

(2000) 01 PAT CK 0081

In the Patna High Court

Case No : Civil Writ Jurn. Case No's. 1757, 1835 and 1867

Nirmal Kumar Ghosh and

APPELLANT

Vs

Sub-Divisional Magistrate, Jamshedpur and Others

RESPONDENT

Date of Decision : 14-01-2000

Acts Referred:

Bihar and Orissa Municipal Act, 1922 — Section 194

Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 — Section 11(1)

Citation : AIR 2000 Patna 141 : (2005) 4 JCR 303

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : Anil Kumar Singh, N.K. Prasad and S.L. Agrawal, Sohail Anwar, for the Appellant; R.L. Saraiwalla, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—In all these writ applications the petitioners have challenged the orders passed by the Jamshedpur Notified Area Committee in purported exercise of power u/s 194 of the Bihar & Orissa Municipal Act and for declaration that the demolition of the tenanted premises by the said committee is absolutely illegal, arbitrary, malafide and against the law.

2. I would first like to state in brief the facts of case of the writ petitioners :

CWJC No. 1835/99(R) :

In this case the petitioner is a partnership firm carrying on hard-ware business. The petitioner is in occupation of a portion of the building premises under respondent No. 2-landlord. Petitioner's case is that previously he was Inducted as a tenant in the said house by the erst while owner and landlord Mr. V.J. Pathak. The building was jointly purchased by Pasan Ben Adesara and Kanchan Ben Adesara by a sale deed dated 3-3-87. Subsequently Pasan Ben Adesars executed a deed of relinquishment on 26-9-95 in favour of respondent No.2 and after becoming full owner of the building, respondent No. 2 started disturbing the

petitioner in order to evict him from the premises. It is stated that respondent No.2 through her husband connived with the officers of the Jamshedpur Notified Area Committee to demolish the building and take possession of the demolished structure. On 9-7-99 about 200 labourers along with the officers of the Jamshedpur Notified Area Committee came to site and started demolishing the building. It is stated that a portion of the roof of the office was partly demolished but due to intervention of the subdivisional Magistrate further demolition was stopped. Petitioner's case is that the condition of the building is not dilapidated and no inquiry was made in presence of the petitioner to ascertain the condition of the building and no notice, whatsoever was given u/s 194 of the Municipal Act to the petitioner.

3. Jamshedpur Notified Area Committee which has been made respondent No. 1 has filed a counter affidavit stating, inter alia, that an order u/s 1-94 of the Municipal Act was passed on. 2-7-99 and on the basis of that order demolition was carried on. It is further stated that demolition order was passed after due notice and due compliance of legal provisions of the Municipal Act.

4. Respondent No.-2-the landlord has filed a counter affidavit stating, inter alia, that in 1998 Senior Divisional Manager (Town Planning and Engineering) Tisco. Jamshedpur examined the condition of the existing structure of holding No.3 and they found the same in a very unsafe condition and accordingly vide letter dated 20-8-98 directed the Vice Chairman, Jamshedpur Notified Area Committee to send a notice to the party to demolish the structure without any delay. The Jamshedpur Notified Area Committee accordingly made inspection of the building and submitted a report. The committee then directed the Assistant Engineer, Jamshedpur to make inquiry and submit a report about the, condition of the building. It was reported that the condition of the building is very dilapidated. It was further stated that thereafter the Special Officer, Jamshedpur, Notified Area Committee sent notice dated 26-5-99 to respondent No. 2 directing that the premises should be vacated by 8-7-99 so that it can be demolished. The Special Officer then by order dated 2-7-99 directed to vacate the building in question and in pursuance of that order passed u/s 194 the Act the building was demolished in presence of the Magistrate on 8/9-7-99 . It is further stated in the counter affidavit that after demolition of the building In question respondent No. 2 entered into an agreement with Chandrakant Adersa, one of the tenants, whereby it was agreed that after construction of the new building a portion of the same shall be allotted to him.

5. CWJC NO.1867/99R:

The case of the petitioner in this writ petition is that she was previously inducted as a monthly tenant by the erst while owner, namely, Bhajan Singh Gumra in respect of the portion of the building premises where she is carrying on business in the name and Style of M/S V-FOUR PUBLISHERS. The said owner Bhajan Singh Gumra sold a portion of his share to respondents 2 and 3 by sale deed dated 10-1-97 and after the said transfer the petitioner started paying rent to

the husbands of respondents 2 and 3, namely, Mr, Pawan Soni and Prabin Soni. It is stated by the petitioner -that she is carrying on business of DTP, Computer Programming and Printing Press in the tenanted premises at the first floor consisting of three rooms. On 8-7-99 at about 9 a.m . all on a sudden the husbands of respondents 2 and 3, without any prior intimation demolished the roof of the office with the help of the employees of the Jamshedpur Notified Area Committee and the reason given was that the building had become very dilapidated and with the help of police force, her articles like computer, printing press and other articles were thrown out of the office and possession was taken by the respondents. The petitioner said to have reported the matter to the Superintendent of Police, Jamshedpur but nothing was done. The petitioner subsequently learnt that in the garb of an order passed in a proceeding u/s 194 of the Municipal Act the respondents illegally demolished the roof of the building and, took possession of the tenanted premises from the petitioner.

6. In the counter affidavit filed by the respondents landlords., inter alia, it is stated that a proceeding u/s 133 Cr. P.O. was drawn up by the Sub-divisional Magistrate, Dalbhum being M. Case No. 274/98 and the learned S.D.M.called for a report from the special Officer, Notified Area Committee with regard to the condition of the building in question and it was reported that the building is in a dilapidated condition. It is stated that on the basis of the inquiry made by the Notified Area Committee the Subdivisional Officer by order dated 10-6-99 dropped the proceeding u/s 133 Cr.P.C. and directed the Notified Area Committee to take suitable action under the relevant section of the Municipal Act. It is further stated that on the basis of the said order Notified Area Committee initiated a Proceeding and issued notice u/s 194 of the said Act. The said notice was not received by the petitioner and ultimately on the basis of the reports the special officer, Notified Area. Committee had passed an order for demolition" of the building and in pursuance thereof the building was demolished.

7. CWJCNO 1757/99R:

In this case also the petitioner is a tenant in a portion of the building premises. It is stated that respondent No. 6, Darshan Singh, for several years, neglected to repair the premises in question and even did not perform the annual white washing and periodical repairs. The petitioner then filed an application on 10-11-95 for repair of the premises which is a portion of the first floor of the buliding. On receipt of the inquiry report from the Executive Magistrate who had recommended for Immediate repair of the premises, the House Controller by his order dated 26-7-96, directed for necessary repairs of the tenanted premises. The respondent No. 6, thereafter, instead of making repair filed an application on 25-5-97 in . HRC case No. 40/95 stating that the properties in question have been transferred to one Sohan Sahgal and Lata Soni. Respondent No,5 then claimed to be the husband of one of the purchasers and in order to put pressure for vacting the tenanted premises, a proceeding u/s 107 Cr.P.C. was initiated which was ultimately quashed by this Court in Criminal Revision No. 84/ 98(R). It

is stated that respondent No.5 then got a proceeding initiated u/s 133 Cr. P.C. with the help of Police officers but the said proceeding was dropped with the observation that Jamshedpur Notified Area Committee may proceed under the Municipal Act. Petitioner's further case is that he learnt from reliable sources that respondent No.4 issued a notice u/s 194 of the Municipal Act and drew up a proceeding. The petitioner could not get a copy of the notice and then he appeared before the special officer, Jamshedpur Notified Area Committee and made request for supply of the order and documents. The petitioner further learnt that on the basis of the order purported to have been passed u/s 194 of the Act the respondents have decided to demolish the tenanted portion of the building with the sole purpose to forcibly evict the petitioner therefrom.

8. In this case also a counter affidavit has been filed by the respondent taking similar stand which has been taken in the counter affidavit filed in other writ applications referred to hereinabove.

9. I have heard Mr. Nand Kishore Prasad, Senior Advocate and Mr. S.I. Agrawal, learned Advocates appearing for the petitioners and Mr. R.I. Saraiwalla, learned counsel appearing for Jamshedpur Notified Area Committee, Mr. Anil Kumar Sinha, Senior Advocate appearing for the respondents-landlord's and learned GPI for the State.

10. In course of argument Mr. Saraiwalla also produced before me the relevant records of the proceeding u/s 194 of the Municipal Act

11. After having heard the learned counsel for the Parties and after going through the entire affidavits and the documents annexed therewith, the only question falls for consideration is as to whether the Impugned order of demolition purported to have been passed in exercise of power u/s 194 of the Bihar Municipal Act, 1922 was Justified and the same was obtained by the respondent landlord with the sole object of evicting the petitioner tenants from the building in question.

12. Petitioners of CWJC No. 1757/99R and CWJC No. 1867/ 99R are the tenants in respect of the same building under the erstwhile owner, respondent No. 6 Darshan Singh. When the landlord failed and neglected to repair the building for several years, the petitioner filed an application u/s 9 of the Bihar Building (Lease, Rent & Eviction) Control Act on 10-11-95 for a direction to the landlord to repair the premises and to do periodical repair and white washing of the building. The said application was registered as HRC case No. 40/95. In the said proceeding the Rent Controller called for a report from the Executive Magistrate who had recommended immediate repairs of the premises. On the basis of the evidence and the enquiry report the Rent Controller passed an order on 26-7-96 directing the respondent No. 6, the landlord to make repair of the building by 19-8-96. However, after about 9-10 months from the date of passing of the order the respondent No. 6 filed an application in HRC case No. 40/95 stating, inter alia, that he has sold the building to one Sohan Sahgal and Lata Soni by virtue of

sale deed dated 9-1 -97 and 11 -1-97 and, therefore, he ceased to be the landlord of the said building. The respondent No.5 therefore, made a prayer that his name may be removed from the said case. A copy of the said application has been annexed as Annexure 2 to the writ application. It further appears that the respondent No.5 claiming himself to be the husband of one of the purchasers, put pressure on the petitioner to vacate the building premises which resulted in a proceeding u/s 107 Cr. P.C. which was ultimately quashed by this court. The respondent No.5 then managed to get a proceeding initiated u/s 133 Cr. P.C. being M. case No. 274/ 98. In the said proceeding the petitioner, Nirmal Ghosh filed a show cause stating, the petitioner, Nirmal Ghosh filed a show cause stating, Inter alia, that proceeding u/s 133 Cr. PC was mala fide inasmuch as there was no question of public nuisance and a tenant cannot be evicted by taking recourse to Section 133 Cr.PC. The subdivisional Magistrate, after hearing the parties, passed final order on 10-6-99 and dropped the proceeding. The relevant portion of the order of the Subdivisional Magistrate is quoted herein below:

"Although the opposite parties have failed to satisfy on the basis of evidence that there is no public right whatsoever but the said premises also appears to be in a dilapidated stage, the conditional order as drawn up is not proper and, therefore, cannot be made , absolute. In Cr. Misc. No.4864/92 it has been clearly held that there is no Jurisdiction to direct eviction of tenant on whatsoever ground in a proceeding u/s 133 Cr. P.C. Conditional order should have been drawn up against the owner of the said building, if information received reveals it to be a fraud and danger to the public. It is also not possible to make the order absolute after reasonable modification in the conditional order because the ownership of the building is neither admitted (opposite party has claimed that one Sri Bhumra is the owner) on an established fact in this case. All further proceedings in this case are, therefore, dropped.

The J.N.A.C. authorities are directed in the light of their own enquiry report to take suitable action under relevant section of D and O. Municipal Act.

13. It appears that on the basis of the order passed by the subdivisional Magistrate in a proceeding u/s 133 Cr. P.C. the Special Officer of the Jamshedpur Notified Area Committee initiated a proceeding u/s 194 of the Municipal Act and a notice dated 13-5-99 was issued to the petitioners directing them to vacate the premises within seven days from the date of receipt of notice for demolition of the dangerous portion of the said building, failing which the committee will undertake demolition work in accordance with law. From the record produced by JNAC it appears that notice was served on the petitioners by affixation and although the petitioner Nirmal Kumar Ghosh appeared on 31-5-99 and filed a petition for time for filing show cause but the same was rejected as not maintainable. The special officer thereafter, on the basis of report of the enquiry, conducted by the Executive Magistrate, passed an order on 2-7-99 for immediate demolition of the building. It is interesting to note that the order was passed by the special officer of demolition of only that portion of the building which were

occupied by the petitioners-tenants. From the aforesaid fact, I am of the opinion that on the face of the order it is crystal clear that the order of demolition was passed at the instance of the respondents only for the purpose of eviction the petitioners who were in occupation of the premises as a tenant.

14. Similarly, in CWJC No. 1835/99R the respondents-landlords after purchasing the "building from the erstwhile owner gave notice to the petitioners asking him to vacate the premises in his occupation the ground that the building is in dilapidated condition and he has been directed by the Divisional Manager, Tisco Ltd, to reconstruct said building after demolition of the same. The respondent, thereafter, got a notice issued by the JNAC u/s 194 of the Municipal Act. The Special officer of the Notified Area Committee, on the basis of a so-called public petition and the letter received from M/S Tisco. Ltd, passed an order directing demolition of the building forthwith.

15. Now I shall deal with the relevant provisions of the Bihar Building (Lease, Rent & Eviction) Control Act (hereinafter referred to as the "Rent Control Act") and Bihar and Orissa Municipal Act (hereinafter referred to as the municipal Act") in order to find out the validity of the order passed by the special officer for demolition of the building in purported exercise of power u/s 194 of the Municipal Act.

16. The growth of commerce and business in the urban areas and commercial centres resulted in much migration of people from rural areas to cities and towns. It was then felt necessary for the State to come with legislation providing law with regard to landlord and tenant's relations and the rights and liabilities of the landlords and tenants. The Rent Restriction law meant mainly to provide extra protection to a tenant against the illegal eviction by the landlords.

17. In the case of Neta Ram v. Jiwan Lal AIR 1963 SC 4998 the Apex Court, while discussing the object and purpose of Rent Restriction Act, held that the very purpose of Rent Restriction Act would be defeated if the landlords were to come forward and to get the tenants turned out, on the plea that they want to reconstruct the house, without first establishing that the plea is bona fide with regard to all the circumstances. The Apex Court again while considering the provisions of the Rent Control Act of Bihar in the case of Ganesh Prasad Sah Kesari and Another Vs. Lakshmi Narayan Gupta, has held that the BBC Act is enacted with a view to providing a fetter on the right of a landlord to evict tenant at his whim or fancy. The long title of the Act shows that it is enacted to regulate the Setting of building and to prevent unreasonable eviction of tenants.

18. In the case of Mohd. Salimuddin Vs. Misri Lal and Another, , the Apex Court considering the status of the landlord and tenant has held as under:-

"One cannot conceive of greater judicial sin than the sin of treating the "oppressor" and the "oppressed" on a par or that of rewarding the oppressor and punishing the oppressed whilst administers the law designed to protect the oppressed. We would be guilty of committing this sin if we uphold the view that

the tenant who advances a loan to the landlord in order to secure the tenancy is in pari delicto, And that the court will not assist the tenant in claiming adjustment of loan amount against the landlord's claim for rent."

19. Section 9 of the Act makes it obligatory and mandatory on the part of the landlord to carry out the repairs of any building in possession of the tenant. Sub-section (2) of section 9 provides that if the landlord fails to carry out periodical repair, white washing etc. the tenant may move the Controller for appropriate direction for such repair.

20. Section 10 provides that no landlord shall, without just or sufficient cause, cutoff or withhold any amenities enjoyed by the tenant. Section 11 provides that no tenant shall be evicted from the tenanted premises, notwithstanding anything contained in any contract or law to the contrary, unless a decree for eviction is passed by a civil court of competent jurisdiction, on one or more of the grounds mentioned in that section, viz; default, personal necessity, subletting, breach of term of tenancy, etc. In 1982 one more ground has been inserted in the said Act for the first time, namely, section 11 (1)(f) to seek a decree for eviction which reads as under :-

"11(1) :- Notwithstanding anything contained in any contract or law to the contrary but subject to the provisions of the Industrial Disputes Act, 1947 (Act XIV of 1947) and to those of section 18, where a tenant is in possession of any building he shall not be liable to eviction therefrom except in execution of a decree by the court on one or more of the following grounds :-

(f) the landlord requires the premises in order to carry out any building work at the instance of the Government or the Municipality, or Municipal Corporation or the Notified Area Committee or the Regional Development Authority or any other Authority within whose jurisdiction the building lies and such building work cannot be properly and fully carried out without the premises being vacated."

21. This clause has been introduced as an essential legislation for the progressive step to enable the landlord to evict the tenant when he requires the premises to carry out any building work at the instance of the Government or any statutory Authority like the municipality, local bodies or the corporation etc. A landlord has right to demolish his property and to construct the structures in order to have a good return from the property but it cannot be done by any illegal method with the sole object to evict the tenant in occupation of the said auilding or portion thereof. If the landlord requires the premises in order to carry out any building work at the instance of the Government or Municipality or any other Authority, then he will have to obtain a decree for eviction of the tenant from the civil count of competent jurisdiction after satisfying the court that such building work cannot be properly and thoroughly carried out without the premises being vacated.

22. As noticed above, in CWJC No. 1835/ 99R respondent No.2, after purchasing the building from the erstwhile owner, served a notice on the petitioner asking him to vacate the tenanted portion of the premises in order to carry out

reconstruction. Relevant portion of the letter reads asunder :- "You are aware that the entire portion of the aforesaid building is in complete dilapidated condition endangering life and properties of the occupants of the building and other persons. Therefore, It requires complete reconstruction after demolishing the existing old and dilapidated structures. As a matter of fact, the Divisional Manager (A&T.P.)Tisco. Ltd., has directed me to take necessary precaution by reconstructing the entire building in order to save loss of life and properties in case the building collapses."

23. Similarly, in CWJC No 1757/99R before the impugned order of demolition was passed, the Rent Controller, on the application filed by the petitioner-tenant, directed the respondent-landlord to make repairs of the building but instead of making repairs of the building the landlord transferred the building to the concerned respondents. The respondent-purchaser totally ignored the order passed by the Rent Controller and proceeded under the provisions of the Municipal Act for the purpose of obtaining an order of demolition on the ground mentioned in section 194 of the Municipal Act.

24. In order to see that the action of the respondent-authority is justified or not, I will first refer to the provisions of section 194 of the Municipal Act which reads as under :-

"194. Power for the prevention of danger from ruinous building:-

(1) Wherever it appears to the Commissioner that any building or part of a building, wall, bank or other structure or anything affixed thereto, is in a ruinous condition and dangerous to persons or property, the Commissioner may:-

(i) forthwith cause a proper hoard or fence to be put up for the protection of any person who may be endangered ; and

(ii) by notice require the owner or occupier of the building or the owner or occupier of the land to which such building, wall, bank or other structure is affixed within seven days to demolish, secure or repair such building; wall, bank or other structure or

(iii) where it appears to the Commissioner that immediate action is necessary for the purpose of preventing imminent danger to any person or property, themselves take such immediate action and recover the cost therefrom the owner or occupier of the building.

(2) Any person who fails to comply with a requisition issued by the Commissioner under clause (ii) of sub-section (1) shall be liable to a fine not exceeding one hundred rupees, and to a further fine not exceeding twenty 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 requisition."

25. Now I shall deal with the notice dated 13-5-99 issued by the special officer of the Notified Area Committee purported to be u/s 194 of the Municipal Act. The

said notice reads as under:-

"Requisition Notice u/s 194 of the Bihar & Orissa Municipal Act. 1922

1) ST. Pravin Kumar S/o Suraj Prakash,

2) Sri Nirmal Kumar Ghosh S/o Not known resident of holding No.4. Sura Bhawan, Diagonal road, Bistupour, Jamshedpur.

You are hereby informed by this notice that the portion of adjacent holding is too old and is in ruinous condition and dangerous to person and also property of the occupants. It may collapse at any time. As such you are directed to vacate the premises within 7 (seven) days from the date of receipt of this notice to demolish the ruinous and dangerous portion of the said building failing which the committee will undertake to demolish in accordance with law, the expenses thereby incurred in the said demolition work will be recovered from you.

By order, sd/ Special officer,

Jamshedpur Notified Area Committee.

26. From perusal of the aforesaid notice it is manifest that it has not been issued in the manner provided u/s 194 of the Municipal Act. By the aforesaid notice the owner or the occupier were neither directed to secure repair of the building or other structures or to demolish the same, rather, by this notice the petitioners who were the occupiers of the premises, were directed to vacate the premises so that it could be demolished. In my opinion, therefore, the direction issued by the special officer by virtue of this notice, is wholly without jurisdiction and mala fide inasmuch as the very purpose of the action of the respondents appears to get vacant possession of the premises by evicting the tenant so that a new building could be reconstructed.

27. It is well settled that the State or its instrumentalities must act fairly and their action must not be without any authority of specific rule of law.

28. In the case of Bishan Das and Others Vs. The State of Punjab and Others, the Apex Court, considering the similar question, has observed :- (Para 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 rule of law. The facts and the position in law thus clearly are (1) that the building constructed on this piece of Govt. land did not belong to the Govt. (ii) that the petitioner were in possession and occupation of the building and (iii) that by virtue of enactments binding on the Govt., the petitioners could be dispossessed if at all, only in pursuance of a decree of a civil court obtained in a proceeding properly initiated. In the said circumstances, the action of the Govt. in taking the law into their hands and dispossessing the petitioners by display of force exhibits a callous disregard of normal requirement of rule of law apart from what might legitimately and reasonably be expected from a Govt. functioning in a society governed by the constitution which guarantees to its citizens against

arbitrary invasion by the executive on peaceful possession of the property."

29. From the aforesaid notice purported to have been issued u/s 194 of the Municipal Act it further appears that before directing the petitioners to vacate the premises he was not called upon to show cause as to why he should not vacate the premises to enable the owner or the Notified Area Committee to get it demolished because of its dilapidated condition. In this connection I will refer to section 360 of the said Act which makes it incumbent upon the authority to follow the principles of natural justice. Section 360 reads as under : -

"360 Objection by persons required to execute any work :- A person who is required by a requisition as aforesaid, other than a requisition u/s 196 or 197, to execute any work or to do any thing may, instead of executing the work or doing the thing required, prefer an objection in writing to the Commissioners against such requisition within five days of the service of the notice or positing up of the notice containing the requisition, or, if the time within which he is required to comply with the requisition be less than five days, then within such less time.

Except as provided in the next succeeding section such objection shall be heard and disposed of by the chairman or vice-chairman.

30. It is, therefore, evident that there has been such a denial in the proceeding culminating in the order of demolition. The notice itself is impalpable congeries of suspicion and fears of relevant or irrelevant matters and has included some trivia. On a matter of such importance where the stakes are heavy for the tenant who claims to be in rightful occupation and where a number of rounds require determination of factual matters of some complexity, the statutory authority should have afforded a personal hearing to the tenant.

31. In similar circumstance a Division Bench of this court in the case of *Bhuvaneshwar Prasad Vs. State of Bihar and Others*, has observed as follows (para 21 of AIR) :-

"On the other hand the court is of the view that when a citizen approaches the court as the petitioner did and complains that he is facing threatened eviction from his house constructed on the lease hold property at the instance of an arrogant executive authority who does not choose to pass any order in writing but proposes to act on oral order and on the strength of police force, in such a situation, it is the duty of the court to come to the rescue of the harassed citizen even by issuance of writ of mandamus and by commanding the respondents, authority not to demolish the structure of the petitioner in question or to evict him from there except in accordance with law."

32. Having regard to the entire facts and circumstances of the case I am, therefore, of the definite opinion that the action of the respondents in demolishing the tenanted portion of the building is absolutely illegal, arbitrary and wholly without jurisdiction. The respondents are, therefore, restrained from demolishing the tenanted premises and evicting the tenants therefrom, if not

already demolished or evicted. I further hold that if the tenants have been evicted in the garb of an action of demolition of the building then they shall be put in possession of the said premises forthwith.

33. In the result, CWJC No. 1835/99R and CWJC No. 1757/99R are allowed and the respondents are restrained from taking possession of the tenanted premises from the petitioners without taking recourse of the provisions of law . Similarly, CWJC No. 1867/99R is allowed and the respondents No. 2 & 3 are directed to put the petitioner in possession of the premises from where she has been forcibly dispossessed or to pay compensation of Rs. 50,000/- (fifty thousand) on account of her illegal dispossession