive to fill these grey areas as the said power rests with judiciary. Whenever interpretation of the concept “public policy” is required to be considered it is for the judiciary to do so and in doing so even the power of the judiciary is very limited.

64. A thing which itself is so uncertain cannot be a guideline for any thing or cannot be said to be providing sufficient framework for the executive to work under it. Essential functions of the legislature cannot be delegated and it must be judged on the touchstone of Article 14 and Article 246 of the Constitution. It is, thus, only the ancillary and procedural powers which can be delegated and not the essential legislative point.”

10. In view of the above, the plea taken on behalf of the State of Bihar that the denial by the respondents to register the document is in terms of a public policy is hereby rejected. In view of the Division Bench decision in case of Bihar Deed Writers Association (supra) and the Supreme Court’s decision as noted above, we have no hesitation in recording our conclusion that once a document, which is required to be registered, is presented for registration in compliance with the Registration Act, the registering authority is under obligation to register a document presented before it.”

29. Section 22A of the Registration Act, 1908

mandates sale of land recorded in the Record of Right, which is reproduced hereinbelow:

“22-A. Registration of document which is against the public policy.- (1) The State Government may by notification in the Official Gazette, declare that the registration of any document or class of documents is against the public policy.

(2) Notwithstanding anything contained in the Act, the Registering Officer shall refuse to register any document to which the notification issued under



sub-section (1) is applicable.”

30. Furthermore, Section 71 and 72 of the Registration Act, 1908 contains the provisions of law which is as follows:-

“71. Reasons for refusal to register to be recorded.

—(1) Every Sub-Registrar refusing to register a document, except on the ground that the property to which it relates is not situate within his sub-district, shall make an order of refusal and record his reasons for such order in his Book No. 2, and endorse the words “registration refused” on the document; and, on application made by any person executing or claiming under the document, shall, without payment and unnecessary delay, give him a copy of the reasons so recorded.

(2) No registering officer shall accept for registration a document so endorsed unless and until, under the provisions hereinafter contained, the document is directed to be registered”

“72. Appeal to Registrar from orders of Sub-Registrar refusing registration on ground other than denial of execution.—(1) Except where the refusal is made on the ground of denial of execution, an appeal shall lie against an order of a Sub-Registrar refusing to admit a document to registration (whether the registration of such document is compulsory or optional) to the Registrar to whom such Sub-Registrar is subordinate, if presented to such Registrar within thirty days from the date of the order; and the Registrar may reverse or alter such order.

(2) If the order of the Registrar directs the document to be registered and the document is duly presented for registration within thirty days after the making of such order, the Sub-Registrar shall obey the same, and thereupon shall, so far as may be practicable, follow the procedure prescribed in sections 58, 59 and 60; and such registration shall take effect as if the document had been registered when it was first duly presented for registration.”

31. The Bihar Land Mutation Act, 2011 deals with the regulation of the process of mutation of land and provides



for the filing of petition of mutation under Section 3, enquiry and report under Section 4 and disposal of mutation cases under Section 6. Under Section 3 (3A) inserted by Bihar Amendment Act 22 of 2017 , the Circle Officer is required to take *suo moto* cognizance for mutation after registration of land. The provision of law is reproduced herein below:-

“ [(3A) After registration of land, the Circle Officers of those notified Anchals will take suo motu cognizance for Online Mutation and start mutation case record within three working days. The Circle Officer shall issue general notice and particular notice in prescribed form. After issuing general notice and also particular notice, the Circle Officer shall abide by the prescribed procedure for disposal of the mutation case records.]”

32. The provisions regarding the sanction of building plans has been provided in Bihar Municipal Act, 2007, Building Bye-Laws (Old) and Bihar Building Bye-Laws, 2014. Section 313 of the Act, 2007 mandates that no construction can be carried out without following the procedure of the building bye-laws, and Section 314 necessitates prior approval of building plan by Competent Authority as per the bye-laws before any construction could be carried out.

33. The Building Bye-laws of 1993 are in the form of regulations and, in case, the same provides for submission of certain necessary documents along with the application for



building permit under Rule 5 sub-rule 5.3, for better appreciation is reproduced herein under:-

“5.3. Application for building permit. *The following shall accompany the application for building permit in the case of permission for erection, re-erection or making material alteration.-*

(i) Site Plan- Plan sent with an application shall be drawn to a scale of not less than 1:500 for areas upto 10 hectare and not less than 1: 1000 for areas more than 1 hectare and shall show-

(a) the boundary of the site with the contiguous land around it;

(b) the position of site in relation to neighbouring street along with the municipal plot number and revenue plot number;

c) the name of the street in which the building is proposed to be situated, if any;

(d) all existing buildings standing on, over or under the site;

(e) the position of the building or of all other buildings (if any) which the the applicant intends to erect upon his contiguous land to in (a) in relation to:

1. the boundaries of the site and in case where the site has been partitioned, the boundaries of the portion owned by the applicant and also of the portion owned by others;

2. All adjacent streets, buildings (with number of storeys) and premises within a distance of 15m. of the site of the contiguous land (i any) referred to in (a); and 3. if there is no street within a distance of 15m. of the site, the nearest existing street.

(f) the means of access from the street to the building and all other buildings which the owner intends to erect upon his contiguous land referred to in (a);

(g) dimensions of the spaces to be left in and around the building to secure a free circulation of air, admission of light and access or scavenging purposes and details of projection (if any) on to open spaces;

(h) the width of the street (if any) in front of any street (if any) at the site or rear of the proposed building;

(i) Scale used and direction of north point relating to plan of the building;

(j) Any existing physical features, such as walls, drains etc;

(k) sewerage and drainage lines upto discharge point and water supply lines; and



(1) such other particular as may be prescribed by the authority.

(ii) Building plan-The plan of the buildings and two elevations (front and side) and sections accompanying the application shall be drawn to a scale not less than 1:100). The plan shall:-

(a) include the floor plans of all floors together with the covered area clearly indicating the size and spacings of all framing members and sizes of rooms and the position of staircase, ramps and lift wells;

(b) show, the use or occupancy of all parts of the building;

(c) show exact location of essential services, for example, WC, sink, bath and the like including the water supply and drainage line;

(d) include two elevations (front and sides) and sectional drawings showing clearly the size of footings, thickness of basement wall, wall construction size and spacing of framing members, floor slabs windows and other openings. The section shall indicate the heights of buildings and rooms and also the height of the parapet and the drainage and slope of the roof. At least one section should be taken through the staircase;

(e) show all street elevations (levels);

(f) indicate details of compound walls (including height and sections) around the boundary;

(g) give dimensions of the permissible projected portions within open spaces;

(h) include terrace plan indicating the drainage and the slope of the roof;

(i) give indications of the north point relative to the plan and scale used; and

(j) any other particulars as desired by the Authority.

(iii) Services plan- Plans, elevations and sections of private water supply and sewerage disposal system Independent of the municipal services if any drawn to a scale of 1:10 shall also be included.,

(iv) Specification. General specifications giving type and grade of materials to be used shall accompany the application.-

(v) Ownership title: Every application for building permit shall be accompanied by the following for verifying proof of ownership.

(a) attested copy of the original sale/lease deed; and

(b) attested copy of the Revenue survey sheet/Municipal survey sheet with Khesra no, or mutation record.



Or***affidavit or other documents acceptable to the Authority.***

(vi) Building permit for special Building. The proposals for building permit for all buildings more than 15 metre in height and other buildings with more than 500 sq.m. grounds coverage and all other buildings of industrial (warehouse, factory workshop etc.) storage, assembly and hazardous use group shall be subjected to the joint scrutiny of the Authority and Director of fire services before the building permit is given. To that extent, one additional copy of plans may be made available to the Authority for scrutiny by Fire Service Directorate.”

34. It will be gainful to take note of the provision of Rule 6 of the Bihar Building Bye Laws, 2014, which is reproduced herein below:-

6. Signing the Plans.-(1) *All the plans shall be prepared and duly signed by a registered/empanelled technical person as specified in Annexure-I (viz. Architect, Engineer, Structural Engineer, Town Planner, Supervisor, Draftsman) and Builder who shall indicate their names, addresses, registration numbers on the body of the plan and in all other relevant documents. The concerned owner of the land shall also sign the plans.*

(2) All plans, drawings, statements, design details shall bear the signature of the applicants and shall be duly countersigned by an empanelled Architect/Technical person. All documents and plans related to structural designs shall bear the full name and full signature of a Structural Engineer. Plans and documents related to sanitary arrangements shall bear the full name and full signature of a technical person.

Note: 1. The Empanelled Architect/Technical Person who has prepared the plan shall put the empanelment number/CoA Registration No. and seal on all plans and documents signed by him and shall also furnish a certificate to the effect that he shall supervise the construction of the building and shall be responsible for any deviation from the approved plan except if the Owner/Architect/Technical person intimates that their agreement has been mar Building Bye-Laws terminated. 2. Wherever required under these bye-laws, the empanelled



Structural Engineer, who has prepared the structural design, shall put his seal, and address on all the documents signed by him and shall also furnish a certificate to the effect that he shall supervise the structural part of the construction and shall be responsible for any structural failure except caused by unprecedented natural calamities in Form-IV and except if the owner intimates that his services have been terminated.

2. Wherever required under these bye-laws, the empanelled Structural Engineer, who has prepared the structural design, shall put his seal, and address on all the documents signed by him and shall also furnish a certificate to the effect that he shall supervise the structural part of the construction and shall be responsible for any structural failure except caused by unprecedented natural calamities in Form-IV and except if the owner intimates that his services have been terminated.

3. All aspects related to structural design, building surface, plumbing, electrical installation, sanitary arrangements, fire protection shall adhere to the specification, standards and code of practice recommended in the National Building Code of India, 2005 and any breach thereof shall be deemed to be a breach of the requirements under these Bye laws.

(3) The technical personnel and builder as specified in sub-bye law (1) & (2) above shall have to be registered/empanelled with the Authority. Their qualifications and competence shall be as per Annexure I. The application form shall be as per Form-VII A & Form-VII B.

(4) No plans for construction of apartment building, group housing and commercial building shall be entertained unless the builder is registered by the Authority in accordance with the competence as specified in the Annexure 1. However for built up area less than 500 sq.m, registration of builder is not mandatory.

(5) When it comes to the notice of the Planning Authority/ Municipalities/ Urban Local Bodies or any other person that a plan signed by technical personnel or builder referred to under sub-bye law (1) & (2) is in violation of the norms of these byelaws he shall bring this to the notice of the Authority. (emphasis supplied)

(6) The Authority shall issue a notice asking



for a show cause within fifteen days as to why such technical personnel or builder shall not be disqualified/ black listed and legal action taken against him. After receipt of the show cause if any, the matter shall be placed before the Concerned Authority for a decision on such disqualification/ black listing/legal action. The decision of the Concerned Authority on disqualification/black listing shall be published in the notice Board of the Authority.
(emphasis supplied)

(7) An appeal against an order under sub-clause (6) above shall lie with Municipal Building Tribunal under Section 329 of the Municipal Act or Tribunal constituted under the Act.” (emphasis supplied)

35. So far as the Building Bye-laws, 2014 is concerned, sub-rule (1) of Rule 4 therein clearly provides that the construction of any building in respect of which permission has been issued before coming into force of 2014 bye-laws, shall, so far as it is not inconsistent with the provisions of the old bye-laws, continued to be validly made and the said permission shall be deemed to have been issued under the corresponding provision of those bye-laws. Sub-rule (2) of the aforesaid Rule 4 provides that where any building has been constructed before the notification of the 2014 bye-laws with deviation of an approved plan, the provision of old bye-laws shall be insisted upon and sub-rule (3) of Rule 4 provides that when any building has been constructed without approved plan, the provision of 2014 bye-laws shall be insisted upon.

36. Therefore, to mean that sale deed cannot be



registered unless the land proposed to be sold stands recorded in favour of the transferor in the “Record of Rights” is not a document of title and the Record of Rights can whether create or extinguish title. Moreover, preventing a person from getting the land mutated in ‘Records of Right’ at the strength of valid transfer / sale deed would be contrary to provisions under Section 8 of the Transfer of Property Act, 1882.

37. It is also to be taken note of that Article 300A of the Constitution of India tends to safeguard the invaluable right to property.

*“300-A. Persons not to be deprived of property save by authority of law
No person shall be deprived of his property save by authority of law.”*

38. The State cannot dispossess a citizen of his property except in accordance with the procedure established by law. In other words, to forcibly dispossess a person of his private property, without following due process of law, would be violative of a human right, as also the constitutional right under Article 300 A of the Constitution.

39. The question arises, whether in a situation as of present, the State Government after allowing the topo land/un-surveyed land to be registered after registration of the land in favour of the petitioner can at the same time by a policy



decision prohibit the mutation and direct the Circle Officer to not create Jamabandi and issue L.P.C. and as a consequence of same in absence of required documents the Municipal Authorities can refuse to sanction building plan till the State Government takes a policy decision, in regard, as informed by the learned Advocate General.

40. The prohibitory order has not been issued under any authority of law.

41. It is not open to respondents to imagine facts contrary to record and with a prejudiced mind come to wrong conclusions that sanction building plan cannot be granted in favour of the petitioner. The state of affairs is presumed to continue under Section 114(d) of the Evidence Act, 1872 and if the State claims to have the possession of the land in question then it must prove by what means and process/ procedure it secured such possession. A coordinate bench of this Hon'ble Court, in the case of **Amar Nath Pandey & Ors. vs The State of Bihar & Ors. (CWJC No. 906 of 2014)**, has *inter alia* made following observations :-

“In so far as the issue of availability of alternative remedy of appeal under Section 11 is concerned, it is seen that the proceedings has been conducted by the Circle Officer, Patna Sadar and thus the appellate forum against the order would be the Collector of the District which in the present case is the District Magistrate, Patna. Considering that



under the orders of this Court, the District Magistrate, Patna has filed his affidavit expressing his opinion on the issue, in my opinion relegating the petitioner to exhaust the forum of appeal in such circumstances would be a mere completion of formality. In the special circumstances of the present case, I am not persuaded by the argument of Mr. Choudhary to relegate the petitioner for exhausting the statutory remedy of appeal. In terms of the provisions underlying the Bengal Alluvion and Diluvion Act, 1847 as finds interpreted in the judgment of the Privy Council relied upon by Mr. Singh, it is not on plain emergence and upon accretion of a submerged land that such land automatically becomes a Government land in absence of any document supporting such position, rather a declaration to such effect has to be there. But until such time that it is established by the respondents that the land in question is a Government land and/or falls within the definition of a 'public land' under 'the Act', no proceedings can be initiated under 'the Act' by terming the possession of the petitioners thereon, as 'encroachment'.

It is rather strange that even when the legal position stands settled in a catena of judgments that where a dispute goes to the root of the matter and involves complicated issues of title and possession then a summary proceedings under 'the Act' would not be a correct recourse, yet the statutory authorities have kept themselves oblivious to the legal position and unaware of their obligations..."

42. Law does not contemplate performance of impossible conditions/obligations from any individuals. The Hon'ble Supreme Court has dealt with the doctrine of impossibility in plethora of cases. In the case of **Industrial Finance Corpn. of India Ltd. v. Cannanore Spg. and Wvg. Mills Ltd., (2002) 5 SCC 54**, the Apex Court has held as under:-



*“30.The Latin maxim referred to in the English judgment *lex non cogit ad impossibilia* also expressed as *impotentia excusat legem* in common English acceptation means, the law does not compel a man to do that which he cannot possibly perform. There ought always thus to be an invincible disability to perform the obligation and the same is akin to the Roman maxim *nemo tenetur ad impossibile*. In Broom’s Legal Maxims the state of the situation has been described as below:*

*“It is, then, a general rule which admits of ample practical illustration, that *impotentia excusat legem*; where the law creates a duty or charge, and the party is disabled to perform it, without any default in him, and has no remedy over, there the law will in general excuse him (t): and though impossibility of performance is in general no excuse for not performing an obligation which a party has expressly undertaken by contract, yet when the obligation is one implied by law, impossibility of performance is a good excuse. Thus in a case in which consignees of a cargo were prevented from unloading a ship promptly by reason of a dock strike, the Court, after holding that in the absence of an express agreement to unload in a specified time there was implied obligation to unload within a reasonable time, held that the maxim *lex non cogit ad impossibilia* applied, and Lindley, L.J., said: ‘We have to do with implied obligations, and I am not aware of any case in which an obligation to pay damages is ever cast by implication upon a person for not doing that which is rendered impossible by causes beyond his control.’*

31.This effort to search out the meaning of the Latin maxim has been only to identify the situation which prompted the learned Judge of the Queen’s Bench to come to the conclusion as above. There, thus, has to be an impossibility of performance of the obligation. The fact situation presently under consideration before us thus has to be assessed whether in fact there was any such impossibility or not. Let us be quite candid about laying down the principles that rights created under statute cannot stand obliterated without cogent reasons and not on mere frivolity. In any event, the right conferred in terms of a deed of guarantee cannot but be stated to be an independent right which stands recognised by the statute and thus cannot in any manner be whittled down without a just cause.Baily decision[(1869) 4 QB 180 : (1861-73) All ER Rep 332 : 38 LJQB 98] in our view does not lend any assistance in the fact



situation of the matter under consideration. There was in fact an impossibility of performance which prompted the Court to excuse the guarantor from its performance by reason of the impossibility of the situation and for reasons that the same stood beyond the control of the guarantor. The situation presently, however, is not so."

43. In the case of ***State of M.P. v. Narmada Bachao Andolan, (2011) 7 SCC 639***, Hon'ble Supreme Court, has made the following observations:

"39.The court has to consider and understand the scope of application of the doctrines of lex non cogit ad impossibilia(the law does not compel a man to do what he cannot possibly perform);impossibilium nulla obligatio est(the law does not expect a party to do the impossible); and impotentia excusat legem in the qualified sense that there is a necessary or invincible disability to perform the mandatory part of the law or to forbear the prohibitory. These maxims are akin to the maxim of Roman law nemo tenetur ad impossibilia(no one is bound to do an impossibility) which is derived from common sense and natural equity and has been adopted and applied in law from time immemorial. Therefore, when it appears that the performance of the formalities prescribed by a statute has been rendered impossible by circumstances over which the persons interested had no control, like an act of God, the circumstances will be taken as a valid excuse. (Vide Chandra Kishore Jha v.Mahavir Prasad [(1999) 8 SCC 266 : AIR 1999 SC 3558] ,Hira Tikkoo v. UT, Chandigarh [(2004) 6 SCC 765 : AIR 2004 SC 3649] and HUDA v. Dr. Babeswar Kanhar [(2005) 1 SCC 191 : AIR 2005 SC 1491] .)

40.Thus, where the law creates a duty or charge, and the party is disabled to perform it, without any fault on his part, and has no control over it, the law will in general excuse him.Even in such a circumstance, the statutory provision is not denuded of its mandatory character because of the supervening impossibility caused therein."

44. In the case of ***LIC v. CIT, (1996) 7 SCC 524***, Hon'ble Supreme Court has held as under :-



“9. This legal fiction enacted in Section 7(2) includes within the assets transferred and vested in the Corporation of all such insurers any amounts which were due to the predecessor-insurer and which remained to be recovered. Section 9(2) enabled the Corporation to prosecute any legal proceeding of whatever nature for the purpose of recovering amounts due to the predecessor on the appointed day. There is no dispute that any liability of the insurer also stood transferred similarly to the Corporation. Accordingly, if any amount remained due towards taxes to be recovered from the predecessor, it was a liability transferred to the Corporation and the Corporation became liable to discharge the same. It is also not in dispute that it is only by virtue of this character of the Corporation that the amount refunded as excess tax paid prior to the appointed day by the predecessor came to be refunded to the Corporation to whom all the assets of the predecessor stood transferred and vested from the appointed day in 1956. It is also not disputed that the opening balance inherited by the Corporation from the predecessor on the appointed day had to be deducted under Rule 2(1)(b) and the amount shown as such was so deducted. It is further not disputed that if this excess amount of tax paid by the predecessor had not been so paid and the question of refund did not arise, then this extra amount would have formed a part of the inherited opening balance with the Corporation and deduction of the same would have been given under Rule 2(1)(b). The question is: Whether, the refund having been made to the Corporation only because of the provision in Section 7 of the LIC Act, the same result should not follow on the wording of Rule 2(1)(b)

10. Rule 2(1)(b) of the First Schedule to the Income Tax Act, 1961 is as under:

“2. Computation of profits of life insurance business.— (1) The profits and gains of life insurance business shall be taken to be the greater of the following:

*(a)****

(b) the annual average of the surplus arrived at by adjusting the surplus or deficit disclosed by the actuarial valuation made in accordance with the Insurance Act, 1938 (4 of 1938), in respect of the last intervaluation

period ending before the commencement of the assessment year, so as to exclude from it any surplus or deficit included therein which was made in any



earlier intervaluation period and any expenditure or allowance which is not deductible under the provisions of [Sections 30 to 43-A] [Subs. by Finance (No. 2) Act of 1967 (w.e.f. 1-4-1967)] in computing income chargeable under the head 'Profits and gains of business or profession'."

11. It is obvious that in the surplus or deficit in any intervaluation period relating to the Corporation which came to be formed only on the appointed day in 1956, this amount could not be reflected since it related to a period prior to the formation of the Corporation. The law does not contemplate or require the performance of an impossible act — lex non cogit ad impossibilia. It is now to be seen whether the expression "included therein" in Rule 2(1)(b) is alone sufficient to negative the logical legal effect of Section 7 of the LIC Act. "

45. Hence, the law shall not expect performance of the impossible conditions and any insistence upon performance of impossible condition is required to be excused.

46. It is a settled preposition of law that a writ petitioner is not barred from invoking the extra-ordinary jurisdiction of this Court under article 226 of the constitution although there may exist an alternate remedy.

47. The Apex Court in the Case of ***State Of U.P. & Anr. versus Ehsan & Anr.*** reported in **2023 LiveLaw (SC) 887**, has made the following observations:-

"28. We are conscious of the law that existence of an alternative remedy is not an absolute bar on exercise of writ jurisdiction. More so, when a writ petition has been entertained, parties have exchanged their pleadings/ affidavits and the matter has remained pending for long. In such a situation there must be a sincere effort to decide the matter on merits and not relegate the writ petitioner to the alternative remedy, unless there are compelling reasons for doing so. One such compelling reason may arise where there is a serious dispute between the parties on a question



of fact and materials/evidence(s) available on record are insufficient/inconclusive to enable the Court to come to a definite conclusion”

48. The Apex Court in the Case of ***M/s Magadh Sugar & Energy Ltd. Versus The State of Bihar & Ors.*** reported in ***LL 2021 SC 495***, has held as follows:-

“ 19. While a High Court would normally not exercise its writ jurisdiction under Article 226 of the Constitution if an effective and efficacious alternate remedy is available, the existence of an alternate remedy does not by itself bar the High Court from exercising its jurisdiction in certain contingencies. This principle has been crystallized by this Court in Whirpool Corporation v. Registrar of Trademarks, Mumbai¹⁹ and Harbanslal Sahni v. Indian Oil Corporation Ltd²⁰. Recently, in Radha Krishan Industries v. State of Himachal Pradesh & Ors²¹ a two judge Bench of this Court of which one of us was a part of (Justice DY Chandrachud) has summarized the principles governing the exercise of writ jurisdiction by the High Court in the presence of an alternate remedy. This Court has observed:

“28. The principles of law which emerge are that: (i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well; (ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person; (iii) Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged; (iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law; (v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and (vi) In cases where there are disputed questions of fact, the High Court may decide to decline



jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.” (emphasis supplied)

The principle of alternate remedies and its exceptions was also reiterated in *Assistant Commissioner of State Tax v. M/s Commercial Steel Limited (Civil Appeal No. 5121 of 2021)*. In State of *HP v. Gujarat Ambuja Cement Ltd & Anr., reported in (2005) SCC 6 499* this Court has held that a writ petition is maintainable before the High Court if the taxing authorities have acted beyond the scope of their jurisdiction. This Court observed:

*“23. Where under a statute there is an allegation of infringement of fundamental rights or when on the undisputed facts the taxing authorities are shown to have assumed jurisdiction which they do not possess can be the grounds on which the writ petitions can be entertained. But normally, the High Court should not entertain writ petitions unless it is shown that there is something more in a case, something going to the root of the jurisdiction of the officer, something which would show that it would be a case of palpable injustice to the writ petitioner to force him to adopt the remedies provided by the statute. It was noted by this Court in *L. Hirday Narain v. ITO [(1970) 2 SCC 355: AIR 1971 SC 33]* that if the High Court had entertained a petition despite availability of alternative remedy and heard the parties on merits it would be ordinarily unjustifiable for the High Court to dismiss the same on the ground of non-exhaustion of statutory remedies; unless the High Court finds that factual disputes are involved and it would not be desirable to deal with them in a writ petition.”*

The above principle was reiterated by the Apex Court in the case of *Executive Engineer, Southern Electricity Supply Company of Orissa Limited (Southco) and Anr. v/s. Sri Seetaram Rice Mill reported in (2012) 2 SCC 108.* In that



case, a show cause notice/provisional assessment order was issued to the assessee on the ground of an unauthorized use of electricity under Section 126 (1) of the Electricity Act 2003 and a demand for payment of electricity charges was raised. The assessee contended that Section 126 was not applicable to it and challenged the jurisdiction of the taxing authorities to issue such a notice, before the High Court in its writ jurisdiction. The High Court entertained the writ petition. When the judgment of the High Court was appealed before this Court, it held that the High Court did not commit any error in exercising its jurisdiction in respect of the challenge raised on the jurisdiction of the revenue authorities. This Court made the following observations:

“81. Should the courts determine on merits of the case or should they preferably answer the preliminary issue or jurisdictional issue arising in the facts of the case and remit the matter for consideration on merits by the competent authority? Again, it is somewhat difficult to state with absolute clarity any principle governing such exercise of jurisdiction. It always will depend upon the facts of a given case. We are of the considered view that interest of administration of justice shall be better subserved if the cases of the present kind are heard by the courts only where they involve primary questions of jurisdiction or the matters which go to the very root of jurisdiction and where the authorities have acted beyond the provisions of the Act.

*82. It is argued and to some extent correctly that the High Court should not decline to exercise its jurisdiction merely for the reason that there is a statutory alternative remedy available even when the case falls in the above stated class of cases. It is a settled principle that the courts/tribunal will not exercise jurisdiction in futility. The law will not itself attempt to do an act which would be vain, *lex nil frustra facit*, nor to enforce one which would be frivolous—*lex neminem cogit ad vana seu inutilia*—the law will not force anyone to do a thing vain and fruitless. In other words, if exercise of jurisdiction by the tribunal *ex facie* appears to*



be an exercise of jurisdiction in futility for any of the stated reasons, then it will be permissible for the High Court to interfere in exercise of its jurisdiction. This issue is no longer res integra and has been settled by a catena of judgments of this Court, which we find entirely unnecessary to refer to in detail..." (emphasis supplied)"

49. In view of the above observations of the Hon'ble Supreme Court, it can be said that the contention of the respondents that an alternate remedy under Section 329(n) of the Act, 2007 already exists, does not hold good being pure question of law.

50. We may take into consideration the Supreme Court's decision in case of State of **Rajasthan Vs. Basant Nahata** reported in **(2005) 12 SCC 77**, wherein, it has been laid down that the aim of the Registration Act is to govern the documents and not the transactions embodied therein. The Supreme Court has noted that by registration of a document, only notice of the public is drawn.

51. A Division Bench of this Hon'ble Court in the case of **Satyendra Kumar (Supra)** has already declared the minutes dated 03.06.2017 contained in Memo dated 07.06.2017 to be not in accordance with law, thereafter, the State Government preferred SLP, which also got dismissed. Learned counsel further proceeded to submit that the action of the Circle Officer cannot be sustained considering the fact that as on date



as no policy or any specific amendment has been brought by the State Government to stop mutation of the sale deed executed on the basis of the rejection of the petitioner's application for sanction of map vide letter no. 2823 dated 14.09.2023, allegedly on the ground that the petitioner did not fulfill the requirement of Rule 6 of Bihar Building Bye-Laws, 2014 in want of Certificate/clearance, Jamabandi, L.P.C. etc.

52. It is admitted fact that the entire city of Chhapra is situated on the topo-land. The State Government has notified the township of Chapra under Chapra Municipal Area more than 100 years ago, during the pre-independence era and the citizens are paying municipal rent to the Municipality after creation of the Municipal holding in their respective names.

53. The State Government is contemplating to take a policy decision in regard to creating Jamabandi in the name of the persons, who are inhabiting on the topo lands by constructing their dwelling house or are running their business and earning their livelihood. According to the information given by learned Advocate General, the survey of topo land is ongoing in the State of Bihar and when the exercise is completed, prescribed procedure for creating zamabandi will be followed in accordance with law. The final survey will result



into reduction of land disputes in the state. Learned Advocate General and the Additional Chief Secretary, Revenue Department have informed that the State Government has not issued any direction to the Municipal Corporation in the State that they are restrained from carrying their statutory duties and concern of the petitioner can well be considered by the Municipal Commissioner.

54. Learned counsel has made specific allegation that the Circle Officer is not issuing rent receipt in spite of the fact that the circle officer having been granted unbridled power to create Jamabandi and the Record of Rights which has been carried out on the basis of the Registered sale deed produced before him, when already Municipal Holding number is existing, which also calls for interference. The Bye-laws requires, for sanction of building plan, duly filled form along with documents included fees, expenses, etc. as well as documents pertaining to Jamabandi, rent receipts and L.P.C. issued by the Circle Officer.

55. In the facts and circumstances of the case, I don't find that the petitioner may be made to relegate to first exhaust the statutory remedy of appeal. In so far as the concern of the State Government is concerned and in view of the admitted



position that the land in question is a topo land, in want of legal position settled in that regard and ratio laid down in *Ashwani Kumar Gupta Vs. The State of Bihar & Ors., reported in 2000 (2) PLJR 221*, in which, it has been observed that the nature of such topo/un-surveyed lands are yet to be established by authority. I find that no prohibitory order could have been directed to the Circle Officer for not entertaining sale deed in respect of the topo land which has been registered pursuant to the Letter No. 3113 dated 20.07. 2017. Once the transfer of land has been registered, it gives legal title to the petitioner in accordance with Section 8 of the Transfer of Property Act to get the land mutated.

56. Section 135 of the Act, 2007 mandates that annual value of holding shall be payable by the persons in actual occupation of the holding within the municipality. A full Bench judgment of this Court in **Nripendra Nath Roy Choudhary Vs. Commissioer of Chaibasa Municipality reported in 1981 BLJR 154 (FB)** has held that title of a person does not get affected in any way by change of his name in records of municipality. Title flows from transfer as devolution of holding which can only be adjudicated in a properly framed title suit. However, a person who is in possession of a holding is liable to



pay holding tax under Section 135 (2) of the Act, 2007 while adjudication of title can simultaneously be decided in a title suit without affecting the right of any of the parties to the title suit in any manner whatsoever.

57. In this regard, the Form-VI prescribed as per the Rule 5 (6) (x) of the Bihar Building Bye-Laws, 2014 prescribes the content of the check list, which is reproduced hereinafter:

FORM VI
CHECK LIST
BYE LAWS NO.5(6) (X)

- 1. Name of the Applicant:
- 2. Name of the Owner:
- 3. Name of the Builder / Developer and Name of the Project:
- 4. Ownership documents: Established / Non established
- 5. Land Area

AS per Document	As per Building Plan	As per Possession

6. Tenancy:- Lease hold / Free hold.

If lease hold

- (i) Name of lesser:
- (ii) Purpose of lease:
- (iii) Duration of lease:

7. Existing off site Physical infrastructure:

- a) Road
- b) Sewerage
- c) Drainage
- d) Water Facility
- e) Availability of drain
- f) Telephone
- g) Electricity

8. Nature of Construction: New Construction/
Reconstruction/Addition/Alternation

- 9. (i) Amount of fee deposited
- (ii) Covered area on all floors

10.

Use applied	Prescribed Land use in the development plan (if any)	Whether permissible /not permissible/special consideration



11. (i) Whether first permission / Revised permission /
Revalidation
- (ii) No of floor(s)
12. Contents of Building Plan:
- (i) Site Plan
- (ii) Lay out plan
- (iii) All floor plan
- (iv) Elevation Front / Rear / Right / Left / Cross Section
- (v) Plan of foundation
- (vi) Septic tank and Soak pit
- (vii) Recharging pit & Rain Water harvesting Plan
- (viii) Drain Section
- (ix) Area Statement
- (x) Schedule of doors and windows
13. Approach road:-
- (i) Nature of road
- (ii) Width of road:-

As per site / key plan	Site inspection report

- (iii) Whether the approach road as shown
connected to an existing public road in the
site plan.....
- (iv) Whether such connection is available in
settlement sheets or Cadastral Map: Yes/No
- (v) If private, whether
- a) transferred to the Authority: Yes/No
- b) indicated in the final settlement plan: Yes/No.
- c) mentioned in the ownership document: Yes/No
14. Whether the plot is affected by proposed road / proposed
drain / proposed lake / any other public use.....
15. Whether the plot is within 100 meter/100-300 meter of
State/ A.S.I. protected monuments.....
Whether the plot is within 200 meter radius of important
buildings (i.e. Governor House, High Court, State
Secretariat, Legislative Assembly)

16. Building Parameters:

Category	Requirement as per norm	Approved building plan	Proposal	Remark s
1	2	3	4	5
Basement/Stiltsqmt				
1st floorsqmt				
2 nd floorsqmt				
3 rd floorsqmt				
4 th floorsqmt				
Other Floors				
Society room				
Front set back				
Rear set back				



Left / Right side set back				
FAR				
Parking				
Height				
No. of dwelling unit				
Population density				
No. of staircase				
No. of lift				
Recharging Pit				
Fee deposited				
Any other item				
Exemptions				
(i) height				
(ii) setback				
(iii) FAR				

17. Whether falls in the Airport funnel zone.....

18. Provision of proposed on site physical infrastructure

- (i) Water Supply:-
- (ii) Sewerage:-
- (iii) Drainage:-
- (iv) Electrical Installation:-

19. Clearance / Certificate produced:

- (i) General Affidavit:-
- (ii) Structural Stability Certificate:-
- (iii) Form of Supervision
- (iv) NOC from Fire Authority:-
- (v) Undertakings with regard to quality construction / Water supply / Sewerage / Drainage / Waste disposal / firefighting (wherever applicable)
- Any other (specify)

N:B: (RS: Required and Submitted, RNS: Required not Submitted, NR: Not Required)

20. Involvement of Technical Person & Builder:

- (i) Architect / Engineer -
Name:- CoANo
(for Architect)
Empanelment No:
- (ii) Engineer / Structural Engineer:-
Name :
Empanelment No.:
- (iii) Builder:
- (iv) Any other:

Name: Empanelment No.:

Name-
Signature of Technical person



58. The ground of rejection is that the Junior Engineer, who upon verification of check list attached with the Form for grant of approval of building plan had found that the same did not contain the rent receipt, Land Possession Certificate and other documents, pertaining to the said land duly issued by the concerned Circle Officer and had recommended for rejection. On perusal of the Form II and conditions of Clause 5(4) of the Bye Laws, 2014 and the Check List contained in Form VI and conditions of Clause 5(6)(x) of the Bye Laws, I don't find that the objection raised by the Junior Engineer that the petitioner has not produced LPC, Zamabandi, Rent Receipt duly issued by the Circle Officer are not required. The Commissioner has also not given any consideration of the Form II and VI and in a most mechanical manner, has accepted the recommendation of the Junior Engineer.

59. I, accordingly, hold that the building plan of the petitioner having not been sanctioned in the name of the petitioner by the Municipal Authorities as contained in Annexure-4 to the writ petition, is without authority of law which calls for interference under facts and circumstances of the case and law laid down by this Hon'ble Court and the Apex Court, and as such the order contained in letter no.2825 dated



14.09.2023 is hereby set aside and quashed for the reason recorded hereinabove.

60. Taking into consideration the information given by the learned Advocate General that steps have already been taken, the same be done expeditiously within a reasonable period of time, at least, in respect of Chapra Town where the township is existing since more than 100 years and perennial alluvion and diluvion has stopped due to the change of the course of the river.

61. With the aforesaid direction/observation, the present writ petition stands disposed of.

62. There shall be no order as to costs.

(Purnendu Singh, J)

mantreshwar/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	29.04.2024
Transmission Date	N.A.

