

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.137 of 2014
Arising out of
Civil Writ Jurisdiction Case No. 7467 of 2013**

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Radehshyam Kandoi, Son of Late Keshar Deo Kandoi, Resident of Mohalla-
Gullobara, Saidnagar, Police Station- Town, District- Darbhanga

.... Petitioner /Appellant

Versus

1. Darbhanga Municipal Corporation, Darbhanga, Through Its Commissioner,
Darbhanga
2. The Town Commissioner, Darbhanga Municipal Corporation, Darbhanga
3. The Executive Engineer, Darbhanga Municipal Corporation, Darbhanga
4. Pradeep Kumar Choudhary Son Of Sri Murlidhar Chowdhary Resident Of
Mohalla- Lalbagh, Police Station- Town, District- Darbhanga
5. Praveen Kumar Choudhary Son Of Shri Kanhaiya Prasad Choudhary Resident Of
Ram Chowk P.S. Town, District- Darbhanga
6. Ratneshwari Devi Wife Of Padamnath Prasad Agrawal Resident Of Mohalla-
Samsherganj, Bara Bazar, Darbhanga, P.S. Town, District- Darbhanga
7. Most Reema Agrawal, Wife Of Late Binay Kumar Agrawal Resident Of
Mohalla- Samsherganj, Bara Bazar, Darbhanga, P.S. Town, District- Darbhanga
8. State Of Bihar, Through The Collector, Darbhanga

....Respondents/ Respondents

with

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**Letters Patent Appeal No. 14 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 7620 of 2013**

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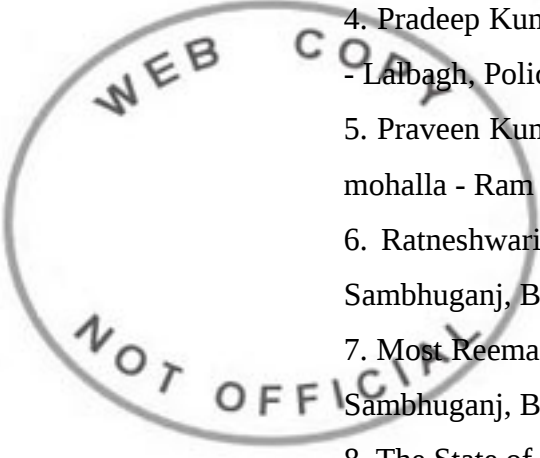
1. Sanjay Kumar
2. Manoj Kumar

-Both sons of Late Ramanand Prasad Sahu, Resident of Mohalla - Gullobara,
Saidnagar, Police Station - Town, District - Darbhanga

.... Petitioners / Appellants

Versus

1. Darbhanga Municipal Corporation, Darbhanga, Through Its Commissioner,
Darbhanga

- 
2. The Town Commissioners, Darbhanga Municipal Corporation, Darbhanga
 3. The Executive Engineer, Darbhanga Municipal Corporation, Darbhanga
 4. Pradeep Kumar Choudhary son of Sri Murlidhar Chowdhary resident of Mohalla - Lalbagh, Police Station Town, District - Darbhanga
 5. Praveen Kumar Choudhary son of Shri Kanhaiya Prasad Choudhary resident of mohalla - Ram Chowk P.S. Town, District - Darbhanga
 6. Ratneshwari Devi Wife of Padamnath Prasad Agrawal resident of Mohalla - Sambhuganj, Bari Bazar, Police Station - Town, District - Darbhanga
 7. Most Reema Agrawal wife of Late Binay Kumar Agrawal resident of Mohalla - Sambhuganj, Bari Bazar, Police Station - Town, District - Darbhanga
 8. The State of Bihar through the Collector, Darbhanga

.... Respondents / Respondents

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Appearance :

(In LPA No.137 of 2014)

For the Appellant/s : Mr. Upendra Prasaad, Advocate
Mrs. Veena Kumari Jaiswal, Advocate

For Respondent Nos. 1 to 3 : Mr. Sanjay Singh, Advocate
Mr. Bindhyachal Rai, Advocate

For the State : Mr. Sanjay Prasad, AC to AAG 6

For Respondent Nos. 4 and 5: Mrs. Priya Gupta

(In LPA No.14 of 2015)

For the Appellant/s : Mr. Upendra Prasaad, Advocate
Mrs. Veena Kumari Jaiswal, Advocate

For Respondent Nos. 1 to 3 : Mr. Sanjay Singh, Advocate
Mr. Bindhyachal Rai, Advocate

For the State : Mr. Sanjay Prasad, AC to AAG 6

For Respondent Nos. 4 and 5 : Mrs. Priya Gupta

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 18-07-2016

I.A.No. 5454 of 2016

This application has been filed for substitution of the sole
appellant in LPA No. 14 of 2015, Ramanand Prasad Sahu, who died

on 16.05.2016 leaving behind his two sons, namely, Sanjay Kumar and Manoj Kumar, as his legal heirs and representatives.

The respondents have no objection if this application is allowed.

Keeping in view the facts and circumstances of the case and the submission made in support thereof, this application is allowed. The appellant in LPA No. 14 of 2015 is substituted by his two sons, namely, Sanjay Kumar and Manoj Kumar, as his legal heirs and legal representatives, as mentioned in paragraph 2 of the application.

I.A. No. 5454 of 2016 stands disposed of.

LPA Nos. 137 of 2014 and 14 of 2015

Both the appeals are directed against the common order dated 18th July, 2013 passed by the learned Single Bench, whereby challenge to the proceedings initiated by Darbhanga Municipal Corporation (for short, the Corporation) for directing the appellant to demolish Holding No. 845, Ward No. 13 (Old) 10 (New) was dismissed.

The appellant is an occupant of the aforesaid building. He was served with a notice on 23rd February, 2012, Annexure-B with the counter affidavit filed on behalf of respondent nos. 1 to 3, that the building in his possession requires to be demolished being in



dilapidated condition. Thereafter the appellant was served with the notice dated 30th August, 2012 as to why the building has not been demolished and as to why the appellant is not vacating the house keeping in view the dilapidated condition of the building. Another notice was issued on 17th September, 2012. The petitioner challenged the order dated 2nd March, 2013 (Annexure-2 with the writ application), wherein the appellant was given 30 days time under Section 278 of the Bihar Municipal Corporation Act, 2007 to vacant the building so that the building can be demolished. The appellant was informed that if he does not vacate the premises within the time specified, the building will be demolished administratively and the appellant will be liable for the expenses.

A detailed counter affidavit was filed by the official respondents as well as the private respondents - the owner of the building.

The learned Single Bench on 16th May, 2013 directed the District Magistrate to requisition services of a reputed Architect and get the building inspected by him and find out whether the house is repairable or not. If necessary, he may be assisted by any engineer of the Public Works Department or Building Construction Department or the Municipality. In terms of such order, a counter affidavit was filed by Senior Deputy Collector-cum-Municipal Secretary on 8th



July, 2013 annexing a report signed by the Executive Engineer, Building Construction Department and an Architect, namely, Neeraj Kumar Bhartiya. It was reported that ground floor has five shops and stairs, whereas on the first floor there are two rooms and verandah. The roof of the building is of wood and supported by bricks which has been constructed applying lime mortar. The first floor of the building is quite dilapidated. The roof and the wall are broken at many places and are falling by itself. Five shops on the ground floor, the roof and the wall are also very weak and are having cracks and water seeps from roof and walls. The building is quite dilapidated and is impossible to repair the same. It can fall at any time which may cause damage to the life and property of the citizens. Photographs of the building from different angles were attached with report. It is the said report which has been made the basis by the learned Single Judge to dismiss the writ application.

A perusal of the counter affidavit filed by the appellant before the learned Single Bench shows that the business activities are in progress in four shops but the rest of the building have broken windows, fallen parapet and most of the building seems to be without any doors and windows. The building as per the Architect and the Engineer is in dilapidated condition, therefore, the said building cannot be ordered to be retained so as to endanger the life and

property of the citizen.

In fact, a perusal of the record of LPA No. 14 of 2015 arising out of CWJC No. 7620 of 2013, shows that in an eviction proceedings bearing Eviction Suit No. 7 of 2007; the stand of the appellant is that the plaintiff has purchased the *pucca* house and godown and that the same is not suitable and habitable condition for occupation of human being.

In view of the report of experts, we do not find any illegality in the order passed by the learned Single Bench which may warrant any interference in the present appeals.

The appeals are accordingly dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

mrl.

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	-07-2016
Transmission Date	N.A.