

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.528 of 2022

In
Civil Writ Jurisdiction Case No.12578 of 2019

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Shailja Vajpei Wife of Sri Shashank Shekhar, Resident of House No. L 3/1(B),
Sri Krishnapuri, P.S. Sri Krishnapuri, District Patna.

... .. Appellant/s

Versus

1. The Patna Municipal Corporation through Municipal Commissioner, Maurya Lok, Dak Bungalow Road, Police Station- Kotwali, District- Patna.
2. The Municipal Commissioner, Patna Municipal Commissioner, Maurya Lok, Dak Bungalow Road, Police Station- Kotwali, District- Patna.
3. The Additional Municipal Commissioner, Patna Municipal Commissioner, Maurya Lok, Dak Bungalow Road, Police Station- Kotwali, District- Patna.
4. The Executive Officer, New Capital Circle, Patna Municipal Corporation, Patna.
5. The Executive Engineer, Patna Municipal Commissioner, Patna.
6. The Project Director, Patna Smart City, Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Shravan Kumar, Sr. Adv. Mr.Krishna Kumar Singh, Adv.
For the Respondent/s	:	Mr. P.K. Shahi, Sr. Adv/AG Mr. Bindhyachal Singh, Sr. Adv. Mr. Vipin Kumar Singh, Adv. Ms. Smriti Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 23-02-2024

Mr. Shravan Kumar, the learned Senior Advocate has pressed I.A. No. 02 of 2024 seeking amendment in the original writ petition because of the changed circumstances. He has prayed for a modification



in the prayer, namely, that the land in question over which the commercial building belonging to the appellants stood and which was demolished, be restored to him and the cost of construction be also made available. In the alternative, it has been prayed that an area of equal dimension namely 1989 sq. ft. be made available to him.

2. The further alternative prayer sought to be incorporated in prayer is that in case, the above noted prayers are not allowed, the respondents be directed to pay compensation to the appellant in accordance with the current rate for 1989 sq. ft. and the appellant be also paid compensation equal to the amount of the land acquisition as also for destruction of movable assets, harassment, mental agony and torture meted out to the appellant and her family.

3. A brief summary of the developments in this case would be necessary to finally dispose of this Letters Patent Appeal.

4. The appellant had approached this Court vide C.W.J.C. No. 12578 of 2019, seeking directions



against the respondent/Patna Municipal Corporation not to demolish the commercial building of the appellant which was constructed over a duly purchased plot of land which was purchased way back in the year 1987. The appellant had also asked for compensation for part demolition of the commercial building on the ground of such building being an encroachment on public land.

5. The prayer of the appellant before the learned Single Judge was rejected on the grounds of propriety as also on merits. The writ petition was dismissed and the appellant was saddled with a cost of Rs. 10,000/-.

6. The afore-noted order of the learned Single Judge was appealed against vide L.P.A. No. 528 of 2022 (instant appeal) which was entertained in the first instance primarily on the ground that if the learned Single Judge was reluctant to entertain the writ petition as any decision on the prayer made by the appellant/original writ petitioner would tantamount to deciding the right and title of a party which is beyond the remit of Article 226 of the



Constitution of India, the writ petition ought to have been dismissed but the same was entertained and the claim of the appellant/original writ petitioner was vanquished.

7. The appeal was heard by this Bench solely to remedy the situation whereby there was a judicial order rejecting the claim of the appellant/original writ petitioner with respect to the purchase of the concerned plot and the commercial building standing over it.

8. The Secretary of the State had granted lease to P.A.C., the predecessor of Patna Municipal Corporation, of an area of land ad-measuring approximately 92 katthas for a period of 50 years. The P.A.C., during the lease period of 50 years, sub-leased the land in favour of one Dharma Das Sarkar in the year 1951 for a period of 30 years with a renewable clause, but limited to a period which would be within the lease period fixed by the Secretary of State to the P.A.C. The lease would normally have expired in 1981 by counting 30 years from 1951. However, according to the claim of the appellant/original writ petitioner, Dharma Das Sarkar



obtained permission from the corporation in the year 1973 for transferring the land to one Jagar Nath Prasad, who is the vendor of the appellant.

9. The original lease in favour of P.A.C. was not on record before the learned Single Judge. However, the sub-lease in favour of Dharma Das Sarkar had been brought on record, Clause-19 of which clearly proscribed any further transfer of the lease rights by any mode; either sale, mortgage, transfer, assignment, sub-letting or parting with the possession of whole or any part of the land or whole or any part of the building except with the previous consent in writing of the Chairman of the P.A.C. It was further claimed by the appellant before the learned Single Judge that the plot in question was initially numbered as Plot No. 8 but later it was re-numbered as Plot No. 19. There was no record or evidence of such claim of the original writ petitioner which was noticed by the learned Single Judge. A typed document was brought on record by the appellant before the learned Single Judge, the contents of which did not tally exactly with the main



document and this was the flash point when the learned Single Judge took the view that there was an attempt at misleading the Court with respect to the right and title of the original writ petitioner. The claim of the appellant for restitution and compensation, therefore, rested on the title which the appellant claims to have obtained by virtue of sale deed dated 02.06.1987 and the corporation having allowed the mutation in favour of the appellant in the year 1989.

10. The primary objection raised by the corporation before the learned Single Judge was that regardless of the mutation and the payment of rent by the appellant, she could never have obtained a better title than Dharama Das Sarkar, who had only acquired the lease for a period of 30 years commencing from 20.10.1951.

11. Many developments took place in between, which appeared to the Appellate Court to be a fact situation where even Patna Municipal Corporation was complicit in allowing such transaction to be treated as valid transaction.



12. In any view of the matter, the issue with respect to the original title of the appellant or the right of Dharma Das Sarkar was required to be decided by a competent Civil Court. The issues of lease could not ever have been decided in a writ proceeding under Article 226 of the Constitution notwithstanding the effort of the appellant to demonstrate its bonafide by bringing on record municipal rent receipts with respect to the building from 1978 onward and also placing on record the acceptance of the corporation of the request by the appellant for a permission to undertake plantation in a contiguous plot measuring about 3450 sq. ft. on a monthly/yearly rental.

13. When the appeal was entertained on 02.02.2023, this Court took note of the fact that it was inexplicable as to what was the justification for demolishing only a part of the structure when the claim of Patna Municipal Corporation was that the land never stood transferred in the name of the appellant. In this context, it was observed that if the eviction of the appellant was attempted on the ground of encroachment, then perhaps,



a proceeding had to be initiated giving an opportunity to the appellant to defend her cause. If the eviction was on the ground of the entire sale deed being a sham transaction, necessary procedural safeguards had to be followed.

14. What this Court did not agree to was the decision of the learned Single Judge regarding the claim of title of the appellant being bad in the eyes of law. The matter, thereafter, again was heard by another Co-ordinate Bench of this Court, when, after the arguments, the judgment was reserved.

15. During the pendency of the interim order restraining the corporation from taking any precipitate action, the building was demolished.

16. A *suo motu* contempt proceeding was initiated against the erring officials of the Patna Municipal Corporation and the matter was sent before this Bench for dealing with the contempt petition namely, MJC Case No. 2289 of 2023 as also the appeal (LPA No. 528 of 2022). On 02.02.2024, this Court accepted the explanation of the



proposed contemnors/officials of the Patna Municipal Corporation and the amount offered by the Corporation to the appellant as compensation and dropped the contempt proceedings.

17. With these background facts, the new set of prayers, which stand incorporated in the present appeal lose all relevance.

18. Both the Benches hearing the matter disclosed the view that even a trespasser cannot be evicted forcibly without resorting to the procedure established under law. The Corporation had taken a dual stand of the appellant being a trespasser and that the acquisition of the land in question by appellant being doubtful.

19. If the appellant is considered to be a trespasser on the ground of the title of the appellant being defective, the Corporation would be under an obligation to initiate appropriate proceedings, if desired, for removing the appellant from the said land. Likewise, the appellant shall also have the liberty to approach the



competent Civil Court for vindication of her rights.

19. The appeal stands disposed off accordingly, giving liberty to the Patna Municipal Corporation to initiate appropriate proceedings against the appellant for evicting her and to the appellant to, if so desired, approach the competent court for any declaration of her title.

(Ashutosh Kumar, J)

(Satyavrat Verma, J)

sunilkumar/-

AFR/NAFR	NAFR
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