

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 8811 of 2015

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Md. Fazale Ali @ Rijawi, Son of Late Jaki Ahmad resident of village + P.O. Chaphari, P.S. Rupouli, District – Purnia.

.... Petitioner/s

Versus

1. The State of Bihar, through District Magistrate, Purnia.
2. The Divisional Commissioner, Purnia.
3. The District Magistrate, Purnia.
4. The Deputy Collector cum Nodal Officer, Rupouli, Purnia.
5. The Sub - Divisional Officer, Dhamdaha, Purnia.
6. The Circle Officer, Rupouli, Purnia.
7. Jaganath Prasad Gupta owner of Mishri Maveshi Hat, Son of Late Munshi Sah, resident of village - Birouli, P.S. Rupouli, District – Purnia.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Abhay Singh, Sr. Advocate. Mr. Raghib Ahsan, Mr. Sanchay Srivastava, Mr. Binod Kumar Sinha & Mr. Ravi Prakash, Advocates.
For the Respondent No.7	:	Mr. Jitendra Singh, Sr. Advocate. Mr. G. P. Bimal, Mr. Mrigank Mauli, Mr. Prince Kumar Mishra & Mr. Sanket, Advocates.
For the State	:	Mr. M. K. Sinha, S.C. 1, Mr. A. N. Pandey, A.C. to S.C. 1.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 03-03-2016

Heard learned counsel for the parties.

The petitioner has moved the Court against the order dated 20.05.2015 passed by the respondent no. 2 in Miscellaneous Appeal No. 51 of 2015, by which he has upheld the order dated 10.02.2015 passed by the respondent no. 3 as contained in Letter No. 445 allowing the respondent no. 7 to hold his cattle fair ('Hat') on Tuesday every week whereas the petitioner has been directed to hold it on Friday every week.



Learned counsel for the petitioner submits that in the constitutional scheme of things as well as in law, coupled with fact that the power exercised by the respondent no. 3 i.e., the District Magistrate, Purnia to intervene in the matter of regulating the cattle fair held on a private '*Raiyati*' land no more exists. He submits that even going by the past history of the case, the family of the petitioner was holding the '*Hat*' at village Chapahari since the year 1957 and though for short period from 1985 the chain was discontinued, but thereafter re-started and finally the petitioner continued to run the '*Hat*' on Tuesday after various orders by the respondent no. 3 himself dated 27.12.1997, followed by 20.01.1998 and finally 08.01.2015. It is submitted that the order dated 20.01.1998 besides being based on the local inspection and reports of the local authorities, was passed after hearing the respondent no. 7. Learned counsel submits that the District Magistrate has reversed his earlier orders by order dated 10.02.2015 after accepting the report of the Nodal Officer. It is submitted that the whole procedure leading to passing of the order dated 10.02.2015 was on the basis of a complaint made by the respondent no. 7 to the Departmental Minister which was forwarded to the District Administration for action. Learned counsel submits that even the report of the Nodal Officer enumerates facts both in favour of the petitioner and the respondent no. 7 which rendered it unfit for any conclusive determination for the purpose of revising the earlier orders, moreso, for the reason that after the repealing of the Bihar Agricultural Produce Markets Act, 1960 (hereinafter referred to as the '*Act*') in the year 2006 thereby rendering the State and its



authorities bereft of any regulatory power with regard to holding of fairs on private land. Learned counsel submits that the earlier order dated 27.12.1997 and 20.01.1998 were pursuant to the Competent Authority under the Act having referred the matter to the District Magistrate whereas in the present case the District Magistrate has passed the order without there being any such provision under the Act, any law or on the basis of facts which would justify invoking of his inherent powers to take care of the genuine ground realities.

Learned counsel submits that besides the order impugned dated 10.02.2015 is also impermissible in view of there being no independent power of review for the reason that the earlier two orders were passed under a statutory provision where the Competent Authority had delegated the power to the District Magistrate to pass an order which was so done in terms of the power vested in the Competent Authority under the Act as it was then whereas the order impugned does not have such legal shield. Learned counsel submits that the petitioner is holding the fair at a distance of nearly 4 Kms. from the site of respondent no. 7 and thus there can be no justification or even presumption that the same would create such a situation where the District Authorities have to invoke inherent sovereign powers to regulate the matter. Learned counsel submits that there is nothing on record to even indicate that the running of the '*Hat*' by the petitioner on his private '*Raiyati*' land in any way has caused impediment either to the public interest or public order.

Learned counsel for the State submits that the earlier

orders having been passed on reports which appeared to the authority not to be well founded on facts, the present position has been taken care of and the order impugned passed, which is justified. However, on a pointed query as to whether there was any consideration regarding breach of law and order/public order, the answer is in the negative. He also admits that the officer has no such independent power under the law.

Learned counsel for the respondent no. 7 submits that the powers vested with the District Magistrate under Rule 15 of the Bihar Board's Miscellaneous Rules, 1958 (hereinafter referred to as the 'Rules') are powers to regulate and the same do not infringe on the right of any party including the petitioner. He submits that on facts, the respondent no. 7 was running his fair right from the year 1985 and the petitioner having stopped doing so, cannot suddenly wake up and claim a right which he himself has chosen to let extinguish. He submits that from the records it will transpire that the petitioner had run the fair without a valid licence as was required at the relevant time and thus having so done, the Court would not interfere in favour of a party who himself has not acted in accordance with law. Learned counsel further submits that the specific power to relegate a fair under the then Act which stands repealed in 2006, would not create a vacuum inasmuch as Schedule-7 of Article 162 of the Constitution of India clearly gives the power to the State Legislature to make laws with regard to regulating markets and fairs and in the present case, the District Magistrate having considered the factual aspect has taken a conscious decision which clearly is within

his jurisdiction and competence in view of Rule 15 of the Rules.

Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds substance in the contentions of learned counsel for the petitioner. The law as it stands now, being very clear in the sense that for running of a fair of the nature in issue, there are no regulatory or statutory provisions which can be invoked by an Officer acting under the authority of the State except in a condition which may be obtaining on the ground to justify such interference, the obvious being to maintain public order and in the general public interest. In the present case, admittedly when the two sides, i.e., the petitioner and the respondent no. 7 are separated by a distance of nearly 4 Kms., there cannot be any question of there being any issue with regard to law and order/public order. Further, it cannot be said to be in public interest for the simple reason that there cannot be any compulsion of any person who may desire to take part in the fair to go either to the petitioner's or the respondent no. 7's '*Hat*' and in fact it is in public interest that there is greater choice for them to approach the fair of their liking without there being any compulsion of being forced to go to a particular fair. On a direct query to learned counsel for the petitioner whether he is opposing holding of the '*Hat*' by the respondent no. 6 on Tuesday, the answer is that he has no such objection. Thus, the Court finds that the stand taken by the petitioner is reasonable and justifiable both on facts as well as in law. The further issue pointed out by respondent no. 6 that the District Magistrate/Collector has power under Section 15 of the Rules does

not seem to be reflected or justified from the facts and circumstances of the case and materials on record and which have also been admitted by learned counsel for the State where he has taken the stand that law and order was not a ground taken or even reflected from the order of the District Magistrate which is impugned.

For the reasons aforesaid, the Court finds that the order impugned dated 10.02.2015 contained in Letter No. 445 of the respondent no. 3 besides being without jurisdiction is not justified in the facts and circumstances of the case and accordingly is set aside. As a consequence, the appellate order of the Commissioner dated 20.05.2015 passed in Appeal No. 51 of 2015 also stands quashed.

The writ petition stands disposed off in the aforementioned terms.

The District Administration shall ensure that the petitioner is not prevented from holding the '*Hat*' on Tuesday every week on his 'Raiyati' land. However, the order may not be construed to mean that the petitioner shall be at liberty not to follow any other rules or regulations or the general directions which the Administration may issue in public interest and for maintaining law and order situation.

(Ahsanuddin Amanullah, J.)

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