

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 9541 of 2021

1. Sanjeev Kumar, Male, aged about 52 years, Son of Rabindra Nath Sharma, Resident of Madnani Lane, Mithanpura, Musahri, Ramna, Muzaffarpur, PS- Mithanpura, District- Muzaffarpur.
2. Noor Alam, Male, aged about 47 years, Son of Md. Taiyab Resident of - Madhopur, Susta, Muzaffarpur, PS- Maniyari, District- Muzaffarpur.
3. Md. Safique, Male, aged about 54 years, Son of Ram Lochan Sharma, Resident of - Mithanpura, Near Amar Cinema, Muzaffarpur, PS- Mithanpura, District- Muzaffarpur.
4. Renu Thakur, Female, aged about 59 years, Wife of Anand Karjee, Resident of Sona Vila, Chaturbhuj Thakur Marg, Gannipur, Muzaffarpur, PS- Kaji Mohammadpur, District- Muzaffarpur.
5. Mustaque Ahmed, Male, aged about 67 years, Son of Md. Hasim, Resident of village- Raksa, Muzaffarpur, PS- Karza, District- Muzaffarpur.
6. Rohit Kumar @ Rohit Gupta, Male aged about 47 years, Son of Uma Shankar Gupta, Resident of Kali Kathi, Naka No. 4, Muzaffarpur, PS- Town, District- Muzaffarpur.
7. Ritesh Kumar, Male, aged about 36 years, Son of Uma Shankar Gupta, Resident of Kali Kathi, Naka No. 4, Muzaffarpur, PS- Town, District- Muzaffarpur.
8. Kishroe Kumar More, Male, aged about 61 years, Son of Rameshwar Prasad More, Resident of Gali no. 2, Behind Ranisati Mandir, Sikandarpur, Muzaffarpur, PS- Nagar Thana, District- Muzaffarpur.
9. Kumar Jitendra, Male, aged about 53 years, Son of Mahendra Ojha, Resident of Khabra, Kiratpur Guards, Khabra Musahri, Muzaffarpur, PS- Sadar, District- Muzaffarpur.
10. Md. Qamre Alam, Male, aged about 54 years, Son of Abdul Alam, Resident of ward no. 4, Rahimpur, Rudauli, Harpur Alloth, Samastipur, PS- Kaji Mohammadpur, District- Muzaffarpur.
11. Md. Hasan, Male, aged about 32 years, Son of Nurul Hasan, Resident of Parati, Bochaha, Muzaffarpur, PS- Bachaha, Muzaffarpur.
12. Niteshwar Prasad Singh, Male, aged about 61 years, Son of Anand Mohan Singh, Resident of 78, Bhadai Niwas, Balughat, Muzaffarpur, PS- Town, District- Muzaffarpur.
13. Ram Pratap Thakur, Male, aged about 73 years, Son of Bhola Thakur, Resident of village- Nazirpur, Sheikhpura, Sheikhpur, Muzaffarpur, PS- Ahiyapur, District- Muzaffarpur.
14. Fuldev Sharma, Male, aged about 59 years, Son of Ramsurat Sharma, Resident of Chhoti Saraiyaganj, Muzaffarpur, PS- Town, District- Muzaffarpur.
15. Md. Adil, Male, aged about 30 years, Son of Qamre Alam, Resident of Mohalla- Sadpura, Sonarpatti, Muzaffarpur, PS- Kazi Mohammadpur, District- Muzaffarpur.



... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Urban Development, Government of Bihar, Patna.
2. The Principal Secretary, Department of Urban Development, Government of Bihar, Patna.
3. The District Magistrate, Muzaffarpur.
4. The Muzaffarpur Municipal Corporation through its Commissioner.
5. The Commissioner, Muzaffarpur Municipal Corporation, Muzaffarpur.
6. The Mayor, Muzaffarpur Municipal Corporation, Muzaffarpur.
7. The Deputy Mayor, Muzaffarpur Municipal Corporation, Muzaffarpur.
8. The Chief Executive Officer, Muzaffarpur Municipal Corporation, Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	: Mr. Ritesh Kumar, Advocate
For the Municipal Corporation/R4-8	: Mr. Prasoon Sinha, Advocate
For the State/R1-3	: Mr. Uday Sharan Singh, GP 19 with Mr. Rakesh Kumar Chandra, AC to GP 19

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 17-06-2021

This matter has been taken up *via* video-conferencing.

2. The instant case has been assigned after being specially notified under orders of Hon'ble the Chief Justice.

3. Heard Mr. Ritesh Kumar, learned counsel for the petitioners; Mr. Uday Shankar Saran Singh, learned Government Pleader 19 along with Mr. Rakesh Kumar Chandra, learned Assistant Counsel to GP 19 for the State and Mr. Prasoon Sinha, learned counsel for the Muzaffarpur Municipal Corporation (hereinafter referred to as the 'Corporation').



4. The petitioners have moved the Court by preferring the present writ petition for the following reliefs:

“i. For quashing letter dated 05.04.2021 issued under the signature the Respondent no. 5, The Municipal Commissioner, Muzaffarpur Municipal Corporation whereby and whereunder the petitioners have been directed to vacate their respective shops by 10.04.2021.

ii. For commanding the respondents to make alternative arrangement at some other place, since the petitioners are doing their business for the last 20-30 years in the shops which are proposed to be demolished without any justifiable basis.

iii. For commanding and directing the respondents to not proceed with the demolition till alternative arrangements are made for rehabilitating the petitioners, who have got no other source of income apart from present shops and to allot new shops to the petitioners in the proposed Shopping Mart by giving preference to them.

iv. For any other relief/reliefs for which the petitioners may be found entitled to.”

5. Learned counsel for the petitioners submitted that they are the *bona fide* allottees of the shops which have now been directed to be vacated by them and against which, order of demolition has been issued. He further submitted that on 12.06.2021, the Commissioner of the Corporation has directed the Executive Engineer of the Corporation to start demolition of the shops of the petitioners from 21.06.2021. Learned counsel drew the attention of the Court to the notices issued to them under Section 278(1) of the Bihar Municipal Act, 2007 (hereinafter



referred to as the 'Act') to which the petitioners have responded. It was submitted that such notice envisages that the owner or the person interested may be given an opportunity to show that the premises in question which may be unsafe for habitation may be repaired to make it fit for such habitation. It was submitted that in the reply to the show submitted by the petitioners, they have taken a categorical stand that whatever repair work is directed to be undertaken, they are ready to execute the same to the satisfaction of the Authority of the Corporation. In this connection, learned counsel drew the attention of the Court to Annexure 10 of the Supplementary Affidavit in which they have categorically undertaken to get the repair work done at their cost under the supervision of the concerned authorities of the Corporation to make the premises safe for habitation or business purposes.

6. Learned counsel for the Corporation fairly submitted that in view of the legal provision, as enshrined under the Act, the authorities would consider the reply to the show cause as well as the undertaking filed by the petitioners. Learned counsel stated that a final decision will then be taken in the matter before ordering any precipitative action against the petitioners.

7. Section 278 of the Act is extracted below for ready reference:



‘278. Power to order demolition of building unfit for human habitation.— (1) *Where, upon information in his possession, the Chief Municipal Officer is satisfied that any building is unfit for human habitation and is not capable at a reasonable expense of being rendered fit, he shall serve upon the owner of the building and upon any other person having an interest in the building, whether as a lessee or as a mortgagee or otherwise, a notice to show cause within such time as may be specified in the notice as to why an order of demolition of the building should not be made.*

(2) *If the owner of the building, or other person, upon whom a notice has been served under sub-section (1), appears in pursuance thereof before the Chief Municipal Officer and gives an undertaking that he shall, within a period specified by the Chief Municipal Officer, execute such work of improvement in relation to the building as will, in the opinion of the Chief Municipal Officer, render the building fit for human habitation or that the building shall not be used for human habitation, until the Chief Municipal Officer, on being satisfied that it has been rendered fit for such habitation, cancels the undertaking, the Chief Municipal Officer shall not make an order of demolition of the building.*

(3) *If no such undertaking as is referred to in sub-section (2) is given, or if, in a case where any such undertaking has been given, the works of improvement to which the undertaking relates are not carried out within the specified period or the building is used in contravention of the undertaking, the Chief Municipal Officer shall forthwith make an order of demolition of the building requiring that the building shall be vacated within a period to be specified in the order, not being less than thirty days from the date of the order, and demolished within six weeks on the expiration of that period.*

(4) *Where an order of demolition of a building under this Section has been made, the owner of the building or any other person having*



an interest therein shall demolish such building within the period specified in the order; and if such building is not demolished-within that period, the Chief Municipal Officer shall demolish the building and shall sell the materials thereof.

(5) Any expenses incurred by the Chief Municipal Officer for carrying out the purposes of sub-section (4) which cannot be met out of the proceeds of the sale of materials of the building, shall be recovered from the owner of the building or any other person having an interest therein as an arrear of tax under this Act.

(6) In determining, for the purposes of this Section and Section 335, whether a building is unfit for human habitation, regard shall be had to its condition in respect of the matters, such as,—

- (a) repair,*
- (b) stability,*
- (c) freedom from damp,*
- (d) natural light and air,*
- (e) water-supply,*
- (f) drainage and sanitary conveniences,*

and

(g) facilities for storage, preparation and cooking of food and for the disposal of rubbish, filth and other polluted matter; and the building shall be deemed to be unfit for human habitation only if it is so defective in one or more of the matters as aforesaid that it is not reasonably suitable for occupation in that condition.

(7) For the purposes of this Section and Section 335, “works of improvement”, in relation to a building, shall include any one or more of the following works, namely:—

- (a) necessary repairs,*
- (b) structural alterations,*
- (c) provision of light points and water taps,*
- (d) construction of drains, open or covered,*
- (e) provision of latrines and urinals,*
- (f) provision of additional or improved fixtures and fittings,*
- (g) opening up or paving of courtyard,*



(h) removal of rubbish, filth and other polluted and obnoxious matters, and

(i) any other work including the demolition of any building or any part thereof which, in the opinion of the Chief Municipal Officer, is necessary for executing any of the works as aforesaid.

(8) The provisions of this Section and Section 334 and Section 335 shall not apply in relation to any building in any area which has been declared to be a slum area under any State law relating to improvement or clearance of slums.’

8. Having regard to the aforesaid, with the consent of parties, the writ petition stands disposed off with a direction to the Commissioner/Respondent No. 5, to pass final order, as contemplated under Section 278 of the Act, after duly considering the reply to the show cause and the undertaking of the petitioners.

9. Till the time such final order(s) are not passed, no coercive steps *qua* the shops in question will be taken, including with regard to demolition.

(Ahsanuddin Amanullah, J.)

P. Kumar

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