

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11426 of 2011

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Awadhesh Prasad Singh, son of late Berasi Singh, resident of village Dighi Kala
West, P.O.- Dighi, P.S.- Hajipur, District- Vaishali.

.... Petitioner/s

Versus

1. The Union of India through the Secretary, Department of Railway, New Delhi.
2. The General Manager, East Central Railway, Hajipur, District- Vaishali.
3. The Divisional Railway Manager, Sonapur, District- Chapra.
4. The Divisional Railway Manager, Engineering (Works), Sonapur, District- Chapra.
5. The I.O.W-cum-Senior Selection Engineer (Works), East Central Railway, Hajipur, District- Vaishali.
6. The Sub-Divisional Magistrate, Hajipur, District- Vaishali.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ratna Deep Prasad

For the Respondent/s : Mr. Sanjay Kumar No. 1. SC-12

For the Railways : Mr. Sunil Kumar Ravi,

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 18-12-2015

Heard the Counsel for the petitioner and the Counsel for
the East Central Railway (for short 'ECR').

The matter relates to Shop no. 125 within the precincts of
Hajipur Railway Station. The petitioner has filed the application for
restoration of possession over the said shop which indisputably was
allotted by the ECR to Dilip Kumar. It is the contention of the
petitioner that the allottee under a Kirayanama executed in the year
1992 permitted him to use the shop for commercial purposes. He had
been continuing as such. Subsequently, the respondent ECR sealed the
shop of the petitioner. It is submitted that in connection with an



enquiry instituted in the Court of Sub-Divisional Magistrate vide Case No. 34 of 2010, it has revealed that the petitioner was actually using the shop after getting the electric connection installed in his name. The respondents be directed to allot the shop in favour of the petitioner and the business activities in the shop by the petitioner be permitted. It is also stated that in connection with some other shops, the respondent ECR has allotted the shop to the real user thereof.

Counter affidavit(s) have been filed on behalf of the ECR. The respondents have contradicted the case of discrimination against the petitioner. It has been clarified that in those cases, the original allottee had consented for such fresh allotment in the name of the real user thereof. In the case at hand, the original allottee has objected to forcible occupation of the petitioner of the shop and a complaint was made before the respondent ECR whereafter the shop in question was sealed taking help of the administration. In paragraph 13 of the supplementary counter affidavit, it has been stated that a three Member Committee approved by the D.R.M. of the Division has been constituted for considering such claim. No application was ever filed by the petitioner before the said Committee for consideration of his claim in accordance with law.

Having heard the parties, what appears to this Court is that the petitioner claims resettlement of the shop in question in his favour



as he had been using the shop for commercial purposes upon consent given by the original allottee. The respondent ECR should, therefore, consider his claim for allotment of the shop. On the other hand, the claim of the ECR is that the shop was allotted to Dilip Kumar who had not given consent for such fresh allotment of the shop in question in favour of the petitioner. It is the contention of the petitioner that even without such consent, the resolution of the ECR could permit such fresh allotment of the shop in favour of the petitioner finding him the real user thereof. Any such claim, according to the ECR can be examined by the Committee under the orders of the ECR consisting of Divisional Head of Engineering, Commercial and Finance which has been approved by the Divisional Manager vide letter no. 736 dated 08/31.05.2012.

In my considered view, the application merits to be disposed of permitting the petitioner to raise such a claim before the said three member Committee for the reliefs prayed for in this application. If any such application is filed within four weeks before the DRM, the matter shall be referred to the three men Committee for consideration of the claim of the petitioner in accordance with law. I am sure, the committee shall take appropriate decision as quickly as possible preferably within five weeks of placing the matter before it. It will be open to the Committee to afford an opportunity of hearing to

the original allottee. Depending on the decision of the Committee, the shop in question shall be either unsealed or allotted to the petitioner as the case may be.

The writ application as well as interlucotory applications are disposed of.

(Kishore Kumar Mandal, J)

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