

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1822 of 2013

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1. Binay Kumar S/O Bishwa Nath Prasad Gupta R/O- Naya Bazar Sherghati, P.S.- Sherghati, In The District Of Gaya

.... Petitioner/s

Versus

1. The State Of Bihar Through The Commissioner, Magadh Division, Gaya
 2. The District Magistrate-Cum-Collector, Gaya
 3. The Sub Divisional Officer, Sherghati, Gaya
 4. The Nagar Panchayat, Sherghati, Gaya Through Its Executive Officer In The District Of Gaya
 5. The Executive Officer, Nagar Panchayat, Sherghati, Gaya
 6. The Chairman, Nagar Panchayat, Sherghati, Gaya
 7. Santosh Kumar S/O Late Arun Prasad R/O- Gola Bazar Sherghati, District- Gaya

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dharmesh Kumar

For the Respondent/s : Mr. Rajiv Kumar Singh Gp2

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH
ORAL ORDER

6 28-07-2015 Heard learned counsel for the petitioner, learned counsel for respondent Nos. 5 to 6 and 7.

The petitioner seeks quashing of the order dated 12.11.2012 passed by the Collector, Gaya in Misc. Case No.10 of 2012 accepting the claim of allotment in favour of respondent No.7 and upholding the cancellation of the agreement made in favour of the petitioner with respect to Shop No.7.

It is not in dispute that shop no.7 was allotted to the petitioner by deed of agreement dated 19.11.1995. It appears that the agreement was cancelled vide order dated 27.4.2001

contained in Annexure-A to the counter affidavit filed on behalf of respondent No.5, wherein it has been stated that as the petitioner has violated the terms of the agreement, the letter of cancellation has been issued.

It is the case of the petitioner that no notice was given to him before cancelling his agreement nor the said order was communicated to him. The petitioner submits that he came to learn about the said letter only in the year 2012 when his shop was locked. He submits that he deposited the rents till the year 2010 and the Collector, Gaya without considering the aforesaid fact has passed the impugned order upholding the allotment of the shop behind his back in favour of respondent No.7.

Counsel for respondent No.7 submits that the allotment of the shop in favour of the petitioner was cancelled in the year 2001 and the petitioner never challenged the same. He further submits that pursuant to the notice inviting application for allotment of the shop, he along with father of the petitioner (Vishwanath Prasad Gupta) applied for the same. Respondent No.7 was finally allotted shop vide memo no.15 dated 12.1.2008 on payment of Rs.30,000/- vide receipt no.48495 dated 26.12.2007 and agreement was also executed and physical possession of the shop was given. However, the shop was locked



in the year 2012 by the authorities of the Nagar Panchayat. Being aggrieved, respondent No. 7 filed writ application bearing C.W.J.C. No.16958 of 2012 which was disposed of by order dated 12.9.2012. While disposing of the writ application, the learned Judge directed the respondent No.7 to appear before the District Magistrate, Gaya who shall call upon the Executive Officer of the Nagar Panchayat to show cause as to why the lock put on his shop be not removed. Further case of respondent No.7 is that the Collector after hearing the petitioner as well as Nagar Parishad passed the impugned order dated 12.11.2012 upholding the allotment in his favour. He submits that the Collector further noticed that as the petitioner violated the terms of the agreement the allotment of the shop in his favour was cancelled on 27.4.2001.

The issue is whether the order of the Collector is just and proper or whether it suffers from illegality and liable to be set aside.

I may broadly agree with the submission of the petitioner in absence of any affidavit to the contrary, that the shop was cancelled without giving any opportunity of hearing. However, the plea of the petitioner that he never came to know about cancellation of his shop till 2012 is difficult to believe.

Respondent no.7 in his affidavit specifically asserts that he along with father of the petitioner applied for the shop. There is no contradiction of the aforesaid fact in the affidavit dated 8.7.2015 filed by the petitioner. Further more, I find that pursuant to the remand of the matter by this Court, all the parties were heard by the Collector. The Collector has given detailed reasons for upholding the contention of Respondent No.7. He stated that the allotment was made in favour of respondent No.7 in the year 2007 pursuant to which he deposited a sum of Rs.30,000/-. He further noticed in the order that prima facie it appears that the petitioner has earlier sub-let the premises to him.

In this view of the matter, I find that the Collector has given reasons for upholding the allotment in favour of the respondent No.7. As such, I do not find any merit in this writ application. It is accordingly dismissed. However, it would be open for the petitioner to file an application for refund of money that he has deposited in the year 2007 which would be disposed of by respondent No.5 within a period of four weeks.

(Samarendra Pratap Singh, J)

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