

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.270 of 2018

In
Civil Writ Jurisdiction Case No.10184 of 2017

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1. Md. Shamshad Alam, S/o Vali Alam
 2. Md. Abdul Gaffar, S/o Lal Mohammad.
 3. Mahesh Prasad, S/o Late Ramashish Prasad.
 4. Md. Manzoor Alam S/o Late Abdul Nasir. All residents of Mohalla- N.A.C Road, Khagaria, P.S. + District-Khagaria and all are Respective allottee Shopkeepers of Nagar Parishad, Khagaria, P.O. + P.S. + District-Khagaria.

... .. Appellant/s

Versus

1. The State of Bihar represented through the Principal Secretary, Department, of Urban Development, Govt. of Bihar, Patna.
2. The Nagar Parishad, Khagaria, represented through its Executive Officer, Nagar Parishad, Khagaria, Executive Officer, Nagar Parishad, Khagaria.
3. The Executive Officer, Nagar Parishad, Khagaria, Executive Officer, Nagar Parishad, Khagaria.
4. The Municipal Chairperson, Nagar Parishad, Khagaria.
5. The Empowered Standing Committee, Nagar Parishad, Khagaria.
6. The Sub-Divisional Officer, Khagaria, District-Khagaria.

... .. Respondent/s

Appearance :

For the Appellant/s	:	None
For the State	:	Mr. Y.P. Sinha, AAG-7
		Mr. Shankar Kumar, A.C. to AAG-7
For Respondent Nos. 2-5:		Mr. Rakesh Chandra, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 18-12-2018

No one has appeared on behalf of the appellants.

A defect in the name of the father of the Appellant No. 1 has been pointed out but the said defect has not been removed. The said defect is ignored.



2. Learned counsel for the State of Bihar and learned counsel for the Respondent Nos. 2 to 5 are present.

3. The learned Single Judge has dismissed the writ petition of the appellants on the ground that they have a statutory efficacious alternative remedy in respect of the letter/notice issued to them for removal of the site of their shops of which they are tenants.

4. It is not disputed that the appellants are stall owners and are vendors of fruits and vegetables. Their stalls are situate by the side of the office of the Nagar Parishad near the Bazar Samiti of Khagaria. A notice/letter has been issued to the appellants-petitioners on 15th July, 2017 calling upon them to remove their stalls and locate them inside the Bazar Samiti of Khagaria keeping in view the heavy rush of traffic that is causing obstruction on the road where their stalls are situate and consequently in order to remove this congestion they should remove their shops.

5. The appellants contend that so far as congestion is concerned i.e. between Rajendra Chowk to Railway Station, Khagaria their shops are not an impediment in the same. The appellants contend that they are paying rent which they have been continuously depositing and consequently



they deserve the protection from this Court to the extent that they should not be disturbed in running their stalls/shops under the garb of the notice that was under challenge before the learned Single Judge.

6. The learned Single Judge has dismissed the petition holding that the appellants have a statutory efficacious alternative remedy. We have not been able to gather from the impugned judgment as to what is the statutory remedy prescribed in this regard and, therefore, to assume that the statutory alternative remedy is available to the appellants would not be correct.

7. Learned counsel for the Nagar Parishad, Khagaria Shri Rakesh Chandra submits that under the provisions of Section 9 of the Bihar Government Premises (Rent Recovery and Eviction) Act, 1956 (hereinafter referred to as the “1956 Act”) the jurisdiction of the Civil Court is barred in relation to any action taken under the said Act.

8. In the present case, we do not find any such action having been taken under the 1956 Act at this stage but the fact remains that the appellants have been put to notice for removal of their stalls on the ground that their shops and stalls are causing obstruction to the free passage of the road where



they are situate, causing traffic congestion.

9. This being a matter of policy, the question of exercising of any right against public interest does not arise but at the same time it is undisputed that the appellants are the tenants of the Nagar Parishad.

10. It is stated by the learned counsel for the Nagar Parishad that a remedy of appropriate accommodation has been made available to the appellants by which they can relocate their shops/stalls inside the Bazar Samiti.

11. So far as taking of action is concerned, we find that the Nagar Parishad is governed by the provisions of the Bihar Municipal Act, 2007 (hereinafter referred to as the “2007 Act”) and Section 104 of the 2007 Act empowers the Municipality to let out on hire any immovable property belonging to the Municipality. Apart from this, any commercial infrastructure is also within the control of the Municipality as per Section 244 of the 2007 Act. The power to rent out, lease or sale any commercial infrastructure is also conferred on the authority and, therefore, keeping in view the provisions of Section 104 read with Section 244 of the 2007 Act, Nagar Parishad has the power to let out its property for any such commercial use. This, therefore, inherently involves the power



of the Nagar Parishad to take appropriate action with regard to the maintenance or settlement of such property in accordance with law. In view of the aforesaid powers available with the Municipality, we further find that the Chief Executive Officer of the Municipality under the 2007 Act vests in the Chief Municipal Officer under Section 27-B of the 2007 Act who is empowered to carry into effect every resolution of the Nagar Parishad which in turn is the function of the Empowered Standing Committee under the 2007 Act. The said authorities are defined under Section 20 of Chapter IV of 2007 Act and consequently, subject to the control and the exercise of powers of the Empowered Standing Committee the Chief Municipal Officer has to take appropriate action with regard to the functions of the Nagar Parishad.

12. In the wake of the aforesaid facts, the notices which have been issued to the appellants are, therefore, clearly subject to the powers being exercised by the Nagar Parishad through the Empowered Standing Committee as well as the Chief Municipal Officer as referred to hereinabove. We do not find any express provision for an alternative statutory remedy as indicated by the learned Single Judge in the impugned judgment dated 24th January, 2018, yet in view of the powers and



functions assigned to the authorities aforesaid, we permit the appellants to represent their cause before the Empowered Standing Committee or the Chief Municipal Officer who may on receipt of any such representation proceed to pass appropriate orders in accordance with law. In the event any such representation is moved by the appellants, the same shall be disposed of expeditiously by the concerned authority.

13. This Letters Patent Appeal stands disposed of with the aforesaid observations.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

P.K.P./-Jagdish

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