

(1996) 08 PAT CK 0047
In the Patna High Court
Case No : C.W.J.C. No. 81 of 1996

Rai Vimal Krishna and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 16-08-1996

Acts Referred:

Patna Municipal Corporation Act, 1951 — Section 247, 247(1), 247(2), 247(3)

Citation : (1997) 1 PLJR 23

Hon'ble Judges : S.N. Mishra, J

Bench : Single Bench

Judgement

S.N. Mishra, J.—In this writ application, the Petitioners have prayed for issuance of a direction to the Respondents to unlock the premises, which is the private property of the Petitioners and also for quashing of the notices, dated 29.12.95, as contained in Annexure-1 and 2 to this writ application, issued by the Respondent-Patna Municipal Corporation whereby the Petitioners have been directed to demolish the building in question, in terms of Section 247 of the Patna Municipal Corporation Act, 1851, which is quoted hereinbelow:

247. Power for the prevention of danger from ruinous buildings.--(1) Whenever it appears to the Chief Executive Officer that any building, part of a building, wall, back or other structure of anything affixed thereto is dangerous to persons or property, the Chief Executive Officer may, with the approval of the Standing committee,--

(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, back 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 Chief Executive Officer that immediate action is

necessary for the purpose of preventing immediate danger to any person or property, himself take such immediate action and recover the cost thereof from the owner or occupier of the building or land.

(2) Any person who fails to comply with a requisition issued by the Chief Executive Officer 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.

2. According to Mr. Mahto, issuance of the notice u/s 247 of the Act is wholly illegal and without jurisdiction, inasmuch as, the notices issued earlier were subsequently withdrawn. According to Mr. Mahto the building in question, is not in a dilapidated condition and, as such, the question of demolition of the same does not (sic) at all.

3. In this case, a counter-affidavit has been filed on behalf of the Patna Municipal Corporation wherein the submission of Mr. Mahto is being denied and it is stated in paragraph 7 as follows:

7. That on submission of report of the Engineer of the Corporation, as required by provisions of Section 247 of the Patna Municipal Corporation Act, notice was issued to the owners of the holding in issue of plot No. 269, Sheet No. 18, Ward No. 210, informing them that their premises, a very old building in dilapidated conditions was dangerous for persons and property and, as such, notice was being issued u/s 247(2) (3) to demolish the building within two days or else in public interest the Respondent-Corporation shall get it demolished and recover the costs from them.

4. Having regard to the rival stand taken in the writ application, it is not possible for this Court to decide the questions involved, and, accordingly, it is desirable at this stage to appoint and/or depute some technical experts to inspect the building, in question and submit a report regarding the existing condition thereof. In that view of the matter, without going into the merits of the case and submissions raised by the parties, I direct the Engineer-in-Chief, Buildings Construction Department, Government of Bihar Patna, and the Chief Engineer, Central Public Works Department and one Engineer duly nominated by the Patna Municipal Corporation, to inspect the building in question, thoroughly and submit a report within two weeks from the date of receipt/production of a copy of this order to the Respondent Administrator of the Corporation; who will proceed further in the matter and pass a reasoned order in the light of the report submitted by the Expert Committee. The parties have agreed that they will fully abide by the report of the Expert Committee which shall be binding upon them. It goes without saying that the order of status quo already passed in this case shall continue till the order is finally passed by the Respondent Administrator of the Corporation on submission of the report by the Expert Committee. Accordingly, this writ application is disposed of in the light of the observations

and directions made hereinabove.