

(2021) 03 PAT CK 0351

Patna High Court

Case No: Civil Writ Jurisdiction Case No. 7296 Of 2020

Nutan Kumar

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision: March 16, 2021

Acts Referred:

- Bihar Buildings (Lease, Rent And Eviction) Control Act, 1982 - Section 11, 22
- Bihar Municipal Act, 2007 - Section 276

Hon'ble Judges: Anjani Kumar Sharan, J

Bench: Single Bench

Advocate: Satyavrat Verma, Lalit Kishore, Amit Prakash, Rajeev Kumar Singh

Final Decision: Allowed

Judgement

1. Heard learned counsel for the petitioner, learned counsel for the State and learned counsel for the respondent no.5 at length.

2. On 28.08.2020, while issuing notice to Respondent No.5, this Court has stayed the order dated 03.07.2020 passed in Case No.HC-06 of 2019 by the

Sub Divisional Officer, East Muzaffarpur. For vacating the aforesaid stay order, Respondent No.5 has filed an interlocutory application, bearing I.A.

No.1 of 2020.

3. I deem it proper not to pass separate order on the interlocutory application, as with consent of all the parties appearing in this case, this writ petition

has been heard finally for disposal at this stage itself.

4. By way of filing the present writ application, the petitioner has assailed the impugned order dated 03.07.2020 (Annexure-8) in Case No. HC

06/2019, by which the petitioner was directed to vacate the premises of the Private Respondent No.5 within one month and also to pay him the outstanding dues of rent.

5. The facts giving rise to the present writ petition, in narrow compass, is that the petitioner for his business required a suitable premise and as such he

and the Private Respondent No.5 (landlord) executed a rent agreement dated 13.02.2015, for a shop of Respondent No.5 situated at Mohalla-D.P.

Gupta Lane, Motijheel, P.S.-Muzaffarpur Town (Annexure-1). The agreement was executed for a period of five years from 01.01.2015 to 31.12.2019

for which the petitioner paid a security amount of Rs.7 lakh to the Respondent No.5 and the monthly rent was fixed at the rate of Rs.8,000/- per

month, which was to be deducted from the aforesaid security amount deposited by the petitioner.

6. Subsequent to the execution of the aforesaid rent agreement dated 13.02.2015, Respondent No.5 approached the petitioner and requested him to

enhance the security amount as well as the period of lease as he was in dire need of money. The petitioner, accordingly, accepted the said proposal,

based on which a fresh agreement for rent dated 26.02.2015, was executed between the petitioner and the Respondent No.5 (Annexure-2 of the writ

petition). The terms and conditions enumerated in the agreement dated 26.02.2015 were the same as it was in the agreement dated 13.02.2015.

However, the period of lease was extended from 5 years to 11 years i.e. from 01.03.2015 to 28.02.2026 and even the security amount was enhanced

from Rs.7 lakhs to Rs.11 lakhs but the monthly rent of the shop remained the same i.e. Rs.8,000/- per month, which was to be deducted from the said

security amount deposited by the petitioner. In terms of the agreement dated 13.02.2015, he paid the security amount of Rs. 7 lakhs to Respondent

No.5 and, thereafter, in terms of the subsequent agreement dated 26.02.2015, the petitioner further paid Rs.4 lakhs to Respondent No.5. By the

subsequent agreement, the security amount was enhanced to Rs. 11 lakhs, as such total Rs.11 lakhs was paid to Respondent no.5.

7. Based on the payment of the aforesaid security amount, the possession of the shop was handed over to the petitioner, which the petitioner was

using as a gowdown. As per the agreement, the monthly rent of Rs.8,000/- was to be deducted from the security amount deposited by the petitioner.

As the premises did not have the electricity connection, as such the petitioner was using emergency lights for storing and taking out the goods from the gowdown.

8. In the month of June 2019, the Respondent No.5 requested the petitioner to give him Rs.1 lakh, as he was in need of some money. On the said request, the petitioner arranged the said amount from one of his relatives, accordingly, Rs.1 lakh was paid to Respondent No.5 vide Cheque no.11395 dated 30.06.2019. However, subsequently, when the petitioner requested the Respondent No.5 to return the said amount, he asked the petitioner to adjust the same in the monthly rent, as such after adjusting Rs.1 lakh in the security deposited by the petitioner, a total amount of Rs.12 lakhs was paid to Respondent No.5, which was required to be adjusted in the monthly rent.

9. All of a sudden, Respondent No.5 in the month of August, 2019 asked the petitioner to vacate his shop immediately, as he requires the said premises for his personal use, on which the petitioner showed his inability to vacate the shop, as if he is made to vacate the shop, he would suffer huge loss in the business. The denial of the petitioner for vacating the premises perturbed the Respondent No.5, who threatened the petitioner of dire consequences, if does not vacate the shop.

10. Despite the fact that the rent agreement was valid till 28.02.2026, the Respondent no.5 on 19.09.2019 filed an application before the SDO East, Muzaffarpur (Respondent no.3), seeking a direction upon the petitioner to vacate his shop, on the ground of personal necessity and also on the ground that the petitioner is neither paying the rent nor is paying the electricity dues of the premises as he wants the premises. Respondent no.5 also stated that he intends to reconstruct the building by demolishing the shop. The petitioner asserts and submits that the premises does not have any electricity connection, as such the question of paying any electricity bill does not arise. (Annexure-3 of the writ petition).

11. From perusal of the application dated 19.09.2019, it would manifest that the Respondent No.5 in his application has admitted that the petitioner is

his tenant. However, in the application several false allegation have been levelled against the petitioner regarding threatening given by the petitioner to the Respondent No.5 and also that the petitioner coerced the Respondent No.5 to register the premises in his name.

12. It is submitted that apart from levelling false allegations of coercion, Respondent No.5 also alleged that an agreement dated 03.02.2015 was executed between the parties for a period of 3 years i.e. from 01.01.2015 to 31.01.2018 in which a monthly rent of Rs.10,000/- was fixed. Respondent No.5 has also admitted that two rent agreements were executed, one on 13.02.2015 and the other after 13 days in which monthly rent of Rs.8,000/- was fixed.

13. The petitioner, upon notice, appeared in the said case on 06.11.2019 and sought some time to file a reply affidavit. However, before the petitioner could have submitted his reply, he received a notice dated 03.12.2019 signed by one Col. Dinanath Gupta in which it was recorded that the building will be demolished by the order of the Court and Government, as such the petitioner was directed to vacate the premises within 48 hours. The petitioner, upon receiving the said notice, filed two applications both dated 07.12.2019. In one of the application the petitioner requested the Respondent No.3 to take appropriate action against the Respondent No.5, as he is trying to forcibly evict the petitioner, despite the fact that the matter was still sub-judice and in the another application the petitioner raised a preliminary objection with respect to the maintainability of the application before the Respondent no.3, as the same was filed for evicting the petitioner. In terms of Bihar Buildings (Lease, Rent, Eviction) Control Act, an application for eviction of a tenant can only be filed before a court of competent jurisdiction and thus Respondent No.3 lacked jurisdiction to adjudicate the dispute (Annexures-4 and 5 of the writ petition).

14. The Respondent no.3, without deciding the preliminary objection raised in the aforesaid application dated 07.12.2019, directed the petitioner to file his reply on the merits of the matter. Accordingly, the petitioner filed his detailed reply on 07.01.2020, denying the allegations contained in the application dated 19.09.2019. (Annexure-6 of the writ petition)

15. From perusal of the reply dated 07.01.2020, it would manifest that the petitioner again raised objection regarding maintainability of the application

dated 19.09.2019 before the Respondent no.3. Petitioner at para 3 of his reply also pleaded that the rent agreement appended by the Respondent No.5

is a forged document and at para 11 and 12 the petitioner gave the details of the rent agreement executed between the parties. From para 13 to 17,

the petitioner has given the details of the monthly deduction of rent from the security amount deposited by the petitioner and based on the said

deductions the petitioner pleaded that till the filing of the reply on unadjusted amount of Rs.7,20,000/- is still lying with the Respondent No.5.

16. Learned counsel for the petitioner submits that order dated 03.07.2020 has been passed in complete breach of Section 11 of the Bihar Building

(Lease, Rent, Eviction) Control Act 1982 (hereinafter referred as the 1982 Act), wherein the power of issuing direction for eviction has been

conferred only in the Court of Competent Jurisdiction and not to an Executive. Further, the order dated 03.07.2020, is also bad for the reason that it is

based on an enquiry report of the Executive Engineer, Building Division, Muzaffarpur, which was carried behind the back of the petitioner and in

complete breach of Section 22 of the 1982 Act and Section 276 of the Bihar Municipal Act, 2007. Learned counsel for the petitioner further submits

that both the rent agreement had the signature of both the petitioner and the Respondent No.5 on all the pages. The petitioner in terms of the

agreement dated 26.02.2015 paid Rs.4 lakhs to the Respondent No.5 and as such total amount of Rs.11 lakhs was paid to Respondent No.5. Learned

counsel for the petitioner further submits that Respondent No.5 on 19.09.2019 (Annexure-3) filed an application before the S.D.O., East, Muzaffarpur

(Respondent no.3) for a direction to the petitioner to vacate the shop/gowdown on the ground that he intended to demolish the premises and to

construct a new building for his personal use and for the use of his children as also on the ground that the petitioner is not paying monthly rental.

17. It is submitted that the S.D.O. East, Muzaffarpur, by order dated 03.07.2020 directed the petitioner to vacate the premises within a month and also

to pay the rent and further directed to obtain permission of the Chief Municipal Commissioner, Municipal Corporation, Muzaffarpur, under Section 276

of the Bihar Municipal Act for demolishing the premises. It is further submitted that the order of the S.D.O. East, Muzaffarpur, is bad as the

application dated 19.09.2019 was filed for evicting the petitioner on the grounds of bona fide necessity and default in payment of rent. It is further

submitted that the Respondent no.5 had not even remotely raised the issue that the premises requires demolition, as it was not safe for human

habitation. Had the Respondent No.5 raised the issue of demolition of the premises before the S.D.O. East, Muzaffarpur, then the petitioner would

have replied the same, but since no such issue was raised, as such the same did not require any reply from the petitioner and the S.D.O. East,

Muzaffarpur exceeded his jurisdiction in issuing an order of eviction. In terms of Section 11 of the 1982 Act, it is the Court of Competent Jurisdiction

which has the jurisdiction to pass an order of eviction, as has been held in the case of the GAIT Public Library and Institute Gardanibagh, Patna

through its President Vs. the State of Bihar and Ors. reported in 1995 (1) PLJR 585, Naintara Sharma and Anr. Vs. the State of Bihar and Ors.

reported in 2011 (3) PLJR 268, and in Rame Gowda (Dead) by Lrs Vs. M. Varadappa Naidu (Dead) By Lrs & Anr. reported in (2004) 1 SCC 769.

18. On the other hand, learned counsel for the Respondent No.5 submits that the Respondent No.5 has rented a shop bearing an area of 1760 sq. ft.,

appertaining to Khata No.105 R.S.P. No.578 (K), 579 (K), (KH), and the said rent agreement was prepared on a Non Judicial Stamp Paper bearing

No.028666 for a period of three years from 01.01.2015 to 31.01.2018 (Annexure-A of the I.A.). He further submits that the petitioner by tampering

the aforesaid rent agreement and putting the forged signature of the Respondent No.5 committed forgery and prepared a forged rent agreement

bearing No. P 138989 (Annexure-2 to the writ petition) by changing and manipulating the contents of original rent agreement and extended the period

of three years from 01.01.2015 to 31.01.2018 to 31.01.2019 for five years. Respondent No.5 was totally unaware of the aforesaid fraud and foul play

being committed by the petitioner. Some disputes cropped up between the parties and the Respondent no.5 requested the petitioner to vacate the

premises but he failed to do so. Respondent no.5 having no other option was compelled to file a written complaint on 19.09.2019 (Annexure-3 to the

writ petition) to the Sub-Divisional Officer East, Muzaffarpur to issue direction for getting his rent and also the petitioner may be directed to vacate the premises. The Sub-Divisional Officer, Muzaffarpur vide his Letter no. 763 dated 18.02.2020 directed the Executive Engineer, Building Division, Muzaffarpur to submit the report with regard to the status of the building and also issued notice to the petitioner to appear before him and submit her reply. Vide letter dated 28.04.2020 Executive Engineer, Building Division, Muzaffarpur submitted his report that the building in question is under dilapidated condition (Annexure-B of the I.A.). The Sub Divisional Magistrate, Muzaffarpur East, after considering the aforesaid report of the Executive Engineer and after providing due opportunity of hearing to the petitioner has passed the impugned order, as contained in Annexure-8 to the writ petition.

19. From bare perusal of the impugned order, it is manifestly clear that the Sub-Divisional Magistrate, East Muzaffarpur has not passed order under the Bihar Building (Lease, Rent, Eviction) Control Act, 1982 rather he has only directed the Respondent no.5 to seek a direction/permission from the Chief Municipal Officer under the Bihar Municipal Act for demolishing the dilapidated building and since the said building is already under dilapidated condition and it is very dangerous to life and limb of a person, so he has directed the petitioner to vacate the said building. The Sub Divisional Magistrate, East, Muzaffarpur, under the changed circumstance and looking into the dilapidated condition of the building, has passed the impugned order because a dilapidated building cannot be demolished with a people living in it and, therefore, he has rightly passed the impugned order. He also submits that the petitioner has not approached this Court with clean hands. He has annexed a forged rent agreement as Annexure-2 with a forged signature of Respondent No.5. Learned counsel for the Respondent No.5 submits that in Annexure-1 of the writ petition the tenure of rent agreement has been mentioned as 01.01.2015 to 31.12.2019 and signature of petitioner and Respondent No.5 is in Hindi which is the genuine one and from perusal of Annexure-2 of the writ petition, it is apparent that tenure of rent agreement has been mentioned as 01.03.2015 to 28.02.2026 and signature

of the petitioner and Respondent No.5 are in English. Hence, this agreement is forged. After knowing the fact that petitioner has changed the contents

of the rent agreement and committed forgery, he filed a complaint before the Police Inspector cum S.H.O., Adarsh Nagar, Motijhil, Muzaffarpur on

15.09.2020 and an FIR bearing Town P.S. Case No. 571 of 2020 was also registered against the petitioner (Annexure-C of the I.A.). Learned

counsel for the Respondent No.5 submits that the (respondent no.3) the Sub Divisional Officer East, Muzaffarpur passed the order under Section 276

of the Bihar Municipal Act. . It is further submitted that at the time of passing the impugned order the S.D.O. East, Muzaffarpur was also incharge of

the Chief Municipal Officer. Therefore, the impugned order passed under Section 276 of the Bihar Municipal Act is rightly passed by the S.D.O. East,

Muzaffarpur. He relied upon the judgment in the case of Raghunath Jha Raja vs. The State of Bihar and others reported in (2004) 2 PLJR 805, while

deciding the present case this Honâ€™ble Court in para 4 has categorically held the S.D.O. has jurisdiction to exercise its power under any other

statue if available to him. He lastly submits that judgments relied upon by learned counsel for the petitioner is not applicable in the facts of the present case.

20. I have heard learned counsel for the petitioner and learned counsel for the Respondent No.5 at length and perused the case records. At this juncture, it would be relevant to reproduce herein below, Section 276 of the Bihar Municipal Act: :

276. Removal of congested buildings-

1) If it appears to the Chief Municipal Officer that any block of buildings is in an unhealthy condition by reason of the manner in which the

buildings are crowded together or the narrowness, closeness, or faulty arrangement of streets or the want of proper drainage and

ventilation or the impracticability of cleansing the buildings or by reason of any other cause to be specified in writing, he shall cause such

block of buildings to be inspected by the Chief Municipal Health Officer and the Chief Municipal Engineer, who shall consult the owners

and the occupiers of such block of buildings and the owners and the occupiers of other buildings affected by the unhealthy condition and

shall, thereafter, make a report, in writing, to him regarding the sanitary condition of such block of buildings.

2) If, upon receipt of the report under sub-section (1), the Chief Municipal Officer considers that the sanitary condition of such block of

building is likely to cause risk of disease to the inhabitants of the buildings or the neighbourhood or otherwise to endanger the community

health, he shall, with the approval of the Empowered Standing Committee, select the buildings which, in his opinion, should wholly or in

part be removed in order to abate the unhealthy condition of such block of buildings, and may, thereupon, by notice, in writing, require the

owners of such buildings to remove them within such period as may be specified in the notice:

Provided that before issuing the notice, a reasonable opportunity shall be given to the owners to show cause either in writing or in person,

why the buildings should not be removed:

Provided further that the Chief Municipal Officer shall, for the removal of any such building, which may have been erected lawfully, pay

compensation to the owner for any such building.

3) If the notice under sub-section (2) requiring any owner of a building to remove such building is not complied with, then, after the

expiration of the period specified in the notice, the Chief Municipal Officer may himself remove the building and recover from the owner of

the building the expenses of such removal as an arrear of tax under this Act.

21. The S.D.O. East, Muzaffarpur, while passing the order, has exceeded his jurisdiction under Section 276 of the Bihar Municipal Act, 2007. The

Bihar Municipal Act, 2007 empowers the Chief Municipal Officer to get the building or premises inspected after due notice to the owner or the

occupier by the Chief Municipal Health Officer and the Chief Municipal Engineer and thereafter to take a decision after giving an opportunity to show

cause to take a decision. But, in the present case, the S.D.O. has literally directed the Respondent No.5 to file an application for getting the building

demolished. When the said power is to be exercised by the Chief Municipal Officer, after holding an enquiry, it is fact that an enquiry report of the

Executive Engineer, Building Division, Muzaffarpur was carried behind the back of the petitioner and in complete breach of Section 22 of the 1982 Act and Section 276 of the Bihar Municipal Act, 2007.

22. If it appears to the Chief Municipal Officer that any Block of Building is in unhealthy condition by reason or the manner in which the buildings are crowded together or the narrowness, closeness or faulty arrangements of streets or the want of proper drainage and ventilation or the impracticability of cleansing the building or by reason of any other cause to be specified in writing, he shall cost such block of building to be inspected by the Chief Municipal Health Officer and the Chief Municipal Engineer who shall consult the owners and the occupiers of such block of building and the owners and the occupiers of other building affected by the unhealthy condition and shall thereafter, make a report, in writing regarding the sanitary condition of such block of building.

23. The Executive Engineer, Building Division, Muzaffarpur has reported that the Respondent No.4 behind the back of the petitioner carried out an inspection of the rented premises and, accordingly, submitted a collusive report vide letter no. 661 dated 28.04.2020, by recording that the building is old and damaged (Annexure-7 of the writ petition).

24. The Bihar Municipal Act, 2007 empowers the Chief Municipal Officer to get the building or premises inspected after due notice to the owner or the occupier by the Chief Municipal Health Officer and the Chief Municipal Engineer and thereafter to take a decision after giving an opportunity to show cause to take a decision. But, in the present case, the S.D.O. has literally directed the Respondent No.5 to file an application before the Chief Municipal Officer, Muzaffarpur Municipal Corporation for getting the building demolished, when the said power is to be exercised by the Chief Municipal Officer, after holding an enquiry, as such the S.D.O. with a view to help the Respondent No.5 or for the reasons best known to him, exceeded his jurisdiction by issuing an order of eviction and at the same time got a report with regard to the premises behind the back of the petitioner for helping the Respondent No.5 for invoking the provisions of Section 276 of the Bihar Municipal Act, 2007.

25. From bare perusal of the impugned order, it appears that the S.D.O. East, Muzaffarpur has passed the order in the capacity of S.D.O. East, Muzaffarpur and not in the capacity of Chief Municipal Commissioner. Respondent no.5 has not pleaded anywhere that the S.D.O. was also Incharge of Chief Municipal Commissioner, Muzaffarpur at the relevant time. The impugned order also does not bear any seal and signature of Chief Municipal Commissioner. Section 276 of Bihar Municipal Act empowers the Chief Municipal Officer to get the building or premises inspected after due notice to the owner or the occupier by the Chief Municipal Health Officer and the Chief Municipal Engineer but no notice has been given to the petitioner.

26. Learned counsel for the petitioner has rightly submitted that the order dated 03.07.2020 has been passed in complete breach of Section 11 of the Bihar Building (Lease, Rent, Eviction) Control Act, 1982, wherein the power to issue direction for eviction has been conferred only on the court of competent jurisdiction and which would be based on an enquiry report of the Executive Engineer, Building Division, Muzaffarpur, but the same was carried on behind the back of the petitioner and in complete breach of Section 11 of the 1982 Act and Section 22 of the 1982 Act and Section 276 of the Bihar Municipal Act, 2007.

27. Having heard learned counsel for the parties, in my considered opinion, Section 276 of the Bihar Municipal Act empowers only the Chief Municipal Officer to get the building or premises inspected after due notice to the owner or the occupier by the Chief Municipal Health Officer and the Chief Municipal Engineer but no notice has been given to the petitioner. Respondent no.5 has not pleaded anywhere that the S.D.O. was also Incharge of Chief Municipal Commissioner, Muzaffarpur. Therefore, the S.D.O. has no power to pass any order under Section 276 of the Bihar Municipal Act. In the facts and circumstances of the present case, the judgment relied upon by Respondent No.5 is also not applicable in the present case.

28. Considering the facts and circumstances of the case and the discussions made in the foregoing paragraphs, in my view, the S.D.O. has no power to pass such order unless he is authorised to do so in the capacity of Incharge Chief Municipal Commissioner. In the result, the order dated 03.07.2020

passed in Case No.HC-06 of 2019 by the S.D.O. Muzaffapur is hereby quashed and this writ petition is allowed. I.A. No.1 of 2020 also stands disposed of.