

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2723 of 2015

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1. Md. Firoj Son of Late Md. Alim
 2. Md. Reyaz Khan Son of Late Md. Manzoor Khan
 3. Md. Jahangir Son of Late Khalil Khan
 4. Md. Mahtab Son of Late Khalil Khan
 5. Md. Hasim Son of Naimuddin
 6. Md. Farooque Ali Son of Late Asgar Ali
 7. Dipak Goshwami Son of Ganesh Goshwami
 8. Anwar Khan son of Amin Khan
 9. Mahendra Prasad Gupta Son of Late Sone Lal Gupta
 10. Nirmal Gupta son of Late Sita Ram Sah
 11. Nabi Ahmed, (Chhote) Son of Ali Hassan Khan
 12. Abdul Rahim Son of Late Kallu Tola old Cloth Selling Situated at New Market G.P.O. Golamber Patna, Near Patna Municipal Corporation office at R/o Mohalla - Kamla Nehru Nagar, P.S. Kotwali, District Patna

.... Petitioner/s

Versus

1. The State of Bihar, through Secretary Department of Town Development and Housing, Patna
2. The Secretary, Department of Town Development and Housing, Government of Bihar, Patna
3. The District Magistrate, Patna
4. Executive officer, Nutan Rajdhani Anchal, Patna Municipal Corporation, Patna
5. Municipal Manager, Nutan Rajdhani Anchal, Patna Municipal Corporation, Patna
6. Town Commissioner, Patna Municipal Corporation, Patna

.... Respondent/s

with

Civil Writ Jurisdiction Case No.3885 of 2015

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1. Ghanshyam Das, Son of Late Meva Lal Goswami,
 2. Naresh Goswami @ Naresh Prasad Goswami, Son of Late Bhola Goswami, Both resident of Mohalla- Kamla Nehru Nagar, Opposite G.P.O., Police Station- Kotwali, District- Patna. At present working as Shop Keeper, New Market, (Old Cloth Market), Patna Municipal Corporation, Budha Marg, Police Station- Kotwali, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary Department of Town Development and Housing, Patna.
2. The Secretary Department of Town Development and Housing, Patna.
3. The District Magistrate, Patna.
4. The Executive Officer, Nutan Rajdhani Anchal, Patna Municipal Corporation, Patna.
5. The Municipal Manager, Nutan Rajdhani Anchal, Patna Municipal

Corporation, Patna.

.... Respondent/s

Appearance :

(In CWJC No.2723 of 2015)

For the Petitioner/s : Mr. Pancham Lal Jaiswal, Adv.

For the Respondent/s : Mr. Arvind Kumar No. 1, S.C. 13

(In CWJC No.3885 of 2015)

For the Petitioner/s : Mr. Pancham Lal Jaiswal, Adv.

For the Respondent/s : Mr. Santosh Kumar Jha, GP-3

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

12 26-08-2015

Heard learned counsel for the parties.

The petitioners in the two writ petitions are vendors whose shops are located in the New Market Area near the General Post Office roundabout under the Patna Municipal Corporation in the town and district of Patna. The petitioners are aggrieved by a notice dated 3.1.2015 issued under the signature of the Executive Officer, a copy of which is placed at Anneuxre-8 to C.W.J.C.No.2723 of 2015 whereby the shopkeepers having their respective shops in between the G.P.O. and railway station roundabout, in between the office of the Patna Municipal Corporation until Hunkar Palace and in between the Buddha Smriti Park until the Ashok Cinema and have illegally encroached upon the public road and the land belonging to the Patna Municipal Corporation, have been directed to remove the same.

Learned counsel has relied upon some orders passed by this Court arising out of **C.W.J.C.No.20206 of 2010 (Pramod Kumar**



Nirala versus The State of Bihar & Ors.), C.W.J.C.No.16645 of 2009 (Sabzi Mandi Dukandar Sangh V. State) as well as the order of this court in C.W.J.C.No.1001 of 2015 (Md. Habibul Rahman Vs. The State of Bihar & Ors.) to submit that these shopkeepers are continuing in their respective shops within the area mentioned in the notice of the Patna Municipal Corporation since almost a decade or more. It is their statement they have been peacefully operating their shops and have also denied any encroachment on public road requiring any interference.

It is with reference to the earlier orders of the Court that these petitioners prayed for consideration of their respective cases for allotment of the shops in the area in question and this Court taking note of the directions so passed in the case of **Pramod Kumar Nirala** (supra) required a consideration of the prayer by the Municipal Commissioner who was directed to pass appropriate orders in the backdrop of the earlier orders passed by this Court in similar matter.

The exercise having been completed that a supplementary affidavit has been filed enclosing an order bearing Memo No.5092 dated 28.7.2015 of the Town Commissioner, Patna Municipal Corporation who has proceeded to reject the claim of the petitioners. Some photographs have also been enclosed with the

affidavit to demonstrate that all these shops have literally encroached the public road though the charge has been denied by the counsel for the petitioner.

While contesting the claim of these petitioners regarding contributing to the revenue of the Corporation relying upon some rent receipts which have been enclosed in the writ petition at Annexure-3 series it is stated that these receipts are in respect of professional tax and in no manner is indicative of any settlement between the Corporation and the petitioners.

It is the stand of the Corporation that the petitioners along with other shopkeepers are illegally occupying the places without sanction and have also indulged in illegal constructions on the public road which if allowed to continue, would make it practically impossible for any traffic movement.

I have heard learned counsel for the parties and I have perused the records.

Although the matter has been under the consideration of this Court for some time expecting some viable solution to the issues where these petitioners have been continuing in the respective shops since long but in the circumstances so discussed where there is no settlement order existing and the spot enquiry reports not only encroachments on the public road but that constructions are

being carried out, in my opinion, in absence of any agreement in between the petitioners and the Municipal Corporation, there is no legally enforceable right vested in the petitioners which can be pursued through the present writ petition.

In the circumstances, so discussed all that this Court can express is sympathy for the petitioners but which alone is not persuasive enough to interfere with the notice dated 3.1.2015 of the Executive Officer, Nutan Rajdhani Anchal, Patna Municipal Corporation, Patna copy of which is impugned at Annexure-8. The respondent-Corporation however before initiating any proceedings for removal of encroachment would give advance notice to the shopkeepers and afford them reasonable time to find an alternative place for their shops.

The writ petitions are disposed of accordingly.

(Jyoti Saran, J)

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