

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8328 of 2024

1. Prakash Studio Yusuf Building, New Dak Bunglow Road, P.S.-Kotwali, District-Patna through its proprietor Rajive Ranjan Mohini, aged about 60 years (male), C/o Kamta Prasad Tiwari, son of Rajhans Mohini, resident of Puleshwari Bhawan, No. 178/372/2, East Ashok Nagar, Road No. 14A, Ashok Nagar, District-Patna-800020 (Bihar).
2. Roshan's Yusuf Building, New Dak Bunglow Road, P.S.-Kotwali, District-Patna through its proprietor Rakesh Kapoor, aged about 60 years (Male), son of Late Inder Raj Kapoor, resident of Kapoor House, Boring Road, P.S.-S. K. Puri, P.O.-Patna G.P.O., District-Patna-800001 (Bihar).
3. Khanna Store, Yusuf Building, New Dak Bunglow Road, P.S.-Kotwali, District-Patna through its proprietor Ravi Nath Khanna, aged about 62 years (male), son of Daulat Ram Khanna, resident of 56, Gurudwara Lane, Buddha Park, Frazer Road, P.O.-Patna G.P.O., District-Patna-800001 (Bihar).
4. Lucknow Zerox House, Yusuf Building, New Dak Bunglow Road, P.S.-Kotwali, District-Patna through its authorized signatory Rajesh Raushan, aged about 38 years, (male), son of Sri Naresh Sharma, resident of Adarsh Colony, Road No. 4, Khemnichak, District-Patna-800027 (Bihar).

... .. Petitioner/s

Versus

1. The State of Bihar through the Principle Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
2. The Patna Municipal Corporation through its Municipal Commissioner, Maurya Lok Building, Patna.
3. The Municipal Commissioner Patna Municipal Corporation, Maurya Lok Building, Patna.
4. The Chief Municipal Engineer, Patna Municipal Corporation, Maurya Lok Building, Patna.
5. The Executive Officer, New Capital Circle, Patna Municipal Corporation, Patna.
6. The City Manager, New Capital Circle, Patna Municipal Corporation, Patna.
7. The Executive Engineer, New Capital Division, Patna Municipal Corporation, Patna.
8. Afzal Amanullah, son of Late Nehaluddin Amanullah, resident of House No. 133, Patliputra Colony, P.O. Patliputra, Patna-800013 (Bihar).
9. A. Ahmad, son of not known, resident and representative of the landowners of Yusuf Building, New Dak Bunglow Road, P.S.-Kotwali, District-Patna-800001 (Bihar).
10. The Patna Metro Rail Corporation Ltd. Indira Bhawan, 7th Floor, Bailey Road, Patna-800001 through its Chief Managing Director.
11. The Chief Managing Director, Patna Metro Rail Corporation Ltd., Indira Bhawan, 7th Floor, Bailey Road, Patna-800001.



12. The Director (Work) Project, Patna Metro Rail Corporation Ltd., Indira Bhawan, 7th Floor, Bailey Road, Patna-800001.
13. Anar kali Restaurant, Yusuf Building , Dak Bungalow Chauraha, frazer Road, Patna.
14. Sharma Crockery, Yusuf Building , Dak Bungalow Chauraha, frazer Road, Patna.
15. Rohan Communication, Yusuf Building , Dak Bungalow Chauraha, frazer Road, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ashok Choudhary, Sr. Adv.
Mr. Akshansh Ankit, Adv.
For the State : Mr. Dhurjati Kumar Prasad, GP-1

For the PMRC

Mr. Shri S.D. Sanjay, Sr. Adv.
Mr. Mohit Agrawal, Adv.
Mr. Lokesh Kumar, Adv.
Mr. Rahul Kumar, Adv.
Mr. Vikash Khanna, Adv.
Mrs. Jaya Sonam, Adv.

For the Municipal Authority Mr. Prasoon Sinha
Respondent nos. 8 nd 9 Mr. Syed Firoz Raza

CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR PANDEY

CAV ORDER

10 02-12-2024 Heard the learned counsel for the parties.

2. The petitioners have filed the present writ application with the following reliefs:-

(a) For quashing order dated 09.05.2024 passed in Demolition Case No. 01/2021 as contained in Memo No. 8518 dated 09.05.2024 [Annexure P10] by the Respondent No. 3 under Section 278 of the Bihar Municipal Act, 2007 whereby and whereunder, inter alia, Yusuf Building [situated at the intersection of Fraser Road- New Dak Bunglow Road within the limits of the New Capital Circle of



the Patna Municipal Corporation] has been directed to be demolished within a period of thirty (30) days.

(b) For a further direction upon the Respondent Authorities to refrain from disturbing the petitioners from running their respective shops and earn their livelihood, in future, without following the statutory procedure as well as in disregard of the principles of natural justice.

(c) Alternatively, for a direction upon the Respondents to make some alternative arrangement and provide for adequate space to the petitioners, since the petitioners are doing their respective businesses for the last several decades and earn their livelihood from the shops which are proposed to be demolished without any justifiable basis.

(d) To stay the operation of the order dated 09.05.2024 passed in Demolition Case No. 01/2021 as contained in Memo No. 8518 dated 09.05.2024 [Annexure P10] by the Respondent No. 3 during the pendency of the instant writ application.

(e) To pass any other order/orders in shape of a consequential relief to which the petitioner may be found to be legally entitled to in the facts and circumstances of the instant case at hand.

3. The brief fact of the case is that an old building, namely, 'Yusuf Bhawan', said to be 100 years old, is existing in



the busiest locality/location of the City of Patna i.e. at the Dak Bungalow intersection, Fraser Road. Respondent no. 8, who is one of the owners of the building, sent an application on 09.09.2020 to the Municipal Commissioner (respondent No.3), Patna Municipal Corporation (hereinafter referred to as 'the Corporation'), mentioning therein that the building is almost 100 years old and except the outer portion on the ground floor thereof, the entire building had remained vacant for the last four years and he made a prayer to 'the Corporation' to have the entire building inspected by the Engineers of 'the Corporation' with regard to the condition and safety of the structure. It was mentioned in the letter that necessary steps should be taken so that no untoward incident might occurs, as the building is located in the busiest street, abutting the public footpath along the roadside on the northern western sides. The photograph of the building was also annexed with the application dated 09.09.2020. The technical wing of 'the Corporation' inspected the building on 16.09.2020 and submitted its/their report. According to the report, it is a very old building and is in dilapidated condition. It has also been mentioned in the report that there are some holes in pillars and the iron rods bulged out from the pillars and are visible. The railing of the building was



also found to be damaged. According to the report, the railing may fall/cave in any time. The iron angle found to be rusted. As per the opinion of the technical team, it would be proper to demolish the building. The pillars as mentioned above, are not RCC pillars, but those are bricks pillars. The wiring of electricity of the building was found in haphazard manner.

4. Thereafter respondent no.8 sent a letter to ‘the Corporation’ on 18.01.2021, making a prayer to demolish the building under Section 278 of the Bihar Municipal Act, 2007 (hereinafter to be referred to as ‘the Act of 2007’).

Sub-section 1 and sub-section 2 of Section 278 of ‘the Act of 2007’ are being extracted hereinbelow:-

“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.”

5. The respondent no.3, the Municipal Commissioner, vide order dated 08.02.2021, directed respondent no.8 to demolish the building. The Municipal Commissioner has mentioned in his order that the building is existing at the busiest place/location of Patna, which is in dilapidated and ramshackle condition and at any time the entire building or part thereof may collapse/cave in, causing the loss of lives and property. While promulgating the order for demolition of the building, which was to be carried out by respondent no.8, six condition were imposed by the Municipal Commissioner which are as follows:-

(i). Respondent no.8 shall carry out demolition exercise entirely on his own



expenses

(ii). While demolishing the building, the responsibility shall lie on the applicant (respondent no.8) vis-a-vis the safety and security of the occupants of the buildings, adjacent to the building in question.

(iii). Pre-constructed sewerage, drain, electricity, telephone cable etc. must be kept in tact and secure.

(iv). It would be the entire responsibility of the applicant (respondent no.8) that the traffic movement on the Dak Bungalow Chauraha should not be hindered and hampered and the work of debris/rubble clearance must be carried out from 10.00 p.m. onwards.

(v). The demolition site should be fully covered with green mesh while demolishing the building, so that the debris of the building may not litter/scatter on the road and the adjacent places.

(vi). To control the air pollution, the applicant shall ensure sprinkling of water time to time at the time of demolition.

6. Thereafter, the respondent no.8 sent a letter to 'the Corporation' on 30.11.2022, in which he has mentioned that altogether six directions were issued to him, but it was not feasible for him to comply with the two directions i.e. direction nos. (ii) and (iv) because of logistical and substantial



dislocation of traffic as well as considering the safety of human life and property. He requested 'the Corporation' to get the building in question demolished urgently to prevent any untoward incident and for which he was ready to meet any expenses that would incur in demolition of the building.

7. After receiving the application from respondent no.8, an inquiry was made by the Director, City Planning of 'the Corporation'. He submitted his report dated 14.12.2023. It has been mentioned in that report that on inspection, it was found that Yusuf Bhawan, which is G+2 old building, is in dilapidated condition. The balcony of the building on either side of the road was found protruded/projected which are in quite dilapidated condition and on the ground floor some shops i.e. 1. Khanna Store, 2. Mogniz Store, 3. Lucknow House, 4. Anarkali Restaurant, 5. Prakash Studio, 6. Sharma Crockery and 7. Rohan Communication, were also found there in course of inspection. The shopkeepers apprised the inspection team that the building is old and some of the shopkeepers were running their shops for the last 80 years. The team also tried to inspect the upper floor of the building, but it was found as locked. It was also mentioned in the report that the building is very old and in dilapidated condition and may collapse at any time



causing loss of lives and property. It was the opinion of the team that in compliance of the order dated 08.02.2021, the building should immediately be demolished. The Corporation sent notices to the petitioners, who are the occupants of the building as tenants, to vacate the premises. The notices were sent to them through letter nos. 2359, 2360, 2361, 2362, 2363, 2364 and 2365, all dated 01.02.2024. They were directed to vacate the premises within 15 days.

8. After receipt of the notices, the petitioners filed a writ application in this Court being CWJC No. 2242 of 2024, mentioning therein that the entire proceeding under Section 278 of 'the Act of 2007' was initiated behind their back. They were not aware of the proceeding, and without giving an opportunity of hearing to them, the order to vacate the premises was passed. The coordinate Bench of this Court, vide order dated 09.02.2024, directed the petitioners to approach the Patna Municipal Commissioner of 'the Corporation' (respondent no.3) for redressal of their grievances by filing appropriate representation, and it was also observed by the co-ordinate Bench that if they file their representation within four weeks, the Patna Municipal Commissioner shall consider their representation in accordance with law and pass a reasoned and a



speaking order.

9. Thereafter, the petitioners filed their representation before the Municipal Commissioner, Patna on 02.03.2024, Annexure P-8, in which they stated that the petitioner no.1, namely, Prakash Studio was established in the year 1948 by late Raj Hans Mohini and the present proprietor is Sri Rajiv Ranjan Mohini. Similarly petitioner no.2, Raushan Brothers established their shop in 1948 and petitioner no.3 Khanna Store was established in 1947. The petitioner no.4 Lucknow Sweet House was established in the year 1948. They are the tenants/licensees of the owner of the building. It has been mentioned in their representation that they are running their business hassle-free and are regularly paying the rent and electricity bills to the landlord. They have also mentioned that the building is not 100 years old, neither it is in dilapidated condition. The petitioners started their business in tin shade. It has further been mentioned that they were not aware of the proceeding as they did not receive any notice before passing of the order of demolition. They would suffer irreparable monetary loss, if the building is demolished. As per recitals in their representation the building is in good shape/condition and it may be restored after minor scientific repairs.



10. It is pertinent to mention here that the progress of Patna Metro Rail is also going on. Respondent nos. 10 to 12, Patna Metro Rail Corporation Ltd. (for short 'the PMRCL') has conducted a pre-constructed survey report which shows that the said building is located close i.e. three meters from the tunnel outer line & pre-construction building condition survey report classifies the building as "severe". The relevant portion of letter no.6740 dated 04.03.2024, sent by Mr. Ajay Kumar PD/PM-2, addressed to the General Manager (Works) Patna Metro Rail Corporation Ltd, is being extracted hereinbelow:

"In this meeting, DMRC informed that the said building is located close i.e., 3m from Tunnel outer line & pre-construction building condition survey (BCS) report classifies this building as "severe" and for this type of cases; said building is evacuated during Tunneling work as a preventive measure. Commissioner/Patna Municipal Corporation (PMC) requested to submit the pre-construction building condition survey (BCS) report of said building and also requested to carry out structural audit by independent structural Engineer, who is empanelled with PMC, as done normally in such cases."

11. It is pertinent to mention here that during the pendency of the writ application it was brought to the notice of this Court that besides the four petitioners, there are some other



occupants. They are: (i) Anarkali Restaurant, (ii) Sharma Crockery and (iii) Rohan Communication. They were impleaded as respondent nos. 13, 14 and 15, respectively, but they did not turn up despite service of notice.

12. Mr. Ashok Choudhary, the learned senior counsel for the petitioners submits that the petitioners are the tenants in the premises and they are running the shops/business, which is the only source of their livelihood, and if the building is demolished, they will be thrown to the street. His further submission is that the building in question is not 100 years old and the petitioners started their business in tin shade existing prior to construction of the building in question. As per the submission of the learned senior counsel, the building is not in dilapidated condition, and it can be saved after minor repairs/retrofitting. He has submitted that in the counter affidavit of 'the Corporation' it has been mentioned that immediate repair and retrofitting of the building is required. He has also submitted that the petitioners were not given opportunity of being heard before passing the impugned order. It has also been argued that the petitioners have filed their undertakings that they would seal the premises and only after completion of metro work, they will enter into the premises.



13. On the other hand, Mr. S.D. Sanjay, the learned senior counsel, appearing for respondent nos. 10 to 12, 'the PMRCL', has submitted that pre-construction building condition survey report conducted by the experts of 'the PMRCL' shows that the building is in severe risk zone and it may fall any time due to vibration of TBM machine while excavating the tunnel, as the building is in proximity to the tunnel. He also submitted that the existence of the building is dangerous for life and property, as the building exists on the roadside in the busiest portion of the City of Patna. His further submission is that such a high risk cannot be taken merely on the undertakings of the petitioners that they would seal the premises. The learned senior counsel submits that the predominant intention of the petitioners is to remain in the premises by hook or crook at the cost of lives and property of the innocent people. He submits that due to evasive and dilatory tactics of the petitioners, the work of 'the PMRCL' has stopped and 'the PMRCL' is suffering a huge monetary loss per day.

14. Mr. Syed Firoz Raza, the learned counsel, appearing for respondent nos. 8 and 9, (the landlords of the building), has submitted that the existence of the building is posing imminent danger to the life and property of the persons



and 'the Corporation' rightly exercised its power under Section 278 of the Act.

15. Mr. Prasoon Sinha, the learned counsel, appearing for 'the Corporation', submitted that the impugned order was passed after giving proper opportunity to the petitioners. They have filed their representation dated 02.03.2024 and after giving them opportunity of being heard, the impugned order was passed. He submitted that the demolition of the building is extreme necessity since it may fall/cave in at any time.

16. Before passing of the impugned order, the petitioners were given opportunity of being heard. They have filed their detailed representation dated 02.03.2024, addressing the Municipal Commissioner and they also participated in the meeting convened by 'the Corporation' on the same day i.e. on 02.03.2024. The petitioners did not adduce any evidence showing that their ancestors started their business/shops in tin shade and the building is not very old. The team of experts of 'the Corporation' conducted an inquiry/survey and found the building in shambles/dilapidated condition and it is posing imminent/lurking danger to the life and property of the people. Not only 'the Corporation', but also 'the PMRCL' found the building in severe zone and as per the report it is in proximity



to the tunnel and since the occupants of the building are not vacating it, the works being carried out by the ‘PMRCL’ are being hampered. The existence of the building is dangerous and it may cause damage to the lives and property of the citizens.

17. On the basis of above-mentioned observation, I do not find any illegality or irregularity in the impugned order dated 09.05.2024 issued to the petitioners through memo no.8515 in Demolition Case No. 01/2021. Accordingly, the writ application is dismissed.

(Nawneet Kumar Pandey, J)

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