

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3617 of 2019

1. Rajesh Kumar Singh Son of Sri Ganga Prasad Singh, Resident of Mohalla Ramdauli Bidupur Bazar, Police Station Bidupur district Vaishali at present Resident of Flat No. 506 Sri Ram Bhawanand Heritage, New Police Line Road, Nawab Bag Colony Police Station Tilkamanjhi Bhagalpur.
2. Kishori Prasad Gupta Son of Late Ram Balak Prasad Sah, Resident of Mohalla Shiv Bhawan Compound, Police Line Road Bhagalpur, Post Office GPO, Police Station Tilkamanjhi, District Bhagalpur at present Resident of flat NO. 501, Sri Ram Bhawanand Heritage, New Police Line Road, Nawab Bag Colony Police Station Tilkamanjhi Bhagalpur.
3. Suruchi Agrawaj Wife of Sri Manish Kumar Agrawal, resident of City Complex, Fifth Floor, DR. R.P. Road Police Station Kotwali district Bhagalpur. at present Resident of flat NO. 502, Sri Ram Bhawanand Heritage, New Police Line Road, Nawab Bag Colony Police Station Tilkamanjhi Bhagalpur.
4. Sweta Kumari Wife of Dr. Rajesh Kumar Gupta, Resident of Mohalla Madhupali near Devi Chaura, Post Office Saguna, Danapur Cant District Patna at present Resident of flat NO. 504, Sri Ram Bhawanand Heritage, New Police Line Road, Nawab Bag Colony Police Station Tilkamanjhi Bhagalpur.
5. Dr. Smita Kumari Wife of Dr Vijay Prasad, Resident of Mohalla Aliganj, Post Office Mirjan Hat, Police Station Mojahidpur, District- Bhagalpur at present Resident of flat NO. 503, Sri Ram Bhawanand Heritage, New Police Line Road, Nawab Bag Colony Police Station Tilkamanjhi Bhagalpur.
6. Mamta Singh Wife of Ranjeet Singh, Resident of Flat No. 405, Sri Ram Bhawanand Heritage, New Police Line Road, Nawab Bag Colony, Police Station Tilkamanjhi Bhagalpur.
7. Asha Devi, Wife of Sri Kishori Prasad Gupta, Resident of Mohalla Shiv Bhawan Compound, Police Line road Bhagalpur, post office GPO, Police Station Tilkamanjhi, District Bhagalpur at present Resident of flat NO. 201, Sri Ram Bhawanand Heritage, New Police Line Road, Nawab Bag Colony Police Station Tilkamanjhi Bhagalpur.
8. Nawal Kishore Gupta, Son of Late Ayodhya Prasad Sah, Resident of Happy Home, S. M. College, Road, Chhoti Khanjarpur, P.S. Adampur, District- Bhagalpur, at present Resident of flat NO.305, Sri Ram Bhawanand Heritage, New Police Line Road, Nawab Bag Colony Police Station Tilkamanjhi Bhagalpur.
9. Suprium Jha, Resident of Present Resident of Flat no. 206, Sri Ram Bhawanand Heritage, New Police Line Road, Nawab Bag Colony Police Station Tilkamanjhi Bhagalpur.

... .. Petitioners

Versus

1. The State of Bihar through the Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna.



2. The Municipal Commissioner, Bhagalpur Municipal Corporation, Bhagalpur.
3. The Senior Superintendent of Police, Bhagalpur.
4. The S.D.O. Sadar, Bhagalpur.
5. The Director of Sri Ram Construction 404 Jagat Trade Centre, Frazer Road, Police Station Kadamkuan, District- Patna.

... .. Respondents

Appearance :

For the Petitioner/s : Mr.P.K. Sahi, Sr. Advocate
Mr.Ranjeer Kumar, Advocate
For the Respondent No. 2: Mr.Manish Kumar, No. 2, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

5 22-04-2019 On 27.02.2019 after hearing learned counsel for the

petitioners and while granting time to Municipal Corporation to

file a counter affidavit, this Court recorded the following

order :-

“This writ application has been preferred challenging the Communication, as contained in letter No.570 dated 15.02.2019, issued by the Municipal Commissioner, Bhagalpur Municipal Corporation (respondent no.2) by which he has requested the Senior Superintendent of Police, Bhagalpur and the S.D.O., Sadar Bhagalpur to provide adequate police force and Magistrate on 28.02.2019 so that illegal construction/deviated part of the building situated upon the holding no.122 situated at Lal Bag, Vishal Mega Mart, Police Line Road, Bhagalpur (Sri Ram Bhawanand Heritage the Apartment) be demolished.

It is submitted that there are altogether 27 flats in the apartment, no notice either to the flat owners or to the Secretary of the Society has been issued prior to the aforesaid communication. Learned senior counsel representing the petitioners submits that so far as these petitioners are concerned, they are not aware of any previous round of litigation or adjudication on the subject. It is submitted that they are also not aware of any court's order directing any such demolition.



Learned counsel representing the Municipal Corporation prays for short time to seek instructions and file a counter affidavit.

In the given facts and circumstances of the case considering that it is a demolition matter and no order of any court or tribunal has been produced before this Court to demonstrate that there is any adjudication on the subject, this Court directs that till next date, the status quo as of today be maintained.

Let notice be issued to the private respondent no.5 both by registered cover with A/D as well as ordinary process for which requisites etc. must be filed within one week, failing which this application shall stand dismissed, as against him, without further reference to a Bench.

In case, the Municipal Corporation is proceeding for demolition by virtue of any court's order, the same should be brought to the notice of this Court and matter may be mentioned forthwith for modification of status-quo order.

List this case on 26th March, 2019 under the heading 'For Orders'."

It appears from the office note, notice issued to respondent no. 5 has returned unserved with a report that the particular firm has been closed one year ago and their whereabouts is not known. This Court would have taken further steps directing the appropriate authorities to find out the whereabouts of respondent no. 5 in order to adjudicate the writ application but, at this stage, since a reasonable stand has been taken on behalf of Bhagalpur Municipal Corporation, the Court is not persuaded to go ahead with the present writ application.

Mr. Manish Kumar, learned counsel representing Bhagalpur Municipal Corporation submits that the Municipal Corporation, Bhagalpur has taken a decision to hear the



petitioners, a notice vide Letter No. 1749 dated 25.05.2018 has been earlier issued to the builder namely Sri Ram Construction who has allegedly constructed the building in violation of the building bylaws. Learned counsel submits that since the Municipal Corporation, Bhagalpur is ready to hear the petitioners and take an appropriate decision after hearing them, this Court sitting under Article 226 of the Constitution of India need not take upon itself the adjudicatory process at this stage.

Learned Senior Counsel representing the petitioners submits that he has only apprehension that the builder who has allegedly constructed the 5th and 6th floor of the building in violation of the building bylaws may go escrow free without any liability and the petitioners who are the bona fide purchasers may have to suffer.

After hearing learned counsel for the parties, in view of the stand taken on behalf of the Municipal Corporation, Bhagalpur, this writ application is being disposed off with a direction to the Municipal Corporation, Bhagalpur to hear the petitioners and the affected persons after giving them a reasonable opportunity of hearing and take a decision after hearing them on the basis of the materials available on the record in accordance with law. While hearing the petitioners,



steps shall also be taken to bring the builder on the record by exhausting all lawful steps and in case it is found that the builder is guilty of violating the bylaws, the Municipal Corporation shall take an appropriate action against the builder in accordance with law.

Learned counsel for the Municipal Corporation, Bhagalpur has stated that till disposal of the representation of the petitioners no step towards the demolition shall be taken.

It goes without saying that the petitioners will cooperate in hearing and shall not seek unnecessary adjournments.

This writ application stands disposed off.

(Rajeev Ranjan Prasad, J)

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