

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5704 of 2010

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Mahesh Thakur S/O Shri Jagdish Thakur, a resident of Mohalla- Miachak, Chatti Road, P/S- Town Thana, Distt.- Begusarai

.... Petitioner/s

Versus

1. The State of Bihar
2. District Magistrate-Cum-Chairman, Swarnjayanti Zila Kendriya Pustakalaya, Begusarai
3. District Education Officer-Cum-Secretary, Swarnjayanti Zila Kendriya Pustakalaya, Begusarai

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajni Kant Jha

For the Respondent/s : Mr. Ranjan Kumar, AC to AAG-IV

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 02-03-2015

Heard the parties.

2. The petitioner has filed the present writ petition under Article 226 of the Constitution of India assailing the validity and correctness of a part of order/ resolution dated 15.03.2010 passed under the Chairmanship of the respondent District Magistrate-cum-Chairman, Swarnjayanti Zila Kendriya Pustakalaya, Begusarai, which was communicated to the petitioner, besides others, vide Memo No. 154-211/ Begusarai, dated 20.03.2010 (Annexure-1) issued under the signature of the respondent District Education Officer cum Secretary, Swarnjayanti Zila Kendriya Pustakalaya, Begusarai, whereby the petitioner has been directed to vacate the shop in question earlier allotted to him at Vikash Bazar, Begusarai.

3. Learned counsel appearing on behalf of the petitioner submits that by virtue of an agreement, as contained in Annexure-6, the petitioner was inducted as a tenant for the shop in question, fully detailed in that agreement for the period from 01.09.2002 to 31.12.2005. According to him, even if the petitioner has violated any terms and conditions of such agreement or tenancy, he could have

been directed to be evicted from the shop in question only after resorting to the procedure prescribed under The Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 (In short “BBC Act”). It is contended that the authority concerned without following the procedure prescribed under the law and without giving any opportunity of hearing to the petitioner has passed the impugned order and, therefore, on the ground of infraction of the principles of natural justice alone, the impugned order/ resolution is liable to be set aside and quashed by this Court.

4. Learned State Counsel appearing on behalf of the respondents has opposed the prayer made on behalf of the petitioner and has submitted that, in fact, as per clause-15 of the agreement (Annexure-6), the petitioner is/was liable to be evicted from the shop in question under the provisions of **The Bihar Government Premises (Rent, Recovery and Eviction) Act, 1956** (In short “Act 1956”) and the rules made thereunder. According to him, the shop in question is on a Government land, therefore, the provisions of the BBC Act shall not apply in the present case. However, he has not been able to dislodge the claim of the petitioner that before passing the impugned order/ resolution, as contained in Annexure-1, no opportunity of hearing was given to the petitioner.

5. After having heard the parties and on consideration of materials available on record, this Court is of the opinion that the entire matter requires reconsideration and fresh decision by the respondent District Magistrate-cum-Chairman, Swarnjayanti Zila Kendriya Pustakalaya, Begusarai. Indisputably, before passing the impugned order/ resolution, as contained in Annexure-1, opportunity of hearing was not given to the petitioner, though he was inducted in the shop in question by virtue of agreement as contained in Annexure-6. This Court further finds that for eviction of the petitioner from the shop in question, whether he is required to be subjected to the

proceeding under the BBC Act or under the provisions of the Act 1956 have not been examined and taken into consideration either by the respondent District Magistrate or by the respondent District Education Officer or any other competent authority. There is no dispute that the petitioner was inducted over the shop in question by virtue of the agreement as contained in Annexure-6, though, the period of tenancy is already over.

6. For the reasons recorded above, the impugned order/ resolution, as contained in Annexure-1, so far it relates to the petitioner, is hereby set aside and quashed and the matter is remitted back to the respondent District Magistrate, Begusarai with a direction to pass a fresh order in accordance with law after giving an opportunity of hearing to the petitioner and other concerned persons/ authorities. The petitioner is directed to appear before the respondent District Magistrate within a period of one month from today with a certified copy of the present order. Thereafter, he shall fix a date and shall give an opportunity of hearing to the petitioner and only thereafter, shall pass appropriate order strictly in accordance with law. The petitioner shall be at liberty to raise all the issues of facts and law before the respondent District Magistrate, Begusarai, which are available to him.

7. The writ petition stands allowed to the extent indicated above. However, the parties are left to bear their own costs.

8. The interim order dated 02.04.2010 passed by a Bench of this Court stands hereby vacated.

(Birendra Prasad Verma, J)

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