

(2014) 07 PAT CK 0068

In the Patna High Court

Case No : L.P.A. No. 25 of 2012 in C.W.J.C. No. 5971 of 2006 and I.A. Nos. 204 of 2012 and 4199 of 2014 in L.P.A. No. 25 of 2012

Ram Das Gupta

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 07-07-2014

Acts Referred:

Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 — Section 17
Constitution of India, 1950 — Article 226

Citation : (2014) 4 PLJR 138

Hon'ble Judges : Rekha M. Doshit, C.J; Ashwani Kumar Singh, J

Bench : Division Bench

Advocate : Ajay Prasad, Advocate for the Appellant; Harish Kumar, Advocate for the Respondent

Judgement

Rekha M. Doshit, C.J.

Interlocutory Application No. 4199 of 2014

1. Learned advocate Mr. Utsav Kumar appears for the respondent No. 8. In view of the appearance filed by Mr. Utsav Kumar for the respondent No. 8, this Application is disposed of.

Letters Patent Appeal No. 25 of 2012

2. We have heard the learned advocates extensively.

3. This Appeal under clause 10 of the Letters Patent has been preferred by the respondent Nos. 7 and 8 in CWJC No. 5971 of 2006 against the judgment and order dated 29th April, 2011 passed by the learned Single Judge.

4. It appears that the appellants are the Shebaites or the trustees of Ram Das Trust. The said trust manages Ram Janki Mandir situated at Lakhisarai. The respondent Nos. 7 to 9-the writ petitioners were the tenants in the premises of the trust. It further transpires that the trust building has been demolished and a

new construction is being made at the site. The respondent Nos. 7 to 9-the writ petitioners have approached the Civil Court in Title Suit No. 17 of 2005 for declaration of interest as tenants. Pending the said suit, the writ petitioners approached this Court under Article 226 of the Constitution for a direction to the respondent-authorities to pay compensation to the writ petitioners for demolition of the property in question and for direction against the respondent Nos. 7 and 8, the present appellants, to re-induct the writ petitioners as the tenants in the constructions proposed to be made on the site.

5. The petition was contested by the State Government and the appellants. According to the appellants, the building had to be demolished under the Municipal Act as it had become unsafe.

6. The learned Single Judge has held that the petitioners could not have been evicted in absence of eviction order made by the competent Court. The learned Single Judge has allowed the writ petition to the extent that the appellants have been directed to provide to the petitioners alternative space commensurate to their earlier tenancy in the new building which has been raised at the site. In case the accommodation in the new construction is not possible, the petitioners be accommodated in some other part of the trust premises. Therefore, this Appeal.

7. To us, it appears that the learned Single Judge has erred in exercising the power of judicial review conferred by Article 226 of the Constitution in the matter where private dispute between the landlord and tenants has been brought before this Court. A petition by the tenants substantially against the landlord cannot be maintained under Article 226 of the Constitution, more particularly when the tenant has the specific statutory remedy under Section 17 of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982.

8. For the aforesaid reasons, Appeal is allowed. Impugned judgment and order dated 29th April, 2011 passed by the learned Single Judge in CWJC No. 5971 of 2006 is set aside. CWJC No. 5971 of 2006 is dismissed on the ground of maintainability alone.

9. Interlocutory Application stands disposed of. We clarify that we have not examined the merits of the claim made by the writ petitioners. The writ petitioners may avail of the statutory remedy, as may be advised.