IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4941 of 2012

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Indu Gupta W/O Surajdeo Prasad Resident of Mehi Picture Palace, Fatuah, P.S. Fatuah, District Patna.

.... Petitioner

Versus

1. The State of Bihar.
2. The District Magistrate, Patna.
3. The Additional District Magistrate, Patna.
4. The Executive Engineer, Department of Building Construction, Patna.
5. The Deputy Commissioner, Sales Tax cum Member Secretary, East Division, Patna City, P.S. Patna City, District Patna.
6. The Executive Engineer, Patna City, Building Division, Guljarbag, Patna.

.... Respondents

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Appearance :
For the Petitioner/s : Mr. Jagdish Prasad Bhagat, Advocate
For the Respondent/s : Mr. Vikas Kumar, AC to PAAG

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)
Date: 03-02-2015

Heard learned counsel for the petitioner and learned counsel for the State.

2. The petitioner seeks quashing of the order dated 13.1.2012 issued by the Deputy Commissioner, Commercial Taxes-cum-Member Secretary, East Division, Patna City by which he has rejected the claim of the petitioner for grant of exemption of entertainment tax claimed in terms of S.O. No. 138 dated 22.7.2009 published in the State Gazette.

3. By the said Gazette Notification bearing S.O. No. 138 dated 22.7.2009 issued in exercise of power under sub-Section (2) of Section 10 of the Bihar Entertainment Tax Act, 1948 the running and closed cinema houses were exempted on upgradation and modernization for a period of two years or recovery of 75% of their capital investment, whichever was earlier, from the date of receipt of the application in that behalf. For the said purpose different places in the State were classified into four categories and different exemption limits were prescribed therein. A Committee of three Officers consisting of the District Magistrate, Executive Engineer and concerned Circle In-charge of Commercial Taxes Department not below the rank of Assistant Commissioner were appointed, among whom the last mentioned Member was the Member Secretary. It is provided in the said Notification that proprietors interested in modernization and upgradation of their Cinema Houses shall give an application with estimate to the Member Secretary and the Member Secretary will forthwith bring it to the notice of the Chairman and the Committee will communicate its decision within one month to the applicant and in case of non-receipt of intimation, the

proprietor may start modernization and upgradation work. It is further provided therein that the proprietor shall give intimation to the Member Secretary about the modernization and upgradation with complete information of expenditure thereon along with evidence and the Committee was to make evaluation of the real capital investment and intimate its decision within two months to the proprietor and the concerned Circle in-charge.

4. The petitioner claims to have filed an application on 13.8.2010 before the Member Secretary-cum-District Magistrate, Patna (SIC) claiming that expenditure of Rs. 7,22,139/- would be involved for upgradation and modernization of Mehi Picture Palace run by the petitioner and claimed exemption in terms of the aforesaid Notification. Thereafter another letter purportedly was given on 12.10.2010 stating that coloring and modernization works were going on since 20.9.2010. A further letter purportedly of 11.10.2010 was also given to the District Magistrate stating the same facts on 11.10.2010. Another letter was finally given to the Deputy Commissioner, Commercial Taxes, East Circle, Patna City on 11.10.2010 for which receipt was given and in which it

is stated that since 20.9.2010 the work of painting was going on. Thereafter the petitioner on 29.11.2010 submitted a letter giving details of expenditure of Rs. 7,89,121/- for the purpose of upgradation and modernization and made a prayer for the amount being adjusted from the entertainment tax after making the necessary inspection, which was received in the office of the Deputy Commissioner, Commercial Taxes on 30.11.2010. The petitioner was subsequently served a notice dated 15.2.2011 to show cause within one week as to why the application be not rejected due to the fact that the upgradation and modernization works had been done without obtaining prior permission. It appears that a letter dated 17.6.2010 was issued by the District Cinema Magistrate to the proprietor by which the proceedings had been initiated against the petitioner for closing the cinema house for the purpose of repair works without obtaining prior permission.

5. Learned counsel for the petitioner has sought to make out a case in terms of the said Notification stating that the petitioner has filed an application for upgradation and modernization with an estimate and thereafter

submitted the final expenditure on the aforesaid date and thus she was entitled to be given the benefit of adjustment of the said amount in entertainment tax in terms of the Gazette Notification dated 22.7.2009.

6. The stand of the State is that the petitioner has tried to make out a false case and has not come to this Court with clean hands. It is submitted that much prior to the so-called application dated 13.8.2010 the petitioner had already given her letter dated 11.6.2010 addressed to the District Magistrate, Patna in the context of change of name of the cinema house and conversion from partnership into proprietorship and intimated that the other partners having left the partnership it had become a proprietorship concern of the petitioner for which intimation had been given on 18.12.2010. It was further stated therein that in the said Picture Palace painting, sound, change of curtain and cleaning works were going on, as a result of which the exhibition of films had been stopped with respect to which information had been given on 15.5.2010 itself. It is thus submitted by learned counsel for the State that it is evident from the said letter dated 11.6.2010 of the petitioner herself that the work of painting, etc. had been started by the

petitioner since 15.5.2010 with due intimation to the respondents and the subsequent letter dated 13.8.2010 was a mere after-thought, probably after learning about the Gazette Notification dated 22.7.2009 in order to derive the benefit under the said notification, which is not permissible as the work can only be started after first giving an application for the purpose of upgradation and modernization and thereafter obtaining permission from the authorities. It is submitted that no such intimation for upgradation and modernization in terms of the Gazette Notification dated 22.7.2009 was ever conveyed before the work was started on 15.5.2010 by the petitioner and the entire story is an after-thought of the petitioner which fact has been suppressed before this Court and the petitioner has come to this Court with unclean hands and thus on this score alone the petitioner is not entitled to any benefit.

7. On a consideration of the pleadings of the parties and going through the entire facts and circumstances of the case, this Court is in agreement with the stand taken on behalf of the respondent State. It is evident from the letter of the petitioner dated 11.6.2010 (Annexure-C) that admittedly she had started the work of upgradation and

modernization as early as on 15.5.2010 without making any such application as was required by the Gazette Notification dated 22.7.2009. The petitioner is therefore estopped from claiming any benefit under the said notification and even otherwise the suppression of facts would additionally disentitle the relief to the petitioner by a Court of equity which the Writ Court undoubtedly is.

8. Thus, it is evident that the petitioner is neither entitled to the benefit of the Gazette Notification dated 22.7.2009 nor any relief in the writ jurisdiction of this Court on account of her conduct while approaching this Court.

9. The writ application is, accordingly, dismissed.

(Ramesh Kumar Datta, J)

(Anjana Mishra, J)

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