

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7848 of 2016

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1. Binod Kumar, S/o Late Chandrika Prasad, resident of Gorla Toli (Station Road), P.S.- Kotwali, District- Patna.
 2. Ram Babu , S/o Late Ram Briksha (Proprietor of a Workshop, Ashok Market, near Patna Junction), resident of Postal Park, Gali No.4, Kayasth Toli, P.S.- Jakkanpur, District- Patna.

.... Petitioner/s

Versus

1. Patna Municipal Corporation, Patna through its Commissioner at PMC Head Office, Opposite GPO, Budha Marg, Patna.
2. The Commissioner, Patna Municipal Corporation, at PMC Head Office, Opposite- GPO, Budha Marg, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Dinesh Kumar
For the Respondent/s	:	None

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 04-05-2016

Heard Mr. Dinesh Kumar, learned counsel appearing for the petitioners. None appears on behalf of the Patna Municipal Corporation.

The two petitioners pray for issuance of a writ of certiorari for quashing the orders bearing Memo Nos.1543 and 1544 dated 15.2.2016 of the Municipal Commissioner, Patna Municipal Corporation impugned at Annexure- 7 series.

The facts of the case stand noted in the judgment and order of this Court passed in CWJC No.5793 of 2013 filed by the petitioners which was heard along with two other writ petitions, a copy of which has been annexed at Annexure-5. Facts briefly stated



is that these two petitioners along with several others were allotted shops by the erstwhile Patna Improvement Trust the predecessor in the office of the corporation which were bulldozed on 23.11.1995. Feeling aggrieved the shopkeepers preferred a writ petition bearing CWJC No.9747 of 1995 which was dismissed on 19.12.1997. Although several of the writ petitioner questioned the dismissal in Letters Patent Appeal before this Court but some of them inclusive of these petitioners, did not choose to question the dismissal. Intra court appeal bearing LPA No.135 of 1998 which was preferred by the aggrieved petitioners, was allowed by a Division Bench of this Court vide judgment and order passed on 9.10.2007. The present petitioners yet did not choose to question the order passed by the writ court before the Division Bench rather accepted the legal position. The Municipal Corporation being aggrieved by the judgment and order of the Division Bench moved in SLP (Civil) No.6655 of 2008 which was dismissed vide judgment and order passed on 19.10.2010 with certain observations and even then the two petitioners did not choose to take any steps rather it is three years thereafter that they came before this Court in CWJC No.5793 of 2013 seeking identical relief as was granted to the co-petitioners in CWJC No. 9747 of 1995 by the Division Bench in LPA No.135 of 1998 as well as by the Supreme Court. This Court in



consideration of the nature of grievance so raised and despite taking note of the contest, disposed of the writ petition leaving it open for the Municipal Commissioner to consider the prayer of the petitioners in the backdrop of the circumstances noted and to dispose of their claims. The claims have been rejected by the Municipal Commissioner, Patna Municipal Corporation by the orders impugned at Annexure-7 series.

The opinion expressed by the Municipal Commissioner to reject the claim of the petitioners is on the ground that the petitioners have accepted the dismissal of the writ petition and the judgment and order of the Division Bench and Supreme Court is exclusively restricted to the appellants therein. It is thus opined by the Municipal Commissioner that since the petitioners claim stands dismissed by the writ court which was never appealed against and since the judgment of the Division Bench as well as the Supreme Court extends relief only to the appellants who chose to move the Division Bench and the Supreme Court hence the relief cannot be extended to these petitioners. The judgment and order of the Division Bench has been enclosed by the petitioners at Annexure-1 and the operative portion thereof runs as follows:

“In the premises we allow the appeal, set aside the judgment and order under appeal as well as all the notices dated 15.11.1995 issued by PRDA to the **appellants** and direct the PMC to pay a sum of Rs.



Two lacs to each of the **appellants** as and by way of damages for destruction of their wares on 23.11.1995. We also allow the **appellants** to reconstruct the stalls on the land in question to the extent of the area mentioned above at their own costs and direct the PMC to allow the **appellants** to remain in such stalls until they are rehabilitated in the new Municipal Market Complex to be set up as envisaged in Development Scheme No.2 on the same terms and conditions as mentioned in the subject Deeds of Licence. The cost of construction of such stalls shall be adjusted by the **appellants** from the licence fees to be paid in respect thereof at the first instance.”

(Emphasis supplied)

The judgment and order of the Supreme Court has also been fairly enclosed by learned counsel for the petitioners at Annexure-2 and which again restricts itself to the respondents to the Special Leave Petition, meaning thereby, the appellants before the Division Bench.

In the circumstances discussed and since the petitioners admittedly have accepted the verdict of the writ court without questioning it before the Division Bench, the judgment and order of the writ court in so far as these petitioners are concerned is binding on them and neither the action of the respondents can be questioned by a second writ petition before a coordinate Bench nor the relief granted by the Division Bench as affirmed by the Supreme Court, can be extended to them.

In the circumstances discussed the order bearing Memo

No.1543 and 1544 dated 15.2.2016 passed by the Municipal Commissioner, Patna Municipal Corporation impugned at Annexure7 series suffers from no infirmity warranting any interference.

The writ petition is accordingly disposed of.

(Jyoti Saran, J)

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Transmission Date	