

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10133 of 2022

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Kumar Sanjeet, son of Late Naresh Kumar Sinha, Resident of A-136 Housing,
Near Panch Shiv Mandir, Kankarbagh Colony, P.O.-Lohianagar, P.S.-
Kankarbagh, District - Patna 800020 Bihar.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary Town/Urban Development and Housing Department, Government of Bihar, New Secretariat, Patna.
2. The Chief Municipal Commissioner, Patna Municipal Corporation Office, Mauryalok Complex, Bailey Road, Patna.
3. The Patna Municipal Corporation through It's Secretary, Maurya Lok Office, Patna.
4. The Principal Secretary, Town/Urban Development and Housing Department, Government of Bihar, New Secretariat, Patna.
5. The Mayor, Patna Municipal Corporation, Patna, Bihar.
6. The Deputy Municipal Commissioner (Planning), Patna Municipal Corporation, Patna.
7. Executive Engineer, (Headquarter) Patna Municipal Corporation.
8. Executive Engineer, Kankarbagh Division, Patna Municipal Corporation, Patna.
9. Junior Engineer, Kankarbagh Division, PMC.
10. Assistant Engineer, Kankarbagh Division.
11. The Chief Town Engineer, Patna Municipal Corporation.

... .. Respondents

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Appearance :

For the Petitioner : Mr. Gajendra Pratap Singh, Advocate
For the Respondents-PMC: Mr. Prasoon Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)
Date : 20-10-2022

In the present application, the petitioner has prayed
for quashing of the order dated 27.06.2022 issued under the



signature of the Deputy Municipal Commissioner, Patna Municipal Corporation (for short 'PMC') under the order of Municipal Commissioner, PMC, as contained in Annexure-1 'E' of the writ petition whereby in view of the recommendation made by Sri Rabindra Prasad, the Chief Town Engineer, the administrative approval granted for the scheme, namely, 'Construction of Chamber Leakage (Drain) near MIG-129 and both sides of House No. U-469' has been cancelled.

2. The admitted facts of the present case are as under:-

(i) The petitioner is an Ex-ward Councillor of the PMC from Ward No.34.

(ii) In the 22nd General Meeting of the Board of Councillor, (which is the apex body of the PMC) convened on 05.06.2021, it was proposed that each Councillor can select scheme/schemes upto one crore on priority basis for promoting development works in his ward. The said proposal was approved by the Board of Councillor vide Proposal No.215 and an order in this regard was passed by the Municipal Commissioner, PMC vide Letter No.10740 dated 18.07.2021.

(iii) The petitioner being the Ward Councillor of Ward No.34 recommended altogether 13 schemes for development work in Ward No.34.

(iv) One of the schemes out of the aforesaid 13 schemes i.e., Scheme No.1 was named as



‘Construction of Chamber Leakage (Drain) near MIG-129 and both sides of House No.U-469’. The estimated cost of the said scheme was Rs.6,69,100/-.

(v) The aforesaid 13 schemes recommended by the petitioner under the One Crore Scheme of the PMC was approved by the Chief Town Engineer and a favourable recommendation was also made by the Chartered Accountant after due inquiry, as the total estimated cost of the 13 schemes was Rs.99,63,600/- only.

(vi) Accordingly, the Municipal Commissioner, PMC accorded administrative approval for all the 13 schemes on 05.11.2011 on the file.

(vii) Thereafter, the Deputy Municipal Commissioner, PMC vide Letter No.15193 dated 16.11.2011 issued administrative approval order in compliance of the administrative approval of the schemes granted by the Municipal Commissioner, PMC.

(viii) On 23.11.2021, E-Notice Inviting Tender was published, allowing time to participate in the bid process till 5:00 p.m. of 06.01.2022.

(ix) After completion of the tender process, the work order was issued by the Executive Engineer, Kankarbagh Division, PMC in favour of one Brijesh Kumar Rai and an agreement with regard to the scheme in question was also executed.

(x) Thereafter, a complaint was received by the



PMC from one Sushil Kumar alleging therein that an old sewerage line is passing through public Plot/House No.U-469, which is fully functional and, as such, there is no need to construct a new drain adjoining the plot/house in question.

(xi) On the basis of the aforesaid complaint of Sushil Kumar, the Municipal Commissioner, PMC directed for a physical inspection of the site vide order dated 20.04.2022 by a team of engineers and instructed them to submit a report.

(xii) Accordingly, on 20.04.2022 itself, a team of engineers consisting of (i) The Chief Town Engineer, PMC, (ii) Executive Engineer (Headquarter), PMC, (iii) Executive Engineer, Kankarbagh Division, PMC, (iv) Assistant Engineer, Kankarbagh Division, PMC and (v) Junior Engineer, Kankarbagh Division, PMC conducted a detailed physical inspection of the site in presence of the complainant Sushil Kumar and submitted a report on 20.04.2022.

(xiii) After considering the inquiry report submitted by the team of engineers on 20.04.2022, the impugned order was passed whereby the administrative approval order in relation to the scheme namely, 'Construction of Chamber Leakage (Drain) near MIG-129 and both sides of Plot/House No.U-469' was cancelled.



3. Assailing the impugned order, Mr. Gajendra Partap Singh, learned counsel for the petitioner submitted that the petitioner is a resident of Ward No.34. He was thrice elected as its representative. He is keenly interested in development work at Ward No.34. The PMC had allocated rupees one crore to each of the Ward Councillor for undertaking development work within his ward for the benefit of public at large. In this regard, the petitioner made recommendation for altogether 13 projects to the Mayor of PMC, which got her administrative approval as well as the approval of the Board of Councillor. After getting the administrative approval, E-Notice Inviting Tender was issued and, accordingly, works were allotted to the successful bidders. However, impugned order was passed arbitrarily and in contravention of the law by the Chief Municipal Commissioner of PMC, who had no authority to override the decision taken by the Board of Councillor. He submitted that the impugned order cancelling the execution of the scheme in question was passed on the ground that Plot No. U-469 seems to be disputed, as the complainant had taken a plea that the existing sewerage line passes through Plot No. U-469 and construction to divert the same sewerage line without any valid ground will amount to misuse of the funds of the Corporation.



4. He submitted that the impugned order has been passed on the basis of the recommendations made by a team of engineers led by the Chief Town Engineer vide inquiry report dated 20.04.2022, which has been marked as Annexure-1 'D'. A perusal of the Annexure-1 'D' would make it evident that there was no recommendation for cancellation of the scheme in question rather the recommendation was that if the right over the Plot No. U-469 is with any private/individual person, the sewerage line may be shifted. The inquiry report further demonstrates that as per the Executive Engineer, Patna, Division-1, Bihar State Housing Board, the plot in question has been allotted to Smt. Chanda Devi and after her death, it was mutated in the name of his son Kishore Kumar Banka and the property in question is free hold property of Kishore Kumar Banka. He contended that there is no dispute relating to the plot in question and the impugned order is based on misconceived reading of the inquiry report of the team of engineers. He urged that the impugned order is also bad for the reason that the scheme in question was approved by the Mayor of the PMC as well as the Empowered Standing Committee and the Board of Councillor. He further contended that in terms of sub-section (6) of Section 27-B of the Bihar Municipal Act (for short



‘Municipal Act’), the Chief Municipal Commissioner is required to carry into effect every resolution of the Empowered Standing Committee or any Committee of the municipality, which is in conformity with the provisions of law unless such resolution is set aside or suspended under the Municipal Act by an appropriate authority. He argued that the Chief Municipal Commissioner, PMC is the Principal Municipal Officer in terms of sub-section (6) of Section 27-B of the Municipal Act and he cannot override the decision taken by the Board of Councillor.

5. On the other hand, Mr. Prasoon Sinha, learned counsel appearing for the PMC submitted that there is no illegality in the order impugned. He contended that the impugned order has been passed by the Chief Municipal Commissioner, PMC in exercise of the powers conferred under the proviso to Section 75(g) of the Municipal Act. He submitted that in view of the proviso to Section 75(g) of the Municipal Act, Notification No.-2B/Muo mo no vo yo-08-01/2013.871/UD&HD had been issued by the order of the Governor under the signature of the Principal Secretary, Urban Development and Housing Department, Government of Bihar on 08.02.2016 whereby the Chief Municipal Commissioner has been authorised to give administrative sanction of a scheme



upto sixty lakh rupees in case of a Municipal Corporation and the administrative sanction of the schemes exceeding the aforesaid amount is required to be accorded by the Empowered Standing Committee of the PMC. He contended that since the estimated cost of the scheme in question was Rs.6,69,100/- only, the Chief Municipal Commissioner, PMC was competent under the Act to accord it's administrative sanction and accordingly, the administrative sanction of the scheme in question was accorded by him. He submitted that had the administrative sanction been accorded either by the Board of Councillor or Empowered Standing Committee of the PMC, the Chief Municipal Commissioner, PMC would not have cancelled the same.

6. We have heard learned counsel for the parties and carefully perused the record.

7. In terms of the definition under Section 2(104) of the Municipal Act, 'Board of Councillor' means the elected body of the Municipality consisting of Councillors elected in general election under Section 12 of this Act or in a bye Election of a Municipality.

8. Section 2(36) of the Municipal Act, which defines 'Empowered Standing Committee' reads as under:-



“2(36).“Empowered Standing Committee” means the Empowered Standing Committee referred to in Section 21.”

9. Section 21 of the Municipal Act deals with Constitution of Empowered Standing Committee of the Municipality. It reads as under:-

“21. Constitution of Empowered Standing Committee of Municipality.-(1) In every Municipality there shall be an Empowered Standing Committee.

(2) The Empowered Standing Committee shall consists of-

(a) in the case of a Municipal Corporation, the Mayor, the Deputy Mayor, and seven other Councillors;

(b) in the case of a Class ‘A’ or Class ‘B’ Municipal Council, the Municipal Chairperson, the Municipal Vice-Chairperson, and five other Councillors;

(c) in the case of a Class ‘C’ Municipal Council, the Municipal Chairperson, the Municipal Vice-Chairperson, and three other Councillors; and

(d) in the case of a Nagar Panchayat, the Municipal President, the Municipal Vice-President, and three other Councillors.

(3) The other members of the Empowered Standing Committee shall be nominated by



the Chief Councillor from among the Councillors elected under Sub section (1) of Section 12 within a period of seven days of his entering office.

(4) The other members of the Empowered Standing Committee shall assume charge after taking the oath of secrecy under Section 24.

(5) The Chief Councillor shall be the Presiding Officer of the Empowered Standing Committee.

(6) The manner of transaction of business of the Empowered Standing Committee shall be such as may be prescribed.

(7) The Empowered Standing Committee shall be collectively responsible to the Municipal Corporation or the Municipal Council or the Nagar Panchayat, as the case may be.”

10. Section 27-B(1) of the Municipal Act provides that the Chief Municipal Commissioner shall be the Principal Executive Officer of the Municipality and all officers and other employees of the Municipality shall be subordinate to him.

11. Section 27-B(6) of the Municipal Act provides that the Chief Municipal Commissioner shall carry into effect every resolution of the Empowered Standing Committee or the Board



of Councillor or of any Committee of the Municipality which is in conformity with provisions of law unless such resolution is set aside or suspended under this Act by the appropriate authority.

12. Section 75(g) of the Municipal Act provides as under:-

“75. Payments not to be made out of Municipal Fund unless covered by budget grant.- The Chief Municipal Officer shall have powers to make payment of any sum out of the Municipal Fund or enter into any contract involving any expenditure provided such payment or expenditure is covered by a current budget grant and a sufficient balance of such budget grant is available, notwithstanding any reduction or transfer thereof under the provisions of this Act:

Provided that this section shall not apply to any payment in the following cases:-

- | | | |
|-----|-----|-----|
| (a) | xxx | xxx |
| (b) | xxx | xxx |
| (c) | xxx | xxx |
| (d) | xxx | xxx |
| (e) | xxx | xxx |
| (f) | xxx | xxx |

(g) such other cases as may be determined by regulations.

Provided further that no contract



involving an expenditure exceeding ten lakh rupees but not exceeding twenty five lakh rupees in case of a Municipal Corporation, five lakh rupees but not exceeding twelve lakhs in case of a Municipal Council or two lakhs but not exceeding five lakhs in case of a Nagar Panchayat shall be made by the Chief Municipal Officer unless it has been sanctioned by the Empowered Standing Committee.

Provided further that no contract involving an expenditure exceeding twenty five lakh rupees in case of a Municipal Corporation, twelve lakhs in case of a Municipal Council or five lakhs in case of a Nagar Panchayat shall be made by the Chief Municipal Officer unless it has been sanctioned by the Municipal Corporation or Municipal Council or Nagar Panchayat as the case may be.”

13. In order to satisfy ourselves as to whether the administrative sanction of the scheme in question was granted by the Municipal Commissioner, PMC or the Empowered Standing Committee or the Board of Councillor, we had called for the original record relating to the scheme in question vide order dated 22.09.2022 pursuant to which, the original record was produced before us by Mr. Prasoon Sinha, learned counsel



for the PMC. On perusal of the original record, we find that though the 13 schemes recommended by the petitioner for development work in Ward No.34 had approval of the Mayor and the Board of Councillor, the schemes recommended by him had the administrative approval of the Municipal Commissioner, PMC. The record so received from the learned counsel for the PMC has been returned to him after perusal.

14. It would be pertinent to note here that in exercise of powers conferred by proviso to Section 75(g) of the Municipal Act, Notification No.- 2B/Muo mo no vo yo-08-01/2013.871/UD&HD was issued by the order of the Governor, State of Bihar under the signature of the Principal Secretary, Urban Development & Housing Department, Government of Bihar on 08.02.2016, which reads as under:-

**“Government of Bihar
Urban Development & Housing Department
Notification**

No.-2B/Muo mo no vo yo-08-01/2013.871/UD & HD. In exercise of the powers conferred by proviso to Section 75 (g) of Bihar Municipal Act, 2007 (as amended time to time) the State Government, Bihar, is hereby please to substitute both the provisoes contained in para – 3 of earlier notification number 2726, dated- 10.09.2014 by the following :-

“Provided that no contract involving an expenditure exceeding 60 lakh rupees but not exceeding 100 lakh rupees in case of a Municipal



Corporation.” Twenty lakh rupees but not exceeding Forty lakh rupees in a Municipal Council or Ten lakh rupees but not exceeding Twenty lakh rupees in case of a Nagar Panchayat may not be made by the Chief Municipal Officer without the sanction of the Empowered Standing Committee:

Provided further that no contract involving an expenditure exceeding 100 lakh in case of a Municipal Corporation. Forty lakh in case of a Municipal Council or Twenty lakh in case of Nagar Panchayat may not be made by Chief Municipal Office without the sanction of the Municipal Corporation or Municipal Council or Nagar Panchayat as the case may be.

Justification :- The Chief Municipal officer will have power to give administrative sanction of a scheme upto Sixty lakh rupees in case of a Municipal Corporation, upto Forty lakh rupees in case of Municipal Council and upto Twenty lakh in case of Nagar Panchayat. The administrative sanction of the schemes exceeding the amount shall be accorded by the Empowered Standing Committee of the Municipal Corporation, Municipal Council and Nagar Panchayat.

By the order of Governor of Bihar
Sd/-

(Amrit Lal Meena)
Principal Secretary to Government”

15. From a perusal of Annexure-1 ‘A’ to the writ petition, it would be manifest that the estimated cost of the 13 schemes recommended by the petitioner was Rs.99,63,600/-. The said proposal of the petitioner had approval of the Board of Councillor. However, the estimated cost of the scheme in



question was Rs.6,69,100/- only. Therefore, the Chief Municipal Commissioner, PMC was competent under the Municipal Act to accord administrative sanction of the aforesaid scheme and the administrative sanction was accorded by the Chief Municipal Commissioner of the PMC.

16. The stand of the PMC that since the estimated cost of the scheme in question did not exceed the amount of rupees sixty lakh, the Chief Municipal Commissioner was competent to accord the administrative sanction appears to be correct.

17. However, in the present case, two other important questions would arise for consideration, which are:-

(i) Whether in terms of sub-section (6) of Section 27-B of the Municipal Act, the Chief Municipal Commissioner could have overridden the resolution of the Board of Councillor merely because he had granted administrative sanction of the scheme?

(ii) Whether the order impugned has been passed on sound reasoning?

18. So far as the first question is concerned, it would be pertinent to note here that the proposal for selection of schemes on priority basis upto rupees one crore by the Ward



Councillor of each ward for development work had the approval of the Board of Councillor and in the light of that, all the 13 schemes recommended by the petitioner for execution in his ward had got approval of the Mayor and administrative sanction for the same was granted by the Chief Municipal Commissioner. In view of sub-section (6) of Section 27-B of the Municipal Act, the Chief Municipal Commissioner is required to carry into effect every resolution of the Empowered Standing Committee or the Board of Councillor. Thus, in case of any complaint regarding any scheme, the Chief Municipal Commissioner, PMC ought to have referred the matter either to the Board of Councillor or to the Empowered Standing Committee for taking an appropriate decision on such complaint instead of cancelling the scheme himself.

19. Insofar as the second question is concerned, it is true that a complaint was received by the PMC from one Sushil Kumar alleging therein that an old sewerage line is passing through Plot/House No. U-469, which is public land for public use and is fully functional and, as such, there is no need to construct any drain adjoining the plot/house in question. On the basis of the said complaint, pursuant to the order of the Chief Municipal Commissioner, PMC, a physical inspection of the



site was conducted by the team of engineers led by the Chief Town Engineer in presence of the complainant and a report was submitted on 20.04.2022, which has been annexed as Annexure-1 'D' of the writ petition. A perusal of the inquiry report would make it manifest that the team of engineers reported that there is an old sewerage line passing through Plot/House No. U-469, which is in working condition and waste water of the area is going through it. If the plot is of public purpose, there is no need to shift the sewerage line. However, if the rights of the land is with private/individual person, it would be proper to shift the sewerage line. It is further stated in the report that the scheme in question is under one crore scheme recommended by the Ward Councillor for which agreement has also been done and the work has not commenced. The complainant, who was present on the spot stated that the allotment made by the Bihar State Housing Board has already been cancelled and when evidence was asked from him in this regard, he could not produce it. In this regard, as per the Executive Engineer, Patna Division-1, Bihar State Housing Board, the plot in question was allotted to Smt. Chanda Devi on 26.05.1980 and after her death, it was mutated in the name of her son Kishore Kumar Banka vide Housing Board Letter No.4522 dated 20.09.2018. The



report further stated that the plot in question is free hold property of Kishore Kumar Banka since 24.09.2019. The Executive Engineer, Housing Board made it clear that plot in question is not marked for the purpose of park. The report further stated that the area in question is prone to water logging and the Ward Councillor has considered the scheme to be of extreme importance, which has also got approval upto the level of headquarter. The report further stated that the residents of the locality have also represented before the Ward Councillor for construction of the drainage. The conclusion of the Committee was that on physical verification and the papers produced by the Housing Board, it is apparent that the Plot and House No.U-469 is a private property of some person.

20. On the basis of the aforesaid report of the team of Engineers, the order impugned was passed by the Chief Municipal Officer, PMC as contained in Annexure-1 'E' which reads as under:-

“पटना नगर निगम Letter No./पत्रांक: 8835
Patna Municipal Corporation Date /दिनांक : 27 / 06 / 2022

संशोधित आदेश

श्री रविन्द्र प्रसाद मुख्य नगर अभियंता द्वारा किये गये अनुशंसा के आलोक में एक करोड़ योजनान्तर्गत निर्गत प्रशासनिक स्वीकृति आदेश पत्रांक-15193, दिनांक- 16.11.2021 में आंशिक संशोधन करते हुए क्र0-01 पर वर्णित योजना Construction of Chamber leakage (Drain) Near Mig- 129 and both side of U-469. कुल प्राक्कलित राशि मो0- 6,69,100/- रू0 मात्र है जिसके प्लॉट संख्या- U-469.



विवादित प्रतीत होने के कारण उक्त योजना को रद्द करने की स्वीकृति संचिका सं०- III-M-2633/21/CME के पृष्ठ सं०- 14 / टि०, दिनांक- 11.06.2022 पर नगर आयुक्त द्वारा प्रदत्त की गई है।

पूर्व में निर्गत कार्यालय आदेश पत्रांक- 15193, दिनांक- 16.11.2021 में अंकित शेष योजनाएँ तथा शर्तें यथावत् रहेंगी।

नगर आयुक्त के आदेशानुसार
संचिका सं०- III-M-2633/21/CMME
पृष्ठ सं०-14 / टि०, दिनांक-11.06.2022

ह० / -

उप नगर आयुक्त (यो०)
पटना नगर निगम।”

21. We fail to understand the reasoning behind the cancellation of the scheme. The complaint was made by Sushil Kumar alleging therein that an old sewerage line is passing through Plot/House No.U-469, which is fully functional and Plot No.U-469 is a plot for public purpose. He, thus, contended that there is no need to construct any drain adjoining the plot/house in question. The report of the team of the engineers clearly goes to suggest that Plot No.U-469 is a private property.

22. In this regard, apart from the report submitted by the team of engineers, the petitioner has relied upon a judgment of this Court in the matter of **Smt. Chanda Devi vs. State of Bihar** since reported in **AIR 2000 PATNA 16**. A perusal of the said judgment would make it evident that the writ petition was filed by the petitioner Smt. Chanda Devi for quashing of the direction cancelling allotment of land made in her favour as contained in Letter No.1187/A, dated 03.06.1986 issued by the



Manager Estate-cum-Additional Secretary of the Bihar State Housing Board. The case of the petitioner was that she was allotted Plot No. U-469 situated at Lohiya Nagar Housing Colony, Patna by allotment letter dated 26.05.1980. On 26.05.1980 a deed of lease for 90 years in respect of the said plot was executed in favour of the petitioner by the Manager Estate-cum-Deputy Secretary on behalf of the Board. The deed was presented for registration on 28.08.1980 and in due course, the registration was completed. Thereafter, Smt. Chanda Devi constructed a boundry wall around the plot and also put up a temporary shed for storing construction materials. Subsequently, a show cause was asked from Smt. Chanda Devi vide letter dated 21.02.1984 as to why her allotment be not cancelled and ultimately, the allotment made in favour of Chanda Devi was cancelled by the Managing Director and the same was communicated to the Manager Estate-cum-Additional Secretary of the Housing Board vide letter No.1187 dated 03.06.1986. Having heard the parties, this Court vide judgment dated 28.06.1999 set aside the order of cancellation of allotment of Plot No.U-469 in favour of Chanda Devi holding the same to be unsustainable in the eyes of law. However, while setting aside the order passed by the Manager Estate, it was left open to



the Board either to institute a suit in order to avoid lease deed executed in favour of Chanda Devi or to initiate a proceeding under Section 59 of the Housing Board Act.

23. From the report of the team of the engineers, which relied on the production of document by the Executive Engineer of the Housing Board, it would be evident that the Plot/House No.U-469 through which the sewerage line is passing is not a plot for public purpose rather it is a plot which was allotted to Smt. Chanda Devi and after her death, it was mutated in the name of her son Kishore Kumar Banka and since 24.09.2019 it is his free hold property.

24. Under such circumstance, the reason assigned by the Chief Municipal Commissioner, PMC that Plot No.U-469 appears to be disputed for cancellation of the scheme in question recommended for public purpose is unsustainable.

25. Accordingly, we set aside the impugned order dated 27.06.2022 issued under the signature of Deputy Municipal Commissioner, PMC. We also set aside the order dated 11.06.2022 passed by the Chief Municipal Commissioner, PMC on file relating to cancellation of construction of Chamber Leakage (Drain) near MIG-129 and both side of Plot/House No.U-469.



26. The writ petition is allowed.

(Ashwani Kumar Singh, J.)

(Shailendra Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21-10-2022
Transmission Date	NA

