

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.44065 of 2013

Arising Out of PS.Case No. -null Year- null Thana -null District- PATNA

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1. Arun Kumar Singh @ Arun Singh, son of Sri Sukala Prasad Singh
 2. Raj Kumar Kasera, son of late Prabhu Dayal Kasera
 3. Pradeep Kumar Jalan, son of late Norrottam Jalan
 4. Amresh Kumar Singh, son of late Sukul Prasad Singh
 5. Manjeet Singh, son of late Narendra Pd. Singh
 6. Suresh Narain, son of late kuldeep Narayan
 7. Amarnath Sighania, son of Dugornal Lal Chand
 8. Krishna lal, son of late Ram Lal, Prop. M/s. Kishan Lal and others.
 9. Smt. Veena Kulshrestha, wife of Sri Santosh Kulshrestha
 10. Ravi Shankar Gupa, son of late Bishwanath Prasad Gupta
 11. Ram Lakhan Prasad, son of late Ganga Prasad
 12. Vijay Prasad Yadav, son of late Sukhdeo Prasad Yadav
 13. Jitendra Goswami, son of late Badri Goswami
 14. Munnu Prasad Yadav, son of late Lakhan Prasad Yadav
 15. Sanjay Kumar, son of late Lakshman
 16. Shyam Kishore Prasad, son of late Sita Ram
 17. Hemant Kumar Naugaria, son of Sri Suresh Prasad Naugaria
 18. Shiv Ratan Prasad, son of late Ram Chandra Prasad
 19. Smt. Savitree Devi, wife of late Ashok Yadav
 20. Rajeev Kumar Thakur, son of late Yogendra Thakur
- All petitioners residing in suit holding as tenants shop situated at Mohalla Fulauriganj, P.S. Khajekalan, Patna City, Distt. Patna.

.... Petitioner/s

Versus

1. The State of Bihar
2. Md. Anwar Ali, son of Ekbal Mohmad, resident of Phulwariganj, P.S. Khajekalan, Patna City, Distt. Patna.
3. Dina Nath Jha, son of late Chandra Mohan Jha, residing in suit holding as tenants shop situated at Mohalla Fulauriganj, P.S. Khajekalan, Patna City, Distt. Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. J.S. Arora, Advocate
Mr. Maonj Kumar, Advocate.
Mr. Gaurav, Advocate
Mr. Aishwarya Shree, Advocate.
For the Opposite Party/s : Mr. Nawal Kishore Pd., A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 19-04-2017

1. This application has been filed for quashing the



orders dated 30.4.2012 passed in Cr. Revision No. 8 of 2010 by the Additional District Judge-VI, Patna City as well as the order dated 1.12.2009 passed in Misc. Case No. 755 of 2009 by the Sub Divisional Magistrate, Patna City.

2. Heard learned counsel for the petitioners and learned counsel for the State.

3. The crux of the matter is that the opposite party No. 2 filed a Miscellaneous Case No. 755 of 2009 before the Sub Divisional Magistrate, Patna City, under Section 133 of the Cr. P.C. against the petitioners for demolition of the building/property appertaining to Circle No. 143, Holding No. 1 to 6, Municipal Survey Plot Nos. 262, 263 and 340, Ward No. 65 which belongs to Murshidabad Estate, situated at Fulauriganj, P.S. Khajekalan, Distt. Patna, on the ground that same being an old building in dilapidated condition. The petitioners are, admittedly, tenants in the shop on the ground floor of that building whereas the opposite party No. 2 is tenant in the premises on the first floor of the said building in question. Such building admittedly is the commercial building consisting of several number of shops on the ground floor and other premises on 1st floor of that building.

4. It is admitted by both the parties that the aforesaid property is owned by Murshidabad Estate which is covered by a



statute being of the Government of West Bengal named “The Murshidabad Estate (Management of Properties) and Miscellaneous Provisions Act, 1980”.

5. It has been submitted on behalf of the petitioners that the petitioners are the lawfully inducted tenant of the premises in question and are paying rent to the officials of the Murshidabad Estate which has been denied by the opposite party No. 2. It has further been submitted that initially the opposite party No. 2 has filed petition before the Patna Municipal Corporation and the same was dropped by the Corporation after the enquiry done and reports submitted in this regard. Thereafter, a petition was filed before the Sub Divisional Magistrate, Patna City, who also called for a report from the Patna Municipal Corporation, about the status of the building in question, which was received vide Annexure-3, stating therein that the building is in bad shape due to non-maintenance, but the ground floor of the property consisting of shop was found to be in good condition and hence, repair is not required.

6. In pursuance to the Misc. application filed by the opposite party No. 2, an enquiry was again conducted by the Executive Engineer, Patna Circle, Patna Municipal Corporation, who submitted the report almost on same terms as submitted on earlier occasion. The aforesaid report is marked as Annexure-4.



7. The learned Sub Divisional Magistrate, on the basis of the aforesaid reports, by order dated 1.12.2009, directed the petitioners to file show cause. The aforesaid order was challenged by the petitioners in Cr. Revision No. 8 of 2010 before the learned Sessions Judge, Patna. The learned Additional Sessions Judge-II, Patna, vide order dated 30.4.2013, rejected the revision application preferred by the petitioners.

8. It has been submitted on behalf of the petitioners that learned Sub Divisional Magistrate, Patna City, by order dated 1.12.2009 has called for show cause from the petitioners without application of mind. The opposite party No. 2 has filed Misc. Case No. 755 of 2009 under Section 133 Cr. P.C. claiming himself to be the Power of Attorney holder of Murshidabad Estate on 6.11.2009, but the said Power of Attorney on behalf of the opposite party No. 2 was revoked by the Murshidabad Estate on 10.7.2008 which will be apparent from Annexure-6 to the supplementary affidavit filed on behalf of the petitioners.

9. It has further been submitted on behalf of the petitioners that this petition will not be barred under garb of second revision because the scope of Section 482 Cr. P.C. is wider than that of Section 397 (3) Cr. P.C.

10. In support of his submission, learned counsel for



the petitioner has relied upon the decision of this Court in the case of *Ajay Kumar Rana Vrs. State of Bihar*, reported in *2002 (2), PLJR page 520*.

11. On the other hand, learned counsel for the opposite party No. 2 has submitted that all these points can be raised by the petitioners before the competent authority as these are question of facts. It is further submitted that no communication has been sent to opposite party No. 2 about revocation of his Power of Attorney (Annexure-6). He has learnt about such happening only in this Court from Annexure-6.

12. After looking into the order dated 1.12.2009 passed by the learned Sub Divisional Magistrate, Patna City, it appears that he has directed to issue notice to opposite party No. 2 (petitioners). Thereafter, revision has been preferred before Sessions judge by the petitioners vide Cr. Revision No. 8 of 2010 which was rejected by learned Additional Sessions Judge-II, Patna, stating therein that learned Magistrate has not taken any final decision in the matter rather has only sent notice to the party giving liberty to them to produce evidence with regard to their respective claim.

13. The learned Additional Sessions Judge has mentioned in the revisional order that the petitioners may raise their lawful claim before the court below who shall decide the matter



judicially after considering rival claim of the parties in the proceeding under Section 133 Cr. P.C.

14. This Court after looking into the order of the learned Additional Sessions Judge passed in Cr. Revision No. 8 of 2010, finds that actually the order passed by the learned Magistrate dated 1.12.2009, has been upheld by learned Additional Sessions Judge in Cr. Revision No. 8 of 2010.

15. The petitioners have an opportunity to raise and submit all the facts which have been raised in this Court, before the learned Magistrate at the appropriate stage which shall be considered by the learned Magistrate, in accordance with law on its own merit.

16. Since the matter is pending before the learned Magistrate, since 2009, it is desirable that the proceeding be disposed off expeditiously after hearing both the parties, preferably within a period of six months from the date of appearance of both the parties in the court below.

17. This Cr. Misc. is accordingly dismissed with aforesaid direction.

(Sanjay Priya, J)

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AFR/NAFR	NAFR
CAV DATE	N.A
Uploading Date	11.05.2017
Transmission Date	11.05.2017

