

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12796 of 2023

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1. Shushil Kumar S/o Basant Lal Vyahut, R/o Vill-Shiv Bazar, PS-Bhagwan Bazar, District-Chapra.
 2. Md. Amin, S/o Md. Mustfa R/o Village-Daulatganj PS Bhagwan Bazar, Dist-Chapra.
 3. Jitendra Kumar, S/o Shree Shankar Singh, R/o Village-Chhota Telpa, PS Nagar Thana, District-Chapra.
 4. Manju Devi, W/o Baidyanath Prasad, R/o Vilalge Mauna Hussai, PS Nagar Thana, District-Chapra.
 5. Meena Devi, W/o Durga Prasad, R/o Village Bhutanbari, PS Nagar Thana, District-Chapra.
 6. Sumit Kumar, S/o Uma Shankar Prasad, R/o Village-Prabhunath Nagar, PS-Muffasil, District Chapra.
 7. Kanhaiya Prasad, S/o Mahesh Prasad, R/o Village-Mauna Hussai, PS Nagar Thana, District-Chapra.
 8. Sanjay Kumar Sharma, S/o Late Satyanarayan Purvey, R/o Village-Bahuriya Kothi, PS-Bhagwan Bazar, District-Chapra.
 9. Samarti Devi, W/o Ambita Choudhary, R/o Village-Ajayabganj, PS-Bhagwan Bazar, District-Chapra.
 10. Abadh Bihari Sah, S/o Jagarnath Sah, R/o Mauna Hussai, PS -Nagar Thana, District-Chapra.
 11. Raj Kumar Jaiswal S/o Rajendra Prasad, R/o Village Sahebganj, PS Bhagwan Bazar, District Chapra.
 12. Shankar Dayal Choudhary, S/o Brijbhushan Choudhary, R/o Village Ajayabganj, PS-Nagar Thana, District-Chapra.
 13. Shrimati Jubaida, W/o Late Husain, R/o Mohalla-Nayi Bazar, PS-Town Thana, District-Chapra.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
3. The District Magistrate-cum-Collector, Chapra.
4. The Municipal Corporation Chapra through its Town Commissioner, Chapra.
5. The Superintendent of Police, Saran at Chapra.
6. The Executive Officer, Urban Development Department, Division-I, Chapra.
7. The Executive Engineer, Urban Development Department, Division-I, Chapra, Nagar Nigam Area, BUIDCO.

... .. Respondent/s

Appearance :



For the Petitioner/s : Mr. Y. C. Verma, Sr. Adv. with
Ms. Priyanka Singh, Adv.
For the Corporation : Mr. Indu Bhushan, Adv.
For the State : Mr. Yogesh Kumar, AC to SC 9

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 18-09-2023

This Court has heard Mr. Y. C. Verma, learned senior advocate, duly assisted by Ms. Priyanka Singh, learned counsel for the petitioners and Mr. Indu Bhushan, learned advocate for the Chapra Municipal Corporation and Mr. Yogesh Kumar, learned advocate representing the State.

2. The petitioners claimed to be petty shopkeepers, who have been coming in possession of their respective shops for more than two decades, duly constructed by the Chapra Municipal Corporation in between the period of 1997-2000, invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India for the following reliefs:

“A(i) The public notice published in the daily newspaper "Hindustan" published from Patna dated 17.08.2023, issued by Town Commissioner, Municipal Corporation, Chapra, giving incorporated notice to 131 persons including the petitioners with direction that within 30 days of the publication of the notice they should remove all belongings stored in their respective shop and intimate the Town Commissioner otherwise in terms of the provisions of Bihar municipal act 2007 and the order passed by



National Green Tribunal, New Delhi the shops were to be sealed, stored items were to be confiscated and in larger public interest the shops standing on Khanua Nala were to be demolished. (Annexure-5)

(ii) The individual Notices issued to the petitioners on 07.08.2023 by Town Commissioner, Chapra Nagar Nigam, reiterating the direction contained in public notice Annexure- 3 to the petition, referring to the order passed by National Green Tribunal in execution application no 46 of 2018 in O.A no 234 of 2015 on 08.03.2021, the order of the secretary Urban development and housing Department, government of Bihar, District Magistrate, Chapra and the Municipal Corporation, Chapra so that non puts any obstruction in the flow of Khanua Nala and non- encroaches upon the same. The same also mentions about renovation and re-habitation of Khana Nala and Urban Development and Housing Department, Bihar government, has appoint executive agency and had given administrative sanction and allotment of money was done. (Annexure-3).

B. *(i) To hold that the notices contained in Annexure-03 series to be nullity and non-est in the eye of law.*

(ii). To restrain the respondents from giving effect to the orders/ directions contained is in Annexure-01 to the petition.

(iii) To restrain the respondents from sealing the shops forfeiting the goods kept inside the



shop and demolishing the shops referred to the Annexure-3 to the petition.

(iv) To hold that the order of the national green tribunal dated 08.03.2023, order of urban development and housing dept, govt of Bihar, order of the collector and that of the Chapra Municipal Corporation to be not binding on the petitioners. And the same to be violative of principle of natural justice, and different constitutional rights i.e. Articles 14, 19(1). G, and 21 and 300A of the Constitution of India.

(v) To hold that the shop of the petitioner in no way obstruct free flow of water under the drainage and the scheme for renovation and restoration.

(vi) To constitute a high-powered committee of top Government servant of Chapratown, some important social activist and representatives of the petitioner to have local inspection and take appropriate decisions in presence of the petitioners.

(vii) To provide alternative place or an appropriate place for Shops.

C. To any other relief/s which the petitioners are found entitled to.”

3. The short facts which led to the filing of the present writ application is/are that there has been a huge drain in the town of Chapra, known as “Khanua Nala” which passes



through the heart of Chapra town. Earlier it was an open drain but considering the hazard of pollution spreading in the entire locality, on demand of the local residents/general public, the Chapra Municipal Corporation resolved to cover the drain in the year 1996 and the drain was covered which runs approximate about two kilometres.

4. The Chapra Municipality in order to augment its income resolved to construct the shops over the covered drain and allot the same to the desirous persons. Pursuant to the advertisement, applications were invited and after completing all the paraphernalia, the shops were allotted to the petitioners and others after executing agreement between the Chapra Municipality and the individuals, including the petitioners.

5. It is the case of the petitioners that the shops were allotted way back in the year 2000 and since then they have been coming in possession of their respective shops peacefully without any interference till date, on payment of rent. It is also stated that substantial money for construction was also taken from the respective selected allottees, including the petitioners on the condition that the same would be adjusted against the rent of their respective shops.

6. Mr. Verma, learned senior counsel submits that in



the meantime, the Veteran Forum for Transparency in Public Life filed Execution Application No. 46 of 2018 in O.A. No. 234 of 2015 before the National Green Tribunal, Principal Bench, New Delhi (hereinafter referred to as the 'NGT') wherein the NGT while considering the issue of restoration of Khanua Nala at Chapra called for the status report from the Secretary, Urban Development as well as from the applicants.

7. Having seen the status report, the learned NGT directed "the Secretary, Urban Development to ensure further action by continuous monitoring to uphold the rule of law and for protection of environment and public health. It may be particularly ensured that the flow of drain is not obstructed by the reduction in the width and by the encroachments. The Nagar Nigam, Chapra and the District Magistrate, Saran may take action on the ground and comply with directions of the Secretary, Urban Development on the subject". The learned NGT also requested the Chief Secretary, Bihar to monitor the situation at least once in six months till the situation improves.

8. At this juncture, the learned senior counsel submits that the shops in question were constructed 10-35 feet from the drain of Chapra Municipal Corporation and it nowhere obstructs the free flow of drain. There are proper chambers



constructed for cleaning of the drain and the cleaning works are being regularly carried for the last 20 years. The learned senior counsel further submits that all of a sudden by the impugned notice as contained in Letter No. 2400 dated 07.08.2021 (annexure-3), under the signature of the Municipal Commissioner, Chapra Municipal Corporation came to be issued intimating them about cancellation of their agreement with a direction to remove all the items stored in their respective shops within one month of the receipt of the notice.

9. In this regard, a public notice was also published in the local daily newspaper 'Hindustan' dated 07.08.2023 (aannexure-5) directing all the occupants of the shop to vacate their respective shops after removing all items/belongings and intimate the Town Commissioner, Municipal Corporation, Chapra, failing which in terms of the provisions of the Bihar Municipal Act, 2007 as also the order passed by the NGT, New Delhi, the shops shall be demolished and items would be confiscated in larger public interest. While assailing the notice, it is vehemently submitted that the impugned notices are wholly without jurisdiction as neither any cause has been shown to the petitioners nor were given any opportunity, apart from the fact that they are not provided any alternative shops. He further



submits that the respondent Chapra Municipality and the State respondents being the welfare State is under obligation to generate employment and not to deprive people of their employment and any such kind of action is transgressing, the rights of the petitioners as provided under Article 19(a) of the Constitution of India as also defeating Article 38 of the Constitution.

10. Mr. Verma next submitted that issuance of the notice impugned herein is also contemptuous and in the teeth of the order dated 25.07.2011 passed in CWJC No. 11846 of 2011 as the Collector, Chapra has not yet disposed of the representations as directed by the Hon'ble Court. While summing up his submissions, he drew the attention of this Court to the order passed by the NGT and submits that the learned NGT has only directed to ensure further action by continuous monitoring to uphold the rule of law and protection of environment and public health by ensuring that the flow of the drainage is not obstructed by reduction in width and by the encroachments. The notice in question nowhere suggests that their shops in question anyhow reducing the width of the drain or making any encroachments over it. He lastly submits that even termination of lease/agreement cannot be arbitrary. Every



State action should conform to principle of fairness and should not be arbitrary and based on non-existent ground. The Corporation is a public authority which action should conform to the fairness and its decisions must be guided by the public interest and should protect the interest of lease-holder also.

11. In support of the aforesaid averments, reliance has been made on a judgment rendered by the Hon'ble Apex Court in the case of *M/S Ajar Enterprises Pvt. Ltd. vs. Satyanarayn Somani & Ors., SLP(C) No. 7116 of 2016*, whereby the Hon'ble Apex Court has held that "Undoubtedly a development authority as a public body cannot act arbitrary or at its own whims, in deciding whether or not to renew the lease. Its decisions must be guided by public interest. Public interest postulates both protecting the interests of the authority and ensuring fairness to the leaseholder who may have construed on the land in pursuance of the leasehold. The exercise must meet the touchstone of Article 14 of the Constitution".

12. *Per contra*, Mr. Indu Bhushan, learned counsel representing the Chapra Municipality has drawn the attention of this Court to the agreement, the copy of which is annexed as Annexure-3 to the writ petition and submits that from the terms of the agreement it is manifest that the allotment was only for



10 years and for renewal of the allotment, the application for renewal was required to be filed before six months prior to the termination of the stipulated period but none of the occupants, including the petitioners, have filed any such application. He further submits that Clause 12 of the agreement stipulates that in case of any need for government work/activities, the premises/shop can be evacuated after giving one month prior notice. The notices which have been assailed herein is in consonance with the aforementioned terms and in light of the order of the NGT, New Delhi. He further drew the attention of this Court to the order of the NGT dated 18.10.2021 and with reference thereto he submits that one of the identically situated occupant of the shop, namely, Smt. Dewanti Devi, being aggrieved by the order passed by the NGT, New Delhi preferred Misc. Appeal No. 70-71/2021 in Execution Application No. 46 of 2018 and stated that she is a shopkeeper but unfortunately being wrongly proceeded with as an encroacher in purported compliance of the order of the Tribunal dated 08.03.2021. Having considered the submissions which have been put forth by her, the learned NGT, New Delhi has been pleased to clarify that the Tribunal has directed the Nagar Nigam and other authorities of the State to ensure that flow of drain is not



obstructed and its width is not reduced by any encroachment. Thereafter, the matter is dealt with Nagar Nigam and the District Magistrate in exercise of their statutory powers under the Municipal Laws. The order of the Tribunal is an order *in rem* and does not deal with any individual shop being or not being encroachment. If at all there is any dispute in this regard, the same has to be adjudicated upon independently by the concerned local authorities or at any appropriate forum. All that is necessary under orders of this Tribunal is to ensure that the flow of the drain and width of the drain is not affected and the drain is maintained as per environment norms. The catchment area of the drain has to be kept free from any construction for maintenance of the drain as laid down by the Hon'ble Supreme Court in Mantri Techzone Pvt. Ltd. v. Forward Foundaion and Ors., (2019) 18 SCC 494. If the authorities find that the construction is on the drain as appears to be the stand of the authorities in taking action, the authorities are certainly entitled to take legal action as per law.

13. The learned counsel for the Chapra Municipality, on the strength of the aforesaid order passed by the NGT, submits that admittedly the shops are constructed over the drain “Khanua Nala” and the decision to remove the shops has been



taken after proper deliberation in terms of the order of the learned NGT. He next submitted that so far the stand of the petitioners that the impugned notices are contemptuous or in the teeth of the order of this Court passed in CWJC No. 11846 of 2011 is concerned, it is relevant to state that the petitioners were not even the parties to the writ petition, moreover, the writ petition was filed by Smt. Dewanti Devi and the same has been disposed of without entering into the merits of the case of the parties. By the order of the Hon'ble Court, only the opportunity was granted to the petitioners to make representation before the Collector, Chapra as well as the Executive Engineer, Chapra Nagar Parishad and in case such representations are filed, the same would be considered and disposed of within five weeks. In the meantime, the *status quo* as of today would be maintained in respect of the settlement made to the petitioners. However, said Dewanti Devi submitted her representation on 16.09.2017 in the office of the Chapra Municipality much beyond the period of five weeks and finally her representation was disposed of vide letter No. 272 dated 08.03.2018. It is also stated that said Smt. Dewanti Devi had also filed MJC No. 2862 of 2017 which also stood dismissed on account of non-compliance of the per-emptory order.



14. Learned counsel for Chapra Municipality lastly submits that the action is being taken to evacuate the shop constructed over Khanua Nala as per the direction of the learned NGT, New Delhi and in terms and conditions of the agreement of the shops. The period of agreement has already expired and only having found the obstruction/encroachment in free flow of drain, the shops are being evacuated after giving one month prior notice and as such neither there is any violation of the terms and conditions of the agreement nor the principle of natural justice. The Chapra municipality is duty bound to abide by the order of the learned NGT, New Delhi as the same has been passed in the interest of public at large.

15. This Court has given anxious consideration to the submissions of the parties and carefully perused the materials available on record. Having gone through the order passed by the learned NGT, New Delhi, it clearly depicted the fact that the status report submitted by the Secretary, Urban Development as well as from application filed by the applicants, serious violation of environmental norms is found continuing on account of illegal encroachment, which needs to be removed by stringent action on the ground, in the larger public interest. The learned NGT has taken note of the fact that one of the major



difficulties in restoration of Khanua Nala is the encroachment over the *nala* on account of construction of shops over it, which are lying and are not allowing the machines to work there and great difficulties are being faced in rehabilitation work. While disposing the execution case, the learned NGT categorically directed to ensure that the flow of the drain is not obstructed by reduction in the width and by the encroachment. The Nagar Nigam, Chapra and the District Magistrate, Saran also directed to take action on the ground and comply with the direction of the Secretary, Urban Development on the subject. The aforementioned status report is clearly suggestive of the encroachment by constructing shops over the Khanua Nala.

16. The Supreme Court in the ***State of U.P. Vs. Ata Mohd., (1980) 3 SCC 614*** held “ if the municipality put the street to any other user than that for which it was intended, the State as its owner, is entitled to intervene and maintain an action and to get any person in illegal occupation evicted.”

17. The Constitution Bench in the case of ***Olga Tellis & Ors vs Bombay Municipal Corporation, (1985) 3 SCC 545***, while dealing with a matter of eviction and removal of slum dwellers from pavement has been pleased to hold in paragraph no. 28 as follows:



“28. It is not possible to accept the contention that the petitioners are estopped from setting up their fundamental rights as a defence to the demolition of the huts put up by them on pavements or parts of public roads. There can be no estoppel against the Constitution. The Constitution is not only the paramount law of the land but, it is the source and sustenance of all laws. Its provisions are conceived in public interest and are intended to serve a public purpose. The doctrine of estoppel is based on the principle that consistency in word and action imparts certainty and honesty to human affairs. If a person makes a representation to another, on the faith of which the latter acts to his prejudice, the former cannot resile from the representation made by him. He must make it good. This principle can have no application to representations made regarding the assertion or enforcement of fundamental rights. Fundamental rights are undoubtedly conferred by the Constitution upon individuals which have to be asserted and enforced by them, if those rights are violated. But, the high purpose which the Constitution seeks to achieve by conferment of fundamental rights is not only to benefit individuals but to secure the larger interests of the community.”

(emphasis supplied)

18. This Court further finds that the agreement executed by the petitioners, one of the copy of which has been brought on record by way of example, was only for the period of 10 years and admittedly after expiry of the period no application for renewal of the agreement has been filed. The agreement also stipulates specific condition that in case of necessity for government work the premises/shop can be



evacuated after giving one month prior notice. The notice under question has provided clear 30 days time to the petitioners for removing their stored items/articles.

19. Undoubtedly the impugned notices have been issued pursuant to the order passed by the learned NGT, New Delhi in the interest of public at large to uphold the rule of law and protection of environment and public health. The learned NGT crystallized its order by observing that the order of the Tribunal is an order *in rem* and does not deal with any individual shop being or not being encroachment. If the authorities find that the construction is on the drain as appears to be stand of the authorities in taking action, the authorities are certainly entitled to take legal action as per law.

20. This Court also finds that the submission of the petitioners that the impugned notices are contemptuous and in the teeth of the order of this Court dated 25.07.2011 in CWJC No. 11846 of 2011 is wholly misconceived as the *status quo* was only granted for certain period prescribed therein and the writ application was disposed of without entering into the merits of the case with an opportunity to the petitioner of the said case to make representation and its disposal by the respondents authorities. The petitioners were not even parties to the said *lis*.



21. This Court has also no confrontation to the settled proposition of law, as has been relied upon by the learned counsel for the petitioners that undoubtedly a development authority as a public body cannot act arbitrary or at its own whims, in deciding whether or not to renew the lease. Its decisions must be fair, reasonable and guided by public interest which in the opinion of this Court are embodied in the decision shown from the impugned notices of the present case.

22. This Court has also taken note of the resolution passed by the Chapra Municipality for providing alternative place for the location of shops for the petitioners and furthermore the learned counsel representing the Municipality also made submission across the Board that the preference should be given to the petitioners in the allotment of the shops constructed by the Municipality in case the shops shall be constructed by the Corporation. It would be relevant to observe here that in case of larger public interest, the personal interest of certain persons has to give way.

23. In view of the aforesaid facts and circumstances and the position obtaining in law, this Court finds no reason or occasion to interfere in the impugned notices. However, it is made clear that in case in future any shop would be constructed



by the Chapra Municipality, the petitioners shall be given all the preference over others, if otherwise they would be found fit for allotment.

24. The writ petition sans any merit, warranting any interference in the impugned notices.

(Harish Kumar, J)

Anjani/-

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

