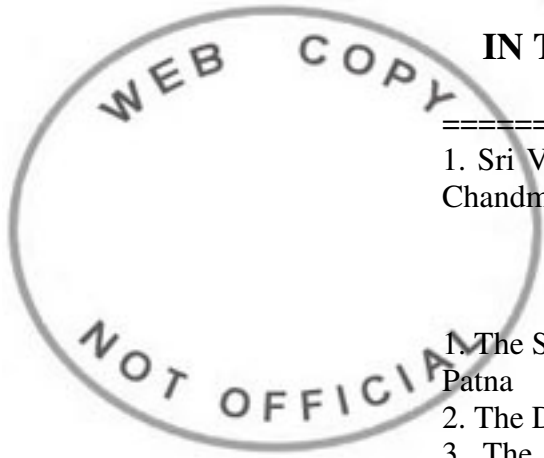




IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2753 of 2013

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1. Sri Vishwajeet Kumar S/O Mr. Uma Shankar Singh Resident Of South Chandmari Road, Police Station- Kankarbag, District- Patna

.... Petitioner/s

Versus

1. The State Of Bihar, Through The Chief Secretary, Government Of Bihar, Patna
2. The District Magistrate, Patna
3. The Commissioner-Cum-Administrator, Patna Municipal Corporation, Null Patna
4. Sri Lalan Singh, The Executive Engineer, Patna Municipal Corporation, Patna
5. The Vigilance Officer, Vigilance Wing, Patna Municipal Corporation, Patna
6. Akarsh Chauhan S/O Late Randhir Singh Resident Of Pustakalaya Lane, East Lohanipur, Kadamkuan, Patna- 03

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Manoj Kumar

For the Respondent

nos. 3,4 and 5 : Mr. Prabhakar Tekriwal

For the Respondent

no.6 : M/S Sanjay Singh and Uma Kant Prasad.

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR
MANDAL
ORAL ORDER

12 02-02-2016

In this writ petition filed under Article 226 of the Constitution of India the petitioner has prayed for a direction to the respondents to adequately compensate the petitioner for illegally demolishing the shop tenanted to him by respondent no.6 under the order of the respondent-Patna Municipal Corporation

(for short 'the Corporation'). He has also prayed for fixing the responsibility on the erring/errant persons, who in a collusive proceeding, passed the order for demolition. He has also prayed for restoration of tenancy right over the shop demolished by the respondent(s).

Heard Mr. Manoj Kumar, counsel for the petitioner, Mr. Sanjay Prakash Verma, counsel for the respondent nos. 3,4 and 6 and Mr.Sanjay Singh, counsel for respondent no.6.

Parties have exchanged their pleadings. A show cause as well as counter affidavit on behalf of the Corporation has been filed.

The writ application asserts that the shop was built up by the father of respondent no.6 situated at West of Tiwary Beachor on Kankarbagh Main Road in the township of Patna was let out to him under an agreement executed on 15th October, 2006. The agreement was for a period of eleven months. He started his business in the said shop and was selling batteries/ invertors in the name and style of M/s Maa Durga Ageny. The original landlord died. He started payment of rent to respondent no.6. Later, the litigation between the petitioner and the landlord ensued. On an application filed by respondent no.7 about illegal construction on the property of respondent no.6, a Vigilance Case bearing



Vigilance Case No.67B/2012 was initiated in which the land owner/occupier was noticed who appeared thereat. The respondent no.6 admitted that the shop was constructed several years ago without getting the map thereof sanctioned by the authority. On 17.08.2012 the said case was heard in presence of both the parties. The Municipal Commissioner permitted the owner to produce post facto approval of the building plan/map. The Municipal Commissioner having found that indisputedly the shop was constructed without any approved map, the same was declared as an illegal construction and was directed to be removed/ demolished. The said order was passed on 19.9.2012. Before disposing of the matter, a report was called for, copy whereof is annexed as Annexure 7 wherefrom it appears that the shop allegedly in possession of the petitioner, was found closed since last two years. The administration in the light of the order of the respondent- Corporation demolished the shop on 12.12.2012. Aggrieved by such demolition of the shop, the present application is preferred for the reliefs noticed above.

It has been submitted by the petitioner that no notice of the proceeding was ever issued to him, who was the tenant of the shop. The respondents have acted in breach of rule/ provisions as well as principle of natural justice. Such arbitrary

action on the part of the respondents caused loss to him. He is entitled to be suitably compensated.

Mr. Sanjay Singh as well as learned counsel for the respondent-Corporation have supported the action of the Corporation.

Mr. Verma appearing for the Corporation has urged that the vigilance case was initiated in which notice was issued to the owner of the property. On hearing the parties it was found that the construction was made without getting a map sanctioned. A report after inspection was also called for. Having found the construction illegal, the order was passed, which was carried out by the respondents. There is no illegality/ infirmity in the said order. Mr. Sanjay also submitted that under the rule/provisions the owner or occupier of the building is to be noticed and heard. The writ petitioner was not continuing as the tenant inasmuch as the shop was closed since last several years. Such disputed question of continuing tenancy cannot be gone either by the respondent- Corporation or this Court.

On a consideration of rival submissions it appears that the impugned action has been taken by the respondent-Corporation under rule/provisions under section 323 of the Bihar Municipal Act which reads as under:



“ Order of demolition and stoppage of buildings or works in certain cases and appeal.-(1) Where the erection of any building or the execution of any work has been commenced, or is being carried on, or has been completed without, or contrary to, the sanction referred to in Section 314 or in contravention of any of the provisions of this act or the rules or the regulations made there under, the Chief Municipal Officer may , in addition to any other action that may be taken under this act, make an order directing that such erection or work shall be demolished by the person at whose instance the erection or the work has been commenced or is being carried on or has been completed, within such period, not being less than five days and more than fifteen days from the date on which a copy of the order of demolition with a brief statement of the reasons therefor has been delivered to such person, as may be specified in the order:

Provided that no order of demolition shall be made unless such person has been given, by means of a notice served in such manner as the Chief Municipal Officer may think fit, an opportunity of showing cause why such order shall not be made:

Provided further that where the erection of any building or the execution of any work has not been completed, the Chief Municipal Officer may, by the same order or by a separate order, whether made at the time of the issue of the notice under the first proviso or at any other time, direct such person to stop the erection or such building or the execution of such work until the expiry of the period within which an appeal against the order of demolition, if made, may be preferred under sub-section (3).

Explanation- In this chapter, “ the person at whose instance” shall mean the owner, or the occupier, or any other person who causes the erection of any building or the execution of any work, including alterations or additions, if any, to be done, or does it by himself.”

It has been urged on behalf of the petitioner that as

per explanation appended thereto, he was the occupier of the shop and notice was required to be issued to him in the proceeding which was undisputedly not done.

On the other hand, it has been argued on behalf of the respondents that the land owner shall be the occupier as tenancy of the said land is a question, which cannot be raised and adjudicated by the Municipal Commissioner. Unquestionably, such notice was issued to the respondent no.6 who could not produce the sanctioned map of the shop the construction of the shop was thus held illegal.

On looking to the provisions, in my view, the explanation (appended to Section 323 of the Bihar Municipal Act) referred to the land owner, who is treated in law the occupier of the building. Further, the contention of the petitioner that he continued as tenant even after the expiry of the agreement is an issue, which cannot be considered in this proceeding where the petitioner claiming himself the person in possession of the shop has prayed for compensation for illegal act of the respondent.

Counsel for the petitioner has made submission with reference to non appearance of respondent no.7. In my view, the said submission would not be of much relevance. In law any body can file such grievance to the respondent- Corporation. That



apart, on the basis of the pleadings on record it would not be possible for this Court to compute the actual loss of the articles sustained by the petitioner. Nothing has been stated about the articles and value thereof, which got destroyed in the wake of demolition of the shop. The court finds from the records particularly the spot inspection report (Annexure 7) that the shop was closed since last two years and no business was transacted therefrom.

The principle of natural justice cannot be invoked in all cases where statutory provisions exist. As noticed, the land owner is the party, who is required to be noticed and heard. There is another reason for this Court to decline the relief. The order was passed by the respondent- Corporation on 19.09.2012. The demolition had taken place on 12.12.2012. The petitioner had statutory remedy to avail which was not done as Section 323(3) of Bihar Municipal Act, 2007, inter alia, states that any person aggrieved by the order passed by the Municipal Corporation can file an appeal. The petitioner had the statutory remedy, which was not invoked and the writ petition was filed in February, 2012.

For the reasons noted above, I do not find it a fit case for exercise of extra ordinary writ jurisdiction to grant the relief(s).

This writ application is accordingly dismissed.

(Kishore Kumar Mandal, J)

