

(2007) 10 PAT CK 0077

Patna High Court

Case No: LPA No. 1192 of 1998

Shishir Kumar Jain

APPELLANT

Vs

The Patna Regional
Development Authority and
Others

RESPONDENT

Date of Decision: Oct. 9, 2007

Acts Referred:

- Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 - Section 11, 11(1)(f)

Citation: (2008) 1 PLJR 707

Hon'ble Judges: Barin Ghosh, J; Anwar Ahmad, J

Bench: Division Bench

Advocate: Y.V. Giri and Mahesh Narayan Parbat, for the Appellant; Dhrub Narayan and Jeetendra Pd. Singh for the Pvt. Resp. and M/s. P.K. Shahi and Sanjay Prakash Verma for The P.R.D.A., for the Respondent

Final Decision: Allowed

Judgement

Barin Ghosh, J.

By the Bihar Regional Development Authority Ordinance made sometimes in the year 1974 Patna Regional Development Authority (hereinafter referred as PRDA) was established. This Ordinance was subsequently kept alive by subsequent Ordinances. By repealing the last of such Ordinances on 25th January, 1982, the Bihar Regional Development Authority Act, 1974 (hereinafter referred to as the Development Act) was made. By virtue thereof, PRDA commenced functioning as the development authority for the city of Patna as constituted by and under the Development Act. On 26th April, 1997, the respondent No. 5 obtained a sanction from PRDA to construct a new building on the land, on a portion whereof the building in which the appellant had his tenancy was situated. One of the conditions for grant of the said sanction was to demolish the existing building situate on the land where the new building was proposed to be constructed within a period of six months from the date of

sanction, as was undertaken by the proposer seeking the sanction. That condition suggests that the respondent No. 5, while submitting the application for sanction to construct the new building on the land in question, undertook to demolish the existing building within a period of six months and accordingly, the sanction for construction of the new building became conditional upon compliance by the respondent No. 5 of her such undertaking.

2. In 1997, the Owners started demolition of the upper floors of the old building. At that stage, the appellant filed Title Suit No. 76 of 1997 in the Court of the. 3rd Munsif, Patna, seeking a declaration that he cannot be evicted from his tenancy except on execution of a degree passed by Court on one or the other of the grounds mentioned in Section 11 of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 (hereinafter referred to as the Buildings Act). In the said suit, it was contended that without taking recourse to the provisions of the Buildings Act, the Owners are demolishing the building for the purpose of evicting the appellant. In the suit, a prayer was made for restraining the Owners from demolishing the building in question. When an application was filed seeking interim injunction restraining the Owners from demolishing the building, an affidavit was filed in the suit by the Owners stating that the appellant will not be evicted from his tenancy without due process of law and the portion of the building in which his tenancy is existing will not be demolished. There is no dispute that the sanction, as was accorded to construct the new building on the land in question, made it clear that the part of the land upon which the old building stood and in which the appellant had his tenancy, will remain as a vacant land.

3. On 20th January, 1998, the appellant filed an application before the Vice Chairman of PRDA seeking two reliefs namely, cancellation of the sanction to construct the new building and to stop further construction activities of the new building. The ground in support of both the prayers was that the tenancy of the appellant in the old building is still continuing and accordingly, the undertaking given to demolish the same is of no effect. It was contended, while suppression of continuation of tenancy of the appellant is a misrepresentation, in view of the fact that the tenancy is in existence the new building cannot be constructed, inasmuch as the old building cannot be demolished. The matter was thereupon taken up by the Vigilance Department of PRDA and one Sri A.K. Srivastava reported on 9th March, 1998 that the old building in the front set back of the proposed new building is to be demolished according to the sanction plan and the old building has been held by the authority to be illegal. It was also reported that the prayer of the appellant for cancellation of the building plan is misconceived, unjustified and based on imagination and without taking into consideration the aim and object of the various provisions of the Development Act. In the meantime, on 6th February, 1998 in Title Suit No. 76 of 1997, the Owners filed a counter claim for eviction against the appellant. The ground for eviction was requirement to demolish the building where the tenancy of the appellant is situate in view of sanction accorded by PRDA to

construct the new building. It was contended that such a claim comes within Clause-(f) of sub-section (1) of Section 11 of the Buildings Act. Soon thereafter by a letter dated 17th February, 1998 the Vigilance Officer, PRDA informed the appellant that he has been made a party to the Vigilance Case and he is directed to demolish the building of which he was a tenant within a period of 15 days and to report compliance, failing which PRDA would demolish the said building. Before that in the Vigilance Case initiated against the Owners by the Vigilance Department of PRDA, the Owners informed the Vigilance Department of PRDA that because the tenants of the existing building are not vacating the old building, the same could not be demolished, On such information, the appellant was made a party to the Vigilance Case and at the same time, by the order dated 17th February, 1998 he was asked to demolish the building failing which it was held out that PRDA will demolish the same. On 23rd March, 1998, Assistant Engineer of the PRDA wrote a letter to the Vigilance Department of PRDA stating that in view of the sanction granted to construct the new building, the old building cannot continue to remain in existence and accordingly, the Owners, who gave undertaking to remove the old building should be asked to remove the said building immediately, in default PRDA will be constrained to remove the old building at the cost of the Owners. The appellant filed Appeal No. 32 of 1998 against the order dated 17th February, 1998 and the Appeal No. 33 of 1998 against the order dated 23rd March, 1998 before the Appellate Tribunal, but since the Appellate Tribunal was not functioning due to retirement of Presiding Officer, he could not obtain any relief therefrom. On 1st April, 1998, the Vigilance Officer, PRDA wrote a letter to the Owners stating that in accordance with the undertaking given for obtaining the sanction for construction of the new building, they are required to immediately remove the old building failing which the old building will be removed by PRDA at their cost.

4. On 7th April, 1998, the appellant filed the writ petition. In the writ petition, he sought for cancellation of the sanction to construct the new building and quashing of the orders passed by the Vigilance Department of PRDA directing demolition of the old building. On the writ petition, a status quo order was passed on 20th April, 1998, which was subsequently directed to continue. In the counter affidavit filed by PRDA, it sought to project that by reason of grant of sanction to construct the new building, the old building has become an illegal structure. The Owners in their counter affidavit contended that removal of the old building is necessary to complete construction of the new building in accordance with the sanction accorded to construct the same. A learned Single Judge while dealing with the writ petition felt that the appellant was only seeking cancellation of the sanction accorded by PRDA to construct the new building. The learned Judge also felt that the old building of which the appellant was a tenant was an illegal construction. Accordingly, the writ petition was dismissed by an order dated 9th October, 1998.

5. The present Letters Patent Appeal was filed on 3rd November. On 6th November, 1998, the appeal was directed to be taken up in the Chambers of the Hon"ble Chief

Justice. On that date, the Hon"ble the Chief Justice directed the appeal to be listed on 9th April, 1998. On 6th November, 1998, a part of the old building, where the tenancy of the appellant was existing, was demolished by PRDA. On 7th November, 1998, the Owners deposited the cost of demolition to PRDA. On 9th November, 1998, a Division Bench of this Court while restrained the respondents from demolishing the building in question, appointed Advocate Commissioners to inspect the building. The Advocate Commissioners inspected the building on 9th November, 1998 and found that substantial part of the tenancy of the appellant in the old building has been demolished but a part thereof is still in existence. On 18th November, 1998, a Division Bench of this Court directed continuation of the order dated 9th November, 1998 and thereupon by another order dated 3rd December, 1998, the order dated 9th November, 1998 was made absolute and the same was directed to continue. Thereupon I.A. No. 3465 of 1999 was filed by the Owners for vacating the order dated 9th November.. 1998. The said application was rejected by an order dated 5th May, 1999.

6. On 26th February, 2001, the claim of the appellant in Title Suit No. 76 of 1997 was decreed and at the same time, the counter claim of the Owners made in the said suit was also decreed. In execution of the decree passed on the counter claim, on 14th July, 2001 possession of the tenancy of the appellant was taken by the Owners and soon thereafter they removed the remaining structures of the old building, which was still then standing.

7. During the pendency of the appeal on 5th April, 2007, the Bihar Municipal Act, 2007 came into effect whereby and under, amongst others, the Bihar Regional Development Authority Act, 1974 was repealed and in terms thereof, PRDA constituted by and under the Development Act ceased to exist. The Bihar Municipal Act, 2007 made it clear that anything done or any action taken under the repealed Acts, including the Development Act, shall continue to be in force and be deemed to have been done or taken under the provisions of the Municipal Act unless it is superseded modified/alterd by anything done or any action taken under the Municipal Act. It also provided that all debts, obligations and liabilities incurred and all matters and things engaged to be done by the authorities set up under the repealed Acts, including under the Development Act, shall be deemed to have been incurred, entered into or engaged to be done by or with or for the Municipality.

8. In those circumstances, while we granted leave to the appellant to proceed against Patna Municipal Corporation constituted by and under the Bihar Municipal Act, 2007, noticed the said Corporation and thereupon the learned Advocate General "appeared on its behalf. On our direction, the Municipal Corporation filed an affidavit to disclose the date of payment made by the Owners to PRDA of the demolition cost of the old building in question.

9. In course of hearing the appeal, we wanted to know from the Owners as well as from the learned Advocate General as to whether at any point of time illegality of

the construction of the old building was taken up for consideration by any authority and if so whether there had been any adjudication that the old building was an unauthorised construction. To that the learned Advocate General reported to us that there is no record, which would suggest that at any point of time any authority had any occasion to go into the question as to whether the old building was an illegal structure and accordingly, there is no finding by any authority at any point of time that old building was an illegal structure. The learned counsel for the Owners also did not dispute the said submissions made by the learned Advocate General.

10. It is, therefore, clear that the learned Judge, who dealt with the writ petition was misinformed that the structure of the old building was illegal. The Officers of PRDA while representing that the old building was an illegal structure proceeded on the basis that in view of the sanction accorded by PRDA to construct the new building, which required removal of the old building, the structure of the old building became illegal. The learned Judge, who dealt with the writ petition, did not make an attempt to ascertain whether by virtue of sanction accorded to construct a new building, which required removal of an old building, the structure of the old building became illegal or not. It is true that one of the prayers in the writ petition was to cancel the sanction accorded for construction of the new building, but the fact remains that the appellant was forced to file the writ petition to stop demolition of the old building in which his tenancy was then existing. Therefore, one of the main contentions of the appellant in the writ petition was that neither PRDA, nor the Owners can demolish the old building where the tenancy of the appellant was subsisting until such time the tenancy was put to an end by delivery of possession by the appellant to the Owners on execution of a decree passed by a Court of law u/s 11 of the Buildings Act. It goes without saying that if the construction itself was illegal, then any tenancy created in such illegal structure could not be protected in terms of the provisions of the Buildings Act. Therefore, the most important question that required consideration was whether the old building, in which the tenancy of the appellant was then existing, was or was not an illegal structure, which had not been gone in. On the contrary as admitted before us the same was not an illegal structure.

11. PRDA, being a statutory authority, was entitle to exercise powers within the four corners of the powers granted to it. It could not act beyond.

12. In the instant case, we are concerned with the power of demolition of PRDA. The power of removing encroachments had been granted to PRDA by Section 85Ka of the Development Act. By that Section, the Vice-Chairman of PRDA had been authorised to remove encroachments from roads, streets, footpaths and public places. By exercising power so granted, PRDA could not remove the old building.

13. The power, which had been granted to PRDA to demolish buildings, was contained in Section 54 of the Development Act. In order to understand the true scope and nature of the power granted by Section 54 of the Development Act, one is required to look at Sections 35, 36, 37, 38 and 39 of the Development Act. Sections

35, 36, 37, 38, 39 and 54 of the Development Act are as follows:--

35. Prohibition to building without sanction.--No person shall erect or commence to erect any building, or make any addition or alteration to any building except with the previous sanction of the Vice-Chairman, and in accordance with the provision of this Chapter and the regulations made under this Act:

Provided that the Authority may make separate set of Regulations for different areas or different kinds of areas.

36. Erection of buildings, etc.--(1) Every person, including local authority, body corporate constituted under any law and a department of Central or State Government who--

(a) to carry out a development plan or any other development work;

(b) to make any addition or alteration thereto, shall apply for sanction by giving notice in writing of his intention to the Vice-Chairman in such form and containing such information as may be prescribed by regulations made in this behalf:

Provided that no such sanction need be sought if the alteration is to be done internally in a building without affecting the position of bathroom, kitchen and drainage arrangements and further that the proposed internal alteration does not violate the provisions of the building regulations or planning standards then in force.

(2) Every such notice shall be accompanied by such documents and plans as may be prescribed.

(3) Every application under subsection (1) shall be accompanied by such fee as may be prescribed by regulation made in this behalf:

Provided further that the operational constructions of the Railways, other Central Government Departments, and Departments of State Government may be exempted from the provisions as aforesaid.

In respect of other works of Railways, Central Government Departments, and Departments of the State Government such as construction of new lines, new buildings, new structures and new installations and reconstruction of existing lines, buildings, structures and installations for both operational purposes and for extension of services permission of the Authority may be granted or rejected latest by three weeks from the date of receipt of notice or proper application by the Authority for the purpose. In case no orders of the Authority are passed and communicated to within the aforesaid time-limit of three weeks at the latest the Railways, Central Government Departments and State Government Departments will be free to go ahead with the constructions. In case the Authority has rejected any proposal in respect of Railways, Central Government or any State Government Department contained in the notice or application as aforesaid an appeal shall lie to

the State Government if preferred within a period of thirty days. While disposing of such appeal the State Government shall consult the Central Government or the Department, of the State Government as the case may be.

(4) Where permission is refused under sub-section (2) of Section 37 the applicant or any person claiming through him shall not be entitled to get refund, of the fee paid on the application for permission but the Authority may on an application for refund being made within three months of communications of the grounds of the refusal, direct refund of such portion of the fee as it may deem proper in the circumstances of the case.

(5) The Authority shall keep in such form as may be prescribed by regulations, a register of applications for permission under this section.

(6) The said register shall contain such particulars including information as to the manner in which applications for permission have been dealt with as may be prescribed by regulations and shall be available for inspection to the public at all reasonable hours on payment such fee, not exceeding rupees five as may be prescribed by regulations.

37. Sanction or refusal of application for erection of a building or addition or alteration thereto.--(1) The Vice Chairman shall sanction the erection of a building or addition or alteration thereto if such erection of the building or addition or alteration thereto would not contravene any provision of this Act or any regulation made thereunder.

(2) If the proposed erection or alteration would be in contravention of any provision of this Act, or any regulation made in this behalf or under any other law, sanction of the plan shall be refused.

(3) The Vice-Chairman shall communicate the sanction to the person who has given the notice, and where he refused the sanction he shall record a brief statement of his reasons for such refusal and communicate the refusal alongwith the reasons thereof to the person who has given the notice.

(4) The sanction or refusal as aforesaid shall be communicated in such manner as may be specified in the regulation made in this behalf.

(5) If at the expiration of a period of 3 months after application u/s 36 has been made to the Vice Chairman, no order in writing has been passed by the Vice-Chairman and no notice of the order passed by the Vice Chairman, in this connection has been sent to the applicant, the applicant shall give a notice under registered post intimating that sanction shall be presumed if nothing to the contrary is received or notified in respect of his application within 30 days from the date of receipt of the notice.

38. Sanction accorded under misrepresentation.--If at any time after the sanction to erection of any building or addition or alteration thereto has been accorded, the Vice-Chairman is satisfied that such sanction was accorded in consequence of any material misrepresentation or fraudulent statement contained in the notice given or information furnished u/s 37 he may by order in writing and for reasons to be recorded cancel such sanction and erection of any building or addition or alteration thereto shall be deemed to have been done without such sanction:

Provided that before making any such order the Vice-Chairman shall give reasonable opportunity to the person affected to explain as to why such order should not be made.

39. Order of stoppage of building in certain case.--(1) Where the erection of any building or addition or alteration thereto has been commenced or is being carried on (but has not been completed) without or contrary to the sanction referred to in Section 37 or in contravention of any condition subject to which such sanction has been accorded or in contravention of any provisions of this Act, or regulations made thereunder the Vice-Chairman may, in addition to any other action that may be taken under this Act, by order, require the person at whose instance the building or the work has been commenced or is being carried on, to stop the same forthwith.

(2) If such order is not complied forthwith, the Vice-Chairman may require any police officer to remove such person and all his assistants and workmen from the premises within such time as may be specified in the requisition and such police officer shall comply with the requisition accordingly.

(3) After the requisition under subsection (2) has been complied with, the Vice-Chairman may, if he thinks fit, depute by a written order, a police officer or any officer or other employees of the Authority to watch the premises in order to ensure that the erection of the building or the execution of the work is not continued.

(4) Where a police officer or an officer or other employee of the Authority has been deputed under sub-section (3) to watch the premises, the cost of such deputation shall be paid by the person at whose instance such erection or execution is being continued or to whom notice under sub-section (1) was given and shall be recoverable from such person as an arrear of tax under this Act.

54. Order of demolition of building.--(1) Where any development or erection of a building has been commenced or is being carried on or has been completed in contravention of the Regional Plan, Master Plan or Zonal Development Plan or without the permission, approval or sanction referred to in Sections 35. 36. 37 or in contravention of any conditions subject to which such permission, approval or sanction has been granted, any officer of the Authority empowered by it in this behalf may, in addition to prosecution that may be instituted under this Act, make an order brief stating the reasons therefore directing that such erection or development work shall be removed by demolition, filling or otherwise by the owner

thereof or by the person at whose instance the erection development work has been commenced or is being carried out or has been completed within a period of thirty days from the date on which a copy of the order of removal has been delivered to the owner or that person, as may be specified in the order, and on his failure to comply with the order, any officer of the Authority lay remove or cause to be removed "he erection or development work and the expenses of such removal shall be recovered from the owner or the person at whose instance the erection or development was commenced or was being carried out or was completed, as arrears of land revenue:

Provided that no such order shall be made unless the owner or the person concerned has been given a reasonable opportunity to show cause why the order should not be made.

(2) Any person aggrieved by an order under sub-section (1) may appeal to a Tribunal constituted under this Act against that order within thirty days from the date thereof; and the Tribunal may after hearing the parties to the appeal either allow or dismiss the appeal or reverse or vary the order or any part thereof.

(3) The decision of the Tribunal on the appeal and subject only to such decision the order under sub-section (1) shall be final and conclusive.

(4) The provisions of this section shall be in addition to and not in derogation of any other provisions relating to demolition of buildings contained in any other law for the time being in force.

14. While Section 35 of the Development Act prohibited erection of a new building without previous sanction, Section 36 thereof required the person seeking to erect a building to apply for sanction and Section 37 thereof granted authority to the Vice-Chairman of the PRDA to grant sanction or not to grant sanction. Sections 39 and 54 of the Development Act made it abundantly clear that such sanction may be granted with conditions attached thereto. Section 38 of the Development Act authorised cancellation of a sanction accorded under misrepresentation and Section 39 thereof authorised stoppage of construction of a building at the construction stage, when the construction was in contravention of the sanction or any condition attached thereto. Section 54 of the Development Act authorised demolition of a building, which was in contravention of the sanction or any condition attached thereto. It is, therefore, abundantly clear that the power to stop construction as was granted by Section 39 of the Act and the power to demolish construction, as was granted by Section 54 of the Act, could be used only against that construction which was being made or had been made in contravention of sanction or any condition attached thereto. The language of the sections quoted above are so clear that a look at them would amply demonstrate that the powers granted thereby could only be used in respect of the construction commenced or in progress or completed in contravention of sanction or any condition attached thereto and not of a

construction which is not in contravention of the same.

15. As aforesaid, it is a fact and known to every one concerned that the old building, where the tenancy of the appellant was then in existence, was not in contravention of the provisions of Sections 35, 36 and 37 of the Development Act. The said building was also not in contravention of any condition attached to the sanction accorded to construct the new building. On the other hand, while preparing a proposal to make construction of the new building, the Owners of the land proposed to keep the space of the land occupied by the old building an open space and accordingly, while applying for sanction to construct the new building gave an undertaking to remove the old building within a period of six months. While this application was considered, PRDA acted upon the said undertaking and accordingly, while granting sanction to construct the new building attached a condition thereto to the effect that in terms of the undertaking given, the old building must be removed within six months. The Owners started construction of the new building without removing the old building. They continued to carry out construction of the new building even after expiry of six months without removing the old building. As a result, they contravened the sanction to construct the new building as well as a condition attached thereto. In such circumstances, PRDA could u/s 39 of the Development Act stop further construction of the new building and even demolish the new building but they could not touch the old building. They had no authority to do what they did in the instant case. No person could assume to himself any power by virtue of Section 54 of the Act, as PRDA assumed to itself, to demolish the old building. The action of PRDA in touching the old building, being beyond its power granted by law, is ultra virus.

16. Assumption of PRDA that because it has granted sanction to construct the new building on the condition that the old building shall be demolished within a period of six months, as had been undertaken by the proposer seeking sanction to construct the new building, the old building became illegal is unimaginable. No person in his proper sense could assume the same. It is settled in law that even if a thing is done with all good intentions but the action is not authorised by law, the same is a malice in law. In the instant case, we are afraid we cannot proceed on the basis that while demolishing the old building, PRDA acted with good intention. In the instant case, the action of PRDA is not only a malice in law, but is also a malice on facts and accordingly, the actions of PRDA in the instant case are mala fide from all angles. While considering the matter of construction of the new building without demolishing the old building, PRDA, in its Vigilance Department, was influenced by the Owners, as would be evident from the facts narrated above, to assume things unimaginable.

17. We, however, feel that the learned Single Judge, who dealt with the writ petition was right in concluding that the appellant could not seek to cancel the sanction accorded by PRDA to construct the new building, inasmuch as the contention that

the sanction was obtained by misrepresentation appears to be not sustainable. It was contended by the appellant that the sanction was obtained by giving an undertaking to demolish the old building within six months which was a mis-statement in view of the existing tenancy of the appellant in the old building and accordingly, the undertaking, being the very basis of the sanction, was a misrepresentation. It is true that at the time of giving such undertaking, the Owners, who gave the undertaking, could not demolish the old building for the tenancy therein of the appellant was still in existence, but the Owners could, within six months from the date of the undertaking, have the consent of the appellant to have the said building demolished and as such the said undertaking cannot be construed in law as misrepresentation. We have not been shown any rules, bye-laws or Regulations requiring the Owner to furnish particulars of tenants of a building, which is proposed to be demolished, in the application for grant of sanction to construct a new building.

18. The question is in the circumstances as above, to what relief the appellant is now entitle to. It is now well settled by a Judgment of the Hon"ble Supreme Court delivered in the case of Vannattankandy Ibrayi vs. Kunhabdulla Hajee, reported in 2001(1) SCC 564, that, a tenant cannot squat on the ground or build thereon where the building was situate after its destruction by natural forces, but he can do so when the landlord himself pulls down the building governed by the State Rent Acts. In the instant case, during the pendency of the appeal, a part of the tenanted building was demolished. This Court as an interim measure in the light of the Judgment of the Hon"ble Supreme Court, as above, continue the status quo, but before the appeal could be finally taken up for hearing, the counter claim of the appellant succeeded in the suit. Having regard to the provisions contained in Section 11 of the Buildings Act, we accordingly, became curious to know as to how the eviction decree was passed. The Judgment and decree passed in the suit was, accordingly, produced by the Owners for our perusal. From the said decree, we found that the claim of the Owners in their counter claim was based on the sanction accorded to construct the new building on the undertaking of the Owners to demolish the old building within six months. Although, subsequent to filing of the counter claim in the suit, as noted above, the Officers of PRDA from time to time issued directions for removal of the old building and although an amendment was effected to the counter claim, but the cause of action of the Owners in the counter claim remained the same i.e. eviction on the ground of sanction to construct a new building on their undertaking to demolish the old building. The learned Munsif while considering the evidence shut her eyes to the cause of action of the Owners as was pleaded by them in the counter claim, but took note of various orders of the Officers of PRDA directing removal of the old building, as noted above, and thereupon decreed the suit under Clause-(f) of sub-section (1) of Section 11 of the Buildings Act. Clause-(f) of sub section (1) of Section 11 of the Buildings Act is as follows:--

11. Eviction of tenants.--(1) Notwithstanding anything contained in any contract or law to the contrary but subject to the provisions of the Industrial Disputes Act, 1947 (Act XIV of 1947), and to those of Section 18, where a tenant is in possession of any building, he shall not be liable to eviction therefrom except in execution of a decree passed by the Court on one or more of the following grounds:--

(f) the landlord requires the premises in order to carry out any building work at the instance of the Government or the Municipality or Municipal Corporation or the Notified Area Committee or the Regional Development Authority or any other Authority within whose jurisdiction the building lies and such building work cannot be properly and fully carried out without the premises being vacated.

19. In the present appeal, we are not concerned with the Judgment and Decree passed on the said counter claim. However, having regard to the fact that an appeal against the said Judgment and Decree is pending, in order to grant reliefs in this appeal, we took note of that Judgment. While doing so, we felt anguished, for while rejecting the writ petition, the learned Judge was impressed by the untrue assertion that the old building is an illegal structure and while decreeing the counter claim, the Court proceeded on the basis that the sanction accorded by PRDA to construct a new building on the condition that the old building should be removed within six months, as had been undertaken by the applicant for sanction to construct the new building, would encompass the ground that the landlord requires the tenanted premises to carry out building work at the instance of PRDA. We feel that it is the combination of inappropriate connections, illegal money and extreme greed which has resulted in making the law a mockery. However, at this stage we can only proceed on the basis that there is likelihood of success of the appeal against the decree passed in the counter claim of the Owners and accordingly, we could mould the reliefs to be granted.

20. Before doing so, we must refer to certain Judgments cited on behalf of the Owners. The first is a Judgment of a Division Bench of this Court in the case of [Vivek Arora and another Vs. The Patna Regional Development Authority and Others](#), . In that case, after the sanction to make a new construction was accorded, a new tenancy agreement was entered into whereby the tenant agreed not to interfere with the construction of the new building. That decision is, therefore, distinguishable. Even then it has been observed by the Division Bench in the said Judgment, that even if the term of the tenancy has expired, the tenant remains a Juridical person and it does not give right to the landlord to take possession in unauthorised manner and even in that situation he has to take possession by following the due process of law. The Court also observed that Section 54 of the Act provides for demolition of the building provided the same is being constructed in contravention of the plan. The learned counsel for the Owners cited a Judgment of the Supreme Court in the case of [Prem Chand alias Prem Nath Vs. Shanta Prabhakar \(Smt\)](#), . In that case, the Supreme Court was concerned with the Rent Act of

Himachal Pradesh, which inter alia, provided that the landlord may be put in possession in case any building or rented land, if he requires it to carry out any building work at the instance of the Government or local authority or any improvement trust under some improvement or development scheme or if it has become unsafe or unfit for human habitation or is required bona fide by him for carrying out repairs which cannot be carried out without the building or rented land being vacated or that the building or rented land is required bona fide by him for purposes of building or rebuilding or making thereto any substantial additions or alterations and that such building or rebuilding or addition or alteration cannot be carried out without the building or rented land being vacated. Since the law as was being considered by the Hon"ble Supreme Court in that case is different from Section 11(1)(f) of the Buildings Act, the said Judgment has no application whatsoever to the present case. The learned counsel for the appellant cited a Judgment of the Hon"ble Supreme Court in the case of [Hotel Sea Gull Vs. State of West Bengal and Others](#), . In that case, the Hon"ble Supreme Court held that construction without obtaining permission u/s 46 of the W.B. Town and Country (Planning and Development) Act, 1979 on the basis of the sanction granted prior to coming into force of the said Act was not permissible. The said Judgment makes it abundantly clear that the construction of the new building after expiration of six months from the date of sanction without removing the old structure, which was undertaken to be removed and was a condition for sanction to construct the new building, was impermissible.

21. The fact remains that the interim order, as was passed by the Division Bench on this appeal, is still continuing, but without obtaining leave of the Court, the Owners have removed the old building completely. This fact should also be kept in mind while granting relief in the appeal.

22. The appeal is, accordingly, allowed. The Judgment and Order under appeal is set aside and at the same time all orders passed by PRDA for removal of the old building are quashed. In that background the reliefs as prayed for by the appellant in the writ petition on being modified the following reliefs are granted to him:--

(a) The Owners namely, the respondent Nos. 4, 5 and 6, and in particular the respondent No. 5, is directed to pay a sum of Rs. 5,00,000/- to the appellant for causing a part of the tenancy of the appellant being demolished through the instrumentality of PRDA before obtaining possession of the tenancy of the appellant on execution of the Decree passed under sub-section (1) of Section 11 of the Buildings Act;

(b) In the event, the appellant succeeds in the appeal pending against the decree passed in Title Suit No. 76 of 1997 on the counter claim of the Owners, within three months from the date of service of a certified copy of the Judgment of the Appellate Court by the Appellant upon the Patna Municipal Corporation, the Patna Municipal Corporation shall proceed on the basis that the new building has been constructed

in contravention of a condition attached to the sanction to erect the said building and shall accordingly, take steps in respect thereof in accordance with law then governing;

(c) In the event, the appeal of the appellant against the said decree passed on the counter claim succeeding, he shall be entitle at his cost to reconstruct his tenancy on the land where the same was situated and on the same area, as mentioned in the application for execution of the said decree, and the Patna Municipal Corporation shall accord all necessary assistance including sanction of plan to construct the same without charging any fees, which they shall recover from the Owner of the land and the appellant shall adjust the cost of such construction with rent payable by him until such time the cost of construction is wholly recovered by such adjustment.

Each of the respondents No. 4, 5 and 6 shall pay Rs. 10,000/- to the Patna High Court, Council of Legal Aid and Advice, for having demolished the remaining portion of the tenancy of the appellant in breach of the order of this Court within a period of three months from today.

Anwar Ahmadi, J.

I agree.