

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7726 of 2011

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Dhrub Prasad, Son of Late Harihar Prasad, resident of Village-Karkach Madhopur, P.O. Karakach Madhopur, Police Station, Barauli, District Gopalganj, at present resident of 4H/71, Bahadurpur Housing Colony, Bhootnath Raod, P.S. Agamkuan, District Patna.

.... Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary-cum-Commissioner, Urban Development Department, Govt. of Bihar, Patna.
2. The Managing Director, Bihar State Housing Board, Patna.
3. The Estate Officer, Bihar State Housing Board, Patna.
4. The Executive Engineer, Division-1, Bihar State Housing Board, situated at Hanuman Nagar, Kankarbagh, Patna-20.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Prafull Chandra Jha, Adv.
For the Housing Board	:	Mr. Tej Bahadur Singh, Sr. Advocate. Mr. Ram Kishore Singh, Adv.
For the State		Mr. Rajesh Singh GP16. Mrs. Abhanjalli, AC to GP 16.

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

C.A.V. JUDGMENT.

Date: 29-10-2015

1. This writ petition has been preferred under Article 226 of the Constitution of India for quashing the letter no. 6844 dated 04.11.2010 issued by the Estate Officer, Bihar State Housing Board through which petitioner was informed that it was not possible to give a no objection to him for opening a petrol pump on commercial plot no. DS-24/L situate at Lohia Nagar, Kankarbagh, District Patna and



also for directing the respondents to produce the letter no. 5101 dated 17.10.2007 by which the prayer for grant of no objection for opening the petrol pump by the petitioner on the above stated land was said to be refused and also for quashing the above stated letter and furthermore, to restrain the respondents from taking any coercive steps or obstructing in smooth running of a petrol pump on the above stated commercial plot and for issuance of direction to respondents to grant no objection in favour of the petitioner for opening petrol pump on the above stated plot.

2. The brief fact, which lies to file this writ petition, is that a deed of Tripartite lease was executed on 25.08.2004 between petitioner, Bihar State Housing Board and the original allottee, Sri Bajarang Lall Bazaz in respect of commercial plot no. DS-24/L situate at Lohia Nagar, Kankarbagh, Patna. The terms and conditions of the lease were duly entered in the registered deed and accordingly, petitioner came in possession of the aforesaid plot. Para-10 of the aforesaid registered deed contains a term that the prescribed plot shall be used only for office/shops/godowns purposes.

3. After coming over the above stated plot, petitioner gave a representation to competent authority of the Bihar State Housing Board for granting no objection for opening a petroleum retail outlet on plot no. DS-24/L in the year 2005. The aforesaid



representation of the petitioner was processed and the office of the Board recommended that there was no technical difficulty to the Board for granting permission to open a petroleum retail outlet on the same condition/on the same rate which rate had been paid by allottee of plot no. DS-7 of the same locality. The then Managing Director, Bihar State Housing Board, Patna having perused the report of office gave certain directions for verification of the site and other enquiries. In compliance of the aforesaid directions, enquiry was conducted and recommendation was made in favour of opening a petrol pump on the above stated plot and the record of plot no. DS-7 was tagged with the record of petitioner for calculation of the rate but in the meantime, the above stated Managing Director was transferred and the matter was kept in abeyance by the office of the Board. However, in the meantime, petitioner got clearance for opening a petrol pump on the aforesaid commercial plot from other authorities including the District Magistrate etc. and in anticipation of grant of no objection from the Board proceeded to open the petrol pump on the aforesaid plot and invested huge amount in the aforesaid project. It is also case of the petitioner that petitioner again approached before the Board for issuance of no objection for opening petrol pump on his plot but same was refused by the Board by issuance of letter no. 6844 dated 04.11.2010 giving information that prayer of the petitioner had



already been refused by the Board vide letter no. 5101 dated 17.10.2007 and it was not possible for the Board to grant no objection for opening petrol pump on the aforesaid commercial plot. The aforesaid fact is evident from Annexure-9 to the writ petition. It is also case of the petitioner that petitioner never received letter no. 5101 dated 17.10.2007 nor any information was given to him about rejection of his prayer by the Board. It is further case of the petitioner that Board had already granted no objection to other person for opening a petrol pump on plot no. DS-7 in the same locality but the prayer of the petitioner was refused without any rhyme and reasons. Hence, petitioner filed the said writ petition for quashing the letter no. 6844 dated 04.11.2010 as well as letter no. 5101 dated 17.10.2007 as stated above.

4. Counter affidavit has been filed on behalf of the Board and it has, specifically, been pleaded in the counter affidavit that plot no. DS-24/L situate at Lohia Nagar, Kankarbagh, Patna was originally settled with one Bajarang Lall Bazaz and after taking permission of the Board, the original allottee transferred the aforesaid plot in favour of the petitioner after executing tripartite lease agreement in which the Board was also a party. It has further been pleaded that plot no. DS-7 had been earmarked for the purpose of opening petrol pump whereas plot no. DS-24/L had been earmarked for the purpose of office, shops



and godowns only and that was the reason the Board refused to grant no objection in favour of the petitioner for opening petrol pump on the aforesaid plot. It has also been pleaded that petitioner earlier made a representation dated 26.09.2007 in the Janta Darbar seeking permission for opening a petrol pump on his plot but the same was rejected on the ground that plot in question could not have been used for the purposes other than mentioned in the agreement and the same was communicated to the petitioner vide letter no. 5101 dated 17.10.2007 which has been annexed as Annexure-B to the supplementary counter affidavit. It has also been pleaded that petitioner made attempt to open petrol pump on the aforesaid land inspite of rejection of his prayer and, therefore, even if the petitioner invested huge amount, the petitioner shall himself bear its consequences.

5. Learned counsel for the petitioner submitted that the action of Board is arbitrary in nature because Clause-10 of the lease deed specifically contains this provision that plot in question can be used for office, shops and godown purposes and the petrol pump comes under the definition of Shops as defined in **Section 2 (16) of the Bihar Shops & Establishments Act, 1953** which says that “*Shop means any premises where goods are sold, either by retail or wholesale or where services are rendered to customers and includes*



an office, store-room, godown, warehouse and work place, whether in the same premises or elsewhere, used in connection with such sales or services, but does not include a restaurant, a residential hotel, eating house, theatre or other place of public amusement or entertainment. It was contended by him that in the light of aforesaid definition of shop, the petrol pump comes under the definition of shops as it is a matter of common sense that services are rendered to customers at petrol pump by selling the petrol and, therefore, there was no violation of Clause-10 of the lease deed.

6. It was further contended on behalf of the petitioner that admittedly, the Board had granted no objection to a person for opening petrol pump over plot no. DS-7 of the same locality but refused to grant no objection to the petitioner and, therefore, the action of the Board violates Article 14 and Article 16 of the Constitution.

7. It was further contended on behalf of the petitioner that admittedly, when the petitioner filed petition for grant of no objection certificate in the year 2005, his petition was processed and a favourable report was placed before the then Managing Director of the Board who directed the office to calculate the rate and in anticipation of grant of no objection certificate, petitioner invested huge amount for opening the petrol pump after taking permission from all the



concerned authorities and, therefore, if the permission is denied to petitioner for opening a petrol pump on his land, the petitioner shall suffer huge loss and, so, this court should issue a direction to the Board for issuance of no objection certificate in favour of the petitioner.

8. Learned counsel for the petitioner relied upon several decisions of the Apex Court which are given below as follows:-

1. AIR 1955 SC, 62.
2. Labour and Industrial Cases, 1973, Part-1, Page-239.
3. AIR 1964 Madras, Page-131.
4. AIR 1972 SC, Page-1479.
5. AIR 1984(2) SC, Page-1700.
6. AIR 1963, Andhra Pradesh, Page-332.

9. It is needless to discuss all the above stated decisions separately and suffice it to say that the aforesaid decisions have been cited by learned counsel for the petitioner to show that petrol pump will come under the definition of shop and furthermore, to show that recommendation shall have force of policy decision.

10. On the other hand, learned counsel appearing for the Board vehemently opposed the aforesaid submissions arguing that the lease deed contains a specific provision that petitioner could have used the premises in question only for the purposes of office, shops and godowns and not for other purposes. It was also argued on behalf



of the Board that the Board prepares schemes and guidelines in accordance with Bihar State Housing Board Act, 1982 and Section 29 (q) of the aforesaid Act clearly distinguishes shops and fuel depots. Therefore, the Bihar State Housing Board Act, 1982 does not include fuel depots in shops. It was further contended by him that as a matter of fact, when layout plan of Lohia Nagar, Kankarbagh was prepared, the plot no. DS-7 was specifically earmarked for the purpose of petrol pump whereas plot no. DS-24/L was earmarked for shops, offices and godowns and in accordance with the aforesaid decision of the Board, the auction was done. It was further argued on behalf of the Board that plot no. DS-7 was auctioned at higher rate than plot no. DS-24/L. It was also contended by him that no doubt, the then Managing Director proceeded with the petition of the petitioner and directed the office to make calculation of the rate but as a matter of fact, the Managing Director had no power to convert the purposes of the aforesaid plot and only Board was competent to convert the purpose of aforesaid plot and moreover, mere recommendation does not confer any right to the petitioner because it was not a decision of the Board.

11. Having heard the aforesaid contentions of the parties and after perusal of the materials available on the record, it is abundantly clear that plot no. DS-7 had been earmarked by the Board for petrol pump whereas plot no. DS-24/L had been earmarked by the



Board for shops, office and godown and the aforesaid plot had never been earmarked by the Board for petrol pump. It is also clear from the materials available on the record that plot no. DS-7 had been auctioned on higher rate than plot no. DS-24/L. It is an admitted position that the Board granted no objection for opening petrol pump on plot no. DS-7 as the aforesaid plot had been earmarked and auctioned by the Board for the aforesaid purpose but so far as plot no. DS-24/L is concerned, the said plot was neither earmarked nor auctioned for opening the petrol pump and, therefore, in my view, there was no violation of Article 14 of the Constitution of India.

12. It has been argued on behalf of the petitioner that Board has violated Article 16 of the constitution of India but in my view, the aforesaid contention of learned counsel for the petitioner does not have leg to stand because the petitioner was bound by the terms and conditions of the lease deed dated 25.08.2004 and Clause-10 of the aforesaid lease deed clearly stipulates that petitioner could have used the plot in question only for office, shops and godown. Therefore, in my view, there is no violation of Article 16 of the Constitution of India.

13. Now, it has to be seen as to whether petrol pump will come under the definition of shop or not. No doubt, according to Section 2(16) of Bihar Shops & Establishments Act, 1953, the petrol



pump will come under the definition of shops but the Bihar State Housing Board Act, 1982 is a self contained Act and Section 29 (q) of the aforesaid Act clearly makes distinction between shops and fuel depots because the aforesaid section says that **“Notwithstanding any thing contained in any other law for the time being in force, the aforesaid housing or improvement scheme may provide for all or any of the following matters; namely:-**

(q) the provision of schools, parks, swimming pools, restaurants, shops, markets, fuel depots, laundries, hair dressing saloons and other amenities in the scheme.”

14. The aforesaid provision clearly goes to show that the above stated Act makes distinction between the shops and fuel depots and, therefore, in my view, the Bihar Shops & Establishments Act, 1953 is not applicable in the present case.

15. Admittedly, plot no. DS-24/L was earmarked for the purpose of shops, offices and godown and not for the purpose of petrol pump/fuel depots and the aforesaid plot was auctioned only for the purposes of offices, shops and godowns and furthermore, the petitioner stepped into the shoes of original allottee and, therefore, he was bound to use the aforesaid plot for the same purposes for which the said plot had been allotted to its original allottee.



16. It is also an admitted position that the then Managing Director had not taken any final decision to convert the purpose of plot in question rather he only directed the office to calculate the rate and, therefore, even if it assumed for the sake of convenience that the Managing Director agreed to convert the purpose of aforesaid plot then also, it was only his recommendation and then managing Director had not taken any final decision. Moreover, it has already been set at rest by several decisions of Apex Court that mere recommendation is not final decision of authority.

17. It has been argued on behalf of the Board that the Managing Director had got no power to convert the purpose of use of any land and the purpose of use of the land can only be converted by the Board. In the instant case, admittedly, the Board has not taken any decision for conversion of purpose of use of the land in question rather the Board decided to refuse the prayer of the petitioner.

18. No doubt, the other authorities had already granted permission to petitioner to open petrol pump on the land in question and huge amount was invested by the petitioner for opening a petrol pump but in my view, the aforesaid facts do not curtail the power of the Board and it was fault of the petitioner to invest huge amount for the purpose of opening of petrol pump without obtaining prior permission from the Housing Board and, therefore, in my view, the

Board can not be made responsible for the fault of the petitioner.

19. On the basis of aforesaid discussions, I have no option except to dismiss this writ petition. Accordingly, this writ petition stands dismissed.

(Hemant Kumar Srivastava, J)

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