
(2011) 07 PAT CK 0084
In the Patna High Court
Case No : CWJC No. 288 of 2010

Uma Shankar and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 25-07-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Patna Municipal Corporation Act, 1951 — Section 247

Citation : (2011) 4 PLJR 115

Hon'ble Judges : Jyoti Saran, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Jyoti Saran, J.—Heard learned counsel for the parties.

2. This writ petition has been filed challenging the notice dated 6.1.2005 issued by the Municipal Corporation, Gaya and the order dated 1.4.2006 passed in Misc. Appeal No. 7 of 2006 by Additional District Judge, F.T.C.-IV, Gaya dismissing the appeal of the petitioner and affirming the order dated 23.1.2006 passed by Munsif-I, Gaya in T.S. No. 10 of 2006 refusing the prayer of the petitioner for grant of ad-interim injunction under Order 39 Rules 1 and 2 of the Code of Civil Procedure.

3. The petitioners are plaintiffs in T.S. No. 10 of 2006 pending before the Munsif-I, Gaya. The suit was filed seeking permanent injunction against the respondents herein who are defendants in the title suit, from taking any steps towards demolition of the building owned by respondent no. 3, the landlord and occupied by the petitioners for running of the shops situated in the building in question.

4. The suit in question is in consequence of the notice dated 6.1.2005 issued by the respondent no.1 Gaya Municipal Corporation u/s 247 of the Patna Municipal Corporation Act, 1951, inter alia, requiring the landlord/owner of the building to either repair or to take steps for demolition of the dangerous portion of the

building failing which the Corporation would carry out the demolition of which the expenses would have to be borne by the owner of the building.

5. It is the contention of the petitioners that the notice in question is a ploy of the landlord to oust them in collusion with the authorities of the Corporation. The petition under Order 39 Rules 1 and 2 of the CPC seeking ad-interim injunction against the defendants from taking any steps for vacating the tenants from the building in question or from carrying out the demolition, was rejected by the trial court and was affirmed in appeal in Misc. Appeal No. 7 of 2006 by the Additional District Judge, Gaya. Feeling aggrieved, the plaintiffs-petitioners are before this court.

6. Learned counsel for the petitioners submits that the motive behind issuing the notice in question is apparent from the fact that whereas the building in question is rendered dangerous as back as in the year 2005 by the respondent Corporation requiring either its repair or demolition, but the fact remains that even today the petitioners have continued to occupy the shops in question and until the date, no major demolition or damage has been reported. He thus submits that where the very issue is pending consideration before the courts below, any action by the landlord or by the Corporation by interfering with the possession of the petitioners or the demolition of the shop in question, would render the suit infructuous. He further submits that in the meanwhile, the landlord having failed in his motives, has filed a separate suit for eviction of the petitioner giving rise to T.S.(E) Nos. 9 to 14 of 2011 which are pending before the Munsif-I, Gaya.

7. Mr. Rabindra Kumar Priyadarshi, learned counsel for the respondent Corporation submits that the condition of the building can be ascertained from the numerous reports prepared by the authorities of the Corporation reporting that the building is highly dangerous and which can lead to substantial loss of public life. Learned counsel, with reference to the report of the Executive Engineer placed at Annexure-F to the counter affidavit, submits that the report is dated 4.7.2011 and in which the Engineers of the Corporation have reported that the building being more than 50 years old, is not in a position to be repaired and is also not advisable for any commercial use in its present stage.

8. Mr. Purshottam Jha, learned counsel appearing on behalf of the respondent no. 3, submits that it is in the circumstances that the petitioners herein had refused to pay the rents in question that the respondent no. 3 had no option but to seek their eviction and it is in this background that the suit in question has been filed and is pending before Munsif-I, Gaya.

9. Having heard learned counsel for the parties and considering the reports of respondent authorities of the Corporation as regarding the physical condition of the building in question and that it is not in a position where steps could be taken for its repair, this court would not interfere with the proposed steps to be taken by the Corporation in this regard. It is also not the case of the petitioners that

they have taken any steps for the repair of the building in question since after the receipt of notice dated 6.1.2005 otherwise the report dated 4.7.2011 as placed at Annexure-F, would not described the building to be in such dilapidated condition of not being fit for repair.

10. Undoubtedly, any interference with the possession of the petitioners over their respective shops situated in the building in question would have a direct impact on the pending suits but considering the larger interest involved in the present case where repeatedly, the Engineers of the Corporation have reported that the building is not in a habitable position, this court would not interfere with the orders impugned in the writ petition.

11. The writ petition is dismissed.

12. The respondent Corporation, however, would proceed in the matter strictly in accordance with law as provided under the Bihar Municipal Corporation Act, 2007.