

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13140 of 2013

1. Raj, Kumar Prasad Soni S/O Late Yamuna Prasad R/O Mohalla- Nadragani, Mallah Toli, P.S- Civil Lines, District- Gaya

.... Petitioner/s

Versus

1. The State of Bihar through Chief Secretary Govt. of Bihar, Patna.
2. Divisional Commissioner, Gaya.
3. District Magistrate, Gaya.
4. Deputy Development Commissioner-Cum- Chief Executive Officer, Zila Parishad, Gaya.
5. Executive Engineer, Zila Parishad, Gaya.
6. Sub- Divisional Officer, Gaya.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Praveen Kumar, Adv.
For the Respondent-State : Mr. Manishdhari Singh, A.C. to G.A.10
For the Gaya Zila Parishad: Mr. Rajendra Prasad, Adv.

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 22-09-2015

Heard Mr. Praveen Kumar, learned counsel for the petitioner, Mr. Rajendra Prasad for the Zila Parishad and Mr. Manishdhari Singh, A.C. to G.A.10 for the State.

The petitioner prays for a direction in the nature of mandamus commanding the authorities of the Zila Parishad including the respondent Nos. 4 and 5 to permit the petitioner to make a permanent construction on the space so allotted by the Zila Parishad vide Annexure-1 which is dated 10.4.1996. It is the contention of Mr. Praveen Kumar that the space in question was allotted by the Zila Parishad as back as in the year 1996 and the petitioner has continued



to remain thereon with no complaints coming from the Zila Parishad of any default in discharge of the obligation. He submits that since the space allotted is the only livelihood of the petitioner that he attempted to construct a permanent structure but which was demolished and on a representation so filed before the Zila Parishad that the Deputy Development Commissioner who happens to be the Chief Executive Officer of the Zila Parishad vide letter dated 3.2.2010 enquired from the Commissioner, Gaya Municipal Corporation as to the circumstances for leading to such demolition. The reply of the Commissioner is present at Annexure-10 and in which it is stated that since the petitioner did not produce any papers hence the structure was demolished. The petitioner has thereafter been representing with the authorities of the Zila Parishad vide representations present at Annexures-13 to 16 but since no positive result was forthcoming hence this writ petition.

Mr. Praveen Kumar espousing the cause of the petitioner submits that since there is no complaint against the petitioner who has been allotted the space more than two decades back, the Zila Parishad authorities should either permit the petitioner to make a permanent construction at the space so allotted vide Annexure-1 or should take steps for allotment of alternative fully constructed shop. According to Mr. Praveen Kumar a large number of allotments had been made by

the Zila Parishad and in which direction a sum of Rs. 10,000/- had also been deposited by the petitioner but no allotment was made in favour of the petitioner.

The arguments of Mr. Praveen Kumar has been contested by Mr. Rajendra Prasad appearing for the Zila parishad who vehemently contested any steps taken by the Zila Parishad in respect of allotment of shops or giving any option to deposit any amount rather it is categorically stated that the amount of Rs. 10,000/- had been deposited by the petitioner on his own volition and without any demand of the Zila Parishad. It is also submitted that the person who received the draft has been proceeded departmentally. With reference to the letter of the Chief Executive Officer present at Annexure-9, it is submitted that since the allotment had been made by the Zila Parishad in favour of the petitioner, hence information had been sought from the Town Commissioner as to the demolition made. It is further submitted by Mr. Rajendra Prasad that the space so allotted to the petitioner vide Annexure-1 is situated near entrance of the office of the Sub-Divisional Officer and thus any permission to the petitioner to make a permanent structure would be causing obstruction in the passage. He thus submits that it is taking into consideration the interest of the petitioner that the space was allotted with the condition that he cannot make any permanent constructions. He further submits

that since at present there are no proposals with the Zila Parishad for construction of shops hence the alternative prayer made by the petitioner also cannot be accepted at present.

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

The allotment made in favour of the petitioner vide order dated 10.4.1996 present at Annexure-1 is not in dispute. The petitioner is a valid allottee. Although Mr. Praveen Kumar has referred to a list of persons enclosed at Annexure-2 said to be allottees by the Zila Parishad but the said document has been questioned on its veracity by Mr. Rajendra Prasad and considering the dispute this Court would not enter into the same. In so far as the deposit of Rs. 10,000/- is concerned, this Court notices that there is no such document present inviting such deposit. Be that as it may, since the petitioner is admittedly a valid allottee from the Zila Parishad hence the deposit of Rs. 10,000/- so made by the petitioner can well be adjusted against his rent.

The issue is whether the prayer of the petitioner for a permanent construction at the space allotted, can be accepted and a direction can be issued to the Zila Parishad in granting such permission.

In the circumstances so noted above and considering the submissions made on behalf of the Zila Parishad as regarding the situs

of the space allotted to the petitioner, the prayer of the petitioner to permit a permanent structure at the space allotted to him, cannot be accepted but considering that the petitioner has been operating the shop at the allotted space for the last two decades, his prayer for alternative allotment with permanent structure merits consideration.

In my opinion, in view of the stand taken by the Deputy Development Commissioner in his letter dated 3.2.2010 wherein he has admitted that the petitioner is a valid allottee and that the Zila Parishad is considering his request for a permanent structure, let a decision be taken by the Zila Parishad in this regard within a period of six months from the date of receipt/production of a copy of this order and until the final decision is taken by the Zila Parishad on the prayer so made, the petitioner shall continue on the space so allotted by the Zila Parishad vide Annexure-1.

Mr. Rajendra Prasad submits that the petitioner has not paid rent since 2007. Since it is not in dispute that a sum of Rs. 10,000/- is lying with the Zila Parishad hence whatsoever amount towards rental is due from the petitioner, should be adjusted against the said deposit.

The writ petition is disposed of with the direction aforementioned.

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(Jyoti Saran, J)