

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7609 of 2014

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1. Noor Ahmad son of Md. Halim Resident of Mohalla - Mumtaz Mohalla,
Police Station - Naugachai, District - Bhagalpur.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The District Magistrate, Bhagalpur.
3. The S.D.M.-cum-House Controller, Naugachia, District - Bhagalpur.
4. The Officer Incharge, Naugachia Police Station, Naugachia, District - Bhagalpur.
5. Parwati Devi wife of Late Hiralal Sah Resident of Naugachia Bazar, Kali Mandir Road, near Gandhi Chowk, P.O. and P.S. Naugachia, District - Bhagalpur.
6. Raj Kumar Sah son of Late Hira Lal Sah
7. Vidya Sagar Sah son of Late Hira Lal Sah Both resident of Naugachia Bazar, P.O. and P.S. Naugachia, District - Bhagalpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Abdul Mannan Khan
For the State : Mr. Md. Irshad, A.C. to S.C.-18
For the Respondent No. 5 to 7 : Mr. Sunil Kumar

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

2 24-04-2015 Heard Mr. Abdul Mannan Khan, learned counsel for the petitioner and Mr. Md. Irshad, AC to SC-18 for the State as well as Mr. Sunil Kumar learned counsel appearing on behalf of the respondent nos. 5 to 7.

The petitioner has questioned the order dated 10.01.2014 of the House Controller -cum- Sub-Divisional Magistrate, Naugachia, district- Bhagalpur passed in House Control Case No. 1036 of 2013 whereby he has issued directions to the petitioner for vacating the shop failing which the same would be vacated

through the process of a Magistrate. Although, the order is appealable under Section 24 of the Act and an appeal also remains pending for consideration but considering the exercise of jurisdiction, this Court is persuaded to consider the matter in issue.

The facts of the case, briefly stated, is that an application was filed by the petitioner before the House Controller-cum-Sub Divisional Magistrate, Naugachia in the district of Bhagalpur under Section 19 of the Bihar Building (Lease, Rent and Eviction) Control Act, 1982 (hereinafter referred to as 'the Act') seeking permission to deposit the rent in Court on the failure of the landlord to accept the same. The Respondent No. 5 appeared and contested the matter and whereupon the House Controller by the impugned order passed on 10.01.2014 while dismissing the case issued further directions to the petitioner to vacate the premises in question, failing which the same would be vacated through the process of law. The petitioner being aggrieved by the order of the House Controller has preferred an appeal before the Collector, Bhagalpur under Section 24 of 'the Act' bearing Appeal No. 87 of 2013-14 and the said appeal is yet pending. It is the complaint of the petitioner that in the meanwhile the said Sub-divisional Magistrate, Naugachia has tried to enforce the order passed by him in House Control Case No. 1036 of 2013 and hence this writ

petition.

Although, it is sought to be contended by Mr. Sunil Kumar appearing for the Respondent Nos. 5 to 7 that real owner of the property is wife of the Respondent No. 6 but that is an issue to be raised in appeal. The issue which falls for consideration before this Court is whether the House Controller in exercise of powers vested under Section 19(2) of 'the Act' could have passed an order of vacation of the premises. Since the matter is yet pending consideration before the appellate authority and is subject-matter of House Control Appeal No. 87 of 2013 hence this Court would refrain from expressing any opinion thereon. Nonetheless, since the order passed by the House Controller is pending consideration in appeal he should not be adventurous enough to enforce the implementation of the order which is yet pending consideration in appeal.

In the circumstances discussed, this Court while disposing of the writ petition would direct the Appellate Authority i.e. District Magistrate, Bhagalpur to consider and dispose of the appeal filed by the petitioner bearing House Control Appeal No. 87 of 2013-14 in accordance with law and after giving opportunity of hearing to the contesting parties expeditiously and preferably within three months of receipt/production of a copy of this order

and until such time that the appeal is disposed of, the Sub-Divisional Magistrate cum House Controller, Naugachia, Bhagalpur is directed to refrain from enforcing the order passed by him in House Control Case No. 1036 of 2013.

(Jyoti Saran, J)

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