

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4353 of 2015

Along with

Interlocutory Application No. 10023 of 2016

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Shivendra Kumar Singh son of Late Jamuna Prasad Singh, Licencee- Proprietor of M/S Shri Krishna Talkies , North of Ashram Road, Raxaul, District- East Champaran, and resident of Mohalla- Islampur, Ward No. -8, Nagar Parishad, Raxaul, Raxaul, P.s.- Raxaul, District- East Champaran.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Urban Development.
2. The Executive Officer, Parishad Raxaul, P.S. Raxaul, District-East Champaran.
3. The Junior Engineer, Nagar Parishad Raxaul, P.S.-Raxaul, District - East Champaran.
4. The Executive Engineer Building Department, Motihari.
5. The Pashupati Prasad Gupta, son of Bhajan Sah, East Champaran.
6. Anant Goshwami son of late Laxmi Goshwami, East Champaran.
7. Rajiv Verma, son of late Girendra Prasad Verma, East Champaran.
8. Rahul Jaiswal, son of late Madan Prasad Jaiswal, East Champaran.
9. Jagdish Prasad son of not known, East Champaran.
10. Sandeep Kumar, son of Vinay Shankar Singh, East Champaran.
11. Arun Kumar @ Arun Kumar Singh @ Arun Singh son of late Suraj Prasad Singh, East Champaran.
12. Dilip Tiwari (name not clearly visible). Son of not known, East Champaran.
13. Mahavir Prasad, son of late Tapeswar Shah, East Champaran.
14. Dhiraj Kumar, son of Ram Prasad Singh, East Champaran.
15. Sunil Mishra, son of late Uma Shankar Mishra, East Champaran.
16. Kishore Kumar, son of not known, East Champaran.
17. Ravi Kumar, son of not known, East Champaran.
18. Dilip Kumar son of late Mohan Lal Jalan, East Champaran.
19. Manoj, son of Ramesh Sah, East Champaran.
20. Mahesh Prasad son of late Jalashankar, East Champaran.
21. Nagendra Nath Tiwari, son of Surendra Nath Tiwari, East Champaran.



22. Vaibhaw Singh, son of Baidhyanath Singh

23. Ajay Kumar Singh son of late Bali Ram Pd. Singh

24. Arun Kumar Singh son of late Suraj Pd. Singh

25 Rajoo Kumar Singh, son of late Bhanu Pratap Singh

All residents of north to Asharam Road, Ward No. 9, Raxaul, East Champaran

Permanent residents of Mahadeva, P.S. Raxaul, East Champaran.

.... Respondent/s

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Appearance :

For the Petitioner	:	Mr. Amarnath Mishra, Advocate
For the State	:	Mr. Kinkar Kumar, SC 9 with Mr. Zaiki Haider, AC to SC 9
For the Nagar Parishad	:	Mr. Dhruv Narayan, Sr. Advocate with Mr. Devi Das Srivastava, Advocate
For the Respondents No. 7, 11, 18 and 20	:	Mr. Sanjay Kumar Tiwari, Advocate
For the Respondents No. 22-25	:	Mr. Prabhat Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 23-12-2016

Re.: Interlocutory Application No. 10023 of 2016

The Interlocutory Application has been filed by four applicants for impleading them as party respondents in opposition to the writ petition.

2. Learned counsel for the proposed interveners submitted that they are the co-sharers of the joint property which is the subject matter of the present writ petition and even notice which has been impugned in the writ petition is in the name of applicant no.



1 but with *mala fide* intention, he has not been made party.

3. Having regard to the aforesaid, Interlocutory Application No. 10023 of 2016 stands allowed. The intervener applicants be impleaded as respondents no. 22, 23, 24 and 25 in the present writ application. Learned counsel for the intervener applicants shall make necessary correction in the cause title of the writ petition during the course of the day.

Re.: Civil Writ Jurisdiction Case No. 4353 of 2015

4. The writ petition had been filed for quashing the order dated 06.12.2014 contained in show cause notice no. 89 issued by the respondent no. 2 where there is a direction to demolish M/s Krishna Talkies situated at north of Asharam Road, Raxaul within 15 days of the receipt of the said notice.

5. Learned counsel for the petitioner submitted that he is the licensee of the Cinema Hall and even though there is an order for demolition but notice was never served on him and, thus, he has been denied the opportunity of being heard in the matter. Learned counsel submitted that the building in question was used as a Cinema Hall till 30.09.2013 when it was locked up by the co-sharers but the notice for demolition, which is impugned herein, has come as a surprise. It was submitted that under Rules 5 and 12 of the Bihar Cinemas (Regulation) Rules, 1974 (hereinafter referred to as the 'Cinema



Rules'), for approval of the building plans of a cinema house, it is the Executive Engineer, P.W.D. (Building) whereas the inspection can be made by the Licensing Authority himself or on the direction of the State Government, by asking the Electrical Inspector, Bihar and Executive Engineer, Building Construction Department, Bihar to inspect and examine the structural soundness of the cinema building. It was submitted that there being no such inspection done of the building in question, the order to demolish is arbitrary. Learned counsel submitted that on the basis of a public petition in the year 2014 against the unhygienic condition and lack of upkeep of the building, the said order has been passed hurriedly on 06.08.2014 without resorting to the due procedure in law. Learned counsel further submitted that under Section 278 of the Bihar Municipal Act, 2007 (hereinafter referred to as the 'Municipal Act') the power to order for demolition of the building unfit for human habitation requires a notice to be served on the owner of the building and upon any other person having an interest in the building to show cause as to why an order of demolition of the building should not be made but in the present case straightaway an order has been passed for demolition, which is unsustainable in law.

6. Learned counsel for the Nagar Parishad, Raxaul, who has filed an affidavit, submitted that the order of demolition dated



06.08.2014 was issued to all the partners, and the petitioner, being a co-sharer of a fraction of the property, notice was served on all the known co-sharers and, thus, the petitioner was also well aware of the same and in fact specific notice in his name was also sent to him which he refused to accept and to which effect the process server has given in writing, copy of which is part of Annexure-B of his counter affidavit. Learned counsel submitted that besides the public complaint, two Ward Concillors had also complained about the danger posed and the same duly recommended by the Chief Councilor, pursuant where to the Junior Engineer of the Nagar Parishad, Raxaul had conducted an enquiry and had reported that the building needs to be demolished as it was a threat to the safety and life of the citizens and also a health hazard.

7. Learned counsel for the private respondents and the interveners submitted that the petitioner, who has a miniscule share in the property, which was also the subject matter of a title suit for partition, which has already been decreed, but it is the petitioner who is resisting somehow to get the matter resolved and this is one such ploy, for unless the building is demolished, the petitioner who has only about two per cent share is holding to ransom the rest 98 per cent of the shareholders. It was submitted that the petitioner, at every point of time, was causing impediments in the disposal of the partition suit



and the matter, at the instance of the petitioner, had come to this Court earlier in Miscellaneous Appeal No. 553 of 2014 and also travelled to the Hon'ble Supreme Court and only upon strict direction to conclude the case, the suit has finally been decreed and judgment delivered on 30.03.2016.

8. Learned counsel for the State submitted on the basis of statements made in the counter affidavit filed on behalf of the respondent no. 4, that after a recent inspection on 21.12.2016, a report has been submitted on 22.12.2016 by the Executive Engineer, Building Division, Motihari, on request made by the Cinema Magistrate with regard to considering the request of the petitioner for renewal of his license. In the said report it has been stated that as the building was locked, there could not be any inspection from within, but inspection from outside reveals that plinth of the building is below the existing ground level and the front of the building is filled with mud and debris and also waterlogged and the windows are badly damaged. Further, it has been reported that the condition of the building all around is filthy and unhygienic and is unfit for exhibition of cinema.

9. Learned counsel for the petitioner, by way of reply, drew the attention of the Court to Annexure 5, which is copy of the report of the inspection made by the Building Construction



Department, Building Division, Motihari dated 22/27.01.2015 in which it has been stated that the inspection from inside has not been made and from outside the building was okay.

10. Having considered the rival contentions, the Court finds that the plea of the writ petitioner that there has been violation of the provisions of Cinema Rules is misplaced, for the simple reason that the order impugned has been passed under the Municipal Act and not under the Cinema Rules. There may be provisions under various statutes which confer different powers and prescribe different procedures for action, but the same would not be in derogation to any other provision in any other statute unless the same is specifically stated. In the present case, the Municipal Act is a self contained statute and the Municipal Authorities are fully empowered to take appropriate action, in accordance with law, and the provisions of the Municipal Act, as and when the situation arises. The same is more with regard to the general conditions of either construction, maintenance or requirement for demolishing a building within the municipal limits; whereas the Cinema Rules are related to grant of license under the Bihar Cinemas (Regulation) Act, 1954. Thus, they operate in two different fields and the provisions of the Cinema Rules cannot be referred to or read into for considering the legality of an action under the Municipal Act. The sheet anchor of the arguments of



learned counsel for the petitioner is that prior to the order of demolition no notice as contemplated under Section 278 of the Municipal Act has been given, which vitiates the said order. The Court finds such contention to be misplaced for the reason that Section 336 of the Municipal Act clearly stipulates that there is power to order removal of dangerous buildings and reads as under:

“336 Power to order removal of dangerous buildings.- (1) If any wall or building, or anything affixed thereto, is deemed by the Chief Municipal Officer to be in a ruinous state, or is likely to fall, or to be in anyway dangerous, he shall forthwith cause a notice, in writing, to be served on the owner and to be put on some conspicuous part of the wall or building or served on the occupier, if any, of the building requiring such owner or occupier forthwith to demolish, repair, or secure such wall, building or thing, as the case may require.”

11. From the same it is clear that the only requirement before ordering for demolition is that the Chief Municipal Officer should deem that any wall or building or anything affixed thereto is in a ruinous state or is likely to fall or to be in anyway dangerous and then he shall forthwith cause a notice in writing to be served on the owner and to be put on some conspicuous part of the wall or building or served on the occupier, if any, of the building requiring such owner or occupier forthwith to demolish, repair or secure such wall, building



or thing, as the case may require. The petitioner had submitted a detailed representation along with various annexures before the authorities concerned on 23.09.2014, which was in response to a report in the newspaper of the proposed demolition of the building in question. Thus, it cannot be said that the petitioner had no notice of the proposed demolition. Further, once he has got full opportunity of making a representation, which he did and in detail, initial requirement which may have been the mandate of the Municipal Act under Section 278 stands fulfilled. Further, after the building having been again inspected by the concerned engineers, the order clearly is under Section 336 and not Section 278 of the Municipal Act. Moreover, the report of the process server that after seeing the notice, the petitioner refused to take the same cannot be said to be non-est and would definitely have some probative value as presumption is a rule of law and holds the field in the absence of evidence. In this connection it would be worthwhile to refer to the division bench judgment of the Punjab High Court (as it then was) in the case of **Fatah Gagan v. Sardara** reported as **A.I.R. 1958 Punjab 333** wherein at paragraph 6 it has been held as under:

“6. A presumption is a rule of law that attaches definite probative value to specific facts or directs that a particular inference as to the existence of one fact not actually known shall be drawn from a fact



which is known and proved. It furnishes prima facie evidence of the matter to which it relates and relieves the party of the duty of presenting evidence until his opponent has introduced proof to rebut the presumption.

It raises such a high degree of probability in its favour that it must prevail unless clearly met and explained and overturned by explanatory proof to the satisfaction of the Court. Presumptions hold the field in the absence of evidence, but when facts appear presumptions recede. "Presumptions", as happily stated by a light hearted jurist, "may be looked on as the bats of the law, fitting in the twilight but disappearing in sunshine of actual facts." They have no place in the presence of actual facts."

12. Moreover, the whole issue starting on a public petition which was endorsed by two sitting Ward Councillors and also recommended by the Chief Councillor, coupled with the fact that the petitioner submitted a detailed reply on the basis of which an inspection was made by the concerned engineers, order passed for demolition under Section 336 of the Municipal Act cannot be faulted or said to be arbitrary. This being the factual and legal position, the Court does not find any valid ground to interfere in the order impugned and accordingly, the writ petition stands dismissed.

13. Before parting, the Court would like to observe that in the present case the majority of the shareholders who have more



than 90 % share, being agreeable to the demolition and not challenging the order impugned would also otherwise persuade the Court not to interfere in the matter in its prerogative extraordinary writ jurisdiction under Article 226 of the Constitution of India.

14. The interim order dated 15.04.2015 stands vacated.

(Ahsanuddin Amanullah, J)

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