

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12483 of 2012

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1. Uma Shankar S/O Late Yogi Lal R/O Village- Abusaleh Road, Mohalla-Murarpur, P.O.- H.P.O., P.S.- Kotwali, District- Gaya, tenant of Holding No. 78/79 In Ward No. 3, At G.B./K.P. Road, P.O.- H.P.O., Gaya, P.S.- Kotwali, District- Gaya
 2. Abhishek Kumar Gupta S/O Mahesh Kumar Gupta R/O Tekari Road, Gol Pathar, P.O.- H.P.O., P.S.- Kotwali, Nagina Gali, Near Madhu Homeo Hall, District- Gaya, tenant of Holding No. 78/79 In Ward No. 3, At G.B./K.P. Road, P.O.- H.P.O., Gaya, P.S.- Kotwali, District- Gaya
 3. Shahabuddin S/O Hazi Nasruddin R/O Village- Durga Bari Masjid, Near Marwari School, Kathokar Talab, P.O.- H.P.O., District- Gaya, tenant of Holding No. 78/79 In Ward No. 3, At G.B./K.P. Road, P.O.- H.P.O., Gaya, P.S.- Kotwali, District- Gaya
 4. Ashique Imam S/O Late Abdul Rahman R/O Enait Colony, A-76, P.O.- H.P.O., Bari Road, District- Gaya, tenant of Holding No. 78/79 In Ward No. 3, At G.B./K.P. Road, P.O.- H.P.O., Gaya, P.S.- Kotwali, District- Gaya
 5. Md. Mazahir Ali S/O Late Abul Khair R/O C/O Late Abdul Hafeez Mallick, P.O.- H.P.O., Transport Mohalla Khattokar Talab, Distt.- Gaya, tenant of Holding No. 78/79 In Ward No. 3, At G.B./K.P. Road, P.O.- H.P.O., Gaya, P.S.- Kotwali, District- Gaya
 6. Abdul Gaffar S/O Late Abdul Ghani R/O Mohalla- Abgilla Jagdishpur, Gaya, tenant of Holding No. 78/79 In Ward No. 3, At G.B./K.P. Road, P.O.- H.P.O., Gaya, P.S.- Kotwali, District- Gaya

..... Petitioner/s

Versus

1. The Chief Executive Officer, Municipal Corporation, Gaya
2. Town Commissioner, Municipal Corporation, P.O.- H.P.O., Gaya
3. Sub Divisional Officer, Gaya Sadar
4. Radha Raman Singh, Engineer, Municipal Corporation, Gaya
5. Dr. Hamid Hussain S/O Late Abdul Wahab R/O Mohalla- Gawal Bigha, P.O.- H.P.O., P.S.- Rampur Town, District- Gaya
6. The State of Bihar through Chief Secretary, Bihar, Patna
7. The District Magistrate, Gaya

..... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Jitendra Kumar Pandey,
Mr. Prabeen Kumar Singh

For the Respondent/s : Mr. Rabindra Kumar Priyadarshi, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

8 05-11-2015 Heard Mr. Jitendra Kumar Pandey, learned counsel for the
petitioners and Mr. Rabindra Kumar Priyadarshi, learned counsel

for the State.

The petitioners are aggrieved by the notice dated 9.6.2013 of the Town Commissioner, Gaya whereby he has sought to depute police force to carry out the demolitions. The petitioners has also questioned the order dated 16.6.2012 of the Sub Divisional Officer, Gaya Sadar whereby he has issued orders for deputation of police force to carry out the demolitions. The orders are impugned at Annexures-7 and 9 respectively. According to the petitioners the action is contrary to the directions of this Court issued in C.W.J.C.No.288 of 2010, a copy of which is placed at Annexure-4 to the writ petition.

It is argued by Mr. Pandey that even while dismissing the writ petition this Court had specifically directed the Commissioner, Gaya Municipal Corporation to proceed in the matter strictly in accordance with law and the action complained of is by circumventing the statutory provisions and thus contrary to the orders of this Court.

Counter affidavits have been filed supporting the impugned action and with reference to the notice impugned at Annexure-5 series it is stated that the petitioners have been duly communicated of the proposed action but they instead of vacating the premises have approached this Court again, after withdrawing an earlier

writ application arising from C.W.J.C.No.675 of 2012.

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

The sum and substance of argument of Mr. Pandey learned counsel appearing for the petitioners is that even when this Court while dismissing the writ petition in C.W.J.C. No. 288 of 2010 had required the municipal authorities to proceed in accordance with law, the proposed action is in contravention thereof. It is thus to be seen as to whether the complaint has substance. This matter having been filed in 2012, has remained pending for response by the respondents thus to the advantage of the petitioners. Since the foundation of the claim advanced by the petitioners rests on the order passed in C.W.J.C.No.288 of 2010, it is to be seen as to what was the nature of the direction passed thereunder and whether it has been flouted and for which I would like to reproduce the relevant part of the order:-

“Having heard learned counsel for the parties and considering the reports of respondent authorities of the Corporation as regarding the physical condition of the building in question and that it is not in a position where steps could be taken for its repair, this court would not interfere with the proposed steps to be taken by the Corporation in this regard. It is also not the case of the petitioners that they have taken any steps for the repair of the building in question since after the receipt of notice dated 6.1.2005 otherwise the report dated 4.7.2011 as placed at Annexure-F, would not described the building to

be in such dilapidated condition of not being fit for repair.

Undoubtedly, any interference with the possession of the petitioners over their respective shops situated in the building in question would have a direct impact on the pending suits but considering the larger interest involved in the present case where repeatedly, the Engineers of the Corporation have reported that the building is not in a habitable position, this court would not interfere with the orders impugned in the writ petition.

The writ petition is dismissed.

The respondent Corporation, however, would proceed in the matter strictly in accordance with law as provided under the Bihar Municipal Corporation Act, 2007.”

The said writ petition was filed by these petitioners questioning the refusal of injunction by the trial Court in the eviction suit filed by the landlord arising from Title Suit No.10 of 2006. The prayer for injunction as well as the appeal was rejected prompting the petitioners to question the impugned orders in an application filed under Article 227 of the Constitution of India. This Court taking into consideration the facts accompanying, dismissed the writ petition while observing as above. It is manifest from the order passed in the earlier round of proceedings that the opinion of the Municipal Corporation that the building in question had become uninhabitable and dangerous for continuation, was not interfered with nor the proposed steps taken by the Corporation was interfered.

In such circumstances, the directions of this Court requiring the municipal authorities to proceed in accordance with law



therefrom, would merely mean the consequential actions taken by the Corporation in carrying out the demolition. It is not in dispute that following the order passed in C.W.J.C.No.288 of 2010, notices were issued by the Corporation to these petitioners to vacate their respective premises failing which appropriate steps would be taken and which notices were initially questioned by the petitioners through C.W.J.C.No.675 of 2012 only to be withdrawn in view of the stay order passed by the Sub Divisional Officer.

As I have already noted the only contention raised by Mr. Pandey is that the Corporation has failed to follow the procedure prescribed which in my opinion is not the correct position for once this Court has expressed its opinion that the building is not capable for repair and has not interfered with the proposed action of the Corporation to carry out the demolition, then the only follow up action in terms of the prescription of the law would be a notice requiring the petitioners to vacate the premises and which admittedly were issued by the Corporation vide Annexure-5 to the writ petition. That the petitioners have been able to avoid the proposed action for all the three years, they should thank themselves for the benefit derived by the pendency of this matter. However, I find no reasons either to interfere with the proposed action of the Corporation or to grant indulgence to the petitioners.

The order of this Court passed in C.W.J.C.No.288 of 2010 has attained finality for it was not questioned by the petitioner before any superior Court.

This writ petition is dismissed.

(Jyoti Saran, J)

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