

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.704 of 2015

With

I.A. No.1593 of 2015

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1. Indian Oil Corporation, a Government of India Company incorporated under the Companies, Act, 1956 having its registered office in Ali Yavar Jung Marg, Bandra (East), Mumbai through its General Manager, Bihar State Office, Lok Nayak Bhawan, Dak Bunglow Road, Patna.
 2. General Manager, Indian Oil Corporation, Bihar State Office, Lok Nayak Bhawan, Dak Bunglow Road, Patna.
 3. Sr. Divisional Manager (Marketing Division), Indian Oil Corporation, Third Floor, Maurya Lok Complex, Dak Bunglow Road, Patna.

.... Petitioner/s

Versus

1. Gaya Municipal Corporation, through its Municipal Commissioner, Gaya.
2. Municipal Commissioner, Gaya Municipal Corporation, Gaya.
3. Meena Dayal, W/o Late Brajeshwar Dayal, Proprietor of Dayal Service Station, Gewal Bigha, Gaya.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 19051 of 2014

With

I.A. No.8369 of 2014

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Meena Dayal, W/o Late Brajeshwar Dayal, Proprietor of Dayal Service Station, Gewal Bigha, P.S. Rampur, Gaya.

.... Petitioner/s

Versus

1. State of Bihar through the Chief Secretary, Govt. of Bihar, Old Secretariat, Patna.
2. The Principal Secretary, Department of Urban Development and Housing, Govt. of Bihar, Old Secretariat, Patna.
3. Municipal Commissioner, Gaya Municipal Corporation, Gaya.
4. Indian Oil Corporation Limited, Third Floor, Maurya Lok Complex, Dakbunglow Road, Patna.
5. Senior Divisional Manager (Marketing Division), Indian Oil Corporation Limited, Third Floor, Maurya Lok Complex, Dakbunglow Road, Patna.

.... Respondent/s

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Appearance :

(In CWJC No. 704 of 2015)

For the Petitioner/s	:	Mr. Anil Kumar Sinha Mr. Amlesh Kumar Verma Mr. Abhimanyu Deo
For Mucicipal Corporation	:	Mr. Bindhyachal Rai
For private Respondent No.3	:	Mr. Amaresh Kumar Sinha
(In CWJC No. 19051 of 2014)		
For the Petitioner/s	:	Mr. Amaresh Kumar Sinha

	Mr. Avinash Kumar
For the Respondent-State :	Mr. Mr. Shailesh Kumar, AC to GP-20
For the Municipal Corporation:	Mr. Bindhyachal Rai
For the Respondent nos.4 & 5 :	Mr. Anil Kumar Sinha
	Mr. Amlesh Kumar Verma
	Mr. Abhimanyu Deo.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 03-04-2015

Heard Mr. Anil Kumar Sinha, learned counsel appearing on behalf of the petitioners and Mr. Bindhyachal Rai, learned counsel appearing for the Gaya Municipal Corporation.

Since the issues raised in the two writ petitions are identical hence they have been heard together and with consent of the parties are being disposed of at the present stage itself by way of this judgment.

For the sake of convenience, I shall be referring to the pleading and annexures as occurring in CWJC No.704 of 2015 unless specified with reference to the other writ petition.

Whereas the petitioner in CWJC No.704 of 2015 is a Government of India Company who has entered into an agreement with the petitioner of other writ petition for the purpose of setting up a petrol pump and for operating its outlet situated on a plot bearing no.67, survey plot no.4565 (Ka) having an area of 9 kathas 12 dhurs in the town and district of Gaya and is also a lessee of erstwhile Gaya Improvement Trust for the said piece of land, the



petitioner in the other writ petition is a dealer of the Indian Oil Corporation who is operating the petrol pump. These facts are not in dispute. It is also not in dispute that lease was entered with the erstwhile Gaya Improvement Trust and Indian Oil Corporation on 7.6.1972 for a period of 10 years with an option of renewal and which has been renewed until 1991 without dispute. The dispute is with the renewal for the period subsequent thereto and whereas according to the petitioners, there has been renewal of the lease but such stand of the Indian Oil Corporation is contested by the Gaya Municipal Corporation.

The fact remains that on the strength of the lease the Indian Oil Corporation continues to operate its petrol pump through the petitioner in the other writ petition but the Gaya Municipal Corporation which is the successor in interest of the erstwhile Gaya Improvement Trust by virtue of Bihar Municipal Act, 2007 (hereinafter referred to as 'the Act') now wants their ouster and it is in these circumstances that a proceeding was drawn by the Municipal Commissioner, Gaya Municipal Corporation by invoking the provisions of the Bihar Government Premises (Allotment, Rent, Recovery and Eviction) Control Act, 1956 (hereinafter referred to as 'the Bihar Government Premises Act'). A notice was issued by the Municipal Commissioner of the Gaya



Municipal Corporation on 13.10.2014 placed at Annexure-9 to the petitioner Indian Oil Corporation as well as its dealer asking them to vacate the premises within 15 days failing which appropriate action would be taken against them including institution of a criminal case. The petitioner Indian Oil Corporation protested against such notice vide letter dated 22.10.2014 placed at Annexure-10 but which was rejected and communicated to the petitioner vide letter dated 1.11.2014 placed at Annexure-11. Being aggrieved the Indian Oil Corporation as well as its dealer are before this Court in the two writ petitions. The petitioner Indian Oil Corporation has further prayed for appropriate direction to the respondent Corporation for grant of renewal of lease.

As I have already indicated hereinabove that the facts are not in dispute. The dispute is whether the lease subsists or stands terminated and whether the petitioners are entitled to its renewal. Since according to the Municipal Corporation, the lease stands lapsed hence it has taken recourse to the remedy available under 'the Bihar Government Premises Act'.

Although there have been arguments on behalf of the writ petitioners as well as the Municipal Corporation regarding the determination of lease but considering that such determination has taken the shape of a proceeding under 'the Bihar Government



Premises Act' this Court would not delve into the issue rather the limited issue which falls for consideration before this Court is whether the Municipal Commissioner can take recourse to the remedies under 'the Bihar Government Premises Act' for seeking the eviction of the petitioners.

Mr. Sinha, learned counsel appearing on behalf of the petitioners with reference to the provisions underlying 'the Bihar Government Premises Act' has referred to the definitions provided under section 2(a) which defines 'allotment', 2(c) which defines 'Government premises' and 2(d) which defines 'premises'. With reference to the said definitions he submits that the term 'allotment' excludes any grant by way of lease and section 2(c) defines the 'Government Premises' to mean any premises belonging to, or taken on lease or requisitioned by, the State Government. He further submits that the term 'premises' defined in section 2(d) also includes lands. It is thus submitted by Mr. Sinha that if the three definitions are considered harmoniously it would manifest that an eviction proceeding under 'the Bihar Government Premises Act' can only be initiated in respect of a property requisitioned or belonging to or taken on lease by the State Government which would include any land or building but not any grant made by way of lease. It is thus submitted that since

the Municipal Corporation is not the same as a State Government, hence the proceeding initiated under the provisions of 'the Bihar Government Premises Act' is wholly without jurisdiction.

Learned counsel has relied upon a Bench decision of this Court reported in **AIR 1996 Patna page 163 (M/s Hindustan Petroleum Corporation Ltd. vs. The State of Bihar)** and with particular reference to paragraphs 53 to 59 has submitted that the law regarding the eviction of a lessee from a lease-hold premises even after expiry of the lease stands settled and can only be undertaken by taking recourse to due process of law which would mean through the process of a court of competent civil jurisdiction. He submits that the proceeding initiated under the 'Bihar Government Premises Act' is wholly without jurisdiction and the Municipal Corporation cannot take resort to the provisions of 'the Bihar Government Premises Act' for a forcible eviction of the petitioners from the lease-hold premises.

Mr. Bindhyachal Rai, learned counsel appearing on behalf of the Municipal Corporation though contesting the over stay of the petitioners submits that even when the lease for the plots in question stands expired, the Indian Oil Corporation being a powerful body has not vacated the premises when it could be expected from them to do so, in absence of renewal of the lease.



Learned counsel has made reference to a Judgment of the Supreme Court reported in **(1999) 4 SCC 450 (Hindustan Petroleum Corporation Vs. Dolly Das)** and a judgment of the Andhra Pradesh High Court rendered in the case of **Hindustan Petroleum Corporation vs. Ali Jafar** reported in **(2004) 3 ALT 371** to submit that since the lease-hold period has expired, this Court would be well within its jurisdiction to issue appropriate direction to the Indian Oil Corporation to vacate the premises. He further submits that a mere act of the petitioners in depositing the rent would not mean deemed extension of the lease by the Municipal Corporation for it has been done on their own volition without there being any such understanding with the Municipal Body.

I have heard learned counsel for the parties and I have perused the materials on record.

I have already outlined that the only issue which falls for consideration by this Court is whether the proceeding initiated by the Municipal Commissioner, Gaya Municipal Corporation by invoking the provisions of 'Government Premises Act' has a sanction of law.

Section 2(a) of 'the Bihar Government Premises Act' defines 'allotment' and means the grant, in writing, by or on behalf of the State Government, of a right of use and occupation of any

Government premises to any person but does not include a grant by way of lease.

Section 2(c) defines 'Government Premises' and means any premises belonging to, or taken on lease or requisitioned by, the State Government.

Section 2(d) defines 'premises' to mean any land or building or part of a building and includes garden, grounds, outhouse appertaining to building; any furniture supplied by the State Government for use in such building; and any fitting affixed to such building for the beneficial enjoyment thereof.

A bare reading of the these provisions is sufficient to indicate that the Act covers within its ambit such premises which include land or building and appurtenants & fixtures thereto which has been requisitioned or taken on lease by the State Government. The Act while defining allotments excludes such grants which has been made by way of lease. There cannot be any dispute on the issue that a Municipal Corporation is not the same as State Government. It may be an authority within the meaning of a 'State' under Article 12 and amenable to writ jurisdiction under Article 226 of the Constitution of India but it does not fall within the definition of the State Government. It is a statutory body created under a statute having a juristic entity. Thus even if according to



the Municipal Commissioner, Gaya Municipal Corporation, the petitioners are trespassers on the property of the Corporation, he cannot under any circumstance take recourse to the remedy provided under 'the Bihar Government Premises Act' which does not vest any power in a Municipal body to seek eviction under this Act. Even the judgments relied upon by Mr. Bindhyachal Rai do not come to his rescue for in so far as the judgment in the case of **Hindustan Petroleum Corporation Ltd.** (supra) rendered by the Supreme Court is concerned, it is a pronouncement in exercise of powers vested in the Supreme Court under Article 142 of the Constitution of India. The decision has been rendered in the peculiar facts of the said case and it is by way substantial justice that certain obligations have been cast on the Hindustan Petroleum Corporation. This issue in fact was contested before the Andhra Pradesh High Court in the Letters Patent Appeal relied upon by Mr. Rai referred to above and the observations of the Division Bench can be found in paragraph 36 of the judgment in which it has been held that the pronouncement is in order to do complete justice. The Division Bench of the Andhra Pradesh High Court after considering the issue has concluded in paragraph 48 of the judgment that a Writ Court cannot grant relief for an eviction decree. The writ petition out of which the Letters Patent Appeal

arose was dismissed but while dismissing the writ petition the Division Bench afforded liberty to the writ petitioner to take recourse to a civil suit.

The issue as to the option available for a lessor to evict the lessee from the demise premises on the expiry of a lease finds discussed in the Bench decision relied upon by Mr. Sinha rendered in the case of **M/s Hindustan Petroleum Corporation** (supra) and I would do no better than to quote paragraphs, 54, 57 and 58 which deals with the particular controversy raised herein regarding forum available to the Corporation for seeking eviction of the writ petitioners:

“54. The law on this point was settled long ago by the Privy Council and also in the decision of the Constitution Bench of the Supreme Court in the case of Bishan Das v. The State of Punjab, reported in AIR 1961 SC 1570. Here this Court can do no better than quote from paragraph 14 (page 1575 of the report) the relevant excerpts from the judgment in Bishandas’s case (supra):-

“The petitioners could be dispossessed, if at all, only in pursuance of a decree of a Civil Court obtained in proceedings properly initiated. In these circumstances the action of the Government in taking the law into their hands and dispossessing the petitioners by the display of force, exhibits a callous disregard of the normal requirements of the rule of law apart from what might legitimately and reasonably be expected from a Government functioning in a society governed by a Constitution which guarantees to its citizens against arbitrary invasion by the executive of peaceful possession of property.”

“57. The ratio of Bishan Das (AIR 1961 SC



1570) (supra) has been affirmed in *State of U.P. v. Maharaja Dharmendar Prasad Singh* reported in AIR 1989 SC 997. In paragraph 15 of the report at p. 1004, it has been held that the possession of the lessee, even after the expiry of the lease or its termination is juridical in nature and 'forcible dispossession is prohibited' and the 'lease cannot be dispossessed otherwise than in due course of law'.

"58. The same principle is echoed in the case of *Krishna Ram Mahale vs. Mrs. Shobha Venkat Rao* reported in AIR 1989 SC 2097. Relying on the principle of *Lallu Jaswant Singh* (AIR 1968 SC 620) (supra), and *Midnapur Zamindary* (51 Ind. App. 243) (PC) (supra), the Supreme Court held that where a person is in settled possession of property, even on the assumption that he has no right to remain in property, 'he cannot be dispossessed by the owner of the property except by recourse to law' (para 8, page 2100 of the report).

For the reasons aforementioned I am unable to uphold the proceeding initiated by the Municipal Commissioner, Gaya Municipal Corporation by invoking the provisions of 'the Bihar Government Premises Act' for seeking the eviction of the two writ petitioners and as a consequence entire proceedings initiated by the Municipal Commissioner under the provisions of 'the Bihar Government Premises Act' including the notice dated 13.10.2014 as contained in Annexure 9 and the notice dated 1.11.2014 as contained in Annexure-11 are set aside.

This order however would not preclude the Municipal Commissioner, Gaya Municipal Corporation to take recourse to

such other civil law remedy that may be available to him in law for seeking ouster of these petitioners.

In so far as the renewal of lease as prayed by the writ petitioners is concerned, the petitioners would also be at liberty to take recourse to such civil law remedy as may be available to them in law.

The writ petitions are allowed. The interlocutory applications stand disposed of.

(Jyoti Saran, J)

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