

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8706 of 2015

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Md. Ashgar Hussain, son of Md. Kasim, resident of village + Post,
Nauranga, P.S. Muffasil, District-Gaya

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Urban Development
, Govt. of Bihar, Patna

2. Municipal Commissioner, Gaya Municipal Corporation, Gaya

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Amar Nath Singh, Advocate,
Mr. Rajendra Prasad, Advocate

For the Respondent/s : Mr. Vinay Kirti Singh, GA-3

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

6 03-09-2015 Heard Mr. Amar Nath Singh, learned counsel appearing for
the petitioner and Mr. Ravindra Kumar Priyadarshi, learned counsel
appearing for the Gaya Municipal Corporation.

The petitioner has questioned the order bearing Memo No.
1268 dated 22.5.2015 whereby the allotment of a shop in his favour has
been cancelled.

The limited ground on which the cancellation order has been
questioned is that it is against the principle of natural justice inasmuch
as no show cause nor any opportunity of hearing has been provided to
the petitioner. It was the stand of the Corporation that the petitioner
was an encroacher and upon which the records were summoned.
However, the respondent Corporation have also filed a counter affidavit
enclosing resolution of the Empowered Standing Committee of the
Corporation and paragraph-3 thereof contains the discussion on the

allotment made in favour of the petitioner. The Empowered Standing Committee of the Corporation has recommended for its cancellation but has opined that the steps for cancellation be taken in accordance with law.

Mr. Singh, learned counsel for the petitioner with reference to the resolution of the Committee present at Annexure-A to the counter affidavit submits that even when the Committee has opined that the process of cancellation should be undertaken in accordance with law but the Municipal Commissioner has overreached the same and that itself is a ground to invalidate the order impugned inasmuch as it has been passed without affording opportunity of hearing to the petitioner.

The argument of Mr. Singh cannot be contested rather is manifest from the order itself which simply proceeds to cancel the allotment.

In the circumstances discussed hereinabove and considering the opinion of the Empower Standing Committee, the order bearing Memo No. 1268 dated 22.5.2015 of the Town Commissioner, Gaya Municipal Corporation, Gaya impugned at Annexure-4 cannot be upheld and is accordingly set aside.

The writ petition is allowed.

(Jyoti Saran, J)

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