

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5893 of 2018

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Dinesh Kumar Agrawal Son of late Maharaj Prasad Agrawal Resident of Pankaj dresses, Main Road, Begusarai, P.S. Begusarai, District- Begusarai.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Urban and Housing Development, Government of Bihar, Patna.
2. The District Magistrate, Begusarai.
3. Nagar Parishad, Begusarai through Special Officer Cum Executive Officer, Begusarai.
4. Special Officer Cum Executive Magistrate, Begusarai
5. Sub. Divisional Magistrate, Begusarai.
6. Jitendra Narayan Agrawal Son of late Rabindra Narayan Agrawal Resident of Mohalla Mungriganj, P.S. and District Begusarai.
7. Rabindra Narayan Agrawal Son of late Vishundeo Narayan Agrawal R/o Mohalla Mungariganj, P.S. and District- Begusarai.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Y. V. Giri, Sr. Advocate. Mr. Mithilesh Kumar Rai, Advocate.
For the State	:	Mr.S.P.Singh, GA-3.
For Corporation	:	Mr. Ravi Bhushan Verma, Advocate.
For Respondent No.6	:	Mr. Jitendra Kishore Verma, Advocate.
For Respondent No.7	:	Mr. Anshuman Singh, Advocate.

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

14 09-02-2023 Heard Mr. Y. V. Giri, learned senior counsel along with Mr. Mithilesh Kumar Rai, learned counsel appearing on behalf of the petitioner; Mr. S. P. Singh, learned GA-3 for the State; Mr. Ravi Bhushan Verma, learned counsel appearing on behalf of the Nagar Parishad; Mr. Jitendra Kishore Verma, learned counsel appearing on behalf of the respondent no.6 and Mr. Anshuman Singh, learned counsel appearing on behalf of



the respondent no.7.

2. This order is being passed in continuation of the order dated 19.01.2023.

3. This Court deprecates the manner in which the Nagar Parishad, Begusarai has acted. The order dated 19.01.2023 has not been complied by bringing on record the records related to the proceeding which was initiated in terms of Section 336 of the Bihar Municipal Corporation Act, shows that suppression has been made deliberately with vested interest for which this Court was contemplating to initiate contempt, however, Mr. Giri, learned senior counsel appearing on behalf of the petitioner submitted that his client is only aggrieved by the action of the Special Officer cum Executive Officer, Nagar Parishad, Begusarai who has issued illegal notice in garb of the order passed in C.W.J.C. No. 9109 of 2008.

4. He further submitted that the buildings which were required to be demolished have already been demolished in terms of the order dated 30.01.2012 passed in C.W.J.C. No. 9109 of 2008 and show cause to that effect has already been filed in M.J.C. No. 2962 of 2014 in compliance of the order of this Court dated 30.01.2012 passed in C.W.J.C. No. 9109 of 2008. The operative portion of the said order, inter alia, is



reproduced hereinafter:

“This court, therefore, finds that there was no justification for the Executive Officer, Begusarai to take any instructions from the Collector on the basis of the applications filed by the tenants, rather, the Executive Officer is directed to act in accordance with the earlier decision and inform the tenants that they should vacate the premises within a fortnight so that the authorities / petitioner may demolish the building in question. The authorities are further directed to act in accordance with the order of this court, dated 29.7.2011. The tenants may be given notice to vacate the premises within a period of one month. Annexure 9 is quashed and the Municipal Officer, Begusarai is directed to take steps in ensuring that the building in question is demolished. CWJC No. 9109/2008 is allowed, whereas CWJC No. 768/2009 is dismissed.”

5. Learned senior counsel further informs this Court that the petitioner has filed Interlocutory Application No. 151 of 2019 to delete the names of the private respondents nos.6 and 7 from the cause title of the present writ petition. He further submitted that the petitioner is aggrieved by the action of the Nagar Parishad Authority who are threatening the petitioner to demolish his building in garb of notice dated 27.03.2018 contained in Memo No. 827 (Annexure-4). He further submitted that the petitioner does not want to go into the merit of the title on the basis of Kewala of the year 1919 in the present proceeding and as such he seeks to delete the statement made in



Paragraph No.3 in view of having appropriate remedy before the competent Civil Court. Mr. Giri has referred to the first page of the order dated 30.01.2012 to inform this Court that the subject matter of the said writ petition related to Khesra Nos. 1331 and 1334 measuring only 7 Kathas and this Court had passed order to the effect that Holdings No. 215 and 216 situated in Ward No. 32 (New) was not subject matter. Referring to Annexure-3, he further submitted that this Court has passed order in C.W.J.C. No. 9109 of 2008 and thereafter the Respondent No.6 had filed contempt. In contempt proceeding in compliance of the order dated 30.01.2012, the Nagar Parishad, Begusarai had filed show cause in the said contempt being M.J.C. No. 2962 of 2014 on behalf of the Special Officer cum Executive Officer wherein Memo No. 827 dated 27.03.2018 (Annexure-4) was brought on record to inform the Court that pursuant to the said Notice shops were vacated. Learned senior counsel further submitted that the petitioner's building was found to be in tip-top condition and as such he was not required to vacate.

6. Mr. Giri, learned senior counsel has further drawn attention of this Court to Memo No. 71 dated 18.04.1981 (Annexure-6 to the writ petition) by which permission was granted to the petitioner to repair the building and thereafter the



building is in habitable condition without there being any portion in dilapidated condition. The Nagar Parishad, Begusarai has not disputed that the building which is in possession of the petitioner is on Holdings No. 215 and 216 situated in Ward No. 32 was not found to be in dilapidated condition.

7. Heard the parties.

8. The Nagar Parishad, Begusari has not been able to bring on record, the records relating to proceedings which were initiated in terms of Section 336 of the Bihar Municipal Corporation Act for the reason best known to them in compliance of order dated 19.01.2023. On the other hand, it is admitted that the petitioner is in continuous occupation of the building on an area of 7 dhors, for which Holdings No. 215 and 216 were created in Ward No. 32 (New). The petitioner has not claimed his title on the basis of sale deed of year 1919 over the said plot in the present proceeding and in support of his submission, he has deleted Paragraph No.3 to the writ petition and has also submitted that in the present writ petition, he is claiming his right only on the basis of the fact that Nagar Parishad records shows that Holdings No. 215 and 216 has been created in his favour in Ward No. 32 (New) and his building is in good habitable condition in which he has shop and residential



house. In this background, he has also preferred to delete the names of respondent nos. 6 and 7 from the cause title of the writ petition.

9. The counsels who have tendered their appearance on behalf of respondent nos. 6 and 7 have no objection as the question of claim of title has been left open to the parties.

10. The record also reveals that the respondent had filed their show cause in compliance of the order dated 30.01.2012 passed in C.W.J.C. No. 9109 of 2008 in M.J.C. No. 2962 of 2014 in which no reference has been made that the petitioner's house was found in dilapidated condition. Record also reveals that the Nagar Parishad Authority way back on 18.04.1981 vide Memo No. 71 (Annexure-6 to the writ petition) had granted permission to the petitioner to repair the building and thereafter, the building of the petitioner is existing in a habitable condition without there being any portion in dilapidated condition.

11. This Court holds that the very purpose of the notice as contained in Memo No. 827 dated 27.03.2018 (Annexure-4) has already lost its legal force in view of the admission made on behalf of the Nagar Parishad, Begusarai



filed in M.J.C. No. 2962 of 2014 because no action was taken against the petitioner before filing of the show cause.

12. At this stage, Mr. Giri has shown his apprehension that the notice is required to be quashed and an order to that effect is required to be passed.

13. It goes without saying that once this Court has held that notice contained in Memo No. 827 dated 27.03.2018 (Annexure-4) has lost its legal force. Any action pursuant to the said notice by the Nagar Parishad authority will be held to be without jurisdiction and will amount to contempt.

14. With the aforesaid observation and direction, the present writ petition is allowed.

15. In the facts and circumstances of the case, there shall be no order as to cost.

(Purnendu Singh, J)

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