

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6211 of 2019

Baptist Union Church through its Priest Incharge and Chairman, Rev. Moses Victor Thomas, aged about 54 years, Male, Son of Late Victor Thomas, Resident of Village-Bakarganj, Patna, P.S. Pirbahore, District-Patna

... .. Petitioner

Versus

1. Patna Municipal Corporation through its Municipal Commissioner, Maurya Lok Complex, Patna.
2. The Municipal Commissioner, Patna Municipal Corporation, Maurya Lok Complex, Patna
3. The M/S. Utras Sfatik Ltd, a Company registered Under the Companies Act Having its registered Office at Ecospace Business Park, Block-4B, 6th Floor, Premises No. IIF/11, Action Area-II, New Town, Kolkata through Its Director Saday Krishna Kanoria, Son of Sri Binod Krishna Kanoria, resident of Marwari Awas Grih Compound, Frazer Road, Patna, P.S. Kotwali, District-Patna
4. The Municipal Building Tribunal-1, Bihar, Patna.

... .. Respondent

Appearance :

For the Petitioner	:	Mr. J.S. Arora, Sr. Adv. Mr.Sanjay Kumar. Adv.
For the Respondent No. 1 & 2	:	Mr.Prasoon Sinha, Adv.
For the Respondent No. 3	:	Mr. Kamal Nayan Choubey, Sr. Adv.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date : 18-10-2022

The reliefs which the petitioner is seeking in the present writ application filed under Article 226 of the Constitution of India is being verbatim reproduced herein, which read as under :-

“(I) *For issuance of an appropriate writ/s, order/s, Direction/s for quashing the order*



dated 20.02.2019 passed in Appeal No. 5(N)/2016 whereby and under the respondent no. 4 was pleased to dismiss the appeal though a finding has been giving that the respondent no. 3 filed wrong affidavit and as such a direction was issued to pay a fine of Rs. 1,00,000/- in the account of State Legal Services Authority, Bihar, Patna.

(II) For issuance of an appropriate writ/s, order/s, Direction/s to the respondents to issue appropriate direction for restraining the respondent no. 3 for making construction vide Plan Case No. CKA/PMC/Mauja-Adra /PCN/SB+G+17/13/2010 which was sanctioned by the Certified Architect on M.S. Plot No. 157,158,159 (part), 160,161, 162 & 60(part) holding no. 223,224,225 within ward no.1, seat no. 2 &3, circle no. 3, Revenue Thana No. 20, Mauza -Adra, Principal Road, Lodipur, P.S. Buddha colony, District- Patna admeasuring about 7.52 Acres.

(III) For issuance of an appropriate writ/s, order/s, direction/s to the respondent no. to cancel the map sanctioned by certified Architect for construction of multi storied building vide plan case no. CKA/PMC/Mauja- Adra /PCN/SB+17/13/2010.



(IV) *To pass such other order/orders as your Lordships may deem fit and proper in the facts and circumstances of this case.”*

2. During pendency of the writ petition, the petitioner has filed an interlocutory application vide I.A. No. 1 of 2022 wherein a prayer has been made for restraining the respondent nos.1 and 2 from issuing completion certificate of the building erected over the property in question.

3. The contention of the petitioner Baptist Union Church is that the properties measuring about 7.52 acres of M.S. Plot Nos. 157, 158, 159 (part), 160, 161, 162 and 60 (part), Holding Nos. 223, 224 and 225 within Ward No.1, Sheet No.2 and 3, Circle No.3, Revenue Thana No. 20, Mauza- Adra, Principal Road- Lodipur (formerly Patna-Gaya Road), Mohalla- Lodipur, P.S.- Buddha Colony, District- Patna (disputed properties for short) belongs to the petitioner after the original land holder Baptist Missionary Society Corporation (for short ‘BMSC’) shifted its office to London after Independence. When the properties of the Baptist Missionaries and Churches were intermeddled by the land grabbers, a civil suit was filed before the Delhi High Court bearing T.S. No. 416 of 1996, in the schedule of the disputed properties in the suit, the description of the disputed properties was also included. Vide orders dated



16.02.1996 and 22.03.1996 passed by the Delhi High Court, the defendants of the suit were restrained from transferring, alienating or encumbering in any manner, the properties as per the Schedule-A to the plaint. However, during the pendency of the suit, the disputed properties mentioned hereinabove were sold through a registered sale deed in favour of respondent no.3. The said sale deed was executed by one Asit Kumar Ghosh, who was holding Power of Attorney from the Baptist Missionary Society Corporation. (for short 'BMSC')

4. The further contention of the petitioner is that the land in question was purchased for the use of the Baptists of Patna town and after Independence of the country; the original land holder had no claim because the foreigners or the foreign organization cannot hold property in India. On the basis of the misrepresentation made before the Reserve Bank of India, the BMSC was successful in transferring the land to the respondent no. 3 by a Power of Attorney in the name of saving the property from unscrupulous persons and utilization of the sale proceeds for the welfare of the Baptist community. During pendency of Title Suit No. 416 of 1996, which was later on transferred to Tis Hazari Court, Delhi for its disposal and was numbered as C.S No. 780/14/96, the land in question was sold. Thereafter, the



vendee applied for sanction of map before the Town Commissioner, Patna vide Plan Case No. PMC/Mauja-ADRA/PCN/SB+G+17/ 13/2010, map was sanctioned on 17.01.2011.

5. The petitioner has further contended that the map was sanctioned on 17.01.2011 by suppressing the material facts that a suit in respect of the land in question was pending before the Tis Hazari Court, New Delhi. Hence, the petitioner filed a writ petition before this Court giving rise to CWJC No. 9159 of 2012 against the act of omission and commission of the Municipal Commissioner, Patna in sanctioning the map. The said writ petition was disposed of by this Court with a direction to the Municipal Commissioner, Patna Municipal Corporation to consider and dispose of the representation, which was filed by the petitioner on 20.01.2012 within a period of two months from the date of receipt/production of a copy of order after hearing the affected parties in the matter. For the said purpose, the petitioner and the respondent no. 8 of that case were directed to appear before the Municipal Commissioner, Patna on 05.08.2013 at 11:00 AM. Thereafter, the petitioner filed a Miscellaneous Case vide Misc. Case No. 3 of 2013 before the Municipal Commissioner, Patna for cancellation of map which was



sanctioned over the land in question in which notice was issued to the respondent no. 3. On 27.01.2014, the Municipal Commissioner, Patna passed an order whereby the said plan of respondent 3 was cancelled and construction work on the said land was stopped. The said order was passed on the ground that the respondent no. 3 at the time to sanction of the said map had not stated in its affidavit about pendency of title suit no. 416 of 1996 in the Delhi High Court. Against the order dated 27.01.2014, the respondent no. 3 filed appeal vide an appeal vide Appeal No. 5 of 2014 before the Municipal Building Tribunal (for short 'Tribunal') on 03.01.2015. During the pendency of the aforesaid Appeal No. 5 of 2014, the aforementioned Title Suit No. 416 of 1996 corresponding to C.S. No. 780/14/1996 was dismissed by the Tis Hazari Court, New Delhi. After dismissal of Title Suit No. 416 of 1996, the Tribunal vide order dated 16.04.2015 disposed of Appeal No. 5 of 2014 and remanded the case to the Municipal Commissioner, Patna to rehear and pass a fresh order in accordance with law after hearing both the parties. After remand of the case before the Municipal Commissioner, Patna, notices were issued to the parties for hearing. After hearing the parties, vide order dated 10.03.2016 the Municipal Commissioner, Patna restored the cancelled plan of respondent



no. 3, in the changed circumstances.

6. Being aggrieved by the order dated 10.03.2016 passed by the Municipal Commissioner, Patna, the petitioner filed an appeal vide Appeal No. 5(N) of 2016 before the Tribunal. The said appeal was dismissed by the Tribunal vide impugned order dated 20.02.2019 in spite of a clear finding that the respondent no. 3 had filed a wrong affidavit and as such a direction was issued to the respondent no. 3 to pay a fine of Rs. 1,00,000/- in the account of the State Legal Services Authority, Bihar, Patna.

7. Mr. J.S. Arora, learned senior counsel appearing for the petitioner submitted that the impugned order passed by the respondent no. 4 is bad in law as well as on the facts of the case. He contended that while passing the impugned order on 20.02.2019 the learned Tribunal did not consider that while sanctioning the map of respondent no. 3, the respondent no. 2 did not take into consideration the fact that against the order passed in Title Suit No. 416 of 1996 re-numbered as 700/14/96 by the learned Additional District Judge of the Tiz Hazari Court, New Delhi an appeal was filed vide R.F.A. No. 132/2015, which was pending adjudication before the Delhi High Court. He submitted that while the learned Tribunal did not consider that wrong



averment made in the affidavit would amount to suppression of material fact and on that basis, not only the appeal ought to have been allowed but the re-sanction of map done by the Municipal Commissioner, Patna should also have been cancelled and the respondent no. 3 should have been directed to file a fresh application for sanction of map in accordance with law. He further contended that while dismissing the appeal the Tribunal did not consider that the order passed by the Municipal Commissioner on 10.03.2016 was based on his subjective satisfaction without any basis and reasons. He lastly contended that misrepresentation made by the respondent no. 3 in the affidavit would tantamount to committing fraud and that it is a trite law that fraud vitiates even most solemn proceeding in any civilized society. In fact fraud vitiates even the equitable right of a person.

8. Mr. Arora, learned senior counsel for the petitioner submitted that in view of the provisions prescribed under Rule 14 of the Bihar Building Bye-Laws, 2014, firstly, the Tribunal ought not to have remanded the matter back to the Municipal Commissioner, Patna for fresh hearing of the matter and secondly, even if the matter was remanded, the Municipal Commissioner, Patna ought not to have restored the building plan



as it was an admitted case of material misrepresentation by the respondent no.3 while making the application for sanction of building plan.

9. On the other hand, case of respondent no. 3 is that it has purchased the properties in question measuring about 7.52 acres from BMSC vide registered deed of sale dated 08.12.2008 for valid consideration and after due clearance from Reserve Bank of India and other Statutory Authorities. The said land has been duly mutated in its name and the Land Possession Certificate has also been issued in its favour. The Baptist Missionary Society was formed in the year 1792 in United Kingdom and was registered under the English Societies Act, whose object is the diffusion of the knowledge of the religion of Jesus Christ throughout the whole world by preaching of the gospels etc.. The Baptist Missionary Society is the confirming party of the sale deed dated 08.12.2008. The BMSC was formed and incorporated under the **Companies Act, 1862 upto 1929 and the Companies Act, 1948 as a Limited Company on 26.11.1888**. It acts as the trustee of the Baptist Missionary Society's properties and has also acquired properties independently as an absolute owner. The Property in question situated at Lodipur, Patna is the purchased property of the



BMSC. The Baptist Church Trust Association (for short 'the BCTA') was incorporated and registered under the Indian Companies Act, 1932. The Baptist Missionary Society and BMSC, in due course transferred its certain properties situated in India in favour of BCTA by Deed of Trust and vested all rights, title and interest in the BCTA. The property in question purchased by the respondent no. 3 in 2008 was, however, never transferred to BCTA and its ownership was retained by the BMSC. The Baptist Union of North India (for short 'BUNI') was formed in the year 1947 with the cooperation of Baptist Missionary Society. Later on, BUNI was registered in 1976 under the Societies Registration Act, 1860. BUNI has been vested with the right of management and control of institutions like hospitals, churches, schools, etc. established over the properties of Baptist Missionary Society, BMSC and BCTA.

10. The further contention of the respondent no. 3 is that Baptist Union Church, Bakarganj, Patna (Petitioner) is an unregistered, unrecognized and self-proclaimed body having no concern whatsoever with the property in question. The petitioner Church is a place of worship where persons having faith in baptism, congregate and offer prayer. The Church is situated far away from the said land and Mr. Moses Victor Thomas is a



terminated Pastor of Baptist Union Church, Patna since 1994. There is also an unrecognized Baptist Union of North India, which is operating illegally through Mr. Paul N. Prem. The said unregistered Baptist Union of North India had filed a suit before the Delhi High Court vide Title Suit No. 416 of 1996, which was later on transferred to Tis Hazari Court, Delhi where it was re-numbered as 700/14/96.

11. The next contention of the respondent no. 3 is that the property in question was purchased by the BMSC in the year 1915. Even after Independence, the said land was retained by BMSC and was not transferred to anybody including BUNI, BCTA or to the Petitioner Church. The said land was duly mutated in the name of BMSC and rent receipt was duly issued in favour of BMSC. The petitioner and its associates made several unsuccessful and unlawful attempts to dispose of the land in question, but could not succeed. In this regard, Shri Rajendra Kamal of the petitioner-Church had sent a letter dated 6.12.2001 to the constituted Attorney of BMSC stating therein that due to several problems relating to the said land, its huge and mounting liabilities, land encroachment, law and order problems, constant apprehension of using the entire property, the property in question i.e. the said land had become unproductive and



troublesome. **It was further stated that one Mr. Sanjiv Sahay of M/s S.S. Builders had agreed to develop the property in question. Shri Rajendra Kamal of petitioner Church requested Baptist Missionary Society and BMSC to grant him permission for sale as the property in question was owned by BMSC and has not been transferred to BCTA.** BMSC, the owner of the property in question did not grant permission for development, which created problems and negated the chances for setting unlawful gain to the petitioner.

12. It is further stated by respondent no. 3 that in the year 2004-05, Mr. Rajendra Kamal of the petitioner-Church along with others illegally executed a development agreement in favour of some builders to develop the said land and illegally realized heavy amount for the same without any authority or consent from the owner BMSC. In this regard, a complaint vide Complaint Case No. 3698 of 2005 was filed on behalf of BMSC, the seller of the property in question against Mr. Rajendra Kamal, an associate of the petitioner and others and cognizance of the offences under sections 420,408,467,468,423 and 120-B of the Indian Penal Code has been taken vide order dated 11.07.2006 and presently the case is pending consideration in the Court of Judicial Magistrate, 1st Class, Patna.



13. It is contended that in the aforesaid backdrop the owner of the property BMSC decided to sell the property in order to save it and utilize the sale proceeds for the welfare of the Baptist Community. On a request made by the BMSC, the Reserve Bank of India, vide an order dated 02.06.2008 granted permission to the BMSC to sell the property in question admeasuring 7.52 acres. Thereafter, an extraordinary meeting of BMSC was held on 05.11.2008 and it was resolved to grant special Power of Attorney to Mr. Asit Ghosh (Officer of BMSC) to execute Sale Deed of the property on behalf of the seller in favour of respondent no. 3. Accordingly, on 07.11.2008, the Power of Attorney was granted by the seller in favour of Mr. Asit Ghosh, who executed sale deed dated 08.12.2008 on behalf of the seller in favour of respondent no. 3 with respect to the property in question and the said sale was registered on 13.12.2008 at the Office of the Registrar, Patna thereafter, the building plan of the said land was sanctioned by the certified Architect registered with Patna Municipal Corporation under Section 314 of the Bihar Municipal Act, 2007 vide Plan Case No. CKA/PMC/Mauza-Adra/PCN/SB+G+17/ 13/2010 dated 17.01.2011 for erection of commercial cum residential complex. The Certified Architect after sanction of the building Plan had submitted the same to the



Patna Municipal Corporation on 20.01.2011 as per the requirement provided under section 316 of the Bihar Municipal Act, 2007. The Building Plan for development of the said land was sanctioned in accordance with the provisions contained in section 314 of the Bihar Municipal Act, 2007 and the same was in conformity with building by laws.

14. The further contention of the respondent no. 3 is that the petitioner filed writ petition, *vide* CWJC No. 9159 of 2012 before this Court for cancellation of the aforesaid sanctioned map and for stay of the construction work. The respondent no. 3 appeared in the said writ petition and filed its counter affidavit as well as supplementary counter affidavit denying the allegations made by the petitioner. The Patna Municipal Corporation also filed its counter affidavit denying the allegations of the petitioner. After hearing the parties, *vide* order dated 18.07.2013, this Court disposed of the writ petition with direction to the Municipal Commissioner, Patna to consider and dispose of the representation filed by the petitioner. On 05.08.2013, both, the respondent no. 3 and the petitioner appeared before the Municipal Commissioner and filed their representations. After hearing the parties, order was reserved and on 27.01.2014 the Municipal Commissioner, Patna passed the order whereby plan



of the respondent no. 3 was cancelled and construction work on the said land was stopped on the ground that at the time of sanction of the said plan the respondent no. 3 had not stated in its affidavit about pendency of Title Suit No. 416 of 1996 in the Delhi High Court.

15. The respondent no.3 preferred an appeal vide Appeal No. 5 of 2014 before the Tribunal against the aforesaid Order dated 27.01.2014 cancelling the building plan passed by the Municipal Commissioner, Patna. During the pendency of the aforesaid Appeal No. 5 of 2014 before the Tribunal, the aforementioned suit was dismissed by Tis Hazari Court, Delhi inter alia on the ground that the said Title Suit was filed by an unregistered society, which has no right title and ownership in the scheduled properties in the aforesaid Title Suits. Being satisfied with the dismissal of the title suit and the circumstances under which the plan was cancelled, the Tribunal, vide Order dated 16.04.2015, disposed of Appeal No. 5 of 2014 and remanded the case to the Municipal Commissioner, Patna to rehear and pass a fresh order in accordance with law after hearing both the parties. After remand, the Municipal Commissioner, Patna heard both the parties in compliance of the order of the Tribunal, considered the circumstances under which the plan was cancelled, issue of



alleged misstatement in the affidavit about pendency of Title Suit No. 416 of 1996 and the changed circumstances under which the Tribunal had remanded the matter, reassessed the facts objectively and vide Order dated 10.03.2016 restored the cancelled plan of the respondent no. 3.

16. Being aggrieved by the Order dated 10.03.2016 passed by the Municipal Commissioner, Patna, the petitioner preferred an appeal vide Appeal No. 5(N) of 2016 before the Tribunal. The said appeal was dismissed by the Tribunal on 20.02.2019 against which the petitioner has preferred the present writ petition before this Court.

17. Mr. Kamal Nayan Choubey, learned senior counsel appearing for the respondent no.3 submitted that since there was no illegality in the order of the Municipal Commissioner, Patna and no prejudice has been caused to the petitioner due to approval of the plan, the Tribunal rightly dismissed the Appeal No. 5(N) of 2016. He submitted that so far as pendency of Title Suit No. 416 of 1996 is concerned, the same was filed by a non-registered Society before the Delhi High Court against the six defendants. The seller of the property in question (BMSC) and the buyer (Respondent No.3) were not made party defendant in Title Suit No. 416 of 1996 and, thus, the restraint orders passed



in the title suit were not applicable either against the seller or the buyer. He contended that even the petitioner of the present writ petition was not a party in Title Suit No. 416 of 1996. The plaintiff of the suit had preferred an appeal by RFA No. 132 of 2015 before the Delhi High Court in which the petitioner filed a petition under Order-I, Rule 10 of the Code of Civil Procedure (for short 'CPC') for impleadment as a party, but the same was dismissed by the Delhi High Court vide order dated 17.01.2017. In this view of the matter, the petitioner had no *locus standi* to assail the orders impugned passed by the Municipal Commissioner, Patna or the Tribunal. He submitted that the plaintiff of the suit, who had filed the appeal by RFA No. 132 of 2015 before the Delhi High Court did not press the appeal and accordingly, the appeal was disposed of as not pressed by the Delhi High Court vide order dated 18.09.2018.

18. In the given facts and circumstances of the case, Mr. Choubey, learned senior counsel for the respondent no.3 submitted that non-disclosure of pendency of title suit in the process of sanction of building plan does not amount to material misrepresentation or fraudulent statement. He argued that the petitioner and his associates are in the habit of filing frivolous and motivated applications against the respondent no.3 or his



seller. He drew our attention towards Annexure-I to the counter affidavit, which is an order passed by the Delhi High Court in W.P. (C) No. 7830 of 2011 wherein, while dismissing the writ petition, the Delhi High Court has observed that the petitioners are resorting to forum shopping.

19. Mr. Choubey, learned senior counsel for the respondent no.3 has further submitted that the petitioner had filed Title Suit No. 562 of 2012 in the court of Sub-Judge-I, Patna for declaration that the confirming party as well as the seller had no right to execute the sale deed dated 08.12.2008 in favour of the respondent no.3 with respect to the property in question, which was described in Schedule-1 of the plaint. The respondent no.3 filed a petition under Order VII, Rule 11 of the CPC for rejection of the plaint and *vide* order dated 09.03.2018 the learned Sub-Judge-II, Patna rejected the plaint of the petitioner on the ground that the plaint did not disclose a valid cause of action and that the suit was also barred by law of limitation.

20. Mr. Choubey, learned senior counsel further contended that even otherwise, the cause of action for filing writ petition does not survive as the old building plan expired on 20.08.2018 whereafter the respondent no.3 submitted an application on 20.08.2018 before the Patna Municipal



Corporation for sanction of new building plan vide Plan Case No. P/Arara (Lodipur)/PCN-G+17/306/18 and the new building plan with respect to the property in question of the respondent no.3 was sanctioned by the Patna Municipal Corporation on 09.02.2019. He urged that the Patna Municipal Corporation after sanction of the new building plan granted permission for construction of the building on 04.04.2019 with certain conditions.

21. Respondent nos.1 and 2 have also filed their counter affidavit in the present matter wherein it is stated that after remand the Municipal Commissioner, Patna heard the matter afresh and vide order dated 10.03.2016 revived the plan map submitted by the respondent no.3, which was cancelled earlier by the Municipal Commissioner and being aggrieved by the order passed by the Municipal Commissioner, the writ petitioner filed an appeal before the Tribunal, which was dismissed on contest vide order dated 20.02.2019. However, cost of Rs.1,00,000/- was imposed against the respondent no.3 for filing false affidavit, which was directed to be deposited in the account of the State Legal Services Authority, Patna.

22. Mr. Choubey lastly argued that at this stage the petitioner cannot raise any objection to the remand order passed



by the Tribunal. In case, the petitioner was aggrieved by the remand order, he should have assailed the said order before this Court, but instead of doing so, he participated in the proceeding in the remanded matter before the Municipal Commissioner. According to him, the remand order of the Tribunal has already attained finality.

23. Mr. Prasoon Sinha, learned counsel appearing for the Patna Municipal Corporation submitted that Rule 14 of the Bihar Building Bye-Laws, 2014 confers discretionary power to the Municipal Authority to cancel the permission in case the Authority is satisfied that such permission was granted in consequence of any material misrepresentation or fraudulent statement contained in the application given or information furnished. He submitted that the aforesaid Rule 14 cannot be read as if in all cases of misrepresentation the Authority must cancel the permission accorded for development of any building. He further contended that there is no error in the order passed by the Municipal Commissioner, Patna, which was under challenge before the Tribunal and the Tribunal, after having considered all aspects of the matter gave sufficient opportunity of hearing to the parties and passed a reasoned order in accordance with law, which does not require any interference by this Court.



24. Mr. Sinha, learned counsel for the Patna Municipal Corporation submitted that the prayer made in I.A. No.1 of 2022 by the petitioner is wholly misconceived, devoid of any merit and is fit to be dismissed in view of the fact that there is no provision in the Bihar Building Bye-Laws, 2014 for issuance of completion certificate by the Municipal Commissioner, who is the competent authority under the Bihar Municipal Act, 2007 as well as the Bihar Building Bye-Laws, 2014 (as amended in 2022) as the onus lies on every owner of the building/empanelled architect/engineer to inform the Municipal Commissioner in writing about completion of the building as mentioned in the Bihar Building Bye-Laws.

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

26. The undisputed facts of the present case, which can be borne from the pleadings of the parties, are that BMSC decided to sell the property in question and on its request the Reserve Bank of India vide order dated 02.06.2008 granted permission to BMSC to sell the property in question, admeasuring 7.52 acres whereafter one Mr. Asit Ghosh was granted special Power of Attorney to sell the property in question on behalf of the BMSC in favour of the respondent no.3.



Accordingly, on 08.12.2008, the Power of Attorney holder executed the sale deed in favour of the respondent no.3 with respect to the property in question, which was registered on 13.12.2008 at the office of the Registrar, Patna. Thereafter, the purchaser of the property (Respondent No.3) filed the map prepared and approved by the registered Architect empanelled by the Patna Municipal Corporation through Plan Case No. CKA/PMC/Mauza-Adra/PCN/SB+G+ 17/13/2010 dated 17.01.2011 for erection of commercial-cum-residential complex over the land in question before the Municipal Commissioner, Patna for grant of sanction and accordingly the sanction was granted.

27. Thereafter, the petitioner filed writ petition before this Court vide CWJC No. 9159 of 2012 stating *inter alia* that the Architect had illegally passed the map of the building in question and the Municipal Commissioner, Patna had wrongly sanctioned the map for construction of the building over the property in question having an area of 7.52 acres. It was further alleged in the writ petition that although a suit was pending in the Delhi High Court with respect to the land in question, suppressing the aforesaid fact, an affidavit has been filed by the respondent no.3 mentioning that no suit/case was pending for disposal in any



court of law and on the basis whereof succeeded in getting the map sanctioned. The aforesaid writ petition was disposed of on 18.07.2013 with a direction to the Municipal Commissioner, Patna to consider and dispose of the representation dated 20.01.2012 filed by the petitioner within a period of two months after hearing the parties including the petitioner and M/s Utkars Sfatik Ltd. (respondent no.3), who were directed to appear before the Municipal Commissioner, Patna on 05.08.2013.

28. After hearing the parties, the Municipal Commissioner, Patna held that the map bearing Plan Case No. CKA / PMC / Mauza-Adra / PCN / SB + G + 17 / 13 / 2010 dated 17.01.2011 was approved by the empanelled Architect on the basis of suppression of facts by the respondent no.3 regarding pendency of a suit pertaining to the land in question and accordingly it was cancelled, granting liberty to the respondent M/s Utkars Sfatik Ltd. to take initiative for getting a new map approved in accordance with the Building Bye-Laws and 30 days time was granted to the concerned parties to challenge the said order passed by the Municipal Commissioner, Patna dated 27.01.2014 in Misc. Case No. 03/2013 if any party was not satisfied with the said order.

29. Being aggrieved, M/s Utkars Sfatik Ltd. Filed



Appeal No. 5 of 2014 before the Tribunal against the order dated 27.01.2014 passed by the Municipal Commissioner, Patna in Misc. Case No.3/2013 challenging cancellation of the map.

30. During the pendency of appeal before the Tribunal, the alleged title suit pending before the Delhi High Court was dismissed and the Tribunal, after having considered the submissions advanced on behalf of the parties observed that the circumstances had changed and accordingly, the Appeal No.5 of 2014 was remanded back to the Municipal Commissioner, Patna to rehear the matter and pass a reasoned order after hearing the parties in accordance with law.

31. After remand, the Municipal Commissioner, Patna heard the matter afresh and vide order dated 10.03.2016 revived the plan map submitted by the respondent no.3, which had been cancelled earlier by the order passed by the Municipal Commissioner, Patna in Misc, Case No.3/2013.

32. Being aggrieved by the order dated 10.03.2016 passed by the Municipal Commissioner, the petitioner herein filed an appeal before the Tribunal vide Appeal No.5(N) of 2016, which was dismissed on contest vide order dated 20.02.2019. However, a cost of Rs.1, 00,000/- was imposed upon the respondent no.3 for filing false affidavit, which was directed to



be deposited in the account of the State Legal Services Authority, Patna.

33. It would be evident from the submissions advanced on behalf of the parties that initially the building plan in question was sanctioned on the application of the respondent no.3 in accordance with the provisions of the Bihar Municipal Act and Building Bye-Laws. The Municipal Commissioner, Patna had cancelled the same vide order dated 27.01.2014 on the ground that the approval was taken on the basis of suppression of fact regarding pendency of Title Suit No. 416 of 1996 pending before the Delhi High Court and liberty was granted to the respondent no.3 to take initiative for getting a new map approved in accordance with the Building Bye-Laws.

34. The respondent no.3 has annexed a copy of the plaint of Title Suit No. 416 of 1996 along with the counter affidavit, which has been marked as Annexure-D. A perusal of the plaint would demonstrate that BUNI had filed the suit against six defendants, who are as under :-

1. Mr. Walter David, 13, Raj Niwas Marg, Delhi-110054

2. Sh. Rajinder Masih, 13, Raj Niwas Marg, Delhi-110054



3. *Sh. J.F. Masih (since deceased & deleted)*
4. *Sh. Ram Singh, 13, Raj Niwas Marg, Delhi-110054*
5. *Baptist Church Trust Association, 44, Acharya Jagdish Chandra Bose Road, P.S. Park Street, Kolkata-17*
6. *Registered Society calling itself Baptist Union of North India, having its office at 13, Raj Niwas Marg, Delhi-110054.*

35. The said suit was preferred seeking for the following reliefs :-

- “(a) a decree of declaration thereby declaring that the Defendant Nos. 1 to 5 have no right to create charge or to transfer, alienate or part with possession of any of the properties, as per Schedule-A annexed with the petition, without getting any approval, sanction from the Plaintiff, Baptist Church Trust Association be passed in favour of the Plaintiff and against the Defendants.*
- (b) a decree of permanent injunction thereby restraining the Defendants from creating any charge alienating or transfer of any of the properties, as per Schedule-A annexed hereto, to any other person be passed in favour of the Plaintiff and against Defendants.*
- (c) a decree of mandatory injunction thereby directing the Defendants to render and give*



the accounts of the income and expenses of all the properties, mentioned to the Schedule-A annexed with this Plaint, to the Plaintiff and not misappropriate the proceeds and funds for their personal use, be passed in favour of the Plaintiff and against the Defendants.

- (d) *a decree of mandatory injunction thereby directing the Defendant no. 5 to invite four members of the Plaintiff for participating any of the General Body Meetings that may be convened hereinafter and notices to that effect be sent to the plaintiff well in time and in accordance with the Rules, Regulations, Memorandum and Articles of Association of the Defendant no. 5.*
- (e) *cost of the suit; and*
- (f) *any such other or further relief which this Hon'ble Court may deem fit and proper be also awarded to the plaintiff and against the Defendants."*

36. The description of the suit land is mentioned at serial no.15 of Schedule-A annexed to the plaint of the said suit. Schedule-A of the suit reads as under :-

"SCHEDULE -A

- 1) 13, Raj Niwas Marg, Delhi*
- 2) 21, Raj Niwas Marg, Delhi*



- 3) *19, Raj Niwas Marg, with hostel, Delhi.*
- 4) *14-A, Alipur-Road, (now 14-A, Shamnath Marg, Delhi.*
- 5) *Baptist Church & School, Shahdara, Delhi*
- 6) *Baptist School & Bungalow and other residential properties at Bhiwani Palwal(Haryana).*
- 7) *Baptist Church and adjoining area at Old Faridabad (Haryana).*
- 8) *Baptist Higher Secondary School, Agra and adjoining land and residential portions at Agra.*
- 9) *Highbury Lodge, MG Road, Agra*
- 10) *Baptist Church and adjoining land at Dholpur, Rajasthan.*
- 11) *Baptist Property at Shimla, Near Mall.*
- 12) *Baptist Property at Kalka and Church.*
- 13) *Baptist Union Church, Patna and its adjoining land in plot No. 866 and 261, holding nos. 314/232/154 and 315/233/154, Ward No. 12/6, Circle No. 14 at Bankerganj Road, Patna*
- 14) *Baptist Properties at Danapore, Mungyer and Gaya in the State of Bihar.*
- 15) *Angus Institutions and its adjoining vacant land at Budh Marg, Patna.*
- 16) *All Baptist Mission properties at Baraut, Dhikana, Khekra, Chaprauli and in other*



parts of Uttar Pradesh.

- 17) *Delhi United Christian Sr. Sec. School, 17, Raj Niwas Marg, Delhi- 110054*
- 18) *B.M. Gange Sr. Secondary School, 21, Raj Niwas Marg, Delhi.*
- 19) *Nisheman Nursery School, Raj Niwas Marg, Delhi-110054.*
- 20) *Francis Girls Sr. Secondary School, 17, Daryaganj, Delhi.*
- 21) *Noor Niwas Nursery School, 17, Daryaganj Delhi.”*

37. A perusal of serial no.15 of the Schedule annexed to the plaint would make it evident that it is without *khata* number, plot number and boundary.

38. The copies of the orders dated 16.02.1996 and 22.03.1996 passed by the Delhi High Court in the aforesaid Title Suit No. 416 of 1996 have been brought on record along with the counter affidavit and marked as Annexures-E and F.

39. From perusal of these orders, it would be evident that the Delhi High Court had restrained the defendants in the suit from transferring, alienating, encumbering in any manner the properties mentioned in Schedule-A annexed to the plaint.

40. The BMSC (seller) and the respondent no.3 (buyer)



were not party-defendants in the suit and as such the aforesaid restraint orders were not applicable either to the BMSC or the respondent no.3 as it is a settled principle of law that the judicial orders passed in a civil **suit is effective** against the parties to the suit and not against any one and every one. The said Title Suit No.416 of 1996 was later on transferred from Delhi High Court to Tis Hazari Court, Delhi and was dismissed on 03.01.2015 on the ground that the suit was filed by an unregistered Society, who had no right, title and ownership in the scheduled property of the suit.

41. The petitioner herein was also not a party to the aforesaid suit. It would further be evident from Annexure-H to the counter affidavit filed on behalf of the respondent no.3 that the appeal filed by the plaintiff of Title Suit No. 416 of 1996 vide RFA No. 132 of 2015 before the Delhi High Court against the judgment/order dated 03.01.2015 passed by the Tis Hazari Court, Delhi in the suit in question was disposed of vide order dated 18.09.2018 observing as under :-

“1. After arguments, the appeal and the suit are disposed of as not pressed inasmuch as learned senior counsel for the appellant on instructions states that a suit plaint will be filed in accordance with law containing a complete



cause of action of as to how the appellant is entitled to be part of management of the respondent no.5/defendant no.5-company which is registered under Section 25 of the Companies Act, 2013 with the fact that if in the alternative the case of the appellant is that of a public spirited person to file proceedings under Section 92 of Code of Civil Procedure, 1908 (CPC), then, on the basis of such cause of action and with respect to which aspect this Court makes no observations on merits one way or the other, the appellant/plaintiff can always file an appropriate suit in accordance with law. Dehors the aforesaid aspects, statement of the learned senior counsel for the respondents is recorded on instructions that the respondent no.5 has not sold or alienated any of the properties as are mentioned in Schedule to the plaint.

2. Appeal and the suit are accordingly disposed of with the aforesaid observations and liberty.”

42. It would also be evident from Annexure-G to the counter affidavit filed on behalf of the respondent no.3 that the petitioner herein had filed a petition under Order I, Rule 10 CPC in RFA No. 132 of 2015 for impleadment of party in the said appeal vide CM 28299/2015, which too was dismissed by the Delhi High Court vide order dated 17.01.2017.

43. In the given facts and circumstances of the case, we



are of the opinion that non-disclosure of pendency of Title Suit by the respondent no.3 in the process of sanction of building plan does not amount to material misrepresentation or fraudulent statement.

44. It is reiterated that the restraint orders were passed against the defendants of the suit only and as such it was not effective against BMSC and the respondent no.3. In this backdrop, non-disclosure of the pendency of the suit cannot be said to be a deceptive act done intentionally by the respondent no.3 in order to influence the registered Architect or the Municipal Commissioner to grant sanction of the building plan. Under the facts and circumstances of the case, non-disclosure of the pendency of the suit can be recorded as a *bonafide* mistake, which would not amount to material misrepresentation or fraudulent statement.

45. Rule 14 of the Bihar Building Bye-Laws, 2014, which provides for cancellation of permission granted to erect a building reads as under :-

“14. Cancellation.- If any time after permission to proceed with any building or development work has been given, the Authority is satisfied that such permission was granted in consequence of any material misrepresentation or fraudulent statement



contained in the application given or information furnished, the Authority may cancel such permission and any work done thereafter shall be deemed to have been done without permission.”

46. A reading of the aforesaid Rule 14 would make it evident that the Municipal Authority has been vested with the discretionary power to cancel the permission accorded to building construction in case it is satisfied that such permission was granted in consequence of any material misrepresentation or fraudulent statement contained in the application.

47. Having regard to the facts and circumstances of the case, if the Tribunal thought it proper to remand back the matter to the Municipal Commissioner, Patna to rehear the matter and pass a reasoned order, the same cannot be said to be bad in law. Moreover, if the petitioner was not satisfied with the said remand order of the Tribunal, he ought to have assailed the said order. But, instead of doing so, the petitioner participated in the proceeding in the remanded matter before the Municipal Commissioner.

48. We are in agreement with the submissions advanced on behalf of the respondent nos.1 and 2 and the respondent no.3 that after remand the Municipal Commissioner, Patna was well within his capacity to reconsider his earlier decision afresh.



Having regard to all the relevant facts and circumstances of the case, if the Municipal Commissioner, Patna accepted the contentions of the respondent no.3 and ignored the unfounded allegations made by the petitioner and restored the cancelled plan of the respondent no.3 in the changed circumstance, no illegality can be found with the order of the Municipal Commissioner, Patna.

49. Moreover, we find force in the submission advanced on behalf of the respondent no. 3 that even otherwise the cause of action for filing the writ petition does not survive as after expiry of old building plan on 20.08.2018, on the application submitted on 20.08.2018, the Patna Municipal Corporation sanctioned a new building plan in respect of the property in question on 09.02.2019 and granted permission for construction of the building on 09.04.2019 with conditions mentioned therein.

50. We are of the opinion that no illegality can be found with the impugned order passed by the Tribunal whereby the appeal preferred on behalf of the petitioner against the order of the Municipal Commissioner, Patna has been dismissed.

51. At this juncture, we can not loose sight of the settled principle of law that ordinarily a person whose rights are alleged to have been threatened or transgressed by the State or the



instrumentality of the State can approach the High Court by invoking writ jurisdiction under Article 226 of the Constitution of India. Every registered society can sue or be sued in its name as it attains the colour of a legal entity by itself. It has separate legal existence in the eyes of law and can act in its own name and in the manner prescribed under the statutory provisions under which it has been registered. An unregistered association, which cannot be regarded as having an independent legal existence, cannot file or maintain writ petition under Article 226 of the Constitution of India. In that background we cannot ignore the submission advanced on behalf of the respondent no.3 that an unregistered association has no right to approach the writ Court under Article 226 of the Constitution of India. On a perusal of cause title of the writ petition, it could be seen that the writ petition has been filed by Baptist Union Church. It is pertinent to note that Rev. Moses Victor Thomas has not filed the writ petition in his individual capacity rather it has been filed by the Baptist Union Church, which is not a registered body. Since, an unregistered body does not fall within the definition of juristic person, we are of the opinion that the writ petition in the present form is not even maintainable.

52. In so far as the contention of the petitioner regarding



a direction to the respondent no.3 to pay a fine of Rs.1,00,000/- in the account of the State Legal Services Authority, Bihar, Patna for filing a wrong affidavit while dismissing the appeal is concerned, the same may have given the respondent no.3 a right to challenge that part of the order passed in the appeal by preferring an appropriate application, but the same cannot be a ground for setting aside the order passed by the Tribunal.

53. In the background of the aforementioned discussions, the writ petition and the interlocutory application, being devoid of any merit, are dismissed with cost of Rs.50,000/- to be paid in the account of the Patna High Court Legal Services Committee within a period of 30 days.

(Ashwani Kumar Singh, J)

Shailendra Singh, J:

(Shailendra Singh, J)

Pradeep/-

AFR/NAFR	AFR
CAV DATE	13.10.2022
Uploading Date	
Transmission Date	

