

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2161 of 2003

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Krishna Kant Sharma, son of late Nathu Ram Sharma, resident of Station Road, Ward No.6 (Old), 16 (New), Police Station Town and District Samastipur.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Collector-cum-District Magistrate, Samastipur
3. The Sub-divisional Magistrate, Samastipur-cum-House Controller
4. Om Prakash Paliwal
5. Ratan Kumar Paliwal, both sons of late Baidyanath Prasad, alias Baijnath Prasad Paliwal, both resident of Village and P.S. Waini (Pusa), District Samastipur, presently residing at Mohan Market, Mouza-Magardahi alias Karimabad Ward No.7 (Old, 14(new) Station Road, P.S. Town and District Samastipur.
6. Sri Narmadeshwar Prasad, Collector, Samastipur
7. Sri Hemchand Prasad, Sub Divisional Officer, Samastipur-cum-House Controller.
8. Sri Arun Thakur, Circle Officer, Samastipur
9. Sri Sanjay Singh, Officer In-charge of Samastipur Town, P.S. Samastipur
10. Sri Krishna Singh, Executive Officer, Samastipur, Nagar Parisad, Samastipur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Patanjali Rishi, Advocate.
For the State : Mr. Nirbhay Kumar Singh, G.P.26
Mr. Manoj Kumar Jha,
For Respondent no.4: Mr. abhay Shanker Singh,
Mr. Amit Kumar Mishra, Advocates.
For Respondent no.8 : Mr. Satish Chandra No.3.
For Respondent No.10: Mr. Durga Nand Jha, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 08-05-2015

Heard the parties.

In the present writ petition the Municipality in exercise of power under Section 194 of the Bihar and Orissa Municipality Act (hereinafter referred to as 'the Act') has directed the petitioner to vacate the premises standing in Holding No.112



(new) and 16 (old). In that (plot) holding there were three rooms. All the three rooms were given on rent. Petitioner was one of the tenants. The condition of building was very dilapidated. It appears that the original land holder approached to the Municipality drawing the attention about the condition of the building. There was a report of different authorities showing nature of building in a very bad condition. When nothing had happened the original land holder approached this Court vide C.W.J.C. No. 10871 of 2002. While disposing of the writ petition direction was given to the Om Prakash Paliwal original land holder to approach the Municipality and Municipality will take action in accordance with law. The Court while disposing of the matter has recorded if tenant wants to stay will be at his own risk.

It appears that after disposal of the case the Municipality has taken cognizance of the nature of the building and gave direction for its demolition. In pursuance thereof the building was demolished in presence of the Circle Officer and the petitioner.

The grievance that has been raised by the petitioner that the action taken is against the provisions of law, as action was taken by the Municipal Corporation at the behest of the order



passed by the Sub Divisional Officer. The Sub Divisional Officer has no role in the Bihar Municipal Act and he can not have jurisdiction to proceed with the matter, so much so without a proper proceeding under Section 194 of the Act the demolition has taken place thereby caused a financial loss Rs.3,00,000 (three lacs). So much so he has approached to the authority under Section 9 of the B.B.C. Act that the land owner has illegally demolished the two adjoining shops attached with the shop of the petitioner and has submitted that whole action of the Municipality is completely illegal. He has further submitted that when there was an order passed by this Court that tenant would continue at his own risk adopting a novel method got eviction completed against the law and as such he requires a proper compensation.

Learned counsel for the Municipality, Circle Officer and the State has submitted that long before the demolition it was reported by different officials that nature of the building was very bad. They have also recorded that it may fall on any time may cause harm to the general public on that reason the Municipal Corporation has taken a decision to demolish the building and placed reliance on the letter dated 12.3.2003, of the Executive Officer, Nagar Parishad, Samastipur to the Sub



Divisional Officer, Samastipur and also letter no.302 dated 28.3.2003 which is Annexure-B to the counter affidavit of respondent no.10. Counsel for the respondents placed reliance on both the letters and submitted that demolition was taken place in presence of the petitioner. All the materials which were stacked in the room were handed over to him. Learned counsel for the Circle officer has submitted that Circle Officer has executed the order in terms of the direction which he received to be remain present to maintain law and order and on that account he was there, allegation of manipulation and connivance is completely wrong.

Having considered the rival contentions of parties it appears that the Sub Divisional Officer has no jurisdiction to take any action or proceed with the matter. Only Commissioner under the Municipal Act has jurisdiction under Section 194 of the Act to declare a building as condom when there is eminent danger to fall can pass an order for demolition of the building. A plea has been taken by the petitioner that there is no such finding of eminent danger but narration of facts mentioned in two orders shows that building was in very poor and dilapidated condition it could have fallen on any day and causing harm to the public. The claim of the petitioner that the order was passed under



Section 194(2), is wrong, the action, in opinion of this Court under Section 194(3), can not be said to be bad. The Municipal Corporation has raised the objection that without presence of Engineer and without fixing any date the Circle Officer should not have got the building demolished is certainly committed wrong. The Sub Divisional Officer had no jurisdiction to proceed with the matter but there are report of condition of building, question would arise whether the petitioner should be compensated. It is very difficult for this court to decide the question of compensating the petitioner. If the petitioner so advised, he may approach the civil court for proper adjudication.

With the aforesaid observation and direction this writ petition is disposed of.

(Shivaji Pandey, J)

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