

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17778 of 2014

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Lalita Singh @ Lalita Devi wife of Late Devendra Prasad Singh and daughter of Late Upendra Singh resident of Village - Thakurganj, P.S. - Thakurganj, District - Kishanganj.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary Department of Rural Development, Government of Bihar, Patna.
2. Collector, Kishanganj, District - Kishanganj.
3. Zila Parishad, Kishanganj through Deputy Development Commissioner Cum Chief Executive Officer, Zila Parishad Kishanganj, District - Kishanganj.
4. Deputy Development Commissioner cum Chief Executive Officer, Zila Parishad Kishanganj, District - Kishanganj.
5. Nagar Panchayat Thakurganj through its Executive Officer, Thakurganj District - Kishanganj.
6. Executive Officer, Nagar Panchayat Thakurganj, District - Kishanganj.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Sarangdhar Jha, Advocate
For the Respondent-State : Mr. ASHOK KUMAR KESHRI, AAG-11
For the Municipality : Mr. Nityanand Mishra, Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 20-01-2016

Heard Mr. Sarangdhar Jha, learned counsel for the petitioner, counsel for the State and Mr. Nityanand Mishra appearing for the Nagar Panchayat, Thakurganj in the district of Kishanganj.

The petitioner is aggrieved by an order bearing Memo No. 257 dated 09.6.2014 of the Executive Officer, Nagar Panchayat, Thakurganj, District-Kishanganj whereby the allotment of shop no. 2 at Shubhra Market, Thakurganj in the District of Kishanganj in favour of the petitioner by the Zila Parishad, Kishanganj has been cancelled on the charges that the petitioner had sublet the shop. The petitioner has questioned the order on grounds that the charges are

without foundation and that the allegation that this petitioner had let out her shop to one Devendra Singh is again misconceived for the said Devendra Singh happens to be the husband of the petitioner.

Mr. Jha, learned counsel appearing for the petitioner submits that it is on identical charges that an FIR was instituted against the petitioner's husband namely, Devendra Singh giving rise to Thakurganj P.S. Case No. 209 of 2012 placed at Annexure-2 but the proceeding was dropped vide order dated 06.1.2014 of the Chief Judicial Magistrate, Kishanganj in absence of evidence and considering the final report submitted by the investigating agency. He thus submits that the impugned order is based on nonest ground.

Mr. Nityanand Mishra appearing for the Nagar Panchayat has contested the writ petition by reiterating the allegations against the petitioner with reference to an affidavit filed by the said Devendra Singh, a copy of which is enclosed with Annexure-C series whereby the said Devendra Singh has sought for transfer of allotment in his favour. Mr. Mishra in reference to the affidavits submits that at no place the said Devendra Singh refers to the petitioner as his wife and which would confirm the subletting by the petitioner. Mr. Mishra has again referred to a copy of the agreement present at Annexure-B and C and with particular reference to Clause-7 he submits that an allottee could not have transferred the shop in favour of any of the person without permission of the Nagar Panchayat and which would entail a cancellation of the agreement.



I have heard learned counsel for the parties and I have perused the materials on record. The shop in question earlier formed a part of Zila Parishad, Kishanganj and thus the allotment of Shop No. 2, Shubhra Market, Thakurganj in the district of Kishanganj in favour of the petitioner was made by the Zila Parishad, Kishanganj in 1999. By passage of time the area in question was notified as Nagar Panchayat, Thakurganj and the shop in question along with other properties falling in the jurisdiction of Zila Parishad, Kishanganj stood transferred with the Municipality. The transfer of the property to the Nagar Panchayat stands discussed at Annexure-A to the counter affidavit filed by the Municipality which is an order passed by the Deputy Development Commissioner-cum-Chief Executive Officer, Zila Parishad, Kishanganj bearing Memo No. 76 dated 27.1.2010. Following the transfer of the shop under the jurisdiction of Nagar Panchayat, Thakurganj that the petitioner deposited the arrears of rent which is manifest from the receipt issued by the Municipality on 21.3.2012 placed at Annexure-1. As according to the Municipality the husband of the petitioner, namely, Devendra Singh was illegally operating the shop that an FIR was instituted against him giving rise to Thakurganj P.S. Case No. 209 of 2012, a copy of which is placed at Annexure-2 and the Police upon investigation submitted a final form which was accepted by the Chief Judicial Magistrate, Kishanganj thereby dropping the proceedings vide order passed on 06.1.2014 also forming part of Annexure-2. It is thereafter that the order impugned



has been passed charging the petitioner of subletting the shop and thus committing a violation of the agreement. Another issue raised by the Nagar Panchayat is the absence of any agreement in between the petitioner and the Nagar Panchayat. It is rather surprising that even when the Executive Officer, Nagar Panchayat, Thakurganj relies upon the agreement entered in between the petitioner and the Zila Parishad, Kishanganj to charge her for violation of its condition by subletting the shop in favour of the third person, neither the Municipality is in possession of the agreement so entered in between the petitioner and the Zila Parishad nor there is any reference of the party in favour of whom the subletting has taken place nor any enquiry report is on record. Apparently the charges are unfounded and based on no evidence. In fact upon query being made to Mr. Mishra, he fairly accepted that the copy of the agreement has not been handed over by the Zila Parishad to the Municipality. In my opinion, once there is no dispute regarding the allotment of the shop by the Zila Parishad, Kishanganj in favour of the petitioner and consequent upon the transfer of the property in question to the Municipality vide Memo bearing No. 76 dated 27.1.2010 brought on record vide Annexure-A by the Municipality, the obligation entirely rested upon the Municipality to enter into fresh agreement with the allottees under the Zila Parishad. That consequent upon the transfer, the Municipality has accepted the rent as manifest from the receipt dated 21.3.2012 present at Annexure-1, the contract in between the petitioner and the



Nagar Panchayat continues. Once there is a continuity of the contract then in absence of any evidence reflecting any violation of the condition by the petitioner, the Municipality was clearly acting without jurisdiction to cancel the allotment. The reliance by Mr. Mishra to an agreement entered in between the allottee and the Nagar Panchayat certainly cannot come to the rescue of the Municipality for justifying the impugned action in absence of any such agreement entered with the petitioner.

In the circumstances so discussed hereinabove, the order impugned at Annexure-3 cannot be upheld on more than one counts, namely:-

- (a) In absence of any agreement entered in between the petitioner and the Nagar Panchayat; there cannot be a question of any violation;
- (b) An agreement entered in between the petitioner and the Zila Parishad, not being in possession of the Nagar Panchayat, they could not have charged the petitioner of violating any such condition;
- (c) The property having been transferred with the Nagar Panchayat, it is the obligation of the Nagar Panchayat to enter into a fresh agreement with the petitioner;
- (d) The order charging the petitioner of subletting is based on no evidence and even the enquiry so referred to is not on record.
- (e) The FIR so instituted against the husband of the petitioner has reached its conclusion when the proceedings were dropped.

For the reasons so discussed, the order impugned at Annexure-3 issued by the Executive Officer cannot be upheld and is accordingly set aside. The Executive Officer is directed to unseal the shop in question and give its possession to the petitioner forthwith and within 48 hours of receipt / production of a copy of this order. The petitioner shall be under an obligation to deposit the up to date license fee / rent for the shop to the Municipality within three months from today. Considering that the property stands transferred to the Nagar Panchayat, Thakurganj, the Executive Officer, Nagar Panchayat, Thakurganj shall be obliged to enter into a fresh agreement with the petitioner.

The writ petition is allowed.

(Jyoti Saran, J)

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