

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2888 of 2016

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Md. Jawed Khan, Son of Late Md. Sirajuddin Khan, Resident of Mohalla- Morarpur, P.S. - Kotwali, District- Gaya.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Urban Development and Housing, Government of Bihar, Patna
2. The Municipal Commissioner, Gaya Municipal Corporation, Gaya
3. The Executive Engineer -cum- Market Incharge, Gaya Municipal Corporation, Gaya.
4. Md. Sarfaraj Kha, son of Late Sirajuddin Khan, Resident of Mohalla- Nagbatiya Colony, Road No. 1, P.S.- Civil Line, District- Gaya.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ranjan Kumar Dubey
For the Respondent/s : Mr. Madhuresh Prasad, GP-12
For the Corporation : Mr. Rabindra Kumar Priyadarshi
For the private Respondent no.4: Mr. Binay Kumar

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 18-02-2016

Heard Mr. Ranjan Kumar Dubey, learned counsel appearing for the petitioner, Counsel for the State, and Mr. Rabindra Kumar Priyadarshi, learned counsel appearing for the Gaya Municipal Corporation.

The petitioner is aggrieved by the notice dated 28.1.2016 issued by the Municipal Commissioner, Gaya whereby the petitioner has been directed to vacate the shop no.10 situated at Gani Market of Gaya Municipal Corporation.

It is the argument of Mr. Dubey, learned counsel appearing for the petitioner that the private respondent had earlier come before this Court in CWJC No.3749 of 2015 and while praying for direction to the authorities of the Corporation for



confirmation of allotment by virtue of an order dated 31.12.2013 bearing Memo no.1453 issued by the Corporation he suppressed the fact that a title suit is filed by this petitioner against the Municipal Corporation bearing T.S. No.292 of 2013 seeking an injunction from disturbing the possession of the petitioner over the shop in question. Learned counsel in his effort to establish allotment, has relied upon some receipts present at Annexure-2 and to justify his possession. The impugned notice is being questioned by the petitioner on grounds that the suit is pending in between him and the Municipal Corporation as regarding the shop in question and until such time that the suit is decided, the Corporation would be precluded from making any interference with the possession of the petitioner and the private respondent being a party to the suit has not disclosed this fact when he preferred the writ petition seeking a mandamus in the light of the allotment order dated 31.12.2013.

I have heard Mr. Dubey, learned counsel appearing for the petitioner, and learned counsel for the Corporation and perused the records.

From the entire gamut of argument advanced by Mr. Dubey I find that there is nothing on record which would justify the occupation of the petitioner in the shop in question except for few receipts dated 26.12.2011 and 10.1.2012. On the other hand the private respondent had approached this Court seeking an

enforceable right under order of allotment bearing Memo no.1453 dated 31.12.2013 as according to him, despite the allotment order issued by the Corporation in his favour, they were not taking steps for handing over the possession of the shop and it is taking note of the circumstances that this Court directed the Town Commissioner to consider the grievance of the private respondent and pass appropriate order, following which the impugned order has been issued directing the petitioner to vacate the shop in question.

A mere pendency of a suit with no restraint order issued therein, vests no right in the petitioner to continue in possession of the shop.

In the circumstance and in absence of any interim order passed in the pending suit, in my opinion the private respondent was neither under any obligation to disclose the pendency of the suit nor the writ petitioner herein deserved a hearing on the writ petition, in the nature of the relief so prayed by the private respondents therein.

For the reasons aforementioned, no case for indulgence is made out. The writ petition is dismissed.

(Jyoti Saran, J)

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