

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19688 of 2010

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1.Navyuvak Pushtakalaya, a District Central Library, Motihari, East Champaran through its Secretary Shri Surendra Kumar Choudhary, son of late Shri Ganga Prasad Choudhary, resident of N.H. Bye-Pass, P.O. & P.S. Chatauni, District East Champaran.

2. Surendra Kumar Choudhary, son of late Shri Ganga Prasad Choudhary, resident of N.H. Bye-Pass, P.O. & P.S. Chatauni, District East Champaran.

.... **Petitioners**

Versus

1.The State of Bihar through the Secretary, Urban Development Department, Bihar, Patna

2. The District Magistrate, East Champaran, Motihari

3. The Nagar Parishad, Motihari represented through the Executive Officer, East Champaran, Motihari

4. The Executive Officer, Nagar Parishad, East Champaran, Motihari

.... **Respondents**

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Appearance :

For the Petitioners : Mr. Satyabir Bharti, Advocate

For the Respondents : Mr. Anil Kumar(GP22)

For the Nagar Parishad : Mr. Raghwanand, Advocate

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

ORAL ORDER

7 22-07-2015 Heard learned counsel for the petitioners and the State as well as learned counsel appearing on behalf of the Nagar Parishad, Motihari.

The petitioners seek quashing of the order dated 24.11.2010, as contained in memo no.1629 passed by the District Magistrate, Motihari in exercise of power conferred under Article 243W read with XII Schedule of the Constitution of India and section 100 of the Bihar Municipal Act, 2007 whereby petitioner no.1 Navyuvak Pushtakalaya, Motihari was directed to be taken over by the Nagar Parishad, Motihari. A further prayer was made

to quash the consequential order, dated 25.11.2010, as contained in letter no.1407 passed by the Executive Officer, Nagar Parishad, Motihari whereby petitioner no.2 was directed to hand over the possession of the said library within three days.

Learned counsel for the State as well as learned counsel appearing for the Nagar Parishad, Motihari has opposed the prayer of the petitioners both on merit and locus.

Both the District Magistrate, East Champaran, Motihari as well as Nagar Parishad, Motihari have filed their counter affidavits. This Court by order dated 6.12.2010 stayed the operation of the impugned order contained in letter no.1407 dated 25.11.2010 issued by the Executive Officer, Nagar Parishad, Motihari. Again this Court by order dated 18.1.2011 directed the respondent nos.2 to 4 to forthwith unseal the premises and handover the possession to the petitioner subject to the final orders that may be passed in the writ petition. Respondent No.4 has filed I.A.No.6904 of 2011 for vacating the stay.

The facts of the case in brief is that on 21st August, 1945, the Governor of Bihar through the Collector executed a registered lease deed in favour of the members of the Managing Committee, Navyuvak Pushtakalaya, Motihari, East Champaran for a period of 30 years for running of the said institution. The lease contained its terms and conditions. There was an option of renewal of lease for

a further period of 30 years on payment of annual concessional rents which was extended for another term.

It is the case of the petitioners that at their request, the lease was renewed for a further period of 30 years, which period expired on 20.8.2005. Much before the period of expiry of the said lease, the then Secretary of the Navyuvak Pushtakalaya requested the District Magistrate, East Champaran, Motihari for further renewal of lease on 19.9.2002.

The Collector in its counter affidavit does not dispute the aforesaid fact that the application for renewal of lease is pending consideration and a decision to the aforesaid effect would be taken shortly. Till the date of hearing, no final order determining the or renewing the lease has been brought on record.

The petitioners have challenged the impugned orders on two grounds. Firstly, the impugned order has been passed in utter violation of principles of natural justice as no opportunity of hearing was given though their application for renewal of lease was pending. Secondly, as the lease was executed between the Governor of Bihar and the Members of the Managing Committee, Navyuvak Pushtakalaya, the same can be resumed only with the express consent of the Governor of Bihar. In this regard, learned counsel for the petitioners has drawn my attention to paragraph 2 of the lease deed, the relevant extract of which is quoted herein

below for easy reference:

“2. That should the land or any part thereof be at any time required by the Government of Bihar for any purpose declared by Government to be a public purpose, the Grantor shall be entitled to resume the land or such part thereof and on giving six Months’ notice in writing may, through any officer or person authorized by Government in that behalf, re-enter and take possession if the said land or part thereof and of all buildings and structures thereon except as authorized by statute or by the Grantor in writing”.

Learned counsel for the petitioners further submits that in view of the settled law the possession of premises of leasehold land could be resumed only in accordance with law. In support of his contention, he relies upon a decision of this Court in the case of *The Gait Public Library & Institute v. State of Bihar, reported in 1995(1)PLJR 585* and the decision of the Hon’ble Apex Court in the case of *State of W.B. & Ors v. Vishnunarayan & Associates (P) Ltd. reported in (2002)4 SCC 134*.

Besides this, learned counsel argued that as the lease land was a Kaisre Hind land and the agreement was executed between the Governor of Bihar and the members of the managing committee of Navyuvak Pushtakalaya, the Collector did not have an authority to exercise powers under section 100 of the Municipal Act and Article 243W read with 12 and 13 of XII Schedule of the Constitution of India.

As learned counsels for the respondents have raised the

issue of locus of the petitioners to challenge the impugned order, it would be just and proper to take up this issue as the first issue.

Elaborating their submissions, learned counsel for the respondents submits that the Managing Committee of the Pushtakalaya has not been formed in terms of bye-laws, whose Chairman as per bye-laws would be either District Magistrate or District Judge. The petitioner no.2 has also no locus to run the institution.

In my view, if the constitution of the Managing Committee including its Secretary is not as per the bye-laws, the same would be subject matter of an appropriate proceeding.

Besides this, the Respondents have not placed any material on record in support of their case that petitioner no.2 has not been chosen as Secretary of Navyuvak Pushtakalaya. No one too has not challenged the election/nomination of petitioner no.2 as the Secretary of Navyuvak Pushtakalaya. Further more, the impugned order of the Collector directing handing over the possession of the Navyuvak Pushtakalaya to the Nagar Parishad, is addressed to the Secretary of the Navyuvak Pushtakalaya. The petitioner no.2 claiming to be the Secretary has challenged the impugned order.

Thus, I am of the considered view that the respondents have failed to satisfy that the petitioners have no locus to challenge the impugned order.



Once I have held that the petitioners have locus to challenge the impugned order, I will now proceed to consider whether they have made out a case for interfering with the impugned order. It appears that the Collector in exercise of power under section 100 of the Bihar Municipal Act and Article 243W read with 12 and 13 of the XII Schedule of the Constitution of India have transferred the possession of petitioner no.1 to Nagar Parishad, Motihari.

Counsel for the petitioners argued that as per Section 100(1) of the Bihar Municipal Act, that all public lands, not belonging to any Government department or statutory body or corporation, would vest in the Municipality, unless the State Government directs otherwise by notification. According to him, the land in question is a Kaisre Hind land as also appearing even from the order of the Collector and as such the same would not vest in the Municipality and the Collector in no case would have power to transfer its possession to the Nagar Parishad in view of terms of agreement apart from lacking jurisdiction to do so, sans government concurrence or directives.

Even assuming for the sake of argument that the land would vest in the Municipality, even then the case of the petitioners would succeed on the point that the impugned order has been passed without affording an opportunity of hearing to

them.

It is not in dispute that the lease deed was executed in favour of the petitioners by the Governor of Bihar in respect of the land which is admitted in 1945 as Kaisre Hind land, for a period of 30 years which was extended for a further term of 30 years in view of option clause for renewal. Petitioner no.1 has filed a request for further renewal in the year 2002, which is admittedly pending consideration. Petitioner no.1 is admittedly in possession of the lease hold land and the Library. The impugned order threatening to dispossess the petitioners affects right of petitioner no.1 to hold lease hold property unless it is resumed in terms of the lease agreement. In such circumstances, the petitioners were entitled to an opportunity of hearing. The impugned order has been passed without affording an opportunity of hearing is violative of principles of natural justice and Article 14 of the Constitution of India.

As such, the impugned order dated 24.11.2010, as contained in memo no.1629 passed by the District Magistrate, Motihari and the consequential order dated 25.11.2010 as contained in letter no.1407 passed by the Executive Officer, Nagar Parishad, Motithari are set aside with liberty to the respondents to proceed afresh in accordance with law. It would be also open for the Collector to pass appropriate order on the application of the

petitioners with respect to renewal of lease.

In the result, this writ application is allowed.

(Samarendra Pratap Singh, J)

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