

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3484 of 2018

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1. Krishna Gopal Sharma, son of Late Prakash Sharma, resident of Jagir Mohalla, Ward No.31, Begusarai, Police Station-Town Thana, P.O. and District-Begusarai.
 2. Rajeev Kumar, son of Jai Prakash Poddar, resident of Main Road, Begusarai, Police Station-Town Thana, P.O. and District-Begusarai.
 3. Rakesh Kumar, son of Late Arjun Prasad, resident of Mohalla-Jama Masjid Power House Road, Police Station-Town Thana, P.O and District-Begusarai

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Urban Development Department, Bihar, Patna.
2. Begusarai Municipal Corporation Commissioner, Begusarai.
3. The Municipal Commissioner, Begusarai Municipal Corporation, Begusarai.
4. The Additional Commissioner, Begusarai Municipal Corporation, Begusarai.
5. The Executive Engineer, Bhavan Pramandal, Opposite Veer Kunwar Park, Begusarai.

.... Respondents

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Appearance :

For the Petitioners	:	Mr. Sanjeev Ranjan, Advocate
For the Municipal Corporation, Begusarai	:	Dr.Amitesh Kumar, Advocate
For the MJC petitioners	:	Mr. Mrigank Mauli, Advocate
		Mr. Sanket, Advocate
		Mr. Prince Kr. Mishra, Advocate

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

Date: 17-04-2018

The matter having being placed before this Court under the orders of Hon'ble the Chief Justice is being heard at length.

2. Heard learned counsel for the petitioners and the learned counsel appearing for the Begusarai Municipal Corporation as well as the learned counsel appearing for the MJC petitioners.

3. The present writ application has been filed



challenging the notice issued vide Memo No.1776 dated 15.07.2014 by the Municipal Commissioner, Begusarai Municipal Corporation, as contained in Annexure 8, whereby 11 tenants have been directed to vacate the premises as the building would be demolished forthwith as the continuance of those tenants is in disregard to the order passed by this Court.

4. It was contended by the petitioners that Respondent Nos.2 and 3, in the garb of above mentioned notice, are also threatening to demolish the shops of these petitioners, which is in excessive abuse of the order and, therefore, it renders the notice as bad, illegal and unsustainable against these three petitioners. It has been submitted that as no proceeding was ever initiated against them nor were they covered in the list of persons who were directed to vacate the shop by the earlier notices, the impugned notices to the petitioners are vitiated and call for interference by this Court.

5. Before proceeding further, it is necessary to identify the status of the present petitioners. These petitioners claim to be tenants of one Sanjiv Kumar Agrawal, who is a co-sharer of the building, which was the subject-matter of the demolition proceedings in the earlier writ application.

6. Learned counsel for the petitioners submits that these petitioners were never noticed by the respondents at any point



of time and all of a sudden on 29.01.2018, the respondent-authorities, in purported compliance of the orders passed in CWJC No.9109 of 2008, visited the shops of the petitioners and orally directed them to vacate the shops. Learned counsel for the petitioners further submits that it appears that the entire demolition proceeding was in pursuance of an order dated 30.01.2012 passed by a Bench of this Court in CWJC No.9109 of 2008, which was disposed of along with CWJC No.768 of 2009 (Rajiv Kumar Agrawal Vs. State of Bihar & Ors.). In the said writ applications, this Court, while dealing with the entire issue regarding demolition under the provisions of Section 336 of the Bihar Municipal Act, 2007, over which stood an old building standing on Khesra Nos.1331 and 1334 located in the district of Begusarai, spreading over an area of 7 Kathas, held that the building in question was in a dilapidated condition and must be demolished. Accordingly, notices were issued to the tenants to file objections and after the objections were filed by the tenants, the matter was referred by the Executive Officer, Nagar Parishad, Begusarai to the District Magistrate for consideration.

7. It finally appears from the text of the order that in the said writ petition also, the landlord of the present petitioners appeared by filing I.A. No.7455 of 2011, wherein he admitted that



he had no objection to the demolition of the building.

8. It is relevant to mention here that Sanjiv Kumar Agrawal is the brother of Rajiv Kumar Agrawal, who was also contesting the writ application and had prayed for demolition of the building. In the said case, Sanjiv Kumar Agrawal had submitted that he, too, was allotted 1/4th share from the north and west portion of the disputed land. He supported the writ application to the extent that he accepted that the building is in a dilapidated condition and, therefore, could not resist the said demolition.

9. So far as Rajiv Kumar Agrawal is concerned, in his writ application, the tenants had come before this Court as intervenors. They had resisted the writ application and were against the demolition as their business would be affected and their submission was that this Court may not encourage such demolition as the buildings were not in such a condition so as to occasion demolition.

10. This Court, while considering the entire facts and circumstances of the case, directed that the building, which was spread over an area of 7 Kathas on Khesra Nos.1331 and 1334, was in a dilapidated condition and, therefore, the direction was issued to demolish the building within 15 days as the authority would take appropriate steps for demolition of the building.



11. Learned counsel appearing for the Municipal Corporation has seriously opposed the writ application, stating that it is only when the Court intervened in the contempt application, being M.J.C. No.2962 of 2014, and directed for immediate compliance of the order in CWJC No.9109 of 2008, then the petitioners, who were sleeping, have woken up and have tried to raise unnecessary hindrance in compliance of the order passed by the writ Court. It was also mentioned that after the order passed by the writ Court, the brother of the landlord of the present petitioners had moved this Court in an LPA, being L.P.A. No.500 of 2012, which was heard and disposed of by a reasoned order rejecting the claim and the Appeal was dismissed. Subsequently, the matter had traversed to the Apex Court. The Apex Court after considering the entire facts and circumstances of the case dismissed the SLP and thus, the petitioners of the said writ application came here for compliance of the order passed by this Court on 30.01.2012 in M.J.C. No.2962 of 2014.

12. It is thus submitted that the petitioners, being the fence sitters, may not be permitted to raise any claim for keeping in abeyance the order and the order of *status quo* passed earlier in the present writ application be vacated, so that there is full and final compliance of the order as, save and except three shops, which have been precluded from demolition after the order of *status quo*, all the



other shops over 7 Kathas plot have already been demolished.

13. Learned counsel appearing on behalf of the petitioners has submitted that the present petitioners will be seriously prejudiced and their lives and livelihood will be affected on account of the laches of the authorities as at no point of time, any notice was ever issued to them. It has been submitted that even notices, which have been issued personally, do not bear their names nor bear the name of their father. Learned counsel for the petitioners further submitted that no proceeding under Section 336 of the Bihar Municipal Act was ever initiated against them so as to necessitate the demolition and thus statutory wrong would be occasioned. In support of his contention, learned counsel has referred to a decision of the Apex Court in the case of *K.K. Sharma vs. High Court of Delhi and others*, reported in (2014) 16 SCC 96, wherein a similar issue was dealt with that an adverse order shall not be passed was brought before this Court. Learned counsel has drawn the attention of this Court to paragraph 13 of the said judgment, which is quoted hereunder:

“13. The appellants were, admittedly, not heard prior to the order dated 23-10-2009 in Atul Kumar Sharma v. High Court of Delhi. Undoubtedly, the directions in the said order would prejudicially affect all or some of the



appellants once the same are implemented. In the above situation, the High Court had two options before it. The first was to recall the order dated 23-10-2009 and start afresh. The second was to hear all the affected parties while considering CM No.22133 of 2010 itself. To us, either of the options would have been in accord with the requirement of a fair hearing. The emphasis must be on substance and not on form. The test, always, will be whether the affected person has been heard. There is no inevitable need to obliterate the adverse order before hearing a person who was mistakenly not heard earlier; the slate can always be cleaned if upon hearing the affected person such a course of action is required. Until such a decision is taken the adverse order is deemed to be in abeyance. This is how the course of events in the present case has to be understood.”

14. However, in paragraph 14 of the said judgment, the Apex Court has proceeded to observe as follows :

“In the present case, according to us, the order dated 23.10.2009 passed in W.P. (C) Nos.4077-84 of 2004 does not justify a recall even upon hearing the appellants and after a comprehensive consideration of the case urged on their behalf. The decision of the High Court in C.W.P. No.1218 of 1989 has attained finality in law. The said order has the effect of putting clock back to the year 1988



and therefore should have been implemented immediately. Such implementation, to say the least, was tardy. A modified scheme of implementation, taking note of the facts and events which have occurred during the interregnum, was attempted by the High Court by the order dated 23.10.2009 in W.P. (C) No.4077-84 of 2004. Not only was the implementation confined to a limited number of posts and benefit thereof restricted to the Junior Translators only, even the said directions were further diluted to the advantage of the incumbents coming from categories other than SJA by restricting the eligibility of the Junior Translators for promotions. In both the orders i.e. 23.10.1989 and 16.01.2002, the High Court had also made it clear that adjustment of seniority was to be purely notional and if any reversion was to result, the High Court administration was free to take necessary administrative measure to minimize the impact thereof. Both the orders dated 23.10.2009 and 01.06.2012 are attempts made by the High Court to balance the situation by taking into account the legal rights that flow to the Junior Translators from the judgments of the High Court that require implementation and the equitable considerations by which the cases of the appellants, who are not at fault, are required to be judged.”

Having referred to the said order, it appears that if the



rationale adopted by the Court at paragraph 13 is followed, the petitioners would be at an advantage. It was thus stated that on consideration of the law as laid down therein that since the petitioners were not heard, they may be spared from the order of demolition.

15. This Court has further given a deep consideration to the matter and upon further going into the aforementioned citation at paragraph 14, would like to point out that since the clock could not be put back to 2002 in the present case, the only option which would remain, was not to create further wrangles, but to hear them in a proper proceeding. Thus, in the present writ, the hearing has already been afforded to the present petitioners on three subsequent dates with reference to all facts and circumstances of the case, but for the reasons that have been stated above and because the petitioners were silent bystander to the proceedings, the plea raised by them in this writ application is fit to be rejected.

16. It has further been contended by the learned counsel for the petitioners that the present attempt to demolish the shops of the petitioners is but a ploy of the landlord who had taken recourse to an oblique and short-cut method and instead of taking action against the petitioners in an eviction proceeding, has surrendered his right before this Court and prayed for demolition.



17. Learned counsel for the M.J.C. petitioners has taken a strong objection to the present plea raised by the petitioners as he submits that a similar plea was adopted by another co-sharer before the Apex Court and was rejected by the Court, which appears from paragraph 5(D) of S.L.P. No.21217 of 2012, wherein it has been stated as hereunder:

“5(D) Because the Hon’ble High Court failed to appreciate that by passing the impugned orders, it has fallen into the trap of the 7th respondent by permitting him to sidestep the pending eviction suits and title suits by getting the tenants ousted and now attempting to oust even the petitioner by trying to take possession of the disputed properties and changing its nature.”

18. Thus, it appears that these petitioners had all along been aware of such demolition. It also appears from the record of the case that they were silent spectators and fence sitters to the entire proceedings, and it is only now, that when the Court has taken up the matter seriously in the contempt jurisdiction, that these petitioners have rushed to this Court in writ and have intentionally not brought to the knowledge of this Court the true facts and circumstances as in the present writ application.

19. Under such circumstances, this Court is unable to appreciate the submissions of the learned counsel for the



petitioners. In view of the judgment rendered by this Court, supported by the Division Bench in an intra-Court appeal and which was duly stamped by the Apex Court, I am not inclined to entertain this application in the writ jurisdiction. The writ application stands dismissed. In the facts and circumstances, however, there shall be no order as to costs.

(Anjana Mishra, J)

PNM

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	15.05.2018
Transmission Date	N.A.

