

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3743 of 2014

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Most. Siyasati Devi wife of Late Mewalal Sah, resident of village- Mohammad Patahi, P.O. Patahi, P.S. Sadar, District- Muzaffarpur and tenant of a Shop, Namely, 'Poojawala' Situated at Mohalla- Sarayaganj, Main Road, Ward No. 19, P.S. Muzaffarpur, District and Town- Muzaffarpur

.... Petitioner/s

Versus

1. The State of Bihar represented through the Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna
2. The Muzaffarpur Municipal Corporation through the Town Commissioner, Muzaffarpur Municipal Corporation
3. The Town Commissioner, Muzaffarpur Municipal Corporation, Muzaffarpur, And
4. Smt. Asha Jaiswal wife of Sri Raj Ratna Jaiswal, resident of Mohalla- Nazirpur, P.O. H.P.O., P.S. Town, District- Muzaffarpur

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. J.S. Arora, Advocate

Mr. Kumar Ravish, Advocate

For the Respondents 2 & 3: Mr. Nikesh Kumar, Advocate

For the Respondent no. 4 : Mr. Khawaja Hasan Khan, Advocate

For the Respondent/s : Mr. Jawahar Pd. Karn, AAG-4

Mr. Siddharth Prasad, A.C. to AAG-4

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

5 06-04-2015 Heard Mr. J.S. Arora, learned counsel appearing on behalf of the petitioner, Mr. Nikesh Kumar for the Muzaffarpur Municipal Corporation, Mr. Khawaja Hasan Khan for the respondent no. 4 and Mr. Siddharth Prasad, Assisting counsel to AAG-4 for the State of Bihar.

The petitioner has questioned a notice bearing Memo No. 217 of the Municipal Commissioner, Muzaffarpur dated

6.2.2014 whereby he has directed for demolition of the entire building presently owned by the respondent no. 4 and which also includes the shop in which the petitioner is a tenant.

Mr. Arora, learned counsel appearing on behalf of the petitioner with reference to the counter affidavit of the Municipal Corporation has submitted that although it is sought to be impressed upon the Court that the notice has been issued after an enquiry was made as to the status of the building in question but a perusal of Annexure-B which is stated to be an enquiry report and which forms the basis in the impugned notice would show that it is on the basis of a report submitted by an Amin which has been endorsed by the Engineer and resulted in the impugned notice.

Mr. Arora with reference to the provisions underlying Section 336 of the Bihar Municipal Act, 2007 submits that there is a complete procedure provided as regarding the manner in which an order can be passed and which has been given a go by by the Corporation in the present case. He submits that neither at any stage of the proceedings any notice was served on the petitioner nor affixed in the building or in his shop to enable him to place his case in defence nor the enquiry which is the basis for the impugned notice has been made by a competent authority.

On this short argument, Mr. Arora submits that the

notice impugned issued by the Municipal Commissioner cannot be upheld.

The argument has been contested by Mr. Nikesh Kumar appearing for the Corporation as well as Mr. Khan appearing on behalf of the house owner to submit that since the building itself has become dilapidated that considering such circumstance the order has been passed which suffers from no infirmity.

I have heard learned counsel for the parties and I have perused the records. Section 336 of the Act casts an obligation on the Chief Municipal Officer to serve a notice on the owner of the building or the occupier thereof and in their absence to affix in a conspicuous part of the building. An exercise undertaken under Section 336 is not an empty formality rather before any conclusion is reached by the Chief Municipal Officer to order for demolition, he has to be satisfied that there exists no other option but to demolish the building. Such information has to be gathered by the Municipal Commissioner by getting the building inspected by a competent engineer who alone would be technically competent to submit such report. Certainly a report of Amin as relied upon by the Corporation in the counter affidavit which has been mechanically endorsed, cannot be a basis for demolition for he does not have the basic technical know-how about the subject.



In the circumstances set forth and on this limited issue that the mandatory provisions of Section 336 has been by passed and in absence of a report of a competent authority as regarding the status of the building warranting demolition as well as denial of opportunity of hearing to the owner and the petitioner who happens to be the tenant in the building, the notice issued by the Town Commissioner in Corporation Case No. 2 of 2014 dated 6.2.2014 impugned at Annexure-7 to the writ petition cannot be upheld and is accordingly set aside. The matter is remitted back to the Municipal Commissioner to get the status of the building enquired into by a competent engineer and decide the issue afresh after satisfying himself on the issue and after giving an opportunity of hearing to the owner and the petitioner as well.

The writ petition is allowed with the directions aforementioned.

(Jyoti Saran, J)

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