

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8479 of 1999

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1. Md. Aftab Alam son of Khurshid Alam.
 2. Md. Hasim @ Hasim Mian son of Late Usman Mian
Both resident of Mohalla Ganj No.2, Bettiah, P.S. & Post Bettiah, District West Champaran.
 3. Sudama Devi wife of Hari Narayan Prasad Gupta, resident of Hospital Road, Bettiah, P.S. Bettiah, District West Champaran.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Secretary, Board of Revenue, Bihar, Patna.
3. The Collector, West Champaran, Bettiah.
4. Sub-divisional Officer, West Champaran, Bettiah, West Champaran.
5. Deputy Collector, Land Reforms, Bettiah.
6. Manager, Bettiah Estate under the court of Wards, Bettiah, West Champaran.
7. Suryadeo Sharma alias Suryadeo Sharma Bagi son of Thakur Pandey, Resident of Ganj No.2, Bettiah P.S. Bettiah, West Champaran.
8. Circle Officer, Bettiah, District West Champaran.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bashishtha Narayan Mishra, Adv.
M/s S.N.Rai and B.K.Mishra, Adv.
For the Res. 1 to 5 : Mr. Manoj Kumar Jha, Advocate.
A.C. to G.A. 26

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 01-04-2015

Heard counsel for the petitioners and the respondents.

In this case, petitioners are claiming to be lease holder of Plot No. 5227 of Bettiah Estate and they are being threatened for illegal ejection. Prayer has been made that the respondents should be directed not to illegally dispossess them from the shops constructed over the respective plots allotted, as they can only be evicted by the process of law and also prayed that the respondent nos. 5 and 6 be restrained from settling the allotted land over which the petitioners shops lie or any portion thereof to the respondent no.7 till

continuation of lease granted in their favour. Petitioners have also sought a relief that letter dated 10th May 1999 issued by the Collector, West Champaran, Respondent no.3 to the Sub-Divisional Officer, West Champaran, Respondent no.4 as well as the order dated 10th August 1999 passed by Sub-Divisional Officer, Respondent no.4, be also quashed.

As per the claim of the petitioners, these petitioners have been leased out to them the plot of land having area of 12'x8'=96 sqr.ft. in Mohalla Ganj No.2 appertaining to plot no. 6227 (big plot) which belongs to Bettiah Estate. They are poor people, for their livelihood have set up their respective Gumti near Mina Bazar in Bettiah Town and started holding their shops. The Gumtis are wooden Gumtis fixed over the plot. Petitioner no.4 constructed straw Gumti over the drain which is part of Municipality. Petitioner no.1 is running a ready-made shop, petitioner no.2 is holding an egg shop and petitioner no.3 deals with miscellaneous articles.

With regard to petitioner no.4 Ram Ayodhya Prasad @ Ayodhya Prasad, the writ petition has been dismissed as not pressed. So this Court is not required to deal with the case of petitioner no.4, but no one has right to cover municipal drain and obstruct the flow of drain water. In the year 1993, beatification of Bettiah Town was taken up by the district administration and a drive was launched to remove encroachments. On account of this drive, petitioners were directed to remove their respective Gumtis.

The Manager of Bettiah Estate, Respondent no.6 allotted the plot and entered into lease agreement on 30th September 1993 which have been approved by Secretary, Board of Revenue, competent authority, accordingly small piece of plot of land were settled with 39 persons including these petitioners on rent of Rs.100/- per month, accordingly all came in

possession of respective plots.

Suryadeo Sharma, respondent no.7 is an influential person of Bettiah. The Manager, Bettiah Estate under the influence of Suryadeo Sharma, Respondent no.7 stopped granting rent receipts but the petitioners and others continued to send the rent through Money Order every month. Suryadeo Sharma, Respondent no.7 was also under lease of house over the plot no. 5227 of Bettiah Estate, he fell in arrear of payment of rent regarding the house. Consequently, the Manager, Bettiah Estate filed Title Suit No. 78 of 1980 in the court of Munsif, Bettiah for eviction and realization of arrear of rent. The suit was decreed on 29th August 1981 but respondent no.7 managed to get the execution delayed which was ultimately filed in 1990 vide Execution Case No. 19 of 1990. The delivery of possession could only be passed on 27th July 1993 but using his influence, but he remained in occupation. Suryadeo Sharma had evil eye over plot no. 5227 of Bettiah Estate and particularly he had grudge against Satya Narayan Prasad one of the allottees running shop with other shop keepers. He approached the Collector and made him understood, petitioners and others have encroached over the land of Bettiah Estate which was settled in his favour and requested for removal of encroachment from the said land.

The Collector called a report from the Sub-Divisional Officer, Bettiah Sadar who after enquiry submitted his report on 27th July 1994 clearly stating that the Gumti of 39 shop-keepers kept in northern part of the plot no. 5227 were existing under valid orders of lease whereupon the Collector did not pass order for removal.

In pursuance of the report, no order was passed for removal for the time being but the Secretary, Board of Revenue sent a letter for removal of

the Gumtis. Suryadeo Sharma, Respondent no.7 by his political indulgence succeeded in stopping the receipt by Bettiah Estate, necessary order was given to the Sub-Divisional Magistrate, respondent no.4 for his removal and threats were issued to the petitioners and other shop-keepers to remove their shops failing which they would be forcibly evicted from that place.

Being apprehensive of evil design, petitioners and others approached this Court in CWJC No. 3417 of 1996 for a direction to the respondents to restrain themselves from removing the shops forcibly. This Court disposed of the writ petition vide order dated 27th June 1996 and expressed the opinion that the authorities will not remove them without following the procedure prescribed under law.

Suryadeo Sharma, respondent no.7 prevailed upon the authority and got initiated Land Encroachment Case No.3 of 1996-97. Notices were issued to the petitioners and one Satya Narayan Prasad. All of them filed respective show cause, produced their respective documents, including the order of this Court and letter of agreement, including rent receipt showing valid agreement with the Bettiah Estate.

The Sub-Divisional Officer, Bettiah who examined the materials on record dropped the proceeding vide order dated 30th January 1997 arising from Land Encroachment Case No.3 of 1996-97 but suddenly Suryadeo Sharma, respondent no.7 with the active support of local Officer of Bettiah Town Police Station entered into the shop of Satya Narayan Prasad on 12th April 1997 along with two Sub-Inspectors and about two dozen Police personnel and started ransacking his shop, looted away articles, dismantled the Gumti and carried it to the Police Station on a truck where the remnants of the Gumti were kept.



Staya Narayan Prasad filed an application before the Collector who enquired into the matter through Sri Krishna Prasad, Magistrate who found all the allegation to be true but nothing tangible was done by the authorities to restore the possession and property of Satya Narayan Prasad which compelled Satya Narayan Prasad moved before this Court in CWJC No. 4496 of 1997 and this Court found his case to be of illegal dispossession and directed for restoration of Gumti over the said plot which was allotted to him.

It will be relevant to quote Para-22 of the judgment which is as follows:

“Para-22 : As noted above on the basis of the pleadings made on behalf of the parties it is only to be verified whether or not the Gumti set up by the petitioner still stands on the disputed land as described hereinabove. The Collector, West Champaran is accordingly directed to ask the Sub-Divisional Officer, Bettiah to personally go on the spot and to verify whether or not the Gumti set up by the petitioner in the year 1993 exists on plot no. 5227. In case it is reported by the Sub-Divisional Officer that the Gumti was still there, that would be the end of the matter. In case, however, the Sub-Divisional Officer reports that the Gumti was not there, the Collector would be duty bound to recover the Gumti from respondent no.9 and 5 and to have it set up at its original place within one week from the date of receipt/production of a copy of this order. In that case the Collector may also consider reporting the conduct of respondent no.5 to the superior Police Officials for suitable

action in accordance with the rules.”

Suryadeo Sharma also threatened these petitioners for dire consequences like Satya Narayan Prasad if they refused to come to his line as dictated.

After the incident took place with Satya Narayan Prasad having feeling threatened, these petitioners had also approached this Court vide CWJC No. 4551 of 1996 and both the cases were listed together but due to some confusion, the writ petition filed by the petitioners was dismissed for default which compelled the petitioners to file the present writ petition.

Counsel for the petitioners submits that the case of Satya Narayan Prasad and these petitioners are identical, in that case this Court has found that there was valid lease with Satya Narayan Prasad. That order equally applies to these petitioners as the land was settled with them under valid lease by the Manager of Bettiah Estate after approval of the Secretary, Board of Revenue.

In such view of the matter, this Court is of the view that the fact of the present case and that of Satya Narayan Prasad are identical with little bit difference that these petitioners are still running their shops whereas Satya Narayan Prasad was removed forcibly by the Police Officials and on that account this Court was compelled to pass order for restoration of Gumti of Satya Narayan Prasad, except that, there is no difference in the facts and situation. In such view of the matter, this Court holds that the petitioners are under valid lease with Bettiah Estate and so long they are under lease, they cannot be evicted illegally but however, it cannot be denied the lessor has every right, in a proper manner he can get a person evicted by following the process of law.

This Court also makes it clear that the petitioners cannot travel beyond the dimension of 12’x8’ (96 sqr. Ft.) of plot no. 5227 and if they have encroached upon any portion of public land, they cannot be allowed to continue upon the public land or any portion of the land of Municipal drainage.

With the above observation/direction, this petition is allowed.

(Shivaji Pandey, J)

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