

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1035 of 2011
IN
Civil Writ Jurisdiction Case No. 8407 of 2011**

- =====
1. The Patna Municipal Corporation ,Maurya Lok, Patna
 2. Patna Municipal Commissioner, Patna Municipal Corporation ,Maurya Lok, Patna
 3. Shri Divesh Sehra, Patna Municipal Commissioner, Patna Municipal Corporation ,Maurya Lok, Patna
 4. Land and Estate Office, Patna Municipal Corporation ,Maurya Lok, Patna
 5. Mrs. Seema Kumari, at present Land and Estate Officer, Patna Municipal Corporation ,Maurya Lok, Patna
 6. The Vigilance Officer, Patna Municipal Corporation ,Maurya Lok, Patna
 7. The Additional Commissioner, Patna Municipal Corporation, custodian of Vigilance Case, Maurya Lok Patna

.... Respondents/Appellants

Versus

1. Naintara Sharma, W/O Gyandeo Sharma, resident of Naintara Sadan, Boring Road, P.S. Sri Krishna Puri, Distt. Patna
2. Anupama Sharma, W/O Vishnu Sharma, resident of Sommanay Bhawan, Boring Road, P.S. Sri Krishna Puri, Distt. Patna ... Writ petitioners/Respondents
3. The State of Bihar through the Secretary, Urban Development Deptt. Bihar Patna
4. M/s. Alaknanda Housing Construction Co-Operative Society Pvt. Ltd. Boring Road, Patna through its Administrator, Sri Prem Prakash, Co-operative Extension Officer, office of District Co-operative Officer, Budh Marg, Patna-1

.... Respondents/Respondents

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Appearance :

For the Appellant/s	:	Mr. Sanjay Prakash Verma, Advocate
For the Respondents 1 & 2	:	Mr. Piyus Lal, Advocate
For the Intervener	:	Mr. Arun Kumar, Advocate
For the State	:	Mr. Manish Kumar, G.P. 4

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

and

HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

Date: 20-12-2016

Heard learned counsel for the appellant-Patna Municipal Corporation and learned counsel for the writ petitioners-respondents.

We have also heard Mr.Arun Kumar, Advocate along with Mr.Arvind Kumar, Advocate-on-Record for Sri Bimal Kumar, who has filed



I.A.No.9806 of 2016.

The appeal is directed against the judgment and order dated 20.5.2011 passed in CWJC No.8407 of 2011 by a learned Single Judge of this Court.

By the said order while setting aside the order dated 6.4.2011 passed by the Municipal Commissioner, Patna Municipal Corporation, the Corporation was directed to remove any lock that it may have put on the premises of the writ petitioners with a further direction to proceed afresh in accordance with law, if so advised, and it was further observed that nothing in the said order shall affect or be deemed to affect the proceedings in Vigilance Case No. 20B of 2010 in so far as enforcement of the building regulations are concerned and which will have to be adjudicated on its own merits but in accordance with law.

The matter in question arises out of a lease for plot No.12 C measuring 3200 square feet situated in the area of Srikrishnapuri, Patna town for construction of commercial-cum-residential building which was granted on 12.3.1984 to the Alaknanda Co-operative Housing Society Limited by the Patna Regional Development Authority. The said land had been transferred to the writ petitioners on 7.5.1985 by the Society, of which the husband and father respectively of the writ petitioners was allegedly the Secretary. A show cause notice dated 24.9.2010 was issued to the writ petitioners



referring to the purchase of land and mutation in their names as also an earlier show cause notice dated 20.10.2005 in which it was stated that for violation of the terms of the lease the allotment of the plot has been cancelled and they were required to file show cause for which no reply was received. It was then stated that map plan for the land in question has been obtained in the year 2010 and in an illegal manner the construction was being carried on the said land which was illegal and unauthorized and, accordingly, they were directed to stop the construction within three days and inform the Estate Officer, Planning and Development, Patna Municipal Corporation, the signatory of the letter, as to why appropriate action be not taken under the applicable provision for such unauthorized construction. A detailed reply dated 11.10.2010 was submitted by the writ petitioners to the Estate Officer. Thereafter by the impugned order dated 6.4.2011 the lease of the petitioners granted by the PRDA to the Co-operative Society was cancelled. Subsequently, on 6.5.2011 the Corporation put a lock on the gate of the building under construction. Aggrieved by the same the petitioners have approached this Court.

The learned Single Judge in a detailed order has considered the facts and circumstances leading up to the impugned order and it was found that the original lease having been granted to the Co-operative Society, the impugned order had been passed without issuing any notice to or hearing the Co-operative Society.



It was also found that the show cause notice was sent to the petitioners with regard to the transfer of the land and unauthorized construction and not for cancellation of the lease, which lease does not prohibit or put an embargo on transfer. Clause-8 of the lease permits the Society to transfer the land and appropriate action could have been taken only after hearing the original lessee, i.e., the Co-operative Society, which has not been done.

With regard to the stand of the Corporation that the show cause notice was given on 23.6.1985 also, it was held that since no action had been taken thereupon it would be a case of implied waiver from the conduct of the parties and the show cause notice of 1985 cannot sustain an order passed pursuant thereto in the year 2010.

The learned Single Judge also noted various contentions of learned counsel for the writ petitioners that permission for transfer was duly applied for by the Co-operative society and was in fact approved by the PRDA.(of which the Patna Municipal Corporation is the successor) at the relevant time under Rule 21(2) of the PRDA (Disposal of Land) Rules, 1978.

It was also observed that whether the petitioners were validly enrolled as members or not and the Secretary was competent to transfer the lands or not were matters exclusively within the domain of the authorities under the Bihar Co-operative Societies Act and it is not open to the authorities of the Corporation to encroach upon the



jurisdiction of such statutory authority.

The learned Single Judge also held that the condition contained in the original lease to complete the construction within three years was not mandatory and for its breach no punitive consequences are provided. On the contrary it provides that the period was extendable.

The other aspects of the matter regarding consumption of electricity, supply of water, etc. were also taken note of.

Learned counsel for the appellant-Patna Municipal Corporation as also learned counsel for the proposed intervenor have strongly sought to support their stand on the merits of the matter by trying to place various facts and documents before us, which, according to them, could not be placed before the learned Single Judge.

In our view, even if all those documents had been placed before the learned Single Judge, it would not have made any difference in view of the basic flaws in the procedure before passing the order dated 6.4.2011 by the Municipal Commissioner. The fact is that the notice dated 24.9.2010 was only a show cause to answer as to why proceedings be not taken against them under appropriate Sections of law. It was not at all specific with regard to the cancellation except to mention that there was an earlier show cause notice of the year 2005 for cancellation of lease. In our view, after receiving the



explanation which was the subject matter of the said letter of Estate Officer, if the Corporation intended to proceed further in the matter then it ought to have issued a clear show cause notice stating the reasons or grounds of which it proposed to cancel the lease deed, which has not been done in the present matter.

We further find that since the original lease was granted to the Co-operative Society in question and the writ petitioners were transferees of the said Co-operative Society and it is not disputed by the appellants or interveners that the said Co-operative Society is still in existence, a notice to the Co-operative Society to be heard was essential before any order of cancellation of the lease could have been passed.

Thus, on the two aforesaid grounds alone, the writ petition is fit to be allowed.

We also notice that the learned Single Judge after setting aside the order dated 6.4.2011 has given liberty to the Corporation to proceed afresh in accordance with law, if so advised, and has made observation that nothing in the order shall affect or be deemed to affect the proceedings in Vigilance Case No. 20B of 2010, which, we are informed, is still pending.

In the light of the aforesaid discussions, we do not see any reason to interfere with the order of the learned Single Judge. However, we make it clear that the proceedings cannot be allowed to



drag on indefinitely which would be to the detriment of the writ petitioners if they ultimately succeed. Therefore it is directed that any fresh proceeding of the present nature must be initiated within a period of two months from today. It is further made clear that the intervener, on whose complaint the two proceedings had been initiated, would have the right to be heard and assist in the proceedings as also in the Vigilance case. The Vigilance case also must be disposed of within a period of four months from the date of receipt/production of a copy of this order. It goes without saying that the writ petitioners must co-operate in the matter for the disposal of both the matters and upon any non-co-operation the authorities of the appellant-Corporation shall be at liberty to proceed in accordance with law.

The appeal is, accordingly, dismissed with the aforesaid observations and directions.

The interim order passed earlier stands vacated.

(Ramesh Kumar Datta, J)

spal/-

(Arun Kumar, J)

AFR/NAFR	
CAV DATE	
Uploading Date	10.01.2017
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