

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 12095 of 2013

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Bhagirathi Prasad Son of Kapil Prasad Resident of Mohalla- Charitarban, P.S.-
Buxar (T), District- Buxar

.... Petitioner

Versus

1. The State of Bihar the Secretary, Urban Development, Bihar, Patna
2. Buxar Municipality, through its Chief Councilor, R/O Buxar Town, P.S. Buxar (T), District- Buxar
3. The Executive Officer, Buxar Municipality, R/O Buxar Town, P.S. Buxar (T), District- Buxar

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Om Prakash Upadhaya

For the Respondent/s : AC to Addl. Advocate General - 6

Mr. Ashwani Kumar Rai

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 11-01-2016

Heard Sri Om Prakash Upadhaya, learned counsel for the petitioner, learned A.C. to Addl. Advocate General – 6 as well as Sri Ashwani Kumar Rai, learned counsel who has appeared on behalf of respondent no. 2 & 3.

The petitioner, invoking writ jurisdiction of this Court under Article 226 of the Constitution of India, has prayed for quashing of notice dated 19-06-2013 issued vide letter no. 640 under the signature of respondent no. 3/Executive Officer, Buxar Municipality. By the said notice, the petitioner was asked to remove his shop (*gumati*) from the place where it was allotted to him and the petitioner has also been asked to get the refund of deposited amount of Rs. 20,000/-.



Learned counsel for the petitioner submits that in the year 2012 the petitioner was allotted a shop, vide **Annexure – 1** to the writ petition, on certain conditions after deposit of Rs. 20,000/-. Subsequently, to the reasons best known to the authority concerned, the respondent started to disturb the petitioner and **Annexure – 2** was issued asking the petitioner to remove his shop. It has been pleaded that like petitioner, some other persons were also allotted shops, whose names have been mentioned in paragraph – 5 of the writ petition, however; without any reason, only the petitioner is being disturbed, whereas no action has been taken against others.

In this case, by order dated 03-07-2013, learned counsel for the respondent no. 2 & 3 i.e. Buxar Municipality was asked to file counter affidavit meeting the statements made in paragraph 5 & 6 of the writ petition and show exactly as to what was the reason for directing the petitioner only to remove his *gumati*. Ofcourse, in compliance of the said order, belatedly counter affidavit was filed on behalf of respondent no. 2 & 3, but no plausible explanation was given in the counter affidavit. A case was made out in the counter affidavit that the *gumati* of the petitioner is situated just below the electric transformer. The respondent no. 2 & 3 were subsequently directed to file supplementary counter affidavit dealing with the matter and thereafter, supplementary counter affidavit was filed on

23rd November, 2015.

Sri Rai, learned counsel for the respondent no. 2 & 3, by way of referring to statement made in paragraph – 4 of the petition, reiterates that the shop/*gumati* of the petitioner is situated just below the transformer. He further submits that in terms of conditions contained in agreement i.e. **Annexure – 1**, there is no difficulty in cancelling the allotment of shop, which was earlier allotted to the petitioner.

Learned counsel for the petitioner assailing the impugned notice has argued that the reason for asking the petitioner to remove the shop is otherwise than the plea taken in the counter affidavit. He further submits that the shop/*gumati* of the petitioner is not situated below the electric transformer, but it is situated at the same place, which was indicated in the allotment order as well as notice issued to the petitioner i.e. **Annexure – 2** to the writ petition. He further submits that in the supplementary counter affidavit also, a plea has been taken that priority shall be given to allot a shop to the petitioner, if in near future there remains a vacant shop.

Besides hearing learned counsel for the parties, I have also perused the materials available on record. On perusal of **Annexure – 1** i.e. allotment order and **Annexure – 2** i.e. notice, whereby the petitioner was noticed and the fact disclosed in the

counter affidavit and supplementary counter affidavit, the Court is of the opinion that two different stand has been taken by the respondent/Municipality. In the notice i.e. **Annexure – 2**, it has been indicated that shop was situated north to the transformer in front of Haunman Mandir, whereas in counter affidavit and supplementary counter affidavit, a plea has been taken that it is situated below the transformer. Moreover, once the shop was allotted to the petitioner and other similarly situated persons, in view of any flagrant violation of terms and conditions, the respondents are not authorized to disturb the petitioner. However, in view of facts and circumstances, particularly; in view of statement made in paragraph – 6 of the writ petition, the Court proposes to dispose of the writ petition, with an observation that the petitioner shall not be disturbed till other appropriate shop is allotted to the petitioner in accordance with law.

Accordingly, the **Annexure – 2** is, hereby, set aside.

The writ petition stands disposed of.

(Rakesh Kumar, J.)

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