

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18673 of 2011

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Manoj Jaiswal S/O Late Triloki Nath Jaiswal R/O Bajaj Patti, Main Road, P.S.-
Motihari Town, District- East Champaran at Motihari

.... Petitioner

Versus

1. The State Of Bihar through the Commissioner, Tirhut Division, Muzaffarpur
2. The District Magistrate-Cum-Collector, Motihari, District- East Champaran
3. Gopalji Jaiswal S/O Late Abhimanyu Prasad Jaiswal R/O Panch Mandir Road,
P.S.- Motihari Town, District- East Champaran at Motihari

.... Respondents

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Appearance :

For the Petitioner : Mr. S.D.SANJAY, SR. ADVOCATE
Mr. GAUTAM KUMAR KEJRIWAL
For the Resp. no. 3 : Mr. SANJAY SINGH, ADVOCATE
Mr. SANGEET DEOKULIAR, ADVOCATE
For the State : Mr. A.K.UPADHYAYA, SC 20

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 07-04-2016

Heard learned counsel for the petitioner, for the
Respondent No. 3, and for the State.

2. The present writ petition has been filed for
quashing the impugned *exparte* order dated 28.06.2011 passed
by the Commissioner, Tirhut Division, Muzaffarpur in Misc.
Appeal No. 8 of 2009 by which he has been pleased to set aside
the order dated 11.07.2008 passed by the Respondent Collector,
East Champaran at Motihari and has directed for transfer of
Cinema License of Payal Picture Palace, Motihari in the name of
the Respondent No. 3 as against the name of the petitioner which



was done by the order of the Collector after the death of the father of the petitioner; and to restore the name of the petitioner in the Cinema License as was done by the Respondent Collector, East Champaran at Motihari.

3. Learned counsel for the petitioner has questioned the validity of the impugned appellate order dated 28.06.2011 on two main grounds namely –

(a) that the Divisional Commissioner did not have the requisite jurisdiction to hear the appeal in the matter of grant/renewal of license in view of the State Government's Notification in S.O. No. 385 dated 08.04.1980 empowering the Principal Secretary, Urban Development and Housing Department, Government of Bihar as the appellate authority for the purpose of Rules 6(ii) and 9(ii) of the Bihar Cinemas (Regulation) Rules, 1974, and

(b) in any event the impugned order has been passed without valid service of notice on the petitioner and thus stood vitiated as being in violation of natural justice.

4. In course of submissions at the Bar, learned counsel for the petitioner did not press the first ground and confined his



challenge to the impugned order on the ground of violation of natural justice. It is submitted that notice of hearing issued by the appellate authority was intercepted by the Respondent No. 3 and as such the notice was never validly served on the petitioner.

5. Learned counsel for the Respondent State as well as for the Respondent No. 3 appear and have been heard. The allegation with regard to the Respondent No. 3 having intercepted the notice who is said to have signed the same has been denied in terms of para 11 of his counter affidavit, which in turn has again been controverted in the rejoinder. In any event and to avoid controversy, learned counsel for the Respondent No. 3 fairly expresses that there may be no objection if the appeal is heard afresh by the Divisional Commissioner.

6. Having regard to the respective stand of the parties as well as the limited prayer as confined by the petitioner, this Court is of the view that the ends of justice will be met if the impugned appellate order dated 28.06.2011 is set aside with directions for passing orders afresh by the Divisional Commissioner in accordance with law after hearing all the concerned parties. For the sake of expediting the matter, this

Court directs the parties to appear before the Divisional Commissioner, Tirhut Division, Muzaffarpur on 03.05.2016 being the date mutually agreed to by the parties and hence no separate notice need be issued by the appellate authority.

7. The writ petition is disposed of with the aforesaid observations and directions.

8. It is made clear that this Court has not expressed any opinion on the merits of the respective claims of the parties.

(Vikash Jain, J)

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