

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19007 of 2019

1. Brahma Nand Singh Son of Sri Ramnanda Singh, Resident of Jubba Sahani Park Shop No. 21, Miscotte Lane, P.S.- Mithanpura, Distt. Muzaffarpur, Permanent Resident of Mohalla- Kanhauli Vishwa Datt, Near P.N. B. P.S. Mithanpura, Distt. Muzaffarpur.
2. Amitabh Ranjan, Son of late Amarnath Singh, resident of Amrit Miscotte Lane, P.S. Mithanpura, Distt. Muzaffarpur.
3. Manisha Ranjan@ Manisha Kumari, W/o of Sri Ashok Ranjan, Resident of Miscotte Lane No. 2, P.S. Mithanpura, Distt. Muzaffarpur.
4. Rajeev Kumar, Son of Sri Shatrudhan Prasad, Resident of Miscotte Lane No. 2, P.S. Mithanpura, Distt. Muzaffarpur.
5. Pushplata W/o Sri Sanjeev Kumarn Tiwari, Resident of Dairy Firm, Mednani Lane, P.S. Mithanpura, Distt. Muzaffarpur.
6. Bibhuti Narain Thakur, Son of Sri Baikunth Narain Thakur, Resident of Harsh Marg, P.S. Mithanpura, Distt. Muzaffarpur.
7. Manoj Kumar, Son of late Devendra Thakur, Resident of Jubba Sahani Park Shop No. 22, Miscotte Lane, P.S. Mithanpura, Distt. Muzaffarpur.
8. Sumit Kumar Suman, Son of Binay Kumar Singh, Resident of Jubba Sahani Park Shop No. 25, Miscotte Lane, P.S. Mithanpura, Distt. Muzaffarpur.
9. Sumit Ranjan, Son of Sri Jivesh Nandan Prasad, Resident of V.C. Lane, P.S. Mithanpura, Distt. Muzaffarpur.
10. Ashok Kumar Chaudhary, Son of Sri Asarfi Chaudhary, Resident of Jubba Sahani Park Shop No. 23, Miscotte Lane, P.S. Mithanpura, Distt. Muzaffarpur.
11. Hari Thakur, Son of Sri Sudhan Thakur, Resident of Jubba Sahani Park Shop No. 29, Miscotte Lane, P.S. Mithanpura, Distt. Muzaffarpur.
12. Khurshid Alam, Son of Md. Sabir Hussain, Resident of Jubba Sahani Park Shop No. 56, Miscotte Lane, P.S. Mithanpura, Distt. Muzaffarpur.
13. Sanjeet Kumar, Son of late Shiva Kant Bihari, Resident of Jubba Sahani Park Shop No. 13, Miscotte Lane, P.S. Mithanpura, Distt. Muzaffarpur.
14. Anil Kumar Thakur, Son of Kedar Thakur, Resident of Jubba Sahani Park Shop No. 32, Miscotte Lane, P.S. Mithanpura, Distt. Muzaffarpur.
15. Chandrika Prasad Pandey, Son of Ram Narain Pandey, Resident of Jubba Sahani Park Shop No. 33, Miscotte Lane, P.S. Mithanpura, Distt. Muzaffarpur.
16. Girindra Kumar Lal Das, Son of late Shivdhari Lal Das, Resident of Jubba Sahani Park Shop No. 65, Miscotte Lane, P.S. Mithanpura, Distt. Muzaffarpur.
17. Ranju Das, W/o Girindra Kumar Lal Das, Resident of Jubba Sahani Park Shop No. 66, Miscotte Lane, P.S. Mithanpura, Distt. Muzaffarpur.
18. Rekha Devi, W/o Shambhu Sharan Prasad Rai, Resident of Jubba Sahani Park Shop No. 64 Miscotte Lane, P.S. Mithanpura, Distt. Muzaffarpur.



19. Pritam Kumari, W/o Rajiv Tiwari, Resident of Jubba Sahani Park Shop No.63, Miscotte Lane, P.S. Mithanpura, Distt. Muzaffarpur.
20. Chandan Kumar, Son of Satish Kumar, Resident of Jubba Sahani Park Shop No.40, Miscotte Lane, P.S. Mithanpura, Distt. Muzaffarpur.
21. Ramesh Khetan Son of Ram Avtar Khetan Resident of Shop No. 15, Jubba Sahani Park Miscotte Lane, P.S. Mithanpura, Distt. Muzaffarpur.
22. Vasim Akram, Son of Md. Naeem, Resident of Shop No. 24, Jubba Sahani Park Miscotte Lane, P.S. Mithanpura, Distt. Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary Urban Development and Housing Development Department, Patna.
2. Mayor, Municipal Corporation, Muzaffarpur
3. The Muncipal (Town), Commissioner, Muzaffarpur, Municipal Corporation, Muzaffarpur.
4. The Chairman Empowered Standing Committee, Muzaffarpur Municipal Corporation.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Sanjay Parasmani, Advocate
For Muzaffarpur		
Municipal Corp.	:	Mr.Anurag Saurav, Advocate
		Mr.Abhishek Kumar, Advocate
		Ms.Prity Kumari, Advocate
		Ms.Sharda Raje Singh, Advocate
For the Respondent/s	:	Mr.Abbas Haider (SC 6)

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

9 22-04-2024 Heard Mr. Sanjay Parasmani, leaned counsel appearing on behalf of the petitioners; Mr. Anurag Saurav along with Mr.Abhishek Kumar, Ms. Prity Kumari and Ms. Sharda Raje Singh, learned counsels for Muzaffarpur Municipal Corporation and Mr.Abbas Haider, learned SC 6 for the State.

2. Learned counsel appearing on behalf of the petitioners informs that the petitioners have sought for following



reliefs, which are re-produced hereinafter :

(I) A writ in nature of certiorari or any other writ or order or direction be issued quashing the order dated 24.11.2018 issued under signature of Municipal (Town) Commissioner, Muzaffarpur Municipal Corporation, whereby and whereunder it is directed *inter alia* that according to decision of Empowered Standing Committee dated 27.10.2018 resolution no.21 at Sl.No.3, from those shop-owner whose period of agreement is yet to complete rent will be realized from them according to agreement and after completion of agreement and from those shop owners who have no agreement rent will be realized from enhanced rate. That is for wooden shop rent is enhanced from Rs.4.00 per sq ft. to Rs.8.00 per sq. ft. and concrete structure from Rs.7.00 to Rs.14.00.

(ii) A writ in nature of mandamus or any other writ or order or direction be issued directing and commanding the respondent authorities to provide basic amenities like urinal and drinking water to the shopkeepers of Jubba Sahani par and thereafter take step for execution of agreement.

(iii) Any other writ or order or direction to which the petitioners are found entitled by this Hon'ble Court may kindly be issued."

3. Mr. Sanjay Parasmani, learned counsel appearing on behalf of petitioners seeks to withdraw the present petition with a liberty to file a detail representation before the Muzaffarpur Municipal Corporation (Respondent no.3) for considering to reduce 100 % enhancement of the rent, which was being paid by the petitioners.

4. Learned counsel further informs that all the petitioners without default have been making payment of the



rent as per the earlier enhancement, which took place in the Year, 2013 and had not violated any original terms and conditions of the advertisement, pursuant to which the petitioners had been allotted their individual shops.

5. Learned counsel also informs that earning from the shops is the only source of income to sustain the livelihood of the petitioners.

6. Learned counsel admitted that the pleadings made with respect to the individual petitioners have not been stated in the present writ petition. The actual facts can be verified by the Municipal Commissioner with respect to each individual petitioners, if they file their application in individual capacity.

7. Mr. Anurag Saurav, learned counsel for the Muzaffarpur Municipal Corporation submitted that the petitioners must file their individual representation before the Municipal Commissioner without suppressing any fact. He further submitted that there is no question of perpetual lease agreement in absence of any pleading made to that effect in the present writ petition.

8. Having heard the rival submissions made on behalf of the petitioners, as well as, considering the limited reliefs sought for by the petitioners that the sympathetic approach can



be taken by the present Municipal Commissioner considering the fact that 100% rent has been enhanced, which the petitioners have been making payment since the Year, 2013 after its enhancement from the date the shop was allotted to them. The petitioners have admitted that the advertisement has not been brought on record, therefore, they are not aware of the terms and conditions and in what manner any advertisement in respect to enhancement of the rent by the Municipal Commissioner can be done unilaterally. In this regard, it would be gainful to reproduce relevant part of **Paragraph no.9** of the judgement delivered by the Apex Court in the case of **Yadlapati Venkateswarlu Vs. State of Andhra Pradesh & Anr.** reported in **1992 Supp (1) SCC 74 :**

“..... The power to tax is a sovereign power and is legislative in character and it has to be exercised within the constitutional limitations. The statutes relating to municipal taxes may be changed according to the existing legislative rules of State policy unless forbidden by the Constitution from doing so. Irregular assessment may also be regularized with retrospective effect within the same constitutional limitations. Where the court has not already declared invalid a taxing measure which was of doubtful validity it is permissible for appropriate legislature to validate it by retrospective legislation. No legal fiction is involved in such a case. Mr. Subba Rao's submission has, therefore, to be rejected.”

Thus, in absence of any notification by the Government regarding 100 % enhancement of rent could be



considered to be arbitrary and without jurisdiction. It is important for the Municipal Corporation to adhere to any regulations or notifications governing enhancement of rent to ensure fairness and legality, as per the rate prescribed by the Government.

9. Considering the aforesaid fact, I direct the Muzaffarpur Municipal Commissioner (respondent no.3) to call for the records relating to the allotment of the shops to the petitioners, as well as, the terms and the conditions of the advertisement, pursuant to which the petitioners were allotted different shops and the petitioners have been making payment of the rent, however, they have shown their inability to make payment of 100% enhanced rent, as such the Muzaffarpur Municipal Commissioner may take individual case of the petitioners and if the petitioners file their individual application making prayer for reduction in the rent, the individual application of the applicant, filed for reliefs as prayed for in the present writ petition, must be disposed of within a period of six weeks from the date of communication of this order in accordance with law.

10. The Municipal Commissioner may consider to reduce the rent, if the applications are filed, proportionately in



accordance with law.

11. With the above observation/direction, the present writ petition stands disposed of.

(Purnendu Singh, J)

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