

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6717 of 2017

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Diwakar Jaiswal son of Sri Chandrabali Prasad resident of Mohalla - Chhatauni, Police Station - Chhatauni, Motihari Town, District - East Champaran at present Secretary Smt. Shivbrat Kunwar Atithishala, Station Chowk, Motihari.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Divisional Commissioner, Tirhut Division, Muzaffarpur.
3. The Sub Divisional Officer, Sadar, Motihari.
4. The Executive Officer, Nagar Parishad, Motihari.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Manish Kumar No-2
For the Respondent/s : Mr. Yogendra Prasad Sinha-Aag7

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CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

3 07-04-2023 Heard learned counsel for the petitioner and learned counsel for the State along with learned counsel for the Municipal Corporation, Motihari.

An I.A. No. 6189 of 2017 has been filed on behalf of the tenants who are presently occupying the outer portion of the *Atithishala* in question which the petitioner alleges should be demolished as the same is in dilapidated condition and already there is an order by the then Executive Officer of Nagar Parishad, Motihari directing the Secretary of the *Atithishala* in question to demolish the same within a week.

In view of the pleadings made in I.A. No. 6189 of 2017, the same is allowed.



Learned counsel for the petitioner submits that the present writ application has been filed seeking a direction upon the respondent authorities particularly the Executive Officer Nagar Parishad, Motihari to take action in pursuance of the office order contained in Memo No. 957 dated 14.07.2010. It is further submitted that Nagar Parishad now has been upgraded as as a Municipality and in place of the Executive Officer, the Municipal Commissioner is in-charge of the Municipality. It is next submitted that by Annexure 1 to the writ application i.e., Memo No. 957 dated 14.07.2010 issued by the then Executive Officer, Nagar Parishad, Motihari, the petitioner was communicated that Shiv Vrat Kunwar *Atithishala* is in a dilapidated condition and can fall anytime leading to major loss of life and property, hence the petitioner was directed under Section 336 of the Bihar Municipal Act to ensure that the said *Atithishala* is demolished within a week failing which the Nagar Parishad would demolish the building and the expenses incurred in the demolition shall be realized from the petitioner.

Learned counsel, thereafter, submitted that, till date, the building is in existence as the tenant who are residing inside the building are not willing to leave the building nor the authorities are serious in getting the building demolished, rather,



are waiting for a catastrophe to take place.

The said submission of the learned counsel for the petitioner was recorded in the order dated 28.02.2023.

Pursuant to the submissions made by the learned counsel for the petitioner, this Court by order dated 28.02.2023 had directed the learned counsel appearing for the Municipality to file a counter-affidavit, bringing on record, the fact that the basis on which the then Executive Officer of the Nagar Parishad had come to a conclusion that the building in question required immediate demolition.

Today, when the matter is taken up, a supplementary counter-affidavit on behalf of the Municipality has been filed which is taken on record.

From perusal of the supplementary counter-affidavit, it would manifest that at Para 4 it records that it is humbly stated and submitted here that the aforesaid four-men committee headed by Executive Engineer has submitted its report dated 28.03.2023 about the matter in question which is self-explanatory.

From the report, it appears that the internal portion of the *Atithishala* in question is not in use. It further appears that there are ten shops and one typing institute which are situated at



on the outer side of the *Atithishala*. The tenant are paying rent. In support of the same, the report dated 28.03.2023 is annexed as *Annexure C-4* to the supplementary counter-affidavit.

Learned counsel for the Municipality draws the attention of the Court to *Annexure C-4* to the supplementary counter-affidavit to submit that the four-men committee constituted by the Municipal Commissioner for assessing the building in question has given its report, wherein, they have found that the building is in a dilapidated condition, and there are ten shops and one typing institute situated in a portion outside the *Atithishala*.

At this stage, the learned counsel appearing for the tenant submits that, no doubt, the *Atithishala* is in a dilapidated condition but then the tenant are there for a pretty long time and they are paying rents and their shops and institute is not within the premises of *Atithishala*, rather, is outside, it is next submitted that the tenant would have no issue if the *Atithishala* is demolished as the same does not have any bearing or interest in the business which they are carrying out from a place which is situated outside the *Atithishala* but within its compound.

After hearing the learned counsel for the parties, the writ application is disposed of with a direction to the Municipal



Commissioner, to get the *Atithishala* assessed again, in terms of the four-member committee report.

In the event, if the Municipal Commissioner comes to a considered conclusion after re-assessment that the *Atithishala*, in question, is dangerous to human life, he will be at liberty to act in accordance with law.

It is made clear that in the event if it is required that the tenant have to leave the premises in question in the event of demolition, they will not object, as submitted by their learned counsel, but if their ejection from the place is not required and by demolishing the *Atithishala*, the purpose would be served, the authorities then will act accordingly.

The Court leaves everything at the discretion of the Municipal Commissioner, Motihari Municipal Corporation for the purposes of taking decision in the best interest of the building in question.

(Satyavrat Verma, J)

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