

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12253 of 2019

1. Tribhuwan Prasad S/o Late Jagarnath Singh Resident of New Market,P.S. Sadar in the Town and Dist.Patna
2. Bishun Prasad S/o Late Badri Prasad Gupta Resident of New Market,P.S. Sadar in the Town and Dist.Patna
3. Mohan Lal Singh S/o Sri Ram Kailash Singh Resident of New Market,P.S. Sadar in the Town and Dist.Patna
4. Bir Bhushan Singh S/o Late Jagarnath Singh Resident of New Market,P.S. Sadar in the Town and Dist.Patna
5. Alok Kumar S/o Late Rameshwar Prasad Resident of New Market,P.S. Sadar in the Town and Dist.Patna
6. Sanjay Kumar yadav S/o Sri Ram Swaroop Yadav Resident of New Market,P.S. Sadar in the Town and Dist.Patna
7. Divya Raj Swatantra S/o Late Surendra Kumar Swatantra Resident of New Market,P.S. Sadar in the Town and Dist.Patna
8. Alakh Ranjan Narayan Singh S/o Late Prabhu Narayan Singh Resident of New Market,P.S. Sadar in the Town and Dist.Patna
9. Nand Lal Sah S/o Late Mathura Sah Resident of New Market,P.S. Sadar in the Town and Dist.Patna
10. Md. Salam alias Abdul Salam S/o Md. Nazir Resident of New Market,P.S. Sadar in the Town and Dist.Patna
11. M/s Akaram S/o Md. Nazir Resident of New Market,P.S. Sadar in the Town and Dist.Patna
12. Md. Ehsan S/o Md. Nazir Resident of New Market,P.S. Sadar in the Town and Dist.Patna
13. Mani Lal S/o Late Ram Dhari Prasad Resident of New Market,P.S. Sadar in the Town and Dist.Patna
14. Upendra Kumar Sah S/o Late Ram Pratap Sah Resident of New Market,P.S. Sadar in the Town and Dist. Patna

... .. Petitioners

Versus

1. The State of Bihar through Principal Secretary,Urban Development Department,Bihar,Patna
2. Principal Secretary, Building Construction Department,Patna
3. Managing Director,Patna Smart City Limited-cum-Commissioner,Patna Municipal Corporation,Patna.
4. The Collector-cum-District Magistrate, Patna



... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Sandeep Kumar (Sr. Advocate)
	:	Mr.Indrajeet Singh
	:	Mr.Ray Saurabh Nath
	:	Ms.Manjari Nath
	:	Mr.Alok Anand
For the Respondent/s	:	Mr.Subhash Prasad Singh (GA 3)
For the Patna Municipal Corp.:	:	Mr.Bindhyachal Singh (Sr. Advocate)
	:	Mr.Sanjay Prakash Verma

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 01-11-2021

There were fifteen petitioners in the present writ application including Sabzi Mandi Dukandar Sangh as petitioner no. 1. Considering the nature of grievance raised in the present writ application learned counsel for the petitioners has been permitted to delete the name of petitioner no. 1 from the cause title by an order dated 14.09.2021. Party position has been accordingly rearranged.

2. All the petitioners have a grievance that they had been carrying on their business on a land located East of Pearl Cinema (now demolished) with G.P.O. on the North, Crockery Shop on the South and Bihar Journal Hindustan Press on the West, which are covered by temporary construction and houses of various trades, commonly known as *Sabzi Mandi*.



3. They approached this Court seeking issuance of appropriate writ/order/direction restraining the respondents from interfering with the use of enjoyment by the petitioners “..... of the premises so leased by the respondents.....” and restraining them, further, from demolition of the structures of the shops of the petitioners.

4. It has been asserted that a general marking “to be demolished” has been done by the respondent Corporation in red ink asking all persons occupying the land for their business to vacate the same which is required for making Patna a smart city. They also assert that they have been paying municipal taxes and availing electricity connection provided by the South Bihar Power Distribution Company. On 07.06.2019, the officials of Patna Municipal Corporation (hereinafter referred to as the Corporation) assisted by police force and officers of the State Administration came and asked the petitioners to vacate the premises within 48 hours else the shops would be demolished. In the aforesaid background, the petitioners filed this writ application on 11.06.2019, which came to be registered on 20.06.2019.

5. The petitioners filed an Interlocutory Application registered as 01 of 2019 seeking amendment in the writ application, as according to them, on 15.06.2019 all the shops over



the land in question were demolished without making any alternative arrangement for the shopkeepers/vendors. It is their case that the writ petition was filed during the summer vacation before vacation Bench of this Court after taking due permission on 11.06.2019. On 14.06.2019, the respondents came, asking the shop-keepers to remove their articles within 24 hours. On 15.06.2019, however, the shops were demolished. With the said statement in the Interlocutory Application, they have sought amendment in the writ petition by way of seeking further direction to the respondents to immediately accommodate them by providing them alternative accommodation so that they may resume their livelihood and also compensate them for the loss caused to their business. When the case was taken up on 24.06.2019, the respondent-Corporation was directed to file counter affidavit and the matter was directed to be listed after six weeks.

6. Considering the facts and circumstances I.A. No. 01 of 2019 is allowed. The relief sought for in the writ petition stands amended accordingly. The averments made in the Interlocutory Application have been treated to be part of the pleadings of the petitioners.



7. It is worthwhile mentioning, at this juncture itself, that in paragraph 3 of the writ application, it has been stated that the petitioners had approached this Court earlier also by filing C.W.J.C. No. 16645 of 2009, which was disposed of on 09.12.2009. A copy of the said order dated 09.12.2009 has been brought on record by way of Annexure-1 to the writ application. Petitioners of that case had apparently approached this Court against a general notice issued by the Corporation asking the shopkeepers to vacate the land. This Court had disposed of the writ petition reiterating well settled law that even a trespasser who had perfected his possession could not be summarily evicted and that he could be evicted only in accordance with the procedure established by law, despite the occupation being illegal, unlawful. Eviction had to be through legal and lawful method and there would have to be an appropriate proceeding against all those persons occupying the said land in which they would be entitled to claim and establish their right to remain on the land, this Court held. The said aspect would be considered by the appropriate authority in those eviction proceeding and only thereafter, if it was found that they had no authority or a right to remain on a land, eviction orders could be issued and follow up action taken, but till such time such a proceeding was not initiated and concluded in



accordance with law, forcible action even by the State or State instrumentality could not be countenanced, this Court held in its order dated 09.12.2009 passed in C.W.J.C. No. 16645 of 2009. The Court further observed that the petitioners were free to approach the Government or any appropriate authority with the relief as they might be advised, which would be considered in accordance with law as and when such occasion arose.

8. In the light of the observations made by this Court in the order dated 09.12.2009, the petitioners are said to have filed a representation before the Urban Development Department, Government of Bihar on 06.01.2010, a copy of which has been brought on record by way of Annexure-3 to the writ application. In the said representation, they asserted that they were allotted land by the Corporation in the year 1964 for running their respective business. They had been paying rent as fixed by the Corporation. However, all the documents in support of their claim got destroyed in fire which had engulfed the entire market several times. Stating these facts and other facts, they represented before the Secretary, Urban Development Department, Government of Bihar for providing them alternative arrangement and rehabilitating them for their sustenance.



9. Before proceeding further, it would be apt to note at this juncture that the statement made in paragraph 3 of the writ petition that all these petitioners had earlier approached this Court by filing the aforesaid C.W.J.C. No. 16645 of 2009 is incorrect. The said writ petition was filed on behalf of the petitioners no. 2, 3, 4, 5, 7 and father of petitioner no. 8 only and not by rest of the petitioners. Evidently, all these petitioners are basing their claim on the order of this Court passed on 09.12.2009 passed in C.W.J.C. No. 16645 of 2009. The petitioners have, thus, taken a false plea to the extent the same relates at least to petitioners no. 6, 9, 10, 11, 12, 13, 14 and 15.

10. The petitioners have filed a second supplementary affidavit more than two years after filing of the writ petition stating therein that they were initially settled lands in the year 1962 by the authorities and they were first removed in 1988 for construction of one Chandralok Commercial Complex. Since there was no construction carried out by the State authorities for two years, upon further instructions of the Government, the petitioners were reinstated in their shops. Again in the year 2009, the State authorities tried to remove the petitioners but due to intervention of this Court, the State Government was restrained from disturbing the petitioners from their possession.



11. These facts were not averred in the writ application and this statement that they were settled lands in 1962 contradicts their own statement made in their representation, as contained in Annexure-3 to the writ application.

12. A third supplementary affidavit has been filed on behalf of the petitioners bringing on record a demand notice dated 19.11.1971 issued from the office of the Corporation in the name of father of petitioner no. 1 in order to substantiate his case that father of petitioner no. 1 was in occupation of municipal land in respect of which he was paying rent to the Municipal Corporation.

13. In the counter affidavit filed on behalf of the Corporation, it has been stated that the steps for clearing the encroachment made on the land of the Corporation have been taken to meet the requirements of making Patna a smart city.

14. In the supplementary counter affidavit filed on behalf of the Corporation, it has been stated that petitioners no. 1 to 5 and 7 to 8 have filed a contempt petition bearing M.J.C. No. 2377 of 2019 which is pending in respect of which the petitioners have not made any disclosure in the writ application. It has been stated that the petitioners were encroachers who had occupied large part of the area and were accordingly asked to remove the encroachment and clear the area. They were asked to produce



necessary documents if any, showing their claim over the land or the area in question as an allottee or settlee. They, however, failed to produce any relevant document in this regard. The petitioners and other shop-keepers were not only illegally occupying the area but had indulged in illegal construction on the land in question.

15. The Corporation is relying on an interim order passed by a Coordinate Bench of this Court dated 24.04.2015 in C.W.J.C. 2733 of 2015 (*Md. Firoj and Ors. v. State of Bihar and Ors.*) whereby, taking into account an earlier order of this Court passed in C.W.J.C. No. 20206 of 2010 (*Pramod Kumar Nirala and Ors. v. The State of Bihar and Ors.*) this Court had directed the petitioners of that case to appear before the Municipal Commissioner of the Corporation and raise their claims and the Municipal Commissioner, in turn, was directed to consider and dispose of respective claims of the petitioners. The Municipal Commissioner by an order dated 27.07.2015 had rejected their claims. The said writ petition bearing C.W.J.C. No. 2723 of 2015 (*Md. Firoz and Ors. v. State of Bihar and Ors. and another analogous case*) was finally disposed of by an order dated 26.08.2015 with another analogous matter with following observation and direction:-

“Although the matter has been under the consideration of this Court for



some time expecting some viable solution to the issues where these petitioners have been continuing in the respective shops since long but in the circumstances so discussed where there is no settlement order existing and the spot enquiry reports not only encroachments on the public road but that constructions are being carried out, in my opinion, in absence of any agreement in between the petitioners and the Municipal Corporation, there is no legally enforceable right vested in the petitioners which can be pursued through the present writ petition.

In the circumstances, so discussed all that this Court can express is sympathy for the petitioners but which alone is not persuasive enough to interfere with the notice dated 3.1.2015 of the Executive Officer, Nutan Rajdhani Anchal, Patna Municipal Corporation, Patna copy of which is impugned at Annexure-8. The respondent-Corporation however before initiating any proceedings for removal of encroachment would give advance notice to the shopkeepers and afford



them reasonable time to find an alternative place for their shops.”

(Underlined for emphasis)

16. The Corporation is also relying on another order passed by a coordinate Bench of this Court dated 24.04.2014 rendered in C.W.J.C. No. 2884 of 2015 (***Jitendra Sao and Anr. v. State of Bihar and Ors.***) filed by the vendors claiming to be occupants of shops situated in the same area i.e. opposite G.P.O. round about. The petitioners of that case claimed to be running a breakfast/tea shop but there was no document to support the said contention.

17. It is noteworthy that this Court had passed following order in this case on 19.05.2021 :-

“Let affidavits be filed, sworn by the Chief Executive Officer, Patna Municipal Corporation and the Principal Secretary, Urban Development and Housing Department, Government of Bihar, stating as to what steps have so far been taken to accommodate the vendors, who have been removed by the impugned action and whether any alternative arrangement has been made for them or not. They will



also be required to state the proposed plan of the State Government and the Corporation for providing space for vegetable/fruit vendors.”

18. In relation to the said order, it has been stated in the supplementary counter affidavit filed on behalf of the Corporation that the officials of the Corporation had contacted some of the petitioners and asked them to submit documents, if any, with respect to allotment/settlement of shops in their favour but they failed to produce any document regarding their entitlement. A report submitted by the Executive Officer, New Capital Circle of the Corporation dated 25.06.2021 has been brought on record by way of Annexure- G to the supplementary counter affidavit. This is to be noted that during the hearing of this case, the Court had made an attempt to address the issue in its broader perspective in larger interest of the street vendors and vendors similar to these petitioners in the wake of specific stand taken by the Corporation that steps were being taken for making Patna a smart city and once vending zones were identified and established, the *bonafide* vendors and shop-keepers would be duly accommodated.

19. Learned Senior counsel appearing on behalf of the petitioners, however, wanted this Court to determine the respective



rights of the petitioners before this Court and adjudicate the matter accordingly. This Court has, therefore, proceeded to examine the individual rights of these petitioners, as made out in the writ application on the basis of pleadings on record.

20. I have heard Mr. Sandeep Kumar, learned Senior counsel appearing on behalf of the petitioners duly assisted by Mr. Inderjeet Singh, Mr. Ray Saurabh Nath, Ms. Manjari Nath and Mr. Alok Anand, learned counsel for the petitioners, Mr. Bindhyachal Singh, learned Senior counsel with Mr. Sanjay Prakash Verma, learned counsel for Patna Municipal Corporation and Mr. Subhash Prasad Singh, learned GA 3 appearing for the State of Bihar.

21. Mr. Sandeep Kumar, learned Senior counsel has placed heavy reliance on a decision of this Court dated 09.12.2009 rendered in C.W.J.C. No. 16645 of 2009 filed by some of these petitioners and has submitted that removal of these petitioners from the land in question is wholly illegal, unauthorized, arbitrary and in violation of Article 19(1) (g) of the Constitution of India. He has submitted that since the dispossession in question is wholly unauthorized and illegal, it is obligatory on the part of the respondents to restore the possession of these petitioners and compensate them for illegal dispossession. He has submitted that there is overwhelming evidence in support of their case that they



were in possession of the land which is concretized by the observations made by this Court in the order passed in C.W.J.C. No. 16645 of 2009 (supra). Reliance has also been placed by him on a Division Bench decision in case of *The Gait Public Library and Institute, Gardanibagh, Patna v. the State of Bihar* reported in 1995 (1) P.L.J.R. 585 and a decision dated 09.10.2007 rendered in *Krishna Kumar Sinha v. The State of Bihar and Ors.* With reference to the said decisions, he has submitted that it was impermissible for the respondent-Corporation to have dispossessed the petitioners from the lands in question and taken forcible possession which was continuing for several decades, without following any procedure of law. He has also relied on coordinate Bench decisions of this Court in case of *M/s Hindustan Petrol v. The State of Bihar* reported in 1996 (2) PLJR 621, *M/s Maa Durga Enterprises v. State of Bihar* reported in 2009 (2) PLJR 1000 and *Naintara Sharma and Anr. v. The State of Bihar* reported in 2011 (3) PLJR 268 to advance his contention that it was impermissible for the respondents to have dispossessed the petitioners forcibly without following due process. He has submitted that though the so-called encroachment has been removed by the respondent-Corporation in the name of developing Patna into smart city, till date nothing tangible has happened in the



said direction. Reliance has also been placed on a coordinate Bench decision in case of *The Company Bagh Dookandar Sangh and Ors. v. The State of Bihar and Ors.* reported in 2007 (2) PLJR 179.

22. Mr. Bindhyachal Singh, learned Senior counsel appearing on behalf of the Corporation, on the other hand, has submitted that this writ petition deserves to be dismissed as the petitioners have made false statement and suppressed material facts. He has submitted that there is false statement in paragraph 3 of the writ petition that all the petitioners had earlier approached this Court whereas only some of them had approached this Court. He has secondly submitted that the petitioners have miserably failed to satisfy, on the basis of pleadings and other materials on record, that they were in possession.

23. I have perused the pleadings on record and considered rival submissions advanced on behalf of the parties. In the very first paragraph of the writ petition, the petitioners have sought a direction commanding the respondents not to interfere with the use of enjoyment by the petitioners of the premises “.....leased by the respondents.....”. There is no document to substantiate their claim that any land/premises was ever leased out in favour of the petitioners by the respondents. In



the Division Bench decision in case of *The Gait Public Library and Institute* (supra) the premises in question was leased out to the petitioner of that case. In the background of the facts and circumstances of that case, the Division Bench had held that even after expiry of the lease, its possession being juridical one, the same could be taken away only by the process known in law. The respondents-Corporation had no authority in law to resume and take possession of the land by virtue of an order which was *non est* in the eye of law, the Division Bench held. Similarly in case of *Hindustan Petrol* (supra) the issue was in relation to forcible resumption of possession over a piece of land which was given on lease by the Patna Women's College, Patna. Similarly, in case of *M/s Maa Durga Enterprises* (supra) the land in question was taken on sub-lease by the petitioner of that case, which was within the knowledge of Bihar Industrial Area Development Authority (in short BIADA). The first issue which the Coordinate Bench framed in case of *M/s Maa Durga Enterprises (supra)* was as to whether the petitioner could be treated as rank trespasser or not of the cold-storage premises. Dealing with the statutory provisions under the Transfer of Property Act, the Coordinate Bench turned down the plea of BIADA that the petitioner of that case was a rank trespasser. Referring to the Supreme Court's decision in case of



Ram Ratan and Ors. v. State of Uttar Pradesh (AIR 1977 SC 619) the Coordinate Bench held that once a trespasser has perfected his possession then he can only be removed in accordance with the procedure established by law and not by show of force or resorting to such extra-legal methods of forcibly locking and sealing the premises otherwise than pursuant to orders of Court or authority.

24. Whether the petitioners being trespassers perfected their possession is a question of fact, which is not admitted. Similarly, case of ***Naintara Sharma*** (supra) relied on by Mr. Sandeep Kumar, learned Senior counsel has no application in the facts and circumstances of the case wherein dispute was in relation to a plot leased out by Patna Regional Development Authority. The said decision, in the Court's opinion, does not apply in the present set of facts and circumstances. The decision rendered in case of ***The Company Bagh Dookandar Sangh*** (supra) too does not support the petitioners' case which was passed in a Civil Revision application arising out of a suit wherein a Trial Court had rejected an application for direction to the respondents to restore *status quo ante* after alleged unlawful demolition of their small shops along the road. The demolition had taken place during the pendency of an injunction petition wherein an order of *status quo* was passed.



This Court, holding such demolition to be in violation of *status quo* order, observed in case of ***The Company Bagh Dookandar Sangh*** (supra) that the plaintiffs-petitioners were well within their rights to move the Court for restoration of *status quo ante*. This Court, however, held in paragraph 10 that as the matter was more than one and a half years old, it would be difficult to direct the opposite parties to restore *status quo ante*. The Court expressed its inability to grant any further relief to the petitioners of that case. In the present case, admittedly, the petitioners are not in possession over the lands in question at least since June, 2019. Further, there was no interim order operating in their favour at any point of time in this case.

25. In my opinion, merely the fact that some of the petitioners had earlier approached this Court by filing a writ application cannot be basis to infer that they were in possession of the respective lands and they were running their business. Further, a false plea has been taken in respect of some of the petitioners, as has been noticed above, that they were also petitioner in C.W.J.C. No. 16645 of 2009 disposed of on 09.12.2009. It is their own case that all their documents in support of their claim that they had been in possession over the lands in question got burnt in fire.



26. The Division Bench decision in case of ***Krishna Kumar Sinha*** (supra) is of no avail for the petitioners, which was rendered in different facts and circumstances of the case. In the said case, in two land acquisition proceedings, large tracts of land were acquired with the object of setting up of a municipal market complex in which the people, who were carrying on commercial activities from the built up acquired land were to be accommodated. So as to have quick vacant possession of the acquired land, the persons carrying on commercial activities at and from the built up areas of the acquired land, were assured that they would be accommodated until the market complex was finally set up and that they would be allowed to run their commercial activities at and from the land situate nearby, belonging to the then Patna Improvement Trust for whom the acquisition was made. Those tenants were told that they would be required to pay 25% of the rent of acquired built up land from the date of payment of compensation to their landlords till they gave up vacant possession of the acquired built up land in their possession to the Patna Improvement Trust and the balance by twelve equal monthly installments. Such tenants who were carrying on commercial activities were allotted stalls at a nearby land upon complying with the terms of the said allotment and a deed of license was issued in



favour of each of such tenants. The license provided that they would be required to pay a daily license fee of Rs. 0.69 paise.

27. In the facts and circumstances of that case, the Division Bench held that demolition of nearby stalls in respect of which the licenses were granted, though on daily basis, was unauthorized and illegal. The facts of the present case are entirely different wherein the petitioners have miserably failed to make out any case in their favour of settlement made by the Corporation of any nature. In any view of the matter, even for the sake of argument if the case of the petitioners of unauthorized dispossession is to be accepted, the petitioners cannot claim restoration of possession in a proceeding under Article 226 of the Constitution of India considering this Court's observation made in case of *The Company Bagh Dookandar Sangh* (supra) on which learned Senior counsel for the petitioners has placed reliance. The decision rendered in C.W.J.C. No. 6546 of 2017 (*Sanjay Singh v. Patna Municipal Corporation Ors. and Other analogous cases*) by the Coordinate Bench too has no application wherein the land in question was given on lease by the Patna Improvement Trust in favour of the petitioners of that case.

28. For the foregoing reasons, I do not find any merit in this application. This application is accordingly dismissed.



29. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

Pawan/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	16.11.2021.
Transmission Date	N/A

