

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.60 of 2012

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Brijnandan Mishra Son of Late Jagdish Mishra, Resident Of Village-Sherpura, Police Station-Tekari, District-Gaya

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Department of Rural Development, Government of Bihar, New Secretariat, Bailey Road, Patna
3. The District Magistrate, Gaya
4. The Deputy Development Commissioner-cum-Chief Executive Officer, District Board, Gaya
5. District Development Officer-cum-Secretary, Zila Parishad, Gaya
6. The Chairman, District Board, Gaya

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar Mallick
: Mr. Murlidhar

For the Respondent No.1 to 3 : Mr. Satya Deo Kumar, SC-V

For the Respondent No. 4 to 6 : Mr. Rajan Prasad

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

3 18-01-2016 Heard the parties.

The petitioner is aggrieved by the order/ communication dated 21st November, 2011 issued by the respondent Deputy Development Commissioner-cum- Chief Executive Officer, Zila Parishad, Gaya, as contained in annexure-6, whereby the petitioner has been communicated that his agreement is cancelled on the ground of violation of the terms and conditions of the said agreement. The petitioner has further been directed to deposit the arrears of money, otherwise the State shall take steps for recovery of said amount by starting a certificate proceeding.

The learned counsel appearing on behalf of the petitioner submits that a lease agreement was signed on 26th February, 1992 (Annexure-4) between the Zila Parishad, Gaya and the petitioner. According to him, though this agreement was only

for one year, but it was extended from time to time by the competent authority. However, his grievance is that without issuing any show cause notice or without giving any opportunity of hearing to the petitioner, by the impugned communication his agreement has been cancelled by a non-speaking order.

The learned State counsel, appearing on behalf of the respondent no. 1 to 3 and the learned counsel appearing on behalf of the respondent no 4 to 6 have contested the matter by referring to the averments made in the counter affidavits filed separately on behalf of the aforesaid respondents. According to them, the lease agreement was only for one year and though, it was subsequently extended, but the petitioner has violated the terms and conditions of the lease agreement. Therefore, it has rightly been cancelled by the respondent Deputy Development Commissioner-cum-Chief Executive Officer, Zila Parishad, Gaya. However, despite repeated query, they have not been able to show that before passing the impugned order any opportunity of hearing was given to the petitioner and/ or rules of natural justice were followed.

In above view of the matter, without going into merits of the claims of the parties, the impugned order/ communication dated 21st November 2011 issued by the respondent Deputy Development Commissioner-cum-Chief Executive Officer, Zila Parishad, Gaya as contained in Annexure-6, is hereby quashed and set aside and the matter is remitted back to the respondent Deputy Development Commissioner-cum-Chief Executive Officer, Zila Parishad, Gaya with a direction to pass a fresh appropriate order after giving an opportunity of hearing to the petitioner and others, if any, strictly in accordance with law.

In order to expedite the matter, the petitioner is hereby

directed to appear before the respondent Deputy Development Commissioner-cum-Chief Executive Officer, Zila Parishad, Gaya with a certified copy of the present order within a period of one month from today, whereafter respondent no. 4 Deputy Development Commissioner-cum-Chief Executive Officer, Zila Parishad, Gaya shall decide the matter afresh strictly in accordance with law, by a reasoned and speaking order. However, before passing any final order, a reasonable opportunity of hearing must be given to the petitioner and all other concerned persons.

It is clarified that if the petitioner does not appear within the aforesaid period of one month, in the manner indicated above, then the respondent Deputy Development Commissioner-cum-Chief Executive Officer, Zila Parishad, Gaya shall be at liberty to pass a fresh order, in accordance with law.

The writ petition stands finally allowed to the extent indicated above, but with the observations and directions made above.

(Birendra Prasad Verma, J)

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