

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6149 of 2013

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1. Md. Khursid Alam Son Of Abdul Rahim Resident Of Village Lalpur,
P.S. Matihani, District- Begusarai

.... Petitioner/s

Versus

1. The State Of Bihar
2. The District Magistrate, Begusarai-Cum-Chairman, Swarn Jayanti
Library, Pustakalaya, Begusarai
3. The District Education Officer-Cum-Secretary, Swarn Jayanti Library
Pustakalaya, Begusarai
4. The Circle Officer, Begusarai
5. The Sub Divisional Officer-Cum-Upadhyaksh Swarn Jayanti Library
Pustakalaya, Begusarai
6. Mahfuzur Rashid Son Of Late Saiyad Varis Raja Resident Of Village
Pokhariya, Ward No. 23, P.S. Town Begusarai, District Begusarai

.... Respondent/s

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR
MANDAL
ORAL ORDER

5 16-02-2016 Heard Mr. Kumar Uday Singh for the petitioners, Mr.
Abdul Kalam for the respondent no.6 as well as the State.

Parties have exchanged pleadings.

The writ application is filed precisely for two reliefs.

Mr. Singh having regard to the fact that expiry of the period of
lease executed in favour of the respondent no.6 states that the
first relief has become infructuous. With respect to the second
relief he submits that as and when occasion arises for entering
fresh lease in respect of shop no.5, the petitioner may be granted
liberty to make a representation for execution of lease in his

favour by the State respondent(s).

Vikash Bazar is a commercial complex constructed and managed by the Swarn Jyanti Library Committee, Begusarai headed by the District Education Officer. It is stated that shop no.5 was allotted to the petitioner. He opened a medicine shop. A partnership agreement was entered between the petitioner and one Md. Shamim Akhtar. He was also inducted as a co lessee /co tenant of the shop. Differences between them later cropped up which resulted in filing of Title suit no. 175 of 1989 by the petitioner against Shamim Akhtar for dissolution of partnership firm. It, however, ended in compromise. Shamim Akhtar continued in possession of the shop and the petitioner in order to evict him therefrom filed an eviction suit being Title Eviction suit no. 4 of 1997 against him. In the meanwhile the administration of the Swarn Jayanti Library committee issued notice to some of the shopkeepers for evicting them from the shop(s) which was challenged by many shopkeepers including the petitioner in C.W.J.C. No. No. 14059 of 2001 which, however, was disposed of with the consent of the parties by order dated 5.2.2003 (Annexure-5). Mr. Singh submits in the light of the said order of this court, the petitioner was entitled to get renewal or execution of the lease in his favour by the Swarn

Jayanti Library committee. In this factual background, it has been submitted that as and when the occasion arises for execution of fresh lease in respect of the shop in question, the case of the petitioner should also be considered by the respondents authority.

The counsel for the respondent no.6, per contra, submitted that both the reliefs prayed for in this application are fit to be rejected as the father of the respondent no.6 was recognized/accepted by the writ petitioner himself as well as by the managing committee of the Swarn Jayanti Library committee as the real tenant/lessee of the shop. In this connection, he has drawn attention of the Court to Annexure-A to the counter affidavit (filed on behalf of the respondent no.6) which is a registered document/kirayanama entered between the father of the respondent no.6 and the writ petitioner, the genuineness whereof was challenged by the petitioner in the pending eviction suit wherein a report of the expert was called in and produced certifying the signature of the petitioner on the said 'kirayanama'. Having found so, the petitioner allowed the suit dismissed for non-prosecution under order dated 23.3.2012 passed by the learned trial court (Annexure-K). The enquiry report of the respondent no.3 as well as the resolution/order of the District Magistrate are enclosed as Annexures E and F

respectively to the supplementary counter affidavit wherefrom it appears the father of respondent no.6 was found the real tenant/lessee of the shop in question.

On a careful consideration of these documents and after hearing both the parties, it appears to this court that factually the father of the respondent no.6 was accepted by the Swarn Jayanti Library committee as the tenant or the lessee in possession of the shop. The contention of Mr. Singh that order of this court passed in C.W.J.C. No. 14059 of 2001 (Annexure-5) is wrongly construed by the State respondents, in my view, shall have not much relevance as the said order itself has lost its life or relevance. It was for a particular period and that too with the consent of the parties. On the other hands, it appears the State respondents have on enquiry found the father of the respondent no.6 as the tenant or the lessee of the shop. Annexure E and F of the supplementary counter affidavit of respondent no.6 bear testimony to these facts. What is the current status of the shop is not known to the petitioner. This Court would, however, note the submission of the respondent No.6 is that the shop no.5 continues in possession of the respondent no.6 on the basis of lease executed by the respondent which has not lapsed. In the circumstances, this court is unable to accede to the second prayer of the petitioner

also to direct the respondents to treat him as the tenant/lessee of the shop. However, without opining any view on his claim, it is observed that as and when the occasion arise, petitioner may make appropriate application for letting out or leasing out the shop for consideration in accordance with law. The writ petition is dismissed.

(Kishore Kumar Mandal, J)

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