

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Letters Patent Appeal No.1499 of 2012**

**IN**

**Civil Writ Jurisdiction Case No. 2279 of 2012**

=====

Anil Kumar S/O Late Govind Prasad Proprietor of Chhaya Studio,  
Meena Bazar, P.O. Motihari, P.S.- Motihari Town, Dist.- East  
Champaran

.... .... Appellant

Versus

1. The State of Bihar
2. The District Magistrate, East Champaran At Motihari
3. The S.D.O. at Motihari Sadar, at Motihari
4. The L.R.D.C., Motihari Sadar at Motihari
5. The Circle Officer, Motihari Anchal at Motihari
6. Motihari Municipality, through its Special Officer, Motihari
7. The Special Officer, the Municipality of Motihari
8. The Chairman of Motihari Municipality, Gandhi Chowk, Motihari
9. The Councilor of Ward No. 9, Motihari Municipality, Motihari

.... .... Respondents

=====

**Appearance :**

|                      |   |                               |
|----------------------|---|-------------------------------|
| For the Appellant    | : | Mr. Sriram Krishna, Advocate  |
| For the Municipality | : | Mr. Raghwanand, Advocate      |
| For the State        | : | Mr. Mani Madhukar, AC to GA-4 |

=====

**CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH**

**And**

**HONOURABLE JUSTICE SMT. NILU AGRAWAL**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)**

**Date: 17-08-2015**

The appellant, in this Intra-Court Appeal, is aggrieved by  
the order dated 01.08.2012 passed in C.W.J.C. No. 2279/2012 (Anil  
Kumar Versus State of Bihar and Others).

2. By the aforesaid order, the learned Single Judge has dismissed the writ petition stating that petitioner had earlier moved the Court for a similar relief without success and, as such, the second writ petition was not maintainable.

3. We have heard learned counsel for the appellant, learned counsel for the Motihari Municipal Council and learned counsel for the State, and with their consent, this Appeal is being disposed of at this stage itself.

4. The writ petitioner had earlier moved this Court by C.W.J.C. No. 3937/2002, wherein on 02.04.2002, an interim order was passed restraining the authorities from demolishing the shop premises in occupation of the writ petitioner admeasuring 7 ft x 25 ft. This interim order was continued while finally disposing of the writ on 18.11.2009, with a direction to the authorities to decide the case of the writ petitioner.

5. The case of the writ petitioner is that after disposal of the first writ petition, he filed an application being a representation or being allowed to continue in the said shop which had been rented out to petitioner's late father over 40 years back. But, there was no further response from the authorities. This happened in the year 2009. In June, 2011, petitioner has allegedly been served with a notice enhancing the rent of the said shop to Rs. 1050/- from existing Rs.

175/-. This was effective from 1<sup>st</sup> April, 2011. Notwithstanding these facts, on 30.12.2011, without any prior notice, without there being any proceeding, the writ petitioner's shop was demolished. This brought him in the Court in present writ proceedings.

6. Having heard learned counsel for the appellant and learned counsel for the Municipal Council and the State, we are of the view that the learned Single judge was not correct in holding that the second writ petition filed by the appellant was not maintainable. The reason is simple. The first writ petition, granted writ petitioner protection by extending the interim order passed in the said proceedings as noted above. There was a direction to the authorities to consider the representation and decide the matter. The petitioner did not re-agitate the same issue, but in this second writ petition, he was aggrieved by the unauthorized manner in which the shop was demolished. The two were totally different causes of action. Therefore, we have no hesitation in setting aside the order of the learned Single Judge which is under appeal.

7. The question is what follows ? The shop was settled with late father of the petitioner in the year 1998. It is also not in dispute that the settlement was for a shop to be made over a public drain. It is also not in dispute that the settlement was made by the Municipality. First, the shop was sought to be demolished as anti-



encroachment drive for removal of encroachment from public road. It is at that stage, the first writ petition was filed. The authorities later found that, in fact, it was not on the road but on the drain. In order to protect the rights of the public, the Municipality demolished the shop. First cancelled the agreement then demolished the shop. The Municipality does not dispute that the order of cancellation was communicated to the petitioner, but also admits that there were no proceedings for demolition either taken up or notified.

**8.** In these facts, we may first state that even though the agreement was cancelled, the legality of which we are not concerned, for the time being, that does not give right to the authorities to enter upon premises and demolish the same. Cancellation of agreement leads to the change of status from permissive possession to that of the civil trespasser. So far as civil trespasser is concerned, they have to be dealt with in accordance with law, either being civil trespasser or unauthorized occupation. They could be vacated under summary procedure, if any, available under the Municipal Act and power available to the Municipal Authority or under Public Premises Eviction Act, comes what to apply. It could not be demolished without resorting to law and lawful procedure. Even if, the person happens to be a trespasser, a trespasser who is in settled possession, cannot be thrown out without following procedure established by law.

9. It is a different matter that if a person is perfecting his possession i.e. trying to establish his right on the land, in that process, a person can summarily be thrown out, but not, once he has perfected his possession. Thus, action can only be taken in accordance with law. In somewhat similar circumstances, this is what Constitution Bench of the Apex Court has said in the case of ***Bishan Das and others Vs. State of Punjab and others*** since reported in ***AIR 1961 SC 1570***. In paragraph, 14 it has been held which reads as such:

*“14. Before we part with this case, we feel it our duty to say that the executive action taken in this case by the State and its officers is destructive of the basic principle of the rule of law. The facts and the position in law thus clearly are (1) that the buildings constructed on this piece of Government land did not belong to Government, (2) that the petitioners were in possession and occupation of the buildings and (3) that by virtue of enactments binding on the Government, the petitioners could be dispossessed, if at all, only in pursuance of a decree of a Civil Court obtained in proceedings properly initiated. In these circumstances the action of the Government in taking the law into their hands and dispossessing the petitioners by the display of force, exhibits a callous disregard of the normal requirements of the rule of law apart from what might legitimately and reasonably be*



*expected from a Government functioning in a society governed by a Constitution which guarantees to its citizens against arbitrary invasion by the executive of peaceful possession of property. As pointed out by this Court in Wazir Chand v. State of Himachal Pradesh, 1955-1 SCR 408: (AIR 1954 SC 415), the State or its executive officers cannot interfere with the rights of others unless they can point to some specific rule of law which authorises their acts. In Ram Prasad Narayan Sahi v. State of Bihar, 1953 SCR 1129: (AIR 1953 SC 215), this Court said that nothing is more likely to drain the vitality from the rule of law than legislation which singles out a particular individual from his fellow subjects and visits him with a disability which is not imposed upon the others. We have here a highly discriminatory and autocratic act which deprives a person of the possession of property without reference to any law or legal authority. Even if the property was trust property it is difficult to see how the Municipal Committee, Barnala, can step in as trustee on an executive determination only. The reasons given for this extra-ordinary action are, to quote we said in Sahi's case (supra) remarkable for their disturbing implications."*

**10.** Thus, in our view, the action of the Municipality, in

demolishing the shop of the petitioner, was totally unauthorized and contrary to law. We deprecate the same.

11. But, at the same time, considering the fact that the shop was admittedly on a public drain which is not permissive, we cannot order restoration of possession. More so, when the agreement has been terminated by the Municipality, but, so far as this unauthorized action of demolition is concerned, the petitioner would surely be entitled to some compensation. Asking the writ petitioner to file a suit for compensation, at this point of time, would be futile and useless exercise. Therefore, in the special facts and circumstances as noted above, we would direct the Municipality to pay, as a matter of compensation, an amount of Rs. 10,000/- to the writ petitioner/appellant within a period of one month from today.

12. With this directions and observations, this appeal stands disposed of.

**(Navaniti Prasad Singh, J.)**

**(Nilu Agrawal, J.)**

Rajeev/N.A.F.R.

|   |  |  |  |
|---|--|--|--|
| U |  |  |  |
|---|--|--|--|