

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8560 of 2011

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1. Ashok Kumar S/O Jagdish Singh Resident Of Viilage-Katra, Post-Hajipur, P.S. Nagar Hajipur, District- Vaishali.

.... Petitioner/s

Versus

1. The State Of Bihar Through Secretary Urban Development Department Government Of Bihar Patna
2. The District Magistrate Hajipur
3. The Sub Divisional Magistrate Hajipur
4. The Nagar Parishad Through Executive Officer Hajipur
5. The Executive Officer Nagar Parishad Hajipur
6. The Chairperson Nagar Parishad Hajipur
7. The Officer In Charge Nagar Thana Hajipur
8. Murlildhar Yadav, Junior Engineer Estate(Deputation) Nagar Parishad Hajipur
9. Raju Baitha S/O Late Shiv Kumar Baitha Mohhala-Guddari Bazar, Hajipur
10. Natwar Singh S/O Vishwanath Singh Mohalla-Guddari Bazar, Hajipur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. APURVA KUMAR

For the Respondent/s : Mr. RAM BALAK MAHTO AG

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 18-12-2015

Heard the Counsel for the petitioner, Mr. Surendra Kishore Thakur for the respondent Nagar Parishad and Mr. Mahendra Thakur for respondent no. 10. A counter affidavit has been filed on behalf of Nagar Parishad, Hajipur (for short 'the Parishad').

In brief, the contention of the petitioner is that on his application, Shop no. 194 measuring 5' X 6' belonging to the Parishad was allotted in the year 2006. Since then, he is paying rent duly accepted by the respondent Parishad. However, possession thereof was never given to him. The matter was agitated before the



Sub Divisional Officer wherein he also deposited cost for deputation of Magistrate and Police party. Even then, the possession of the shop was not given. The present writ application seeks a direction upon the Parishad to deliver vacant possession of the land of the petitioner since it was allotted to him and he had been paying rent under receipt to the Parishad.

In paragraph 8 of the supplementary counter affidavit, the respondent Parishad has stated as under:-

“8. That it is also submitted that accordingly the petitioner has deposited Rs. 1400/- as a cost of Magistrate and Police Personel and accordingly vide letter no. 380 dated 5.4.2010 Sri Murlidhar Yadav, Junior Engineer was appointed as a Magistrate to deliver possession and measurement of the alleged place but possession could not be given and when the Executive Officer has got changed other Executive Officer has joined it has come to the knowledge that the settlement was made illegally only on the recommendation of the then M.L.A. and on the Note Sheet prepared by the then clerk Naresh Mohan Prasad Sinha and ultimately a report was called from the Ward Inspector Sri Harishchandra Choudhary with regard to the status of the shop in question who reported vide his report dated 3.9.2011 that in fact in the market Gudri there is total shops 193 and there is no shop demarcated as 194 and it was also reported that the land which in fact has been settled in favour of the petitioner is shop no. 25 which has already been settled to Babulal Singh and is paying rent whereas it was also reported that it is wrong to say that the alleged settled place is vacant land or the petitioner any occasion has installed his shop of vegetable but some and other reason a final decision could not be taken because of the pendency of the writ application before the Hon’ble High Court as the petitioner has already filed writ application for direction either to return the amount or to give possession over the settled land.”



Mr. Mahendra Thakur appearing for respondent no. 10 has submitted that Shop no. 25, which is being claimed by the petitioner, was settled/allotted to the father of the respondent no. 10 at least several decades ago and he had been paying rent to the Parishad. What appears from the rival pleadings is that although on the recommendation of the local M.L.A., the Executive Officer allotted a piece of land/Shop no. 194 but the said shop/piece of land never existed. The petitioner, on the basis of Annexure-2, now claims the land/shop which is shop no. 25 allotted to the respondent no. 10. At least for nearly five years, the possession was not given to the petitioner. However, it appears from diverse pleadings on record that the petitioner had been paying the rent as fixed under Annexure-1 series to the respondent Parishad.

Having regard to the rival submissions, this Court does not find it expedient to direct for giving vacant possession over the said plot/shop of the Parishad to the petitioner. However, the respondent Parishad has been receiving the rent as well as a sum of Rs. 1,400/- was also got deposited by the petitioner for enforcement of the Magistrate which has not brought any relief to him. The acceptance of rent was wholly unlawful if the statements made in the supplementary counter affidavit are true and accepted by the Court.

Consequently, while declining the relief prayed for in the

application, the writ application is disposed of by directing the Parishad to refund all the amount which the petitioner deposited either by way of rent and/or deputation of police contingent in favour of the petitioner within four weeks. Petitioner shall also be entitled to an additional sum of Rs. 4,000/- for having putting him in trouble and litigation by the respondents initially by allotting the land and thereafter receiving rent from him without giving delivery of possession.

(Kishore Kumar Mandal, J)

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