

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5322 of 2014

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1. Sunil Kumar Bhagat @ Suni Kumar Yadav S/o Sri Krishna Dev Prasad Bhagat, resident of Village Naga Road, Ward No. 11, P.O. + P.S. Raxaul, District East Champaran
 2. Raju Kumar Raj S/O Sri Chandra Kishore Prasad, resident of Village Naga Road, Ward No. 11, P.O. + P.S. Raxaul, District East Champaran
 3. Mohan Prasad S/o Raghu Nath Prasad, resident of Village Nakar Dei, P.O. Noniadih, at present Subjee Bazar, Ward No. 21
 4. Akhilesh Kumar S/o Dularchand Prasad, resident of Mohalla Nagar Road, Ward No. 9
 5. Viveka Nand Prasad S/o Ishwari Prasad, resident of Village Ashram Road, Ward No. 8
 6. Pankaj Kumar S/o Damodar Prasad Verma, resident of Village Ashram Road, Ward No. 8
 7. Prahlad Prasad S/O Late Laloo Ram, resident of Village Subzi Bazar , Ward No. 21
 8. Smt. Ambika Devi @ Ambika Devi Jaiswal W/o Dr. Prithvi Chand Prasad, resident of village Subzi Bazar , Ward No. 21
 9. Smt. Shashi Bala Devi W/o Sri Dhrub Narayan, resident of village Subzi Bazar , Ward No. 11
 10. Surendra Prasad S/o Sri Rajdeo Prasad Mahto, resident of Village Korla Tola, Ward No. 11
 11. Birendra Prasad S/o Rajdeo Mahto, resident of Village Korla Tola, Ward No. 11, All are P.O. and P.S. Raxaul, District East Champaran
 12. Dinesh Prasad S/o Bidyasagar Prasad, resident of Village Nagar Road, Ward No. 11, P.O. + P.S. Raxaul, District East Champaran
 13. Ramesh Kumar S/o resident of village Naga Road, Ward No. 11, P.O. + P.S. Raxaul, District East Champaran

.... Petitioner/s

Versus

1. The State of Bihar through District Magistrate, East Champaran
2. The Sub Divisional Officer, Raxaul, P.O. + P.S. Raxaul, District East Champaran
3. The Executive Officer, Nagar Parishad Raxaul, P.O. + P.S. Raxaul, District East Champaran
4. Tax Collector/Inspector Nagar Parishad Raxaul, P.O. + P.S. Raxaul, District East Champaran
5. The Chairman, Nagar Parishad Raxaul, P.O. + P.S. Raxaul, District East Champaran
6. The Vice Chancellor, Nagar Parishad Raxaul, P.O. + P.S. Raxaul, District East Champaran

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Md. Shahnawaz Ali, Advocate
For the Respondent/s : Mr. Sandeep Kumar, GA-8

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

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27-04-2015

Although this writ petition has been filed by 13 persons claiming allotment of shops in their favour from the authorities of Nagar Parishad, Raxaul in the District of East Champaran but the record manifests that it is only petitioner nos. 1 to 5 and 7 to 11 with whom an agreement has been made by the municipality for allotment of the shops. Insofar as petitioner nos. 6, 12 and 13 are concerned, although the records demonstrate that they had made deposits of Rs. 20,000/- each for the purpose but there is no such agreement on record.

In the circumstances, this writ petition insofar as petitioner no. 6 Pankaj Kumar, petitioner no. 12 Dinesh Prasad and petitioner no. 13 Ramesh Kumar is concerned, stands disposed of with a direction to the Executive Officer, Raxaul to refund the deposits made by these petitioners as back as in the year 1996 alongwith interest quantified at 7 per cent per annum after adjustment of outstandings, if any, found payable to the municipality.

Insofar as petitioner nos. 1 to 5 and 7 to 11 are concerned, the record manifests that an agreement was entered in between these petitioners and the Executive Officer, Nagar Parishad, Raxaul for allotment of shops and pursuant whereto



these petitioners have been allotted shop nos. 33, 34, 25, 15, 8, 35, 36, 32, 38 and 37 respectively. Since an attempt was made by the municipality for disturbing the possession of these petitioners that the writ petition in question was filed for appropriate direction to the authorities of the municipality.

A counter affidavit has been filed by the Executive Officer, Raxaul, Nagar Parishad in which he has admitted that an agreement was executed in between these petitioners but when the municipality gathered knowledge that the deposit made by these petitioners as vegetable vendors had been accepted under confusion inasmuch as their name did not find mention in the list prepared in this regard arising out of Miscellaneous Case No. 10 of 1996 that the Board of the Nagar Parishad has decided to cancel the agreement executed in between the Nagar Parishad and the petitioner and that they have issued notice as back as on 6.9.2012, copy of which finds place at Annexure-B series.

Mr. Shahnawaz Ali, learned counsel for the petitioners submits that these notices were never communicated to the petitioners and it is for this reason that the petitioners approached this Court so belatedly. He submits that once an agreement has been entered in between the municipality and the petitioners, before any order of cancellation is passed, these petitioners

deserve a hearing and which is missing in the present case.

I have heard learned counsel for the parties and I have perused the materials on record. The statement made by the Executive Officer in paragraph-6 of the counter affidavit does not reflect whether any hearing was granted to these petitioners before a resolution was taken by the Board of the Nagar Parishad. The moment an agreement is entered by the Nagar Parishad with these petitioners a right is created in these petitioners to claim a relief of renewal and its cancellation without a hearing would be a nullity. It is to be considered by the Board of the municipality whether these petitioners in the backdrop of the circumstances were entitled for renewal of their licenses especially where the agreement has continued for almost two decades and admittedly these petitioners have made deposits, under a legitimate expectation of allotment of a shop. That there being no adverse reports against these petitioners of being involved in any other activity than vending of vegetables, in my opinion the case of these 10 petitioners i.e. petitioner nos. 1 to 5 and 7 to 11 requires a reconsideration by the municipality especially where the cancellation is ex-parte and no hearing was granted to these petitioners.

In the circumstances discussed, the matter is remitted

back to the Executive Officer, Nagar Parishad, Raxaul for consideration of the claim of the petitioners for allotment / renewal of license of the shops allotted in their favour, the details of which are given hereinabove more particularly where deposits have remained with the Nagar Parishad for almost 20 years.

Let the Executive officer, Nagar Parishad Raxaul, consider the respective cases of the petitioners for renewal of their agreements on such terms and conditions as deem fit and proper by the municipality and in the event the decision goes against the petitioners then obviously they would be entitled for refund of their deposit alongwith simple interest @ 7 per cent per annum after adjustments against outstandings, if any, payable to the municipality.

The matter is left open for consideration and decision to be taken preferably within three months from the date of receipt / production of a copy of this order by the Executive Officer, Nagar Parishad Raxaul.

The writ petition is disposed of.

(Jyoti Saran, J)

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