

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21264 of 2011

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Bhola Nath @ Bhola Nath Gupta S/O Late Muneshwar Sao Resident of
Mohalla- Alamganj, P.O- Biharsharif, P.S- Lahiri, District- Nalanda.

.... Petitioner

Versus

1. The Biharsharif Municipal Corporation, Nalanda at Biharsharif.
2. The Nagar Ayutk-Cum-Special Officer of Nagar Nigam, Biharsharif.
3. The Mayor, Biharsharif Nagar Nigam, Nalanda.

.... Respondents

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Appearance :

For the Petitioner : Mr. Bhola Prasad, Advocate

Mr. Amar Nath Singh, Advocate

For the Respondents : Mr. Gyan Prakash Ojha, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 25-04-2016

Heard learned counsel for the petitioner and learned counsel
for the respondents.

2. The present writ petition has been filed for quashing the
decision dated 27.09.2011 (Annexure-6) communicated to the
petitioner vide Memo No. 2509 dated 11.10.2011 (Annexure-7) under
the signature of the Respondent Nagar Ayukt, Municipal Commissioner
of Biharsharif Municipal Corporation; for a direction to the
respondents to act upon the agreement dated 10.09.2011 executed by
the Respondents No. 2 and 3 with the petitioner; and for connected
reliefs.

3. Learned counsel for the petitioner states that pursuant to an
agreement dated 10.09.2011 (Annexure-3) entered into between the
parties pursuant to a decision of the Board dated 06.09.2011, the
petitioner made the pre-requisite deposit of Rs. 20,00,000/- in terms of
condition no. 3 of the said agreement prior to commencement of
construction, and also incurred other expenses of about Rs. 1,00,000/-
towards preparation of map and lay out. It is submitted that the
impugned order dated 27.09.2011 has been passed unilaterally by the

respondents without so much as a show cause to the petitioner, thereby denying him even an opportunity of being heard in the matter. It is therefore, submitted that the decision of the respondents dated 27.09.2011 taken in its special meeting is wholly unsustainable.

4. Learned counsel for the respondents relies on the counter affidavit to oppose the writ petition, *inter alia*, stating that possession of the land has not been given to the petitioner and the deposit of Rs. 20,00,000/- has been made by the petitioner without any demand being made for the same.

5. Having heard the parties and on consideration of the materials on record, this Court finds merit in the writ petition. The agreement dated 10.09.2011 itself states that the same was entered into pursuant to a unanimous decision taken in the Board's meeting dated 06.09.2011 for the allotment of the land measuring 20 ft./100 ft. for the establishment of a small scale industry and an electronic shop by the petitioner. It is also not in dispute that the petitioner made the deposit of Rs. 20,00,000/- prior to the commencement of construction on the land. The stand of the respondents that no demand for such payment was made is contrary to condition no. 3 of the agreement, which itself required the petitioner to make such payment at any time prior to commencement of the construction. The respondents are unable to satisfy this Court that any opportunity was granted to the petitioner for a hearing prior to the cancellation of the agreement. It is therefore, apparent that the right which had accrued to the petitioner has been deprived of his right under the agreement without any opportunity of being heard and thus the decision making process stands vitiated as being violative of the principles of natural justice.

6. In the above view of the matter, therefore, the decision taken by the Board in its special meeting dated 27.09.2011 along with the memo No. 2509 dated 11.10.2011 communicating such decision to the petitioner, is hereby quashed.

7. It is made clear that the respondents shall be at liberty to take a fresh decision in the matter in accordance with law and after the grant of reasonable opportunity to the petitioner of being heard in the matter.

8. The writ petition stands allowed.

(Vikash Jain, J)

Chandran

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	06.05.2016
Transmission Date	