

(2020) 02 JH CK 0029
In the Jharkhand High Court
Case No : Writ Petition (C) No.6804 Of 2012

Rajkumar Agarwal And Ors	Vs	APPELLANT
Jugsalai Municipality And Ors		RESPONDENT

Date of Decision : 12-02-2020

Acts Referred:

Jharkhand Municipal Act, 2011 — Section 449
Code Of Criminal Procedure, 1973 — Order 26 Rule 9

Citation : (2020) 02 JH CK 0029

Hon'ble Judges : B.B. Mangalmurti, J

Bench : Single Bench

Advocate : B.V. Kumar, J.N. Upadhyay, Soumitra Baroi, Ashok Kumar Yadav,
Radha Krishna Gupta

Final Decision : Dismissed

Judgement

Heard learned counsel appearing on behalf of petitioners and learned counsel appearing on behalf of respondent no.1 as well as learned counsel

appearing on behalf of respondent no.2 and learned counsel appearing on behalf of respondent no.3.

Learned counsel appearing on behalf of petitioners submitted that although adjournment was taken for filing response to the counter affidavit filed on

behalf of respondent no.3 but instead of that he is filing in Court an Interlocutory Application under Order XXVI Rule 9 of the Code of Civil

Procedure for appointment of Commissioner to make local inspection of the building. Copy of which has already been served to the counsel for the respondents.

Let it be taken on record.

Learned counsel for the petitioners submitted that he has filed instant

interlocutory application for appointment of Commissioner to make local inspection of building. He further submitted that vide order dated 19.11.2019, this Court directed the Deputy Commissioner, East Singhbhum, Jamshedpur (respondent no.3) to conduct an independent enquiry and submit the report. Accordingly, the inspection report was submitted by filing counter affidavit filed on their behalf without giving knowledge to the petitioners, therefore an Interlocutory Application has been filed for appointment of Commissioner to carry out local inspection.

Learned counsel for respondent submitted that he has filed counter affidavit on 16.01.2020 annexing the report dated 24.12.2019 conducted by a team of Engineers which was constituted in pursuance of order of this Court and report was submitted to the legal cell of the Deputy Commissioner, Jamshedpur by which it has been recommended that the building could be declared not usable as horizontal cracks have been found in the building and the walls of building are in dilapidated condition and accident could not be avoided as the area is under Earthquake Zone III. He also submitted that Xerox copy of photographs taken during enquiry was also attached.

Learned counsel for respondent no.3 submitted that building in question was in dilapidated condition and in the counter affidavit filed on behalf of Jugsalai Municipality, photographs have also been attached which shows the condition of building, therefore, to ascertain the condition of building at present, an order was passed by this Court on 19.11.2019 and in compliance of that order, an affidavit has been filed on behalf of respondent no.3 on 16.01.2020 where the committee consisting of Executive Engineer, Building Construction Department and other technical persons including Assistant Engineer and Junior Engineer of Building Division, Jamshedpur as well as Assistant Engineer and Junior Engineer of Jugsalai Municipality were members who have inspected the building and found the building 40-45 years old and was in dilapidated condition. The roof of Tin- Sheet were also broken and the part of building has also fallen. Cracks were found in several parts of building. Horizontal cracks were found and there is chance of vertical slide as the area is under Earthquake Zone III.

Considering the above submission of the parties and on perusal of record, it appears that instant writ petition was filed for quashing the notice dated 29.10.2012 contained in memo nos.1005 and 1006 issued by Jugsalai

Municipality to the petitioners under Section 449 of Jharkhand Municipal Act, 2011 as the direction was to vacate the premise so as to demolish the building. It further appears that this petitioner has also filed Title Suit in the year 2012 before the Court of Civil Judge (Junior Division-I), Jamshedpur for permanent injunction. Learned counsel for the petitioners could not inform this Court about the present stage of that case. It further appears that this Court in order to verify the present status of building allowed the writ petitioners to implead Deputy Commissioner, East Singhbhum, Jamshedpur as respondent no.3 and directed to conduct enquiry by team of Engineers in relation to the present condition of the structures existing over House No.112/78 situated over Plot No.235 a, b, c, d under Khata No.82, Station Road, Ward No.8, P.S. Jugsalai vide order dated 19.11.2019 with further direction to indicate as to whether said building is safe for occupants. This order was passed in presence of the counsel for the petitioners as well as other respondents.

In compliance of order of this Court, counter affidavit was filed on 16.01.2020 annexing the Enquiry Report by team of Engineers which has been marked as Annexure B where the condition of building was found dilapidated and horizontal cracks were seen and have recommended that the building be vacated immediately and demolition of building should be carried out to prevent any accidental fall of the building.

On two occasions, adjournments were granted to the petitioners for filing response to the counter affidavit but today the interlocutory application for appointment of Commissioner was filed.

Learned counsel for the petitioners on enquiry by this Court submitted that team of Engineers had visited the building in presence of their staffs and inspection of inside and outside of the building was carried out. Since the enquiry was conducted in presence of staffs of petitioners by team of Engineers duly constituted on the order of this Court dated 19.11.2019 and the order was passed in presence of counsel for the petitioners, therefore, in this situation, I.A. No.1550 of 2020 filed today for appointment of Commissioner to make local inspection, is hereby, rejected as the team of Engineers was constituted by the Deputy Commissioner consisting of technical officials on the order of this Court. It seems that with a view to delay the matter, the Interlocutory Application is filed today in Court.

In this circumstance, the report of team of Engineers (Annexure-B) attached with the counter affidavit filed on behalf of Deputy Commissioner, East

Singhbhum, Jamshedpur, is hereby, accepted. From report, it appears that the building is in dilapidated condition and there is chance of accidental fall,

therefore, the said building should be declared unusable and demolition of building should be carried out to prevent any accidental fall of the building.

Resultantly, instant writ petition is dismissed.

Let a copy of this order be transmitted to the respondent no.3-Deputy Commissioner, East Singhbhum, Jamshedpur and respondent no.1-Jugsalai

Municipality for compliance.