

**(2019) 10 JH CK 0018**  
**In the Jharkhand High Court**  
**Case No : Writ Petition (c) No. 2524 Of 2019**

|                                                 |            |
|-------------------------------------------------|------------|
| Bharat Engineering & Body Building Co. Pvt. Ltd | APPELLANT  |
| Vs                                              |            |
| State Of Jharkhand And Ors                      | RESPONDENT |

**Date of Decision :** 22-10-2019

**Acts Referred:**

Jharkhand Municipal Act, 2011 — Section 387  
Constitution Of India, 1950 — Article 226

**Citation :** (2019) 10 JH CK 0018

**Hon'ble Judges :** Sujit Narayan Prasad, J

**Bench :** Single Bench

**Advocate :** R.S. Mazoomdar, Pati & Kumar Vaibhav, Ankit Kumar, Amarendra Kumar

**Final Decision :** Disposed Of

## Judgement

This writ petition is under Article 226 of the Constitution of India, whereby and whereunder the petitioner being aggrieved with the action of the respondent no.5 who is making an alteration in the building without resorting to any provision as provided under Jharkhand Municipal Act, 2011, has assailed the same.

It is the grievance of the petitioner as has been agitated in the writ petition that he is tenant of erstwhile owner of the building which has been sold out in favour of the respondent no.5, who has pasted a notice in the building showing therein about the condition of building which according to the respondent no.5 is not inhabitable.

It is the further grievance of the petitioner as has been stated in the interlocutory application being I.A. No.9769 of 2019 by annexing photograph that the respondent no.5 has also started demolishing the building and therefore, the petitioner is compelled to live in open sky which according to the petitioner is highly illegal and improper since even if accepting the fact that the condition of building is not inhabitable, the subsequent purchaser, respondent no.5, ought to have approached the Municipal Authority, wherein under Section 387 of the

Jharkhand Municipal Act, 2011 provision has been made to deal with such situation.

It has further been stated that the said illegal action has also been reported to the respondent nos.2 and 3 but having no effect.

Mr. Ankit Kumar, learned A.C to G.P-IV for the State of Jharkhand has stated that under the Jharkhand Municipal Act, 2011, the Jamshedpur Notified Area Committee has been conferred with the power to deal with such situation and under Section 387 of the Act, 2011 it is the Municipal Authority who has to take appropriate action, if such situation exists.

Mr. Amarendra Kumar, respondent no.4 has submitted that no such complaint has ever been made by the petitioner or the respondent no.5 for resorting to the provision under Section 387 of the Act, 2011, however, he has submitted that now it has come to the knowledge of the respondent no.4 and as such appropriate action would be taken in accordance with law.

This Court after having heard learned counsel for the parties and considering the fact that the petitioner is being sought to be disturbed by demolishing the building in the garb that it is not inhabitable, the prime question is that if a building is not inhabitable who is to give such declaration.

The statute provides provision to deal with such situation and if any complaint would be made by the landlord or anybody aggrieved with respect to the conditions of the building before the Municipal Authority who is required to resort the provision under Section 387 of the Jharkhand Municipal Act, which reads as under:

"Section 387. Power to order demolition of building unfit for human habitation-

(1) Where, upon information in his possession, the Municipal Commissioner or the Executive 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 Municipal Commissioner or the Executive Officer and gives an undertaking that he shall, within a period specified by the Municipal Commissioner or the Executive Officer, execute such works of improvement in relation to the building as will, in the opinion of the Municipal Commissioner or the Executive Officer, render the building fit for human habitation or that the building shall not be used for human habitation until the Municipal Commissioner or the Executive Officer on being satisfied that it has been rendered fit for such habitation, the Municipal Commissioner or the Executive 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 Municipal Commissioner or the Executive 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 sub section (3) 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 Municipal Commissioner or the Executive Officer shall demolish the building and shall sell the materials thereof.

(5) Any expenses incurred by the Municipal Commissioner or the Executive 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) Any person who fails to comply with the notice issued by the Municipal Commissioner or the Executive Officer under sub-section (1) shall be liable to a fine not exceeding two thousand rupees and to a further fine of two hundred rupees for every day during which the default is continued after the expiration of eight days from the date of service on him of such notice.

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

(a) repair,

(b) stability,

(c) freedom from damp,

(d) natural light and air,

(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 factors as aforesaid that it is not

reasonably suitable for occupation in that condition.

(8) For the purposes of this section, "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 Municipal Commissioner or the Executive Officer, is necessary for executing any of the works as aforesaid.

(9) The provisions of this section 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."

Since learned counsel for the respondent no.4 has submitted that no complaint has been made either by the respondent no.5 or by the petitioner but as would appear from the photographs that the building is being demolished by the respondent no.5.

Learned senior counsel for the petitioner is admitting the fact that no such complaint has been made before the respondent no.4, however, he submits that he will make representation before the respondent no.4 as such the writ petition is disposed of with liberty to the petitioner to make representation before the respondent no.4 with all details for its consideration, if such complaint would be made within two weeks, appropriate decision would be taken by the respondent no.4 in accordance with law.

Needless to say that while taking such decision the respondent no.5 shall be provided with an opportunity of hearing.

Since this Court is directing the respondent no.4 to take decision complaint if made by the petitioner within a period of two weeks as such since the building in question is being demolished by the respondent no.5 by pasting a notice as would appear from page no.66 to the brief, the same cannot be said to be a proceeding in accordance with law and therefore, this Court is of the view that status quo is required to be maintained pertaining to the condition of the building.

The validity of the status quo is for a period of two weeks, subject to further extension by the respondent no.4, if situation so arise and upon hearing the respondent no.5.

The writ petition is accordingly, disposed of.

Consequently, I.A. No.9769 of 2019 also stands disposed of.