

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1238 of 2024

In
Civil Writ Jurisdiction Case No.8328 of 2024

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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), son of Rajhans Mohini, resident of Puleshwari Bhawan. 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).

... .. Appellant/s

Versus

1. The State of Bihar through the Principal 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 Bunglow Chauraha, Frazer Road, Patna.
- 14. Sharma Crockery, Yusuf Building. Dak Bunglow Chauraha, Frazer Road, Patna.
- 15. Rohan Communication, Yusuf Building, Dak Bunglow Chauraha, Frazer Road, Patna.

... .. Respondent/s

Appearance :	
For the Appellant/s	: Mr. Ashok Kr. Choudhary, Sr. Advocate Mr. Akshansh Ankit, Advocate
For the State	: Mr. Yogendra Prasad Sinha, AAG-7
For the PMRCL	: Mr. S.D. Sanjay, Sr. Advocate Mr. Mohit Agarwal, Advocate Mr. Rahul Kumar, Advocate Mr. Lokesh Kumar, Advocate
For the PMC	: Mr. P.K. Shahi, Senior Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE NANI TAGIA
CAV JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 20-12-2024

The appellants impugn the judgment of the learned Single Judge, which declined interference to the order of the Municipal Commissioner dated 09.05.2024 in Demolition Case No. 1 of 2021. The appellants are licensees, in the building, by name ‘Yusuf Building’, carrying on commercial activities in the licensed premises, who essentially challenged the demolition order as one issued in connivance with the owner of the building, the 8th



respondent, to evict them without availing the legal remedies available under the Bihar Buildings (Lease, Rent & Eviction) Control Act, 1982 (for brevity 'Buildings Control Act, 1982').

2. We heard Shri Ashok Kumar Choudhary, learned Senior Advocate for the appellants, Shri P.K. Shahi, learned Senior Counsel for the Municipal Corporation and Shri S.D. Sanjay, learned Senior Advocate for the Patna Metro Rail Corporation Limited (for brevity 'PMRCL'). The State was represented by Shri Yogendra Prasad Sinha, learned AAG-7.

3. The learned Senior Counsel appearing for the appellants contended that the impugned order is devoid of any reasons as required under Section 278(6) of the Bihar Municipal Act, 2007 (for brevity 'Act of 2007') and hence is bereft of a valid satisfaction on the various factors enumerated under the provision to carry out a demolition. None of the factors delineated under clauses (a) to (g) of the provision has been considered by the Municipal Commissioner. It was also argued that there was absolutely no material on record to enable the Commissioner to arrive at a finding that the building in question is unfit for human habitation. Two reports were referred to in the order, one an inspection report dated 14.12.2023 by the Director, City Planning, Patna Municipal Corporation and the other a Pre-Construction Building Condition Survey dated 12.03.2024 carried out by the



PMRCL. The inspection was not conducted in the presence of the appellants or with a notice to them and the report was also not served on them. The report itself specifically indicates that the entire building was not inspected since the upper floors were locked and inaccessible. The Survey conducted by the PMRCL categorised the building as severe, only indicating that extensive repair involving removal and replacement of section of walls would be required; which does not really warrant a demolition. There was no technical personnel in the inspection team.

4. It is asserted that the appellants had undertaken to carry out the repairs of the building; in the context of the refusal of the owner, the 8th respondent so to do; consideration of which is a statutory mandate under Section 278(2) and (3) of the Act of 2007. The ongoing work of Patna Metro cannot result in a demolition; on a mere apprehension that the building will collapse by reason of the construction work of the tunnel, carried out in the vicinity. Reliance is also placed on the Metro Railways (Construction of Works) Act, 1978 (for brevity 'Act of 1978'), which has been adopted within the State of Bihar. Section 25 of the Act of 1978 specifically provides for compensation in the event of any damage, loss or injury sustained by a person's land, building, street, road or passage as a direct consequence of any power exercised by the Metro Railway Administration. The Municipal Commissioner, the



PMRCL and the 8th respondent are acting in cohorts to somehow evict the appellants. The appellants had also undertaken to close the business establishments carried on in the tenanted premises and cease all activities therein for the entire period of construction carried out by the Patna Metro. It is argued that the owner of the building has resorted to such action for demolition to bypass the remedy available under the Buildings Control Act, 1982. Reliance is also placed on the decision of the Hon'ble Supreme Court in ***Olga Tellis v. Bombay Municipal Corpn., (1985) 3 SCC 545*** to urge infringement of the fundamental rights guaranteed under Article 19 and 21 of the Constitution of India. The appellants are all eking out their livelihood from the tenanted premises and they cannot be evicted abruptly and un-ceremoniously; on the false allegation of the building having turned severe.

5. The learned Senior Counsel who appeared for the Municipal Corporation referred in detail to the order of the Municipal Commissioner. It is pointed out that the building in the heart of Patna City is more than 100 years old and if it is allowed to stand, it would definitely collapse, thus causing damage to public property, hindrance to free movement and even danger to life. The Patna Metro Rail Project is also an ambitious project of the State Government which has to be completed within the timeline. It is pointed out that as of now only the four appellants



remain in the building and the litigation is misconceived considering the dilapidated condition of the building, which is visible to the naked eye. All the other tenants have vacated, quite conscious of the dilapidated condition of the building and apprehending danger to themselves and their commercial establishments.

6. Learned Senior Counsel arguing for the PMRCL points out that PMRCL is not liable to pay any damages since there is no takeover proposed by the PMRCL nor has any loss been occasioned as of now. The owner of the building has sought for demolition long prior to the work of the Patna Metro Rail and the Municipality has passed an order of demolition finding the condition of the building to be unsafe. If at all the building collapses, while the work of Patna Metro Rail proceeds; it would be due to the condition of the building and not necessarily due to the impact of the construction work carried out. An essentially unstable building cannot be allowed to stand as has been already held by the local body, in which event, there arise no claim for compensation. The appellants cannot stall the demolition and then claim compensation if the building collapses when the work of the metro is proceeding.

7. The learned Senior Counsel for the appellants also contended that the entire exercise started in 2020 and till date



nothing has happened to the building. It is also argued that the building is not 100 years old, as has been claimed by the respondents. The tenants, who also have an interest in the building, were to be heard before the demolition is carried out.

8. We are not impressed with the argument raised by the learned Senior Counsel for the appellants that nothing has happened to the building for the last four years, during which time the proceedings in the demolition case was pending with the Municipality. The mere fact that the building did not collapse in the meanwhile is no reason for us to find stability of the building as against the inspection conducted both by the Corporation and PMRCL. The mere fact that the building stood for the last few years, after the threat of collapse arose, is no ground to assume that it will stand forever or even a few years more. We are also of the opinion that an undertaking to close down the business, while the construction of the Patna Metro Rail is going on, would not mitigate the perceived dangers that would ensue on the collapse of the building; which if not done under controlled circumstances would result in danger to the public even to the extent of causing loss of life.

9. On the legal aspects argued by the appellants, we looked at Section 278 of the Act of 2007, which is extracted hereunder:



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 works 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.

(3) If no such undertaking as is referred to in sub-section (2) is given, or if, in a case where any such undertaking has been given, the works of improvement to which the undertaking relates are not carried out within the specified period or the building is used in contravention of the undertaking, the Chief Municipal Officer shall forthwith make an order of demolition of the building requiring that the building shall be vacated within a period to be specified in the order, not being less than thirty days from the



date of the order, and demolished within six weeks on the expiration of that period.

(4) Where an order of demolition of a building under this section has been made, the owner of the building or any other person having an interest therein shall demolish such building within the period specified in the order, and if such building is not demolished within that period, the Chief Municipal Officer shall demolish the building and shall sell the materials thereof.

(5) Any expenses incurred by the Chief Municipal Officer for carrying out the purposes of sub-section (4) which cannot be met out of the proceeds of the sale of materials of the building, shall be recovered from the owner of the building or any other person having an interest therein as an arrear of tax under this Act.

(6) In determining, for the purposes of this section and section 335, whether a building is unfit for human habitation, regard shall be had to its condition in respect of the matters, such as,-

(a) repair,

(b) stability,

(c) freedom from damp,

(d) natural light and air, water-supply,

(e) water-supply,

(f) drainage and sanitary conveniences, and

(g) facilities for storage, preparation and cooking of food and for the disposal of rubbish, filth and other polluted matter; and the building shall be deemed to be unfit for human habitation only if it is so defective in one or more of the matters as aforesaid that it is not reasonably suitable for occupation in that condition.

(7) For the purposes of this section and section 335, "works of improvement", in relation to a



building, shall include any one or more of the following works, namely:-

- (a) necessary repairs,*
- (b) structural alterations,*
- (c) provision of light points and water taps,*
- (d) construction of drains, open or covered,*
- (e) provision of latrines and urinals,*
- (f) provision of additional or improved fixtures and fittings,*
- (g) opening up or paving of courtyard,*
- (h) removal of rubbish, filth and other polluted and obnoxious matters, and*
- (i) any other work including the demolition of any building or any part thereof which, in the opinion of the Chief Municipal Officer, is necessary for executing any of the works as aforesaid.*

(8) The provisions of this section and section 334 and section 335 shall not apply in relation to any building in any area which has been declared to be a slum area under any State law relating to improvement or clearance of slums.

10. Section 278(1) provides for the Chief Municipal Officer to proceed against a building which is unfit for human habitation and is not capable, at a reasonable expense of being rendered fit. A notice has to be issued on the owner of the building and any other person having interest in the building whether as a lessee or as a mortgagee. Hence, necessarily even the tenants are to be issued with a notice before a demolition case is proceeded with. In the present case, though a notice was not issued in Demolition Case No.01/2021, the petitioners approached this Court with a writ petition numbered as C.W.J.C. No.2242 of 2024



in which Annexure-P7 judgment was passed. Therein, the writ petitioners had specifically sought for approaching the Municipal Commissioner with their grievances by filing an appropriate representation. As of now, the order impugned in the writ petition was passed, after such representation was filed and the petitioners were heard. The ground raised of a hearing not having been afforded no longer survives.

11. Sub-Section (2) of Section 278 provides that if any person issued with a notice under sub-section (1), appears before the Chief Municipal Officer and furnishes 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 well as the Chief Municipal Officer, is of the opinion that this would render the building fit for human habitation, it shall be given due consideration. In the present case, at the time of consideration of demolition case, after disposal of Annexure-P7 judgment, in the representation dated 02.03.2024, the appellants assert they gave a specific undertaking to carry out repairs. The undertaking, as seen from the representation (paragraph no. 7), is extracted hereunder: -

vii. It is most humbly submitted before you that the said building is in good condition and the same can be restored in its full strength with minor scientific repairs if required. The applicants herein are ready to share the burden of such repairs, if



any with help of expert agencies. Thus, by allowing so by your office, the Applicants would be able to continue to run their business and livelihood.

12. Having read the undertaking, we are of the opinion that such a lackadaisical statement would not satisfy the requirements under sub-section (2). The appellants have averred that they had consulted Structural Engineers who have assured them that the building is not in an unstable condition. No such study report has been produced to substantiate the above contention. The appellants have not placed any concrete proposal for repair of the building for the Commissioner to examine as to whether, it would render the building fit for human habitation. Further, the contention taken of an undertaking to carry out repairs, while also asserting that the building is not in danger; would be mutually destructive and clearly demonstrate the appellants attempt to cling on to the tenancy, somehow or other. Whether such repairs could have been made by the appellants in the subject building, has to be considered looking at the defects pointed out as also the area of the building; which we would do at the time of consideration of the impugned order. We cannot but find the bland statement; styled as an undertaking, without any efforts in that direction, to be lacking in *bona fides* and not sufficient for the Corporation to desist from proceeding with the demolition case.



13. Sub-Section (3) provides that, if no undertaking, as is referred to in sub-section (2) is given, the Chief Municipal Officer shall proceed with the demolition case and make an order of demolition of the building, requiring that the building shall be vacated within a period not less than 30 days from the date of the order. Sub-Section (6) has been specifically referred to by the learned Senior Counsel to contend that the requirements in the above provision; which alone can lead to a satisfaction, warranting an order of demolition, has not been complied with. We cannot but notice that it is not the statutory mandate that all the conditions delineated under clauses (a) to (g) or more than one such condition, has to be found for an order of demolition to be passed. The specific statutory dictate is that a building will be deemed to be unfit for human habitation only if it is so defective in one or more of the matters mentioned in clauses (a) to (g). The circumstances which lead to the present order of demolition, as we see from the order of the Municipal Commissioner, is repair and stability, as stated in clauses (a) and (b) of Section 278(6).

14. Now, we refer to the order of the Municipal Commissioner, the operative portion of which is in paragraph no. 13, a translation of which was obtained by us from the Registry. Paragraph no. 8 of the order specifically refers to the judgment of this Court produced as Annexure-P7 and the dates on which the



appellants were issued with notice along with the Deputy General Manager, Patna Metro Rail Corporation. The technical team of the Municipal Corporation, as early as on 21.10.2020, had examined the building and found defects, which are extracted hereunder: -

1. Yusuf Building is very old G+2+3 (Part) structure and it is 13.32 meter high.

2. Whole structure is based on brick pillar (not RCC) and so many holes on the pillar is apparently visible. The load bearing capacity of these pillars have decreased.

3. Roof slab is constructed with the use of steel angle and bar which is rusted and is in pathetic condition. Plaster and concrete cover has fallen out. So many cracks appear in the structure.

4. Balcony and Parapet is damaged in so many stretches. Steel used in this structure looks naked and rusted.

5. Wiring of electricity for this building is in a haphazard manner and it is hanging down in some places. It is very dangerous.

15. On an assessment of the report, the Municipal Commissioner had directed demolition by order dated 08.02.2021 specifying certain conditions. The conditions were that, the entire demolition would be at the expense of the owner of the building that, the area around the building including the safety of the other buildings, vehicles and citizens would be the responsibility of the owner that, the reconstructed sewerage, drain, electricity and telephone cables should be kept safe, that, the traffic system of the Dak Bungalow crossing should not be affected, that removal and disposal of debris shall be carried out at 10:00 p.m. at night and



that, the demolition should be carried out after covering the entire area with green mesh and air pollution should be avoided by sprinkling water from time to time. The owner, however, expressed inability to ensure that the traffic system is not hampered as also safety of the pre-constructed sewerage etc, and offered to pay the entire expenses, if the demolition is carried out by the Corporation. Admittedly, the said order was passed without notice to the appellants, who are the tenants but as per Annexure-P7 order, they were heard and the present order was passed.

16. In the impugned order, the inspection report of the Municipality was relied on. The counter affidavit filed, has quoted from the Inspection Report of 16.09.2020, specifically pointing out that the subject building, which is called the 'Yusuf Building' has ground plus 2+3 floors with a height of 13.32 meters. The whole structure is based on brick pillars and holes were apparently visible in the brick pillar decreasing the load bearing capacity of the pillars. The roof slabs constructed with steel; angles and bars were rusted, which were visible since plaster and concrete had fallen out, with cracks visible on the roof. The balcony and parapet were damaged at many stretches and the steel used in the structure was naked and rusted. Wiring of electricity in the said building was also in a haphazard manner and it hangs down in some places. The said report was sent to the Municipal



Commissioner and the same was enclosed as Annexure-R2/D in the counter affidavit. The conclusion of the report was as below: -

“It is pertinent to say that due to rusting of reinforcement; bonding strength of the bar has decreased. Whole structure is in very bad condition as far as its strength part is concerned. In light of above mentioned facts, repair/ retrofitting should be done as soon as possible.”

17. Admittedly, as observed earlier, no such repair or refitting was done but for a bland undertaking given by the appellants to do the repairs. The appellants also made no efforts to carry such repair or refitting especially in the context of the owner having submitted that such repair was not feasible; considering the age of the building. In addition to the above inspection report, the Metro Rail Corporation had also conducted a survey titled Pre-Construction Building Condition Survey with respect to the buildings coming within the impact area of construction of metro rail, which was also submitted to the Municipal Corporation at the time of hearing. The same is produced as Annexure-R/10-A along with the counter affidavit filed by Respondent Nos.10 to 12 dated 01.07.2024.

18. The degree of damage in the Survey carried out was categorized as ‘severe’ with the description as below: -

“Extensive repair involving removal and replacement of sections of walls, especially over doors and windows required. Windows and door frames distorted. Floor slopes noticeably. Walls lean or bulge noticeably, some loss of bearing in



beams. Utility services disrupted.”

The survey carried out by the PMRCL was relied on by the Municipal Commissioner only as an additional material which more than supported the inspection carried out by the Officers of the Municipality. The inspection of the Municipality and the survey carried out by the PMRCL definitely puts the building in the category of a severe hazard; especially in the context of the construction work being carried out, of the Patna Metro Rail. Section 25 of the Metro Railways (Operation and Maintenance) Act, 2002 only provides for damage, loss or injury occurring by reason of any work carried out, which has to be compensated by the Metro Rail Administration. As of now, no loss or damage has been caused and what is apprehended is that the building itself will collapse due to the impact of the tunneling work to be carried on in the vicinity of the building. There is no question of an anticipated loss, damage or injury being assessed especially when the condition of the building itself is dilapidated and severe. The collapse of such a building, on the impact of the work cannot be mulcted on the Metro Rail Administration since, it is the inherent instability of the building, which would result in the collapse. It is not as if the PMRCL is seeking for demolition of buildings in the area where the impact of its work is apprehended. The apprehension of the PMRCL is that the collapse of the unstable



building; which has been categorized by the Patna Municipal Corporation itself, way back in 2020 as not fit for human habitation, would be hastened causing loss and damage in an around the area as also to the life of citizens.

19. Having considered the inspection report of the Municipal Commissioner, which is amply supported by the Survey carried out by the PMRCL, we are of the opinion that larger public interest requires demolition of the building. The appellants are running commercial establishments in the dilapidated building which commercial activities can be continued only if the public visits the premises regularly; which would be dangerous not only to those persons from the public coming to the building but also to the appellants themselves and their employees. Further, the size of the building is such that the collapse would cause danger to the public at large; the movable and immovable assets in the vicinity and also to the life of the citizens in and around the building. The very fact that the petitioners undertook to close down their establishments while the Metro Rail construction is carried out indicates that the apprehension of a collapse, is real. As we observed, a collapse other than under controlled circumstances would result in mishaps which cannot be anticipated as of now. The public interest, we emphasized, is not as much relatable to the construction of the Patna Metro Rail, but more in the context of an



imminent collapse of the building, which is a danger posed to the general public. The appellants are four in number and there are three other establishments also referred to in the interim order dated 05.09.2024 in the writ petition (impleaded as Respondent Nos. 13 to 15); which indicates a meager presence of tenants in the building.

20. On the totality of the circumstances, we are of the opinion that the demolition case is not an attempt to get the tenants evicted, some-how or the other. But for a bland assertion there is no substantiation of the allegation of collusion and connivance by the respondents. The 8th respondent, who is the owner of the building only seeks demolition of the building and if there is a new construction proposed, definitely the earlier tenants would be entitled to resumption and possession, on such altered terms, if such right is provided under any statute. We would not comment on the same at this juncture, especially since no argument was raised on that count; which cause could be agitated before an appropriate forum at the appropriate time. The appellants right to livelihood, has to succumb to the larger public cause; insofar as avoidance of large-scale damage and loss of life which could be caused if the building collapses by itself.

21. On the above reasoning, we are of the opinion that there is absolutely no valid ground to interfere with the



judgment of the learned Single Judge and we dismiss the appeal.

We grant the appellants and the Respondent Nos. 13 to 15 one week’s time, from today, to vacate the premises, failing which the Corporation would take vacant possession of the building.

22. The appeal stands dismissed.

(K. Vinod Chandran, CJ)

Nani Tagia, J: I agree

(Nani Tagia, J)

Anushka/Sharun-

AFR/NAFR	
CAV DATE	17.12.2024
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