

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No.4194 of 2011

=====

Gupteshwar Mishra, Son of Sri Shivdeep Mishra, resident of Sheo Complex, Bikramganj, Ara - Sasaram Road, P.S. - Bikramganj, District - Rohtas.

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna, namely, Sri Anup Mukherjee.
2. The Sub-Divisional Officer, Bikramganj, District - Rohtas, namely, Sheodani Singh.
3. The Officer-in-Charge, Bikramganj Police Station, District - Rohtas, namely, Sri Ranjit Kumar Singh.
4. The Indian Oil Corporation through the General Manager, Jai Prakash Bhawan, Dak Bunglow Chowk, Patna, namely, Sri B.B. Choudhary.
5. The Area Manager, Indian Oil Corporation, Shahi Bhawan, Exhibition Road, Patna, namely, Sri A.K. Sinha.

.... Contemnors/Opposite Parties

With

=====

Civil Review No.116 of 2011

IN

LPA No.24 of 2010

- =====
1. Sheodani Singh, the then Sub-Divisional Magistrate, Bikramganj and at present Additional District Magistrate, District - Sitamadhi.
 2. Ranjit Kumar Singh, Officer-in-Charge, Bikramganj, District - Rohtas.

.... Petitioners

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. Sheo Kumar Mochi, S/o Moti Mochi, R/o - Village & P.O. - Bhadsara, P.S. - Kako, District - Jahanabad.
3. Indian Oil Corporation through G.M., Jay Prakash Bhawan, Dak Banglow, Patna.
4. The Area Manager, Indian Oil Corporation, Jay Prakash Bhawan, Dak Banglow, Patna.

.... Respondents/Opposite Parties

5. Gupteshwar Mishra, S/o Shri Shivdeep Mishra, R/o - Sheo Complex, Bikramganj, Ara - Sasaram Road, P.S. - Bikramganj, District - Rohtas.

.... Writ Petitioner/Respondent

=====

Appearance :

(In MJC No.4194 of 2011)

For the Petitioner : Mr. Rajendra Narain, Sr. Adv.
Mr. Sunil Kumar Dubey, Adv.

For the Opposite Parties : Mr. Subhash Pd. Singh, G.A.-7
(In C. REV. No.116 of 2011)

For the Petitioners : Mr. Shambhu Pd. Singh, Adv.
For the Respondents : Mr. Shiv Kumar, A.C. to G.A.-7
Mr. Rajendra Narain, Sr. Adv.
Mr. Sunil Kumar Dubey, Adv.

=====

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

And

**HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH**

C.A.V. JUDGMENT

**(Per: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH)**

Date : 23-06-2016

Both the cases arise out of the same judgment and order, dated 24.02.2011, passed by a Division Bench of this Court in L.P.A. No.24 of 2010 and have therefore been heard together, with the consent of the parties.

2. Petitioners of Civil Review No. 116 of 2011, viz, Sheodani Singh and Ranjit Kumar Singh, who were, at the relevant point of time, posted as Sub-Divisional Officer, Bikramganj Sub-Division, and Officer-in-Charge, Bikramganj Police Station, respectively, have sought for review of the aforesaid judgment and order, dated 24.02.2011, whereby a Division Bench of this Court has passed the following order, on an appeal, preferred by one Gupteshwar Mishra, who has been impleaded as respondent No.5 in the petition for review:-

"..... It is true that the learned counsel appearing for the State was staunchly defending the actions of the respondents no.2 and 3, but considering the underlying arbitrariness which was defended in exercise of executive actions purported to be taken under



Section 133 Cr.P.C, which has already been held, not resorted to by the learned single Judge, we find that if there was any report- we regret to note that there was nothing in that behalf brought into our notice- a proper proceeding ought to have been initiated under the proper provisions of chapter-VIII Cr.P.C. and then only any notice could have been issued or any action to prevent the breach of the peace could have been taken. That not having been done-we find that the acts complained of in view of its arbitrariness do invite an order from us to respondents no.2 and 3 to pay compensation. However, considering that acts complained of had taken place on 21.03.2009 and thereafter, and officers like respondents no.2 and 3 might have been transferred from Bikramganj- we direct the State of Bihar to pay a compensation of Rs.25,000/- to the appellant for the arbitrary and illegal actions of its employees, i.e., respondents no.2 and 3 which may be realized from their salaries in due course of time. The compensation must be paid to the writ petitioner within a period of three months



from the present order.

This appeal stands disposed of. We want to add that notwithstanding the disputed question of facts as discussed by the learned single Judge at page-12 of the order under consideration it has been noted by the writ Court that the lock was put on the premises illegally and arbitrarily. We direct in that view that the locks be removed immediately and status quo ante be restored."

(Emphasis supplied)

3. The said Sheodani Singh and Ranjit Kumar Singh were impleaded as respondent Nos.2 and 3 respectively in the writ proceedings as also in the appeal, preferred, under Clause 10 of the Letters Patent of this High Court, by said Gupteshwar Mishra (respondent No.5 in review proceeding).

4. M.J.C. No.4194 of 2011 has been filed by the said Gupteshwar Mishra alleging willful and deliberate disobedience of the same judgment and order, passed by the Division Bench of this Court, dated 24.02.2011, in L.P.A. No.24 of 2010 and, therefore, he has sought for initiation of contempt proceeding against, *inter alia*, the said Sheodani

Singh and Ranjit Kumar Singh. This is, in brief, the background as to why these two cases have been heard together and are being disposed of by the present common judgment and order.

5. We need not enter into discussion of facts, in detail, which came to be finally adjudicated upon by a Division Bench of this Court, *vide* judgment and order, dated 24.02.2011, passed in L.P.A. No.24 of 2010, except, those which are essential for considering the grounds, taken in the petition, seeking review of the said judgment and order. Before coming to the said grounds and facts, which have been pressed for review of the said judgment and order, we consider it appropriate to take note of certain facts, as the conducts of the review petitioners, in our opinion, have been found to be lacking in *bona fide*.

6. We, at the outset, have taken note of the fact that respondent No.2 had also filed a petition for review, *vide* Civil Review No.146 of 2012, of the same order, dated 24.02.2011, passed in L.P.A. No.24 of 2010, which came to be dismissed by a Division Bench of this Court by an order, dated 02.04.2013, in following terms:-



"Feeling aggrieved by the judgment and order dated 24th February, 2011 passed by a Bench of this Court in Letters Patent Appeal No.24 of 2010, the respondent no.4 has preferred this Petition for review under Order Rule 1 C.P.C.

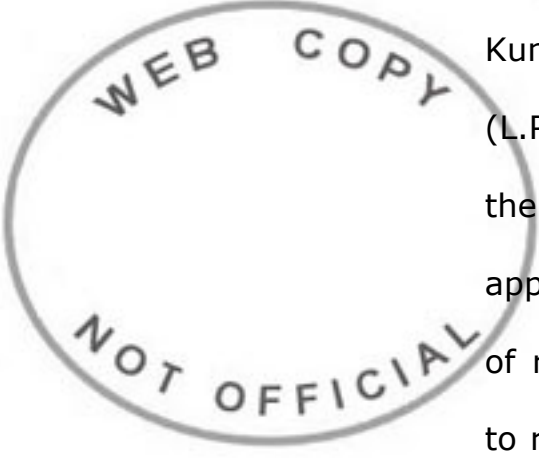
According to the petitioner, the judgment under review is illegal, unjust, unwarranted, bad in law, passed under misconceived proposition of law and perverse.

No ground for review is made out. Petition is dismissed in limine."

7. On perusal of review petition, we notice that in the present case also, the said order, dated 24.02.2011, is sought be reviewed on the ground that the same is illegal, unwarranted and passed under misconceived proposition of law.

8. For the purpose of clarity, we, in our present common judgment and order, have described the parties to these proceedings according to the party position of Civil Review No.116 of 2011.

9. From the records, it appears that there was some dispute between respondent No.5



(Gupteshwar Mishra) and respondent No.2 (Sheo Kumar Mochi) over running of business premises (L.P.G. distributorship of Indian Oil Corporation) in the name and style of M/S Raj Enterprises. It further appears that the distributorship was granted in favour of respondent No.2 (Sheo Kumar Mochi). According to respondent No.5, as respondent No.2 was not able to manage the business, had incurred liability of several lacs and facing termination of distributorship, he entered into an agreement with respondent No.5 executed on 23.08.2004. Respondent No.5 is said to have made substantial investments, whereafter the business could be brought back on track. Attitude of respondent No.2 is said to have changed off late, who wanted to usurp heavy investments made by respondent No.5.

10. The petitioner Nos. 1 and 2 were, admittedly, at the relevant point of time, posted as Sub-Divisional Officer and Officer-in-Charge of police station, at Bikramganj, respectively. Premises, in question, were put under lock and key, on 21.03.2009, by the petitioner No.2. Thereafter, on 31.03.2009, petitioner No.1 asked the petitioner No.2 to unlock the premises and hand it over to respondent

No.2. On 01.04.2009, the petitioner No.1 asked the petitioner No.2 to prepare an inventory, with the help of the Block Supply Officer and to hand it over to respondent No.2.

11. Respondent No.5, thereafter, approached this Court, invoking Article 226 of the Constitution of India, by filing a writ application, which gave rise to C.W.J.C. No.4791 of 2009, seeking quashing of the memo No.312, dated 31.03.2009, and memo No.315, dated 01.04.2009, whereby petitioner No.1 had asked the petitioner No.2 to make an inventory of the godown and ensure handing over possession of the godown in favour of respondent No.2. He also sought for a direction to the respondents to restore *status quo ante* as prevailing before 21.03.2009. He took specific plea that the petitioners had no authority to lock the premises in question, which had resulted in unlawful ouster and immense loss to him. He had also sought for suitable compensation.

12. Learned single Judge, while allowing the writ petition, vide order, dated 08.09.2009, made following observations:-

"X X X X X X X The actions of respondents 3 in locking the premises is absolutely without

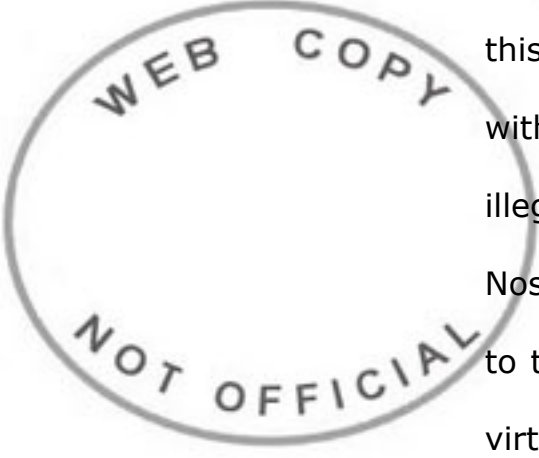


sanction of law and this court in strong terms deprecate the same. The respondent no.2 also ought not to have handed over the premises to respondent no.4 without a proper proceeding as the official respondent themselves admitted that it is the petitioner who was running the gas agency business since long. However, as the respondents pleaded that the premises were locked in order to prevent eruption of a volatile situation in Gas Agency, I do not want go into the issue of compensation and its quantum in this writ petition. It will be open to the petitioner, if so advised, to agitate his claim in a court of competent civil jurisdiction. X X X X X X X X X X"

(Emphasis supplied)

13. Petitioner Nos.1 and 2 were impleaded as respondent Nos.2 and 3 respectively in C.W.J.C. No.4791 of 2009. We have noticed that a counter affidavit was also filed in the writ proceeding by petitioner No.1.

14. Respondent No.5 preferred an appeal against the order of learned single Judge, dated



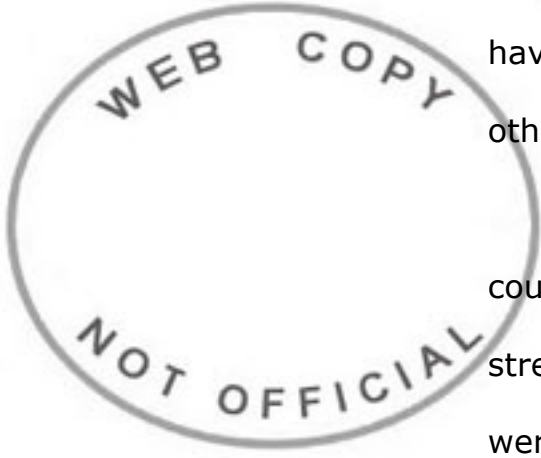
08.09.2009, under Clause 10 of the Letters Patent of this Court, which gave rise to L.P.A. No.24 of 2010, with a limited prayer that on account of arbitrary and illegal act of the officers of the State, viz. petitioner Nos.1 and 2 of locking the premises without resorting to the proper provisions of law in that behalf, he was virtually ousted from the premises and, therefore, he needed to be duly compensated. In this background, a Division Bench of this Court passed the order, dated 24.02.2011, review of which is being sought in the present proceeding.

15. We have carefully perused the application, seeking review of the order of Division Bench of this Court, dated 24.02.2011, and we have given our anxious consideration to the grounds taken therein.

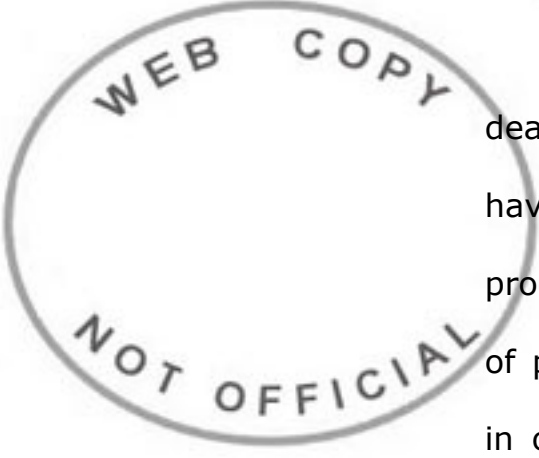
16. We find that finding of fact, arrived at by learned single Judge, in C.W.J.C. No.4791 of 2009, to the effect that the action of petitioner No.2 in locking the premises was without any sanction of law, was not assailed either by the State of Bihar, review petitioners or any other party, including the State Government. The conclusion that petitioner No.1 ought not to have handed over the premises to

respondent No.2 also attained finality, the same having not been questioned by way of appeal or any other proceeding.

17. Mr. Shambhu Prasad Singh, learned counsel, appearing on behalf of the petitioners, has strenuously tried to convince us that the petitioners were not given due opportunity of hearing and to present their case before the Division Bench. We do not find, however, any such ground taken in the review petition. The petitioners have attempted to assail the findings and conclusions recorded by the learned single Judge in the order, dated 08.09.2009, passed in C.W.J.C. No.4791 of 2009, in the present proceeding seeking review of the order passed in Letters Patent. They, having not questioned the finding of fact and conclusion recorded by learned single Judge, and, thus, having accepted the findings and conclusions, cannot be permitted, in our considered view, to question the same in the present proceeding. Further, the petitioners seek to challenge legality of the order passed by the Division Bench of this Court, in the present review petition, justifying their action of putting the godown under lock and key and directing the premises to be handed over to



respondent No.2.



18. The above aspects of the case have been dealt with in detail by the learned single Judge, which have remained unchallenged by the parties to the writ proceeding. It is well accepted principle that a Court of plenary jurisdiction may exercise power of review in order to prevent miscarriage of justice or correct palpable errors committed by it. An order can also be reviewed on discovery of new and important matter or evidence, which, despite due diligence of a party, could not be brought to the notice of the Court. We have failed to notice any error, let alone a palpable error, apparent on the face of record in the order under review. A palpable error or an error, apparent on face of record, is such an error, which does not require any long drawn out process of argumentation.

19. No such ground, in our opinion, exist nor taken in the present review application. The grounds, which have been taken, are not such, which can be gone into a review proceeding. We reiterate that the Division Bench by the order, under review, based on finding recorded by the learned single Judge, ordered for paying compensation to respondent No.5, considering the conduct of the petitioners as public

servants. There is no error of record apparent in the said order.

20. Accordingly, Civil Review No.116 of 2011 stands dismissed.

21. The interim order, dated 04.03.2013, passed in the present case, stands vacated.

22. So far as the contempt petition is concerned, in the facts and circumstances of the case, we do not intend to proceed any further in the matter since we have been informed that order of Division Bench, dated 24.02.2011, has since been substantially complied with, except for payment of compensation, because of operation of the interim order. Accordingly, M.J.C. No.4194 of 2011 stands disposed of.

23. Parties shall bear their own costs.

(Chakradhari Sharan Singh, J.)

I.A. Ansari, ACJ : I agree

(I.A. Ansari, ACJ.)

Praveen-II/-

U			
---	--	--	--

