IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.528 of 2022

Civil Writ Jurisdiction Case No.12578 of 2019

Shailja Vajpei, Wife of Sri Shashank Shekhar, Resident of House No. L 3/1(B), Sri Krishnapuri, P.S. Sri Krishnapuri, District Patna.

... ... Appellant/s

Versus

- 1. The Patna Municipal Corporation through Municipal Commissioner, Maurya Lok, Dak Bunglow Road, Police Station- Kotwali, District- Patna.
- 2. The Municipal Commissioner, Patna Municipal Commissioner, Maurya Lok, Dak Bunglow Road, Police Station- Kotwali, District- Patna.
- 3. The Additional Municipal Commissioner, Patna Municipal Commissioner, Maurya Lok, Dak Bunglow Road, Police Station- Kotwali, District- Patna.
- 4. The Executive Officer, New Capital Circle, Patna Municipal Corporation, Patna.
- 5. The Executive Engineer, Patna Municipal Commissioner, Patna.
- 6. The Project Director, Patna Smart City, Patna.

... ... Respondent/s

Appearance:

Mr. Shravan Kumar, Senior Advocate For the Appellant/s

Mr. Dinesh Maharaj, Advocate

For the State Mr. Anjani Kumar, AAG-IV

For the Corporation Mr. Sanjay Prakash Verma, Advocate

Mr. Vipin Kumar Singh, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

HONOURABLE MR. JUSTICE PARTHA SARTHY **ORAL ORDER**

(Per: HONOURABLE THE CHIEF JUSTICE)

10 13-08-2023 Read order of even date passed at 10.45 A.M.

2. As directed in the said order, the Commissioner,

Patna Municipal Corporation and the S.H.O., Kotwali Police



Patna High Court L.P.A No.528 of 2022(10) dt.13-08-2023

2/19

Station are before us. Sri Anjani Kumar, learned AAG-IV is also present with learned counsel appearing for the appellant and the respondent- Patna Municipal Corporation. The printed copy of the WhatsApp communication received by the Commissioner as extracted from his Mobile Phone is

produced herewith as Court Exhibit-C-1. We examined the

Commissioner on oath, which deposition is annexed to the

instant order as Court Exhibit-C-2.

3. The writ petition was filed alleging that the petitioner had been in possession of a land by virtue of sale deed dated 02.06.1987 produced as Annexure-5. The land on which the petitioner claimed title as per Annexure-5, was having Municipal Survey Plot No. 8, Ward No.34, Circle No.235, Holding No. 124/175 admeasuring 1989 sq.ft., the

North: P.A.C. 10 feet wide service road and

Pearl Cinema House.

South: Proposed P.A.C. Road

East: Plot No. 9

boundaries of which land are as below:

West: Plot No. 4 & 7

4. The allegation was that, despite her continued possession, based on title, the respondent Patna Municipal Corporation was proceeding for demolition of the building



and has already demolished a portion of the commercial building situated over the land. The writ petition was dismissed by judgment dated 31.08.2022.

- 5. Learned Single Judge initially observed that there were disputed questions of fact, which would not be possible of resolution under Article 226. However, on the learned Senior Counsel appearing for the petitioner emphatically requesting for an adjudication, the matter was considered, based on the materials on record.
- 6. On the brief history of the transactions with respect to the subject land, it is to be noticed that the Secretary of the State, the predecessor of the State of Bihar had granted a lease of 125190 sq.ft. land to the Patna Administrative Committee for a term of 50 years, renewable for a further period of 50 years. The Patna Administrative Committee was superseded by the Patna Municipal Corporation. The said land was sub-leased in favour of Sri Dharma Das Sarkar with effect from 20.10.1951 for a period of 30 years, with the option of renewal, restricted to the period of lease granted by the State. The lease granted required erection of a building on the land within one year, as per specification available in the



sanction letter of the Government. Sri Dharma Das Sarkar transferred the holding bearing Plot No.19, Holding No. 119/151, Circle No. 235 in favour of Sri Jagar Nath Prasad as on 27.12.1973. It is asserted on the strength of Annexure-2 that Patna Municipal Corporation had also permitted the transfer.

- 7. Here, it is to be specifically noticed that though the petitioner claimed title and possession over Plot No.8, the transfer as seen from Annexure-2 was of Plot No. 19 though No. '8' is also interpolated; which is in hand.
- 8. Be that as it may, Sri Jagar Nath Prasad was conveyed the subject land with permission from the Patna Municipal Corporation, as evident from Annexure-2 and he transferred it to the petitioner, both of whom have obtained mutation of the land in their respective names. The petitioner is in uninterrupted possession, continuing from the date of Annexure-5, holding the land and also the commercial building situated thereon.
- 9. The immediate cause of action arose for the petitioner when the Patna Municipal Corporation demolished a portion of the building existing in the land and there was an



interim order passed on 25.06.2019. Learned Single Judge, who heard the matter finally, looked into the records and found that the petitioner has not come with clean hands and hence, she was not entitled to the discretionary remedy under Article 226. The said observation of the learned Single Judge rested mainly on the interpolation made in Annexure-2 and the typed agreement brought on record as a true copy of the original, having indicated the lease to have been extended from '20.10.1981' with the option of renewal, which date ought to have been '29.10.1951'. This was found to be an apparent attempt on the part of the petitioner to obtain relief by misleading this Court. The ground raised by the petitioner that the lease of the Municipal Corporation had expired and if at all the State has to proceed for eviction, was noticed, but negatived. It was found that the petitioner herself had approached the Municipal Authority for permission to carry out agricultural operations in the vacant space lying adjacent to the building in 1991 and to put up fences, which was granted on 07.03.1992. The petitioner after thus acquiescing to the authority of the Corporation cannot later challenge the Corporation's right over the property, held the learned Single Judge. The writ petition stood dismissed.



10. The present appeal was filed in which order dated 02.02.2023 was passed. The Division Bench of this Court prima facie observed that if there were disputed questions of fact, then despite the insistence of the petitioner, learned Single Judge ought to have relegated the petitioner to appropriate proceedings; since the authoritative finding under Article 226 would settle the matter once and forever and the parties would not be able to agitate their claims before the forum. Division Bench appropriate The elaborately considered the contentions on both sides and noticed that the property was originally leased out to the Municipal Corporation for 30 years, in 1951, which lease would have expired in 1981. Though the transfer from Sri Dharma Das Sarkar to Sri Jagar Nath Prasad was in 1973, within the lease period, the alleged sale to the petitioner was after the lease period. The Division Bench also noticed disparity in the numbers of the subject property, the leased property bearing no.19; while the possession asserted of the petitioner was on No.8.

11. Be that as it may, it was also opined that the Corporation was required to be questioned as to how the mutation was allowed to Sri Jagar Nath Prasad in 1983 and



also the request of the appellant to register her name as the owner in 1989; in mutation proceedings, allowed. The Division Bench raised a question as to whether the property remained as a lease hold property or whether it was converted into a free hold one. There were also municipal rent receipts produced with respect to the building with effect from 1978 onwards and the application for permitting fencing and plantation on the adjacent property was allowed by the Corporation on monthly/yearly rental. The Division Bench expressed surprise on the manner in which the Corporation had taken up action for demolition. It was found that the petitioner was in occupation for the last three decades and the partial demolition was brought about after drawing a red line on the part of the building which was styled as an encroachment; without taking appropriate proceeding under the Bihar Public Land Encroachment Act, 1956. Prima facie, it was found that the Corporation had acted in a hasty manner. Learned Senior Counsel appearing for the Corporation then, submitted that he shall make an attempt to debunk the claim of the appellant regarding title over the land in question and facts shall be placed on record by the next date. The Division Bench had restrained the Corporation from taking precipitate



action and posted the matter on 02.03.2023.

12. We cannot understand the Division Bench having stayed the order only till 02.03.2023. Even before posting the case to 02.03.2023, the Division Bench noticed the submission of the learned Senior Counsel appearing for the Corporation that he shall make an attempt to debunk the claim of title of the appellant and he was specifically directed to place necessary facts on record, by the next date. The interim order of stay was not till the necessary facts are placed on record but till there is a final decision taken by the Court as to the title of the property.

13. We heard the matter on 11.08.2023. Both learned Senior Counsel appearing for the appellant and learned Senior Counsel appearing for the Patna Municipal Corporation were heard and the matter was reserved for judgment. This Bench also raised doubts about the veracity of the claims raised by the petitioner. However, this Court was of the opinion that even *dehors* a lease or a finding of its renewal or also a valid title; with uninterrupted possession there should be appropriate proceedings taken in accordance with law for evicting a person in possession, even if he/she be



a rank trespasser. We reserved the matter for judgement after making it clear to both parties that after going through the records once more and the conflicting orders passed by the learned Single Judge and the Division Bench, we would either dismiss the application or direct proceedings to be initiated in accordance with law. It is after the matter was reserved that the demolition was carried out by the Corporation and even now the appeal is shown as pending, with the judgement reserved, in the Website of the High Court.

14. We are prima facie of the opinion that there is deliberate contempt made out from the facts noticed above and the demolition carried out on Saturday is without any further notice to the appellant and is in total violation of the interim orders. We also arrive at the finding after having questioned the Commissioner of the Patna Municipal Corporation, whose deposition is annexed herewith. We further reckon the statement made by the respondent in the appeal that he had specific orders from 'above'. Howsoever high the order came from, it cannot be from one above the law.

15. We again sat to deliver the order at 5.15 P.M..



The 4th respondent, who carried out the demolition, was present before us. We examined the 4th respondent, who is an Executive Officer, New Capital Circle, Patna Municipal Corporation, Patna and his deposition is annexed as Exhibit-C-3. He denied that he talked to the appellant or that the appellant's husband informed him of the pendency of the LPA. However, he admits that he carried out the demolition on the verbal orders of the Commissioner of the Patna Municipal Corporation.

16. We would have ourselves taken further proceedings, but both the Judges, who were Members, of the Division Bench which passed the interim order, are present and sitting in the High Court of Patna. Hence, judicial discipline and decorum requires us to refer the matter for consideration by that Division Bench.

17. We appoint Sri Prashant Sinha, Advocate, as the Court Commissioner to inspect the site cordoned off by the police on our directions and file a report before the Court by Wednesday, i.e. 16.08.2023. The Court appointed Commissioner shall be paid a remuneration of Rs.25,000/- by the Patna Municipal Corporation and memo filed by the next



date of hearing.

18. The files of the Patna Municipal Corporation produced before us by the Commissioner shall be in the safe keeping of the Registry to be placed before the Court on Wednesday, i.e. 16.08.2023.

19. We direct the Registry to initiate a contempt case as against the following contemnors who are respondent nos. 2 to 6 in the LPA, namely, (1) Animesh Kumar Parashar, son of Sri Madheshwar Prasad Singh, resident of Mohalla-Shivam Health Club, Opposite P.C. Jewellers, Boring Road, Patna, Municipal Commissioner, Patna Municipal Corporation, Maurya Lok, Dak Bunglow Road, P.S. Kotwali, District-Patna, (2) Sheela Irani, daughter of Sri Lal Bahadur, the Additional Municipal Commissioner, Patna Municipal Corporation, Maurya Lok, Dak Bunglow Road, P.S. Kotwali, District-Patna; (3) Prabhat Ranjan, son of Sri Ravindra Nath Pathak, the Executive Officer, New Capital Circle, Patna Municipal Corporation, Patna; (4) Sri Vijay Kumar, son of Sri Bachchu Prasad Singh, the Executive Engineer, Patna Municipal Commissioner, Patna; and (5) Md. Shamsad, son of Md. Jakir Hussain, the Project Director, Patna Smart City,



Patna, enclosing the two orders passed by us in LPA before the Bench, who passed the interim order dated 02.02.2023, on Wednesday, i.e. 16.08.2023.

20. The LPA be released from our Bench and placed along with the contempt case.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

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In the High Court of Judicature at Patna Letter Patent Appeal No.528 of 2022 Shailja Vajpei v. The Patna Municipal Corporation and Ors.

Deposition before the Court of Hon'ble Division Bench-I, comprising Hon'ble the Chief Justice and Hon'ble Mr. Justice Partha Sarthy, holding Court in the Chambers of Hon'ble the Chief Justice on 13.08.2023 at 11.15 A.M..

The Commissioner is present before us in the presence of Sri Shravan Kumar, learned Senior Counsel for the appellant, Sri Anjani Kumar, learned Additional Advocate General for the State and Sri Sanjay Prakash Verma, learned counsel for the Patna Municipal Corporation.

The Commissioner, Patna Municipal Corporation was delivered oath as below:-

I, Animesh Kumar Parashar, son of Sri Madheshwar Prasad Singh, resident of Mohalla- Shivam Health Club, Opposite P.C. Jewellers, Boring Road, Patna, presently, Commissioner, Patna Municipal Commissioner, do hereby take oath in the name of God that I shall say the truth and nothing but the truth.

Question No.1:- Do you have the files with you?

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Answer:- The files are entrusted to Sri Bindhyachal Singh, learned Senior Counsel for the Corporation.

Question No.2:- When did you entrust the file?

Answer:- The case is going on for quite long and hence the file was entrusted with Sri Bindhyachal Singh, learned Senior Counsel.

Question No.3:- On whose orders, the demolition was carried out?

Answer:- There was miscommunication from the part of the Junior Counsel appearing for the Corporation that the case was dismissed.

Question No.4: Who was the counsel?

Answer:- The communication was from Sri Bipin Kumar, Junior Counsel.

Question No.5:- When were you communicated and who communicated it to you?

Answer:- I was communicated by Mr. Kartikay, who was the Manager at the Patna Smart City, who communicated me the dismissal of the LPA by evening on Friday. I was communicated a screenshot of the dismissal of the writ petition, which I communicated to the junior officer. There was also an oral communication that the appeal was dismissed, hence, this was communicated to the lower officials.

Swil Kr. Tiwas

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The Court Master is directed to take the Mobile of the Commissioner into custody and get a printed copy of the Whatsapp message.

Question No.6:- Who was the junior officer?

Answer:- The junior officer was the Executive Officer, New Capital Circle Region, Patna Municipal Corporation.

Question No.7:- Was there any written order?

Answer:- There was no written order.

Question No.8:- Did you see the judgment in appeal?

Answer: No. The work of the project of multi model hub was going on for connecting Railway Station to the G.P.O. and the subject building was situated on the proposed road.

Question No.09:- Do you proceed on oral communications?

Answer:- The deponent did not answer the question, but it was submitted that "We always abide by the orders of the Court."

Question No.10:- Were you aware of the interim order of the Court?

Answer:- Yes, there was an interim order and during the entire period of order of stay, we did not carry out any precipitate action.

Question No.11:- What prompted you to carry out the present precipitate action?

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Answer:- The oral communication from our Junior Counsel through our officials made me believe that the order has been passed in the appeal, dismissing it.

The printed copy of whatsapp message attested by him is shown to the witness and marked as Court Exhibit C-1.

Certified that the evidence has been taken down by me on the dictation of the Hon'ble Court and is the true transcription of the shorthand notes.

Swil Kr Tivers

(Sunil Kumar Tiwari)

Joint Registrar-cum-APPS

To Hon'ble the Chief Justice

13.08.2023

The deposition has been read over by me and found it to be correct.

(Animesh Kumar Parashar)

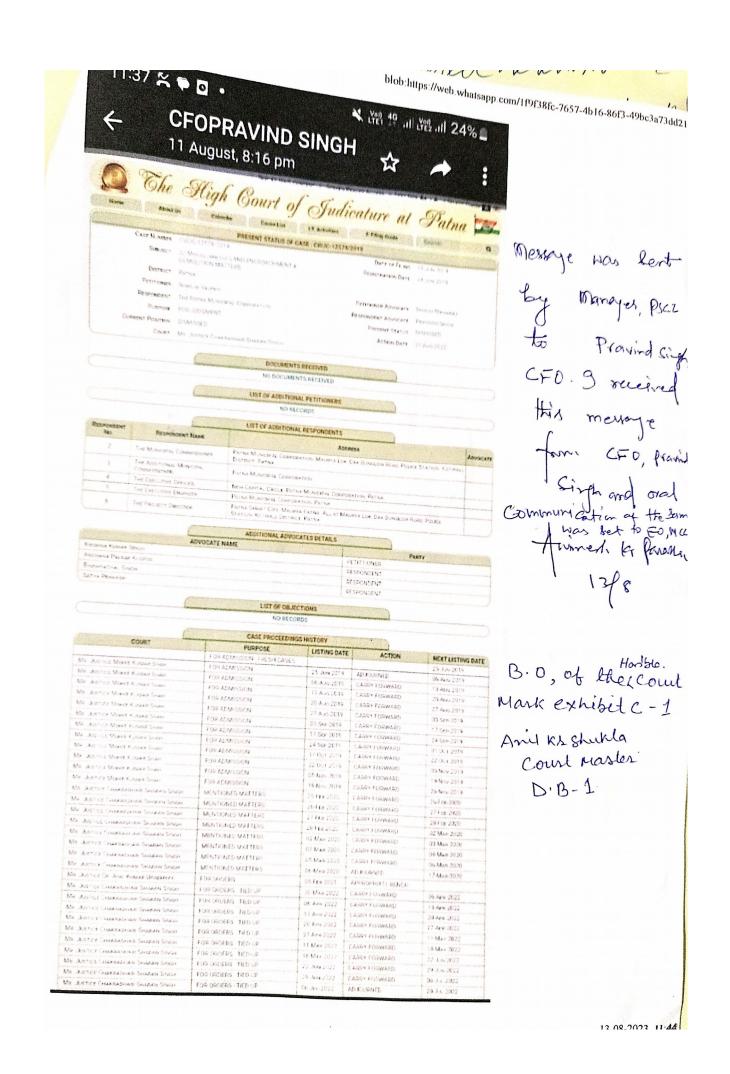
Commissioner, Patna Municipal Commissioner

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13.08.2023

Sanjey Grazach Varma Advocate for PMC 40R HU. 05028







In the High Court of Judicature at Patna Letter Patent Appeal No.528 of 2022

Shailja Vajpei v. The Patna Municipal Corporation and Ors.

Deposition before the Court of Hon'ble Division Bench-I, comprising Hon'ble the Chief Justice and Hon'ble Mr. Justice Partha Sarthy, holding Court in the Chambers of Hon'ble the Chief Justice on 13.08.2023 at 05.30 P.M..

Mr. Prabhat Ranjan, son of Sri Ravindra Nath Pathak, the Executive Officer, New Capital Circle, Patna Municipal Corporation, Patna is present before us in the presence of Sri Shravan Kumar, learned Senior Counsel for the appellant, and Sri Sanjay Prakash Verma, learned counsel for the Patna Municipal Corporation.

Prabhat Ranjan, the Executive Officer, New Capital Circle, Patna Municipal Corporation, Patna was delivered oath as below:-

I, Prabhat Ranjan, son of Sri Ravindra Nath Pathak, the Executive Officer, New Capital Circle, Patna Municipal Corporation, Patna, do hereby take oath in the name of God that I shall say the truth and nothing but the truth.

Question No.1:- Were you on the site when the demolition was carried out?

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Probhet Ronjan.



Answer:- Yes.

Question No.2:- On whose order you carried out the demolition?

Answer:- Municipal Commissioner's order.

Question No.3:- Did you receive a telephone call from the appellant's husband?

Answer:- No.

Question No.4: Did anybody approach from the appellant's side?

Answer:- No.

Question No.5:- Did you tell anybody that you have received orders from above?

Answer:- Yes, to the persons present at the site.

Certified that the evidence has been taken down by me on the dictation of the Hon'ble Court and is the true transcription of the shorthand notes.

Sunil Ky, Tiwari (Sunil Kumar Tiwari)

(Sunii Kumar Tiwari)

Joint Registrar-cum-APPS

To Hon'ble the Chief Justice

13.08.2023

The deposition has been read over by me and found it to be correct.

(Prabhat Ranjan)

Porabhat Roman

Executive Officer, New Capital Circle, Patna Municipal

Corporation, Patna 13.08.2023

Sarjay Prakosh Verme Alvoceli for INC ADR MO. O 5028

