
(2011) 04 PAT CK 0039
In the Patna High Court
Case No : CWJC No. 17589 of 2009

Giridhar Kumar Sharma

APPELLANT

Vs

The Patna Municipal Corporation and Others

RESPONDENT

Date of Decision : 28-04-2011

Acts Referred:

Citation : (2011) 04 PAT CK 0039

Final Decision : Allowed

Judgement

Navin Sinha, J.—Heard learned Counsel for the Petitioner, the Patna Municipal Corporation and private Respondent Nos. 4 to 6.

2. The Petitioner is a tenant in the suit premises purchased by the Respondents 4 to 6 who have filed Title Suit No. 162/98 for his eviction. The relief sought in paragraph-18 of the plaint acknowledges the tenancy status originating in 1995 with the grand father of the Petitioner but urges that after his death, the possession was permissive. A decree for eviction was prayed for and that the Defendant (Petitioner) be directed to vacate suit premises within a reasonable period fixed by the Court failing which possession be delivered to the Plaintiff over the suit premises after dispossessing the Defendants (Petitioner). It is not in dispute that the suit is still pending. Respondents 4 to 6 have filed a counter affidavit. The tenancy occupation of the Petitioner is not a controversy.

3. Respondents 4 to 6 are stated to have filed an application before the Patna Municipal Corporation that the tenanted premises were unsafe and were required to be demolished. No copy of the same has been brought on record by them in their counter affidavit. Paragraph-26 of the plaint states that the house was in a badly ruined and dilapidated condition and had become dangerous for life and property. Paragraph-24 of the plaint states that the Respondents as Plaintiffs made persistent demands for vacating the premises. Paragraph-18 of the plaint states that the Defendants had refused to vacate the premises. Paragraph-17 states that the Respondents required the holding for their own use and occupation and had to construct a new building after demolishing the old ruined

and dilapidated building.

4. The Municipal Commissioner, Patna Municipal Corporation then ordered demolition on 30.7.2008. The Petitioner filed an objection on 6.8.2008 that he was in possession of the premises, he had not been heard and that the building was in proper condition including the pendency of the title suit filed by the private Respondents. The Petitioner obtained copies of the file noting dated 29.8.2008 of the Chief Engineer that the Petitioner was required to be heard duly endorsed by the superior on 3.9.2008. In the meantime, the Patna Municipal Corporation demolished the premises on 30.8.2008.

5. The present writ application was filed on 14.12.2009 after serving an extra copy on the counsel for the Patna Municipal Corporation on 24.11.2009. The second copy was to facilitate and enable the expeditious filing of a counter affidavit by the Patna Municipal Corporation to assist this Court in quick and timely dispensation of justice. This Court on 9.3.2010 noticed the grievances of the Petitioner of high handed arbitrary action done by the Patna Municipal Corporation on whose behalf time was sought to file counter affidavit while notice was issued to Respondents 4 to 6. Demolition having been done, this Court restrained further construction on the suit lands.

6. No counter affidavit has been filed on behalf of the Patna Municipal Corporation. Learned Counsel for the Patna Municipal Corporation is unable to explain to the Court why a period of nearly one and a half years has been considered insufficient by the Corporation to file a counter affidavit. He prays for some more time to file counter affidavit. The Court is satisfied that in the nature of the allegations, any further latitude to the Patna Municipal Corporation shall only be at the expense of denying justice to the Petitioner. In the nature of the allegations each day's delay becomes vital. If this Court were to go on adjourning the matter at the request of the Patna Municipal Corporation, justice shall not be delayed, but buried. The Court rejects the prayer for further adjournment.

7. Learned Counsel for the Petitioner submits that the procedure for demolition of an unsafe or dangerous building, is provided for in Section 336 of the Bihar Municipal Act, 2007 (hereinafter referred to as the Act). It mandates a finding by the Chief Municipal Officer that the building was in a ruinous state, likely to fall, dangerous. Thereafter notice was required to be served on the owner or put on some conspicuous part of the wall or building and served on the occupier, first requiring the owner or occupier to demolish, repair or secure. The Chief Municipal Officer was then required to give a notice to vacate the building after he had arrived at his satisfaction with regard to the ruinous state of the building. The Patna Municipal Corporation with overzealous enthusiasm in abuse of its powers swung into action at the behest of the private Respondents without any notice to the Petitioner as an occupier or notice to vacate the premises on any application that may have been filed by the private Respondents. The impugned order dated 30.7.2008 came to be passed straightaway to his detriment. He had

objected in writing on 6.8.2008 that the building was not in a dilapidated condition and that there was a suit pending. The Chief Engineer on 29.8.2008 prima facie found justification in his objections. It is asserted that thereafter the file was deliberately suppressed till it surfaced on 3.9.2008 with an endorsement to hear him by the superior authority. In the meantime, while the file was kept suppressed in the Corporation demolition took place on 30.8.2008. The contention thereafter is that the demolition done as a short-cut to the relief sought in the eviction suit is completely illegal and the Petitioner is not only liable to be restored possession, but also compensation.

8. Learned Counsel for the Patna Municipal Corporation submitted that the Petitioner may have been heard before the impugned order dated 30.7.2008 came to be passed. This is a question of fact. No material has been placed on behalf of the Patna Municipal Corporation. On the contrary, the documents that have come on record read in conjunction with the counter affidavit of the private Respondents satisfies the Court that no such hearing was granted to the Petitioner. The impugned order dated 30.7.2008 is a statutory order passed under Section-336 of the Act. It does not state that the occupier was noticed and/or that the occupier had been asked to vacate for purposes of demolition the building being ruinous. There is no discussion of the nature of the building and how it was dangerous or ruinous. It straightaway proceeds to demolish. The submission on behalf of the Corporation is only stated to be rejected. It stands confirmed from the file noting of the Chief Engineer given to the Petitioner under the Right to Information Act on 29.8.2008 that it was only after the Petitioner represented on 6.8.2008 that the authorities acknowledged the need to hear him. That the statutory provision of Section-336 of the Act was not followed by the Corporation goes beyond the pale of controversy. No submission has been made on behalf of the Corporation that the cost for demolition has been recovered from the private Respondents as required statutorily. Was it a benevolence conferred by the Corporation for a consideration?

9. Learned Counsel for the private Respondents made similar submission that it remains a question of fact whether the Petitioner was heard or not. It was next submitted that the Petitioner can seek appropriate remedies in the pending title suit itself. The counter affidavit however does not enclose any documentary evidence of notice issued by the Corporation to the Petitioner if the private Respondents could have explained the same in absence of any explanation forthcoming from the Patna Municipal Corporation itself. A bald assertion has been made at paragraph-7 of the counter affidavit by the private Respondents that "an enquiry was conducted by the Government Respondents and during the course of the enquiry verification had been conducted by the authority requiring disclosure of dangerous house as well as demolition procedure which was in full knowledge of writ petition." Even as per these pleadings there is no statement that notice was issued to the Petitioner as an occupier. On the contrary, the pleadings amount to a tacit admission that no notice was given. No submission has been made that they have paid the cost of demolition to the Corporation as

statutorily required. The deep seated conspiracy is writ large.

10. Section-336 of the Act reads as follows:

336. Power to order removal of dangerous buildings. - (1) If any wall or building, or anything affixed thereto, is deemed by the Chief Municipal Officer to be in a ruinous state, or is likely to fall, or to be in anyway dangerous, he shall forthwith cause a notice, in writing, to be served on the owner and to be put on some conspicuous part of the wall or building or served on the occupier, if any, of the building requiring such owner or occupier to forthwith demolish, repair, or secure such wall, building or thing, as the case may require.

(2) The Chief Municipal Officer may, if it appears to him necessary to do so, cause a proper hoarding or fence or other means of protection to be put up at the expense of the owner of such wall or building for the safety of the public or the inmates thereof: and may, after giving them such notice as the Chief Municipal Commissioner may think necessary, require the inmates of the building to vacate it.

(3) The provisions of this Act and of any rules and regulations made thereunder relating to buildings shall apply to any work done in pursuance, or in consequence, of a notice issued under Sub-section (1).

(4) (a) Notwithstanding anything contained in the foregoing provisions of this section, the Chief Municipal Officer may, forthwith or with such notice as he thinks fit, demolish, repair or secure or cause to be demolished, repaired or secured, ay such wall or building or thing affixed thereto, on the report of the Municipal Architect and Town Planner, certifying that such demolition, repair or securing of the building, wall or thing is necessary for the safety of the public or the inmates of the building.

(b) In any such case, the Chief Municipal Officer may cause the inmates of the building to be summarily removed from such building or from such portion thereof as he may consider necessary.

(c) All expenses incurred by the Chief Municipal Officer for carrying out the purposes of this Sub-section shall be paid by the owner of such, wall, building or thing.

(5) Anything done or any action taken by the Chief Municipal Officer under Sub-section (4) shall, unless the contrary is proved, be deemed to have been done or taken lawfully and in good faith.

11. If the Statute prescribes a procedure, the power under that provision can be exercised only in the manner prescribed and in no other manner. Any action contrary to the statutory procedure prescribed is a nullity as it tantamount to abuse of statutory powers.

12. In Gujarat Electricity Board Vs. Girdharlal Motilal and Another, , it has been explained at paragraph 5 that:

5. These provisions confer a power on the State Electricity Board to purchase the property of the licensee but that right can be exercised only in the manner provided in the Act and not in any other way. It must be remembered that the provisions in question empower the State Electricity Board to interfere with the property rights of the licensee. Therefore such a power will have to be strictly construed. The legislature has prescribed a mode for the exercising of that power and hence that power can be exercised only in that manner and in no other manner.

13. A pre-condition to the exercise of statutory power is a determination that the building was in a ruinous state likely to fall or dangerous. A mere recital of the statutory provision mechanically shall not suffice. It is implicit and inherent in the statutory provision that a brief recital has to be made of the condition of the building and inspection made on a disclosed specified date and a preliminary recording of reasons with regard to the condition of the building to conclude how it was unsafe for human habitation. This power may be exercised suo motu or on an application made by the owner. It was mandatory to serve notice on the occupier. The use of the words "were served on the occupier, if any," cannot be construed as directory, but only mandatory, otherwise it may facilitate an unjust owner from adopting a short method against the occupier for eviction. The Statutory provision is clear and unambiguous that if there is an occupier he has to be served notice. After the occupier is heard, there had to be a specific order requiring the inmates to vacate the building. Demolition cannot be ordered straightaway. The facts of the present case are eloquent and speak for themselves. The private Respondents file a suit and seek eviction of the Petitioner. They acknowledge his possession. They acknowledge that he is refusing to vacate. They acknowledge that they wish to demolish and raise their construction. To overcome the eviction suit which is still pending, a short-cut method is then adopted by approaching the Patna Municipal Corporation whose officials seemed only too eager to help by abuse of their statutory powers naturally for a money consideration. The conclusive finding of fact of the Court is that there has been complete violation of the statutory provision of Section-336 of the Act in all its aspects. It is not without reason and very justified that the Chief Engineer on 29.8.2008 opined that the Petitioner should be heard. The reference to Section-379(2) however was totally misconceived as it had no application to the facts of the case and therefore needs no further discussion as it is not the case of the Corporation that any notices under Section-377 of the Act had been served upon the Petitioner.

14. In *Shadi Singh Vs. Rakha*, at paragraph 6 the Supreme Court has held as follows:

6. ...The test in each case is whether it is absolutely necessary to have the tenant evicted to carry out repairs or structural alteration for making the demised building safe and fit for human habitation. Further it is to be asked whether the repairs are so fundamental in character and extensive which cannot

be carried out without evicting the tenant from the building or while the tenant remained in occupation. If the repairs could be carried out without disturbing the possession of the tenant, the need for eviction is a mere wish of the landlord or a ruse to have the tenant evicted....

15. The Court on the facts of the present case returns a conclusive finding that there shall be no presumption in favour of the officials of the Patna Municipal Corporation under Section-336(5) of having acted lawfully and in good faith. The finding arrived at by the Court is completely to the contrary.

16. Deprecating forceful demolition contrary to law the Supreme Court in *Bishan Das and Others Vs. The State of Punjab and Others*, holds as follows:

14. Before we part with this case, we feel it our duty to say that the executive action taken in this case by the State and its officers is destructive of the basic principle of the rule of law. The facts and the position in law thus clearly are (1) that the buildings constructed on this piece of Government land did not belong to Government, (2) that the Petitioners were in possession and occupation of the buildings and (3) that by virtue of enactments binding on the Government, the Petitioners could be dispossessed, if at all, only in pursuance of a decree of a Civil Court obtained in proceedings properly initiated. In these circumstances the action of the Government in taking the law into their hands and dispossessing the Petitioners by the display of force, exhibits a callous disregard of the normal requirements of the rule of law apart from what might legitimately and reasonably be expected from a Government functioning in a society governed by a Constitution which guarantees to its citizens against arbitrary invasion by the executive of peaceful possession of property.

17. In *AIR (1996) S.C.W 2539 (Samir Sobhan Sanyal v. Tracks Trade Pvt. Ltd.)* the Appellant was a tenant in the premises in question. The land lady had entered into an agreement with the developer for sale of the property. A suit for specific performance was filed and certain interim relief sought in which the Appellant was kept completely in the dark and not made a party even. Forcible demolition followed. The Supreme Court at paragraph-6 of the judgment held as follows:

6. ...Since the letter of the law should strictly be adhered to, we find that high handed action taken by the Respondent Nos. 1, 3 and 6 in having the Appellant dispossessed without due process of law, cannot be overlooked nor condoned. The Court cannot blink at their unlawful conduct to dispossess the Appellant from demised property and would say that the status quo be maintained. If the Court gives acceptance to such high handed action, there will be no respect for rule of law and unlawful elements would take hold of the due process of law for ransom and it would be a field day for anarchy. Due process of law would be put to ridicule in the estimate of the law abiding citizens and rule of law would remain a mortuary.

18. If the judgment of the Supreme Court be a far cry for the Corporation it has

more to be answered in the judgment of this Court following the same in Hindusthan Petroleum Corporation Ltd. Vs. The State of Bihar and Others holding at paragraph-53 as follows:

53. Demolition of structures can never be used as a handy substitute for eviction of tenants and lessees. This has precisely been done in this case. These aspects of the case, if I may say, in the language of Supreme Court are remarkable for their disturbing implications Ram Prasad Narayan Sahi and Another Vs. The State of Bihar and Others, Thus rule of law has been circumvented and overreached. The college authorities knew it very well that in order to evict the Petitioner company it will have to file a suit. In stead of doing that, the so-called understanding was reached with P.R.D.A. Authorities and by demolishing the structure, the Petitioner company has been got rid of. This Court strongly condemns this subversion of rule of law by the P.R.D.A. authorities at the instance of the college authorities.

19. It was further held at paragraph-60 as follows:

60. This Court also feels that by their illegal acts the P.R.D.A. authorities have not only demolished the structure of the Petitioner company, they have at the same time caused a severe dent to the edifice of the rule of law on which is based the administration of justice. Justice is, as is well known, rooted in confidence. When ordinary men seek that suddenly the structures of a petrol pump which were there for almost the last forty years and which was bona fide carrying on its business are raged to the ground at the instance of the governmental authorities and with the help of police, they would obviously go away thinking that liberty and property of people are at the total mercy of the government and its men. That in stead of there being a government of laws, it has degenerated into a government of men. This would certainly shock their faith in the efficacy of the judicial system. At least this wanton display of arrogance on the part of the executive authority has shocked the conscience of the Court.

20. Costs were imposed on the authority with liberty to the Petitioner to file appropriate proceedings in the civil court for realization of damage.

21. In Satyapal Singh Vs. Union of India (UOI) and Another, the Supreme Court has observed at paragraph 10 that where a litigant suffers due to the conduct of another, the costs may be directed to be paid to the sufferer.

22. That brings to the fore the question of the nature of the relief to be granted. Demolition has taken place on 30.8.2008. The private Respondents have filed an eviction suit. Quite obviously, the Petitioner must have made alternative arrangements for his habitation and this Court on 9.3.2010 had already observed that demolition having taken place no further interim relief could be granted except to stay further construction. The Court therefore permits the Petitioner, if he so desires, to raise temporary constructions only on the lands in question in accordance with law. The Court further holds that he continues to be a tenant of the land area on which the premises stood. He retains physical possessory rights

on the same and no one, either the Corporation or the private Respondents, can interfere with his enjoyment of the same except in accordance with law. Till the Petitioner is not vacated from the lands in question in accordance with law or till the private Respondents do not obtain the judgment and decree of a competent Court of Law to that effect, the Patna Municipal Corporation is restrained from any considering any building plan for the area in question which may include the area of the disputed premises.

23. Every man's home is his castle. The right to have his home unless interfered by a valid law is but a facet of the right to life under Article 21 of the Constitution of India. The right to life shall include the right to have the safety of his house and roof for him and his family.

24. The Court has no hesitation in arriving at the finding that it is not without reason that the Patna Municipal Corporation is refraining from filing a counter affidavit. Perhaps, those responsible find their actions indefensible and the bonhomie that may have existed between them and the private Respondents quite obviously for money consideration has become a thorn in the flesh and therefore they do not desire to file any counter affidavit.

25. The Court finds it very difficult to appreciate the conduct of the officials who man the Corporation when they hold their posts in a fiduciary capacity given in trust to them by the Corporation to protect the interests of the Corporation, uphold the Rule of Law and not to abuse their powers. If any abuse of the power is committed, the answerability is individual and not institutional. Those who malign the institution must bear the consequences of their own actions and they cannot take shelter behind the institutional fabric. In Ghaziabad Development Authority Vs. Balbir Singh, the law as discussed is that:

In Farrington v. Thompson the Supreme Court of Victoria awarded damages for exercising a power the authorities knew they did not possess. A licensing inspector and a police officer ordered the Plaintiff to close his hotel and cease supplying liquor. He obeyed and filed a suit for the resultant loss. The Court observed:

Now I take it to be perfectly clear, that if a public officer abuses his office, either by an act of omission or commission, and the consequence of that is an injury to an individual, an action may be maintained against such public officer.

26. In Sandvik Asia Ltd. Vs. Commissioner of Income Tax-I, Pune and Others, it was ordered at paragraph 49 that:

49. This is the fit and proper case in which action should be initiated against all the officers concerned who were all in charge of this case at the appropriate and relevant point of time and because of whose inaction the Appellant was made to suffer both financially and mentally, even though the amount was liable to be refunded in the year 1986 and even prior thereto. A copy of this judgment will be forwarded to the Hon'ble Minister for Finance for his perusal and further

appropriate action against the erring officials on whose lethargic and adamant attitude the Department has to suffer financially.

27. Again in Rudul Sah Vs. State of Bihar and Another, it was observed that:

If civilisation is not to perish in this country as it has perished in some others too well known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the Petitioner's rights. It may have recourse against those officers.

28. In Lucknow Development Authority Vs. M.K. Gupta, it has been observed at paragraph 11 as follows:

11. Today the issue thus is not only of award of compensation but who should bear the brunt. The concept of authority and power exercised by public functionaries has many dimensions. It has undergone tremendous change with passage of time and change in socio-economic outlook. The authority empowered to function under a statute while exercising power discharges public duty. It has to act to subserve general welfare and common good. In discharging this duty honestly and bona fide, loss may accrue to any person. And he may claim compensation which may in circumstances be payable. But where the duty is performed capriciously or the exercise of power results in harassment and agony then the responsibility to pay the loss determined should be whose? In a modern society no authority can arrogate to itself the power to act in a manner which is arbitrary. It is unfortunate that matters which require immediate attention linger on and the man in the street is made to run from one end to other with no result. The culture of window clearance appears to be totally dead. Even in ordinary matters a common man who has neither the political backing nor the financial strength to match the inaction in public oriented departments gets frustrated and it erodes the credibility in the system. Public administration, no doubt involves a vast amount of administrative discretion which shields the action of administrative authority. But where it is found that exercise of discretion was mala fide and the complainant is entitled to compensation for mental and physical harassment then the officer can no more claim to be under protective cover. When a citizen seeks to recover compensation from a public authority in respect of injuries suffered by him for capricious exercise of power and the National Commission finds it duly proved then it has a statutory obligation to award the same. It was never more necessary than today when even social obligations are regulated by grant of statutory powers. The test of permissive form of grant is over. It is now imperative and implicit in the exercise of power that it should be for the sake of society. When the court directs payment of damages or compensation against the State the ultimate sufferer is the common man. It is the tax payers' money which is paid for inaction of those who are entrusted under the Act to discharge their duties in accordance with law. It is, therefore, necessary that the Commission when it is satisfied that a complainant is entitled to compensation for harassment or mental agony or

oppression, which finding of course should be recorded carefully on material and convincing circumstances and not lightly, then it should further direct the department concerned to pay the amount to the complainant from the public fund immediately but to recover the same from those who are found responsible for such unpardonable behaviour by dividing it proportionately where there are more than one functionaries.

29. The Patna Municipal Corporation is directed to pay costs of Rs. 1,00,000/- to the Petitioner whose house is stated to have been demolished. The costs shall be paid by the Patna Municipal Corporation within a maximum period of three weeks to the Petitioner. Thereafter the Patna Municipal Corporation shall proceed to hold an enquiry and recover the costs from the salary of the officials who not only ordered but also effected the demolition abusing their statutory powers within one month of such deposit. The Secretary, Urban Development, shall ensure that this enquiry is held and the costs recovered from the salary of the officials concerned. In no event shall the Corporation bear the financial burden for the misadventures in the abuse of statutory powers by its officers. The Secretary shall then file a compliance report before this Court inclusive of the question of appropriate administrative disciplinary action against the concerned for having acted in gross abuse of powers and the trust placed in them by the Corporation and the Society. The matter shall be listed for that purpose under "Orders" on the 30th June 2011.

30. In Inder Singh Vs. State of Punjab and others, at paragraph-13 fixing personal liability the Supreme Court directed as follows:

13. Disciplinary inquiries must be started against the aforesaid accused as also the said Sita Ram and the then DIG, Border Range, Amritsar. Others responsible for delaying the registration of the complaint and inquiry thereon must also be identified and proceeded against.

31. The acts of the officials of the Municipal Corporation can best be summed up in what has been observed in Victorian Granites (P) Ltd. Vs. P. Rama Rao and Others,

The object is to have control in the hanky-panky and shady transactions done in collaboration and collusion with the lower level officers for illegal gratification and to prevent the depletion of the assets of the State for personal benefit of the vested interests, defeating the constitutional objective behind Article 39(b) of the Constitution, the preamble and fundamental rights enshrined in the Constitution. This system of transfer would encourage corruption and nepotism and official acts done in secrecy would sabotage the constitutional objectives. Big fish will always eat away small fish in diverse forms, so as to drive the latter away from the area.

32. This shall be without prejudice to the rights of the Petitioner to raise any claims for damages and or compensation and any such other proceeding before a competent Court of law as he may be advised against the officials of the Patna

Municipal Corporation and / or the Respondents 4 to 6.

33. The impugned order dated 30.7.2008 and the consequent demolition on 30.8.2008 are therefore held to be a complete abuse of statutory powers done by the individual officers of the Corporation for which they remain individually answerable.

34. Before partaking with the discussion the Court is constrained to take notice of the fact of the manner in which the officials of the Patna Municipal Corporation appear to be acting assuming the nature and character of a law unto themselves unmindful of the powers placed in them in trust by the Corporation for the public good. The power does not inhere in the individual but in the office. This Court recently in C.W.J.C. No. 17196 of 2010 had observed that "the conduct of the Municipal Commissioner thoroughly disappoints the Court leaving it satisfied that he was deliberately and consciously adopting an attitude of defiance and confrontation in Court proceedings and with regard to Court orders." In conclusion the Court held "that the Municipal Commissioner has acted more in abuse of his statutory powers rather than in trust and for the purpose for which the government vested him with powers. He has not only abused his powers, betrayed the trust placed in him by the government, subjected a citizen to unnecessary harassment, but has also wasted the time of the Court. The liability for abuse of the power must rest upon him alone."

35. The events are not symptomatic but indicative of the malaise that affects the Patna Municipal Corporation. Perhaps it is time for the State Government to take stock of the situation and take such remedial steps as it considers necessary before the situation becomes irretrievable.

36. The writ application stands allowed.