

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1001 of 2015

With
I.A. No.420 of 2015

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1. Md. Habibul Rahman, son of late Yashin Khan, Coal Shop New Market at G.P.O., District- Patna, resident of Mohalla- Kamla Nehru Nagar, P.S.- Kotwali, District- Patna.
 2. Pramod Kumar Nirala, son of Ashrafi Lal, Old Cloth Seller, New Market, G.P.O., District- Patna, resident of Mohalla- Kamala 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.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pancham Lal Jaiswal
Mr. Raju Kumar Goshwami
For the RespondentState : Mr. S.A. Alam, SC-3
For the Municipal Corporation : Mr. H.S. Himkar

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

2 20-01-2015 Heard Mr. Pancham Lal Jaiswal, learned counsel appearing on behalf of the petitioners, Mr. H.S. Himkar, learned counsel appearing for the Patna Municipal Corporation and its Executive Officer and counsel for the State.

Although the matter is listed for interim order but considering the nature of grievance raised and with the consent of the parties, the writ petition itself is taken up with a view to its final disposal.



The two petitioners are aggrieved by a notice dated 3.1.2015 placed at Annexure-7 to the writ petition whereby the Executive Officer, Nutan Rajdhani Anchal, has directed the encroachers to remove the shops failing which appropriate action would be taken against them.

Whereas the petitioner no.1 runs a wood/coal shop, the petitioner no.2 runs a cloth shop and both the shops are situated south of the head office of the Patna Municipal Corporation and opposite the General Post Office, Kamla Nehru Nagar, P.S. Kotwali, District- Patna. The petitioners claim to run these shops since 1990. In support of their claim whereas petitioner no.1 has relied upon the property tax assessment made by the Patna Municipal Corporation placed at Annexure-6 series and which is in respect of his coal shop situated at New Market Area, the petitioner no.2 relies upon a Bench decision of this Court passed in a writ petition preferred by him arising from CWJC No.20206 of 2010 dated 22.2.2011 when on a similar exercise undertaken by the Corporation, the petitioner no.2 had moved this Court and the writ petition was disposed of with liberty to the petitioners to satisfy the authorities as to his claim and the respondents were restrained from disturbing the writ petitioners except after rehabilitating them at a place, to the

discretion of the respondents. The operative portion of the order runs as follows:

“If the petitioners satisfy the authorities of long continuance, as claimed, the respondents shall not disturb the petitioners except after rehabilitating them and the location for which shall be the discretion of the respondents not to be questioned by the petitioners. Though late, urban planning necessarily requires the respondents to even now start planning for a better Patna tomorrow.

It is the contention of learned counsel for the petitioners that in the circumstances discussed and until such time that the Executive Officer of the Corporation comes to a conclusion that these two petitioners are encroachers, the purport of the notice dated 3.1.2015 placed at Annexure 7 cannot be applied to these petitioners.

Having heard learned counsel for the parties and considering the material on record, the writ petition and the interlocutory application are disposed of with a direction to the Executive Officer, New Capital Circle, Patna to consider the claim of the two petitioners in the backdrop of the documents relied upon by them as also taken note of in this order and dispose of the same by a speaking order in accordance with law and after giving opportunity of hearing to the petitioners expeditiously and preferably within three months from the date

of receipt/production of a copy of this order. The petitioners shall be at liberty to support their claim with additional documents.

Until such time that a final decision is taken in accordance with law holding the petitioners as encroachers, no action should be taken by the Executive Officer or the authorities of the Corporation for displacing these petitioners from their respective shops.

(Jyoti Saran, J)

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